Vero Marine Carriers' Legal Liability Wording

Note: individual policies may not include all the coverage sections shown in this sample wording
Limited Carrier’s Risk section

We cover your liability as a Carrier under the Contract and Commercial Law Act 2017 for carriage at Limited Carrier’s Risk. We do not cover any carriage under Declared Value or Declared Terms or any other liability assumed by you in private agreement with your customers, unless we agree specifically to cover any such liability on terms in writing between you and us.

We will indemnify you for:
(a) all sums which you shall become legally liable to pay as a Carrier under the Contract and Commercial Law Act 2017, subject to the terms of this Policy, in respect of loss of or physical damage to goods arising from an occurrence during the Period of Insurance. Our liability for all sums payable for any one occurrence shall not exceed the applicable Limit(s) of Liability specified in the Schedule.

If you choose, you will not be required to rely on the defence of saving life or property in peril available under section 260(2)(d) of the Contract and Commercial Law Act 2017 in any claim made against you.

Further, in addition to the Maximum Amount Any One Occurrence in the Schedule, we will indemnify you for:
(b) all costs and expenses of litigation recovered by any claimant against you;
(c) all costs and expenses of litigation incurred with our prior consent;
(d) Debris Removal and Clean-Up: where we have agreed that a claim is payable for lost or damaged goods, the costs of the removal of debris (that were the goods) following an accident, and any subsequent clean-up costs. However, any insurance cover available under your commercial motor vehicle or general liability policy / policies must first be exhausted.
(e) Expediting Expenses: where we have agreed that a claim is payable for lost or damaged goods, the reasonable additional costs incurred by you to carry any surviving goods to their destination.
(f) Consequential Loss: where we have agreed that a claim is payable for lost or damaged goods, we shall also reimburse you for any sum that you are found legally liable to pay for consequential losses that are found to be a direct result of the loss of or physical damage to those goods. However, we will not pay for loss of market, or fines or punitive damages of any kind.
Limited Carrier’s Risk -
Restricted Cover section

We cover your liability as a carrier under the Contract and Commercial Law Act 2017 for contracts for carriage at Limited Carrier’s Risk, for loss or damage caused by certain identified perils only, or as may otherwise specifically be agreed in writing between you and us.

Under this restricted cover we will indemnify you for:

(a) all sums which you shall become legally liable to pay as a Carrier under the Contract and Commercial Law Act 2017, subject to the terms of this Policy, in respect of loss of or physical damage to goods arising from an occurrence reasonably attributable to:
• fire or explosion
• the carrying conveyance colliding with any external object
• the carrying conveyance overturning or being derailed
• the carrying conveyance being a waterborne vessel, or being on board a waterborne vessel, that is stranded, grounded, capsized or sunk
during the Period of Insurance.

Our liability for all sums payable for any one occurrence shall not exceed the applicable Limit(s) of Liability specified in the Schedule.

If you choose, you will not be required to rely on the defence of saving life or property in peril available under section 260(2)(d) of the Contract and Commercial Law Act 2017 in any claim made against you.

Further, in addition to the Maximum Amount Any One Occurrence above, we will indemnify you for:

(b) all costs and expenses of litigation recovered by any claimant against you;

(c) all costs and expenses of litigation incurred with our prior consent;

(d) Debris Removal and Clean-Up: where we have agreed that a claim is payable for lost or damaged goods, the costs of the removal of debris (that were the goods) following an accident, and any subsequent clean-up costs. However, any insurance cover available under your commercial motor vehicle or general liability policy / policies must first be exhausted.

(e) Expediting Expenses: where we have agreed that a claim is payable for lost or damaged goods, the reasonable additional costs incurred by you to carry any surviving goods to their destination.

(f) Consequential Loss: where we have agreed that a claim is payable for lost or damaged goods, we shall also reimburse you for any sum that you are found legally liable to pay for consequential losses that are found to be a direct result of the loss of or physical damage to those goods. However, we will not pay for loss of market, or fines or punitive damages of any kind.
Owner’s Risk section

Under this Owner’s Risk cover we will indemnify you for:

(a) Debris Removal and Clean-Up: where we agree that a loss is payable involving damaged goods, the costs of the removal of debris (that were the goods) following an accident, and any subsequent clean-up costs incurred by you. However, any insurance cover available under your commercial motor vehicle or general liability policy / policies must first be exhausted.

(b) Expediting Expenses: where we agree that a loss is payable involving lost or damaged goods, the reasonable additional costs incurred by you to carry any surviving goods to their destination.
Declared Value Risk section

We cover your liability as a Carrier under the Contract and Commercial Law Act 2017 for contracts for carriage at Declared Value Risk, as specifically agreed with us.

In addition to the Maximum Amount Any One Occurrence in the Schedule, we will indemnify you for:

(a) Debris Removal and Clean-Up: where we have agreed that a claim is payable for lost or damaged goods, the costs of the removal of debris (that were the goods) following an accident, and any subsequent clean-up costs. However, any insurance cover available under your commercial motor vehicle or general liability policy / policies must first be exhausted.

(b) Expediting Expenses: where we have agreed that a claim is payable for lost or damaged goods, the reasonable additional costs incurred by you to carry any surviving goods to their destination.

(c) Consequential Loss: provided there is a limit specified in the Schedule, where we have agreed that a claim is payable for lost or damaged goods, we shall also reimburse you for any sum that you are found legally liable to pay for consequential losses that are found to be a direct result of the loss of or physical damage to those goods. However, we will not pay for loss of market, or fines or punitive damages of any kind.
Declared Terms section

We cover your liability as a Carrier under the Contract and Commercial Law Act 2017 for contracts for carriage on Declared Terms, as specifically agreed with us.

Further, in addition to the Maximum Amount Any One Occurrence in the Schedule, we will indemnify you for:

(a) Debris Removal and Clean-Up: where we have agreed that a claim is payable for lost or damaged goods, the costs of the removal of debris (that were the goods) following an accident, and any subsequent clean-up costs. However, any insurance cover available under your commercial motor vehicle or general liability policy / policies must first be exhausted.

(b) Expediting Expenses: where we have agreed that a claim is payable for lost or damaged goods, the reasonable additional costs incurred by you to carry any surviving goods to their destination.

(c) Consequential Loss: provided there is a limit specified in the Schedule, where we have agreed that a claim is payable for lost or damaged goods, we shall also reimburse you for any sum that you are found legally liable to pay for consequential losses that are found to be a direct result of the loss of or physical damage to those goods. However, we will not pay for loss of market, or fines or punitive damages of any kind.
Introduction

Privacy Act and the Insurance Claims Register (ICR)

The ICR is a database of insurance claims to which participant insurers have access. The purpose of the ICR is to prevent insurance fraud. The ICR is operated by Insurance Claims Register Limited (ICR Ltd), PO Box 474, Wellington.

This Policy is issued to you conditional upon you authorising us to place details of any claims made against this Policy on the database of ICR Ltd, where they will be retained and be available for other insurance companies to inspect.

You also authorise us to obtain from ICR Ltd personal information about you that is (in our view) relevant to this Policy or any claim made against it. You have certain rights of access to and correction of this information, subject to the provisions of the Privacy Act 1993 or any subsequent re-enactments.

General Conditions

The following General Conditions apply to the whole policy.

1. Attachment and Termination of Cover

The cover attaches from the time the goods for which you accept responsibility are accepted for carriage, as defined in section 257 of the Contract and Commercial Law Act 2017. Cover continues until your responsibility for the goods ends as in section 258 of the Contract and Commercial Law Act 2017.

However, we do not cover the goods when not in transit; or when left unattended at the intended point of delivery.

2. Goods covered by this insurance

All goods and merchandise, except:

- living animals, including livestock
- household goods & personal effects removals
- office removals
- perishable goods
- Dangerous Goods
- Hazardous Substances
- aircraft of any kind including helicopters
- Valuable Cargo
- wines, spirits, tobacco, tobacco products

unless specified in the Schedule.

3. Exclusions applicable to this Policy

This Policy does not cover:

1 Any deductible stated in the Schedule.
2 Liability for loss of or damage to goods arising out of:
   (a) your insolvency
   (b) acts of suspected theft, pilferage or dishonesty not notified to the Police within 72 hours of you becoming aware of the event
   (c) infidelity or dishonest acts by your employees, agents or subcontractors
   (d) unexplained disappearances, or shortages of goods revealed only after the taking of inventory, or due to accounting or clerical errors
   (e) the actions of any person involved with the goods accepted for carriage by you, where that person
      (i) is under the influence of any intoxicating liquor, or drug; or
      (ii) does not hold the appropriate driver’s licence for any road conveyance on public roads

but only when you or your local managers were aware, or should have been aware, of the substance use or licence deficiency prior to the accident.
(f) (i) carriage by a carrying conveyance which is overloaded or overweight
(ii) the use of a carrying conveyance that is not in a roadworthy or safe condition
(iii) inadequate protection of the goods from the weather
(iv) inadequate stowage or securing of the goods but only where you or your local managers were aware, or should have been aware of the situation prior to the accident

(g) theft or pilferage from an unattended and unlocked carrying conveyance

(h) your acceptance of goods for carriage, after being advised by a customer of any matter breaching either of the implied warranties in section 273(1)(a) of the Contract and Commercial Law Act 2017.

(i) any mechanical or electrical derangement of the goods where there is no evidence of external damage to either the goods or its external packaging

(j) you intentionally causing loss or damage.

3 In no case shall we cover your liability for loss or damage directly or indirectly caused by or contributed to, by, or arising from:

(a) any radiation from civil nuclear power generation, nuclear fuel or military any nuclear chemical, biological, bio-chemical or electromagnetic weapon

(b) civil strife, terrorism, strikes or war.

4. Your Obligations

Basis of Insurance Any information provided to us to assess your risk for acceptance for insurance shall form the basis of the contract between you and us.

Advise us You must contact us immediately if you become aware of any situation that may give rise to a claim against you.

Minimise the loss You must take all reasonable steps to minimise the claim and avoid any further damage to the goods, or any further liability.

Provide full information When you make a claim under this Policy you consent to your information in connection with that claim being:

- disclosed to us
- shared with others investigating the claim on our behalf.

You must:

- give us free access to examine and assess the claim
- send to us any relevant documentation or correspondence
- complete a claim form and statutory declaration on request
- provide us with requested information and assistance.

Be truthful If your dealings with us are dishonest and/or your claim is dishonest or fraudulent in any way, we may:

- decline your claim in whole or part
- declare this Policy or all policies you have with us to be unenforceable from the date of the dishonest or fraudulent act.

Do not admit liability You must not:

- admit you are liable to any customer
- do or say anything that may prejudice our ability to defend the claim against you or take a recovery action in your name.

Comply with the Policy You must comply with your obligations under this Policy at all times. If you do not comply with this, we may not pay your claim.

Provide accurate information At any time, you must make sure that all statements and representations made to us, either by you or anyone else on your behalf, are truthful and complete.

Reasonable care You must take reasonable care at all times to avoid circumstances that could result in a claim. Your claim may not be covered if you are reckless or grossly irresponsible.

Other insurance You must notify us as soon as you know of any other insurance policy that covers you for any of the liabilities covered by this Policy.

If you can claim under any other insurance policy, we will only pay over and above the amount paid by the other insurance.
Change in circumstances  You must inform us of any change in circumstance which is material to your risk we insure or the amount of premium we charge to cover your risk. Information is material where we would have made different decisions about either:

- continuing to insure you
- the terms of your cover
- the amount of premium we charge.

Once you have told us of any change in circumstances, we may at our option either cancel your Policy, or alter the premium agreed, or change the terms of cover provided by this Policy.

If you fail to tell us about a change of circumstance to the risk we have agreed to insure, we may at our option:

- declare this Policy unenforceable
- decline any claim in whole or in part.

These actions will be taken from the date you knew, or ought to have known, of the increase or alteration of the risk we insure.

5. Managing Your Claim

Subrogation  Once we have accepted any part of your claim under this Policy, we may, at our own expense, assume your legal right of recovery. If we do so, you must fully co-operate in the enforcement of this right by us.

Defence of claims  After you have made a claim, we have the sole right to act in your name and on your behalf to defend, negotiate or settle the claim, as we see fit. This will be done at our expense.

We may appoint our own lawyers to represent you. They will report directly to us. You agree to waive in our favour the legal professional privilege to your communications with them.

Discharge of claims  We may elect at any time to pay you

- the maximum amount payable under the Policy; or
- any lesser sum for which we can settle the claim against you.

Once we have paid this amount, and any defence costs already incurred, our responsibility to you under this Policy has been met in full.

6. How we administer this Policy

Cancellation  You can ask us to cancel this Policy at any time.

If so, cover of all risks under this Policy will cease immediately on cancellation. We will then refund the proportion of the unused premium paid, calculated from the date of the cancellation less 15% which will be retained by us.

We can cancel this Policy by advising you, or those who represent you, by letter, fax or email. Cancellation will take effect at midnight on the 7th day after the date of our communication. We will refund the proportion of the unused premium paid, calculated from the date of the cancellation.

Modification  You can ask us to modify this Policy at any time. We must agree to any modification before it takes effect.

We can modify this Policy by advising you, or those who represent you, by letter, fax or email. The modification will take effect at the agreed time.

GST  Except at where otherwise stated, the Limits of Liability in the Schedule are exclusive of GST.

Premium adjustments and declarations  For goods carried at Limited Carrier’s Risk, where we have charged you a deposit premium, then the annual premium can be adjusted by us, based on the agreed method of calculation. You agree to declare to us the estimated and actual values of the gross income derived from these contracts. This might result in an additional premium payable by you. No portion of a deposit premium is refundable.

If we have specifically agreed to include goods carried at Declared Value, you agree to declare to us the value of the goods carried.
If we have specifically agreed to include goods carried at Declared Terms, you agree to declare to us the gross income derived from these contracts.

You shall keep accurate records and agree to allow us to inspect them.

7. Laws that govern this Policy

The law of New Zealand applies to this Policy. The New Zealand Courts have exclusive jurisdiction. Any reference to legislation in this Policy and any Schedule includes any future modification, any future re-enactment, and/or any future substitution of that legislation. Any reference to legislation also includes any regulation, any order-in-council, any/or any other instrument issued or made or enabled under that legislation.

8. Definitions applicable to this Policy

**Accident** means an event that is sudden, unintended and unexpected by you.

**Actual Carrier, Carriage, Carrier, Contracting Carrier, Contracting Party, Contract for Carriage, Declared Value Risk, Declared Terms, Goods, Limited Carrier’s Risk and Loss, Damage** where used in this Policy shall, except where the context clearly requires otherwise, have the same meaning as is given to each of them in the Contract and Commercial Law Act 2017.

**Carrying conveyance** a means of carriage or a vehicle used for the carriage of goods and includes any trailer, b-train, wagon, container or similar vehicle or space in which the goods are carried.

**Claim** means a claim against you by a third party which arises from your legal liability as a Carrier under the Contract and Commercial Law Act 2017.


**Customer** means any contracting party with whom you contract to carry Goods.

**Dangerous Goods** has the same meaning as in the Land Transport Rule: Dangerous Goods 1999.

**Deductible** means an amount that is first deducted from any claim made under this Policy. A deductible is an amount that is included within a Limit of Liability. For example, if there is a NZD 50,000 Limit, but a NZD 5,000 deductible applies, the maximum we can pay for one claim is NZD 45,000.

**Goods** are as defined in the Schedule.

**Goods are in transit** when the goods are on any carrying conveyance, including whilst stationary, or whilst on loading docks, wharves or any holding area waiting on transport. Goods are not ‘in transit’ when they are in a store and a storage charge is made. Goods under carrier’s lien (section 285 of the Contract and Commercial Law Act 2017), or under storage and disposal (sections 287, 288, 289, 290 and 291 of the Contract and Commercial Law Act 2017) are not ‘in transit’.

**Hazardous Substances** has the same meaning as in the Hazardous Substances and New Organisms Act 1996.

**Loss of market** means a claim made against you by your customer for their loss or damage arising from their inability or unwillingness to sell the goods at the intended price or to a particular purchaser.

**Occurrence** means an event or series of events from one source or original cause during the Period of Insurance which results in loss of or physical damage to goods in any circumstances which could give rise to your liability under the Contract and Commercial Law Act 2017.

**Period of Insurance** means the period shown in the Schedule and any subsequent period for which we have agreed to renew this Policy, and for which you have agreed to pay premium.

**Policy** means the terms, conditions and exclusions of this document, including the Schedule.

**Punitive damages** means damages awarded against you to reflect punishment and/or of an exemplary nature.

**Schedule** means the most recent Policy Schedule (and any Policy endorsements) issued by us.
**Valuable Cargo**

means bullion, precious metal objects, precious stones, jewellery, bank notes, coins, bonds, negotiable instruments or securities of any kind, antiques, and works of art.

**We, Us**

means Vero Marine Insurance, an operating division of Vero Insurance New Zealand Limited, the Insurer.

**You, your means:**

(a) the party named as the Insured in the Schedule; and any

(b) subsidiary company.

You, your can also mean any

(c) associated managed company

(d) new company or organisation formed or acquired by the party named as the Insured in the Schedule

provided that we are advised in writing within 60 days of the assumption of active management control, or 60 days from the time of any formation or acquisition.
Liability Claims Procedure

Vero Marine Insurance
P O Box 1759
Auckland
New Zealand

Tel +64 9 363-2600
Fax +64 9 363-2601
E-mail claims@veromarine.co.nz
Website http://www.veromarine.co.nz

Notification

Please advise our nearest office (either directly or through your broker) immediately should any of the following occur:

- **Claim** - this includes any legal proceedings and/or allegations of wrongdoing coupled with a demand for compensation
- **Complaint** - this includes allegations of incompetence, poor performance or expressions of dissatisfaction, as well as complaints lodged with any professional body or association
- **Circumstance that might give rise to a claim** - this includes any mistake, error or problem that you ought to reasonably identify as possibly giving rise to a subsequent claim.

Further Action Required

Following initial advice to us, as soon as reasonably practicable you must:

- provide details of the circumstances to us in writing, together with any documents and information which we deem necessary to obtain; and
- on receipt, forward to us every letter, writ, summons, process and claims; and
- inform us in writing of notice of any prosecution or inquest.

It is good practice to note the names and addresses of witnesses, to take photographs and to video, and to draw diagrams as soon as possible after the occurrence.

Important

Notification should be given irrespective of the perceived merit of any actual or potential claim or the quantum at issue.

You should not:

- admit liability without our written consent; or
- take any action which may be considered an admission of liability; or
- repudiate or settle a claim.

If you do not follow these instructions, you may prejudice your insurance claim

Subrogation

1. 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.
2. 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.
3. 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:
   i) first - in meeting our loss.
   ii) second - in compensating us for interest foregone in respect of 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.
   iii) third - in meeting your uninsured losses (if any).
   iv) fourth - for our benefit.
**Initial Notice of Claim**

*Notification to other Carriers of a Potential Claim*

This Notice should be faxed to any actual carrier who may be legally responsible by the Carriage of Goods Act 1979 or subsequent amendments for causing damage or partial loss to the items detailed below, or may have been in possession of the items at that time. *This Initial Notice should be lodged with the actual carrier within 10 days of receiving a Notice of Claim: section18(2).*

<table>
<thead>
<tr>
<th>To</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>From Company</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company Address</td>
<td>Contact Person</td>
</tr>
<tr>
<td></td>
<td>Telephone</td>
</tr>
<tr>
<td></td>
<td>Fax</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Location of Goods</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person</td>
<td>Telephone</td>
</tr>
<tr>
<td></td>
<td>Fax</td>
</tr>
</tbody>
</table>

Goods may be examined at this address. Please advise us prior to attending as the insurance surveyor may wish to conduct a joint survey.

<table>
<thead>
<tr>
<th>We hold you responsible for damage to</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Units</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transit Document No.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Conveyance(s)</td>
<td></td>
</tr>
<tr>
<td>Transit From</td>
<td></td>
</tr>
<tr>
<td>Transit To</td>
<td></td>
</tr>
<tr>
<td>Estimate of Loss</td>
<td></td>
</tr>
<tr>
<td>Date of Discharge</td>
<td></td>
</tr>
<tr>
<td>Date of Loss</td>
<td></td>
</tr>
</tbody>
</table>

Yours faithfully

**NAME:**

**TITLE:**