



FEE INSURE & FEE INSURE PLUS POLICY



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QBE INSURANCE (INTERNATIONAL) LTD
A Member of the QBE Insurance Group - Incorporated in N.S.W., Australia. A.B.N. 11 000 000 948



international underwriting
agencies ltd



FEE INSURE & FEE INSURE PLUS

POLICY

In consideration of the payment of the Premium to QBE Insurance (International) Limited (“QBE”) and in reliance on the written proposal, declaration and any other underwriting information provided, which shall be deemed to be incorporated into and to be the basis of this Policy, QBE will indemnify the Insured as follows.

This Policy includes two types of cover and the cover You have chosen (either Section 1 or both Sections) will be shown on Your Policy Schedule.

SECTION 1: AUDIT FEE

YOUR COVER

External Professional Fees reasonably and properly incurred by You up to the Limit of Liability specified in the Policy Schedule in connection with assisting in responding to or defending an Audit of a Return lodged by You or on Your behalf for the financial year(s) specified in Your Policy Schedule.

CONDUCT OF AN AUDIT

You must assist any professional engaged on Your behalf in the Audit process and You must take all reasonable action, including the utilisation of relevant staff for the work to be undertaken, so that Professional Fees incurred are fair and reasonable for the type of Audit.

You must co-operate with Us and provide any information and documentation reasonably required for the administration or payment of claims under this Policy.

We shall be entitled to obtain any information, report, document or advice relating to the Audit from You or Your representatives, subject however, to Your right to refuse to agree on the grounds that to do so might prejudice Your interest in any litigation subsequent to the Audit.

DEFINITIONS APPLICABLE TO SECTION 1

In Section 1 of this Policy, (including any endorsements relating to Section 1), unless specifically stated to the contrary:

1. **“Audit”** means:

Any form of inquiry, investigation, review or Audit (including record keeping or record retention) in respect of a Return that is initiated by a government agency duly authorised to conduct this form of activity.

This definition does not include:

- (a) any form of activity involving a review relevant to You maintaining industry status, licence, membership, any form of occupational health and safety type compliance, similar requirements, or
- (b) any form of activity involving a review of how the professional firm assisting the insured party undertakes its professional duties, or
- (c) any form of practice or procedural Audit of any of Your representative’s files or Your files, or
- (d) any activity involving a government agency gathering information or data that is not part of an Audit, or
- (e) any activity involved in the familiarisation, education, training, application, implementation, process or operation of any amendments or changes to existing, or the introduction of new, government or industry regulation.

2. **“Notification Date”** means:

The date when You or Your representative were first made aware of a potential Audit, either verbally or in writing. Where You receive a pre-audit questionnaire, subsequent to the lodgement of a Return, the Notification Date is deemed to be the date of receipt of this pre-audit questionnaire.

3. **“Professional Fees”** means:

Reasonably incurred fees, costs and expenses of a practising accountant or any other professional You may need to engage such as a qualified advisor, solicitor, lawyer or other professional and disbursement costs. Professional Fees does not include Professional Fees to complete relevant Returns, questionnaires or documents required by a government agency that the insured party would ordinarily be required to complete and supply or costs, associated with the reconstruction or rewriting of the insured party’s records required for the purpose of the Audit.

4. **“Retrospective Period”** means:

The Retrospective Period shown on the Policy Schedule.



5. “Return” means:

Any return legally required to be and actually lodged with a government or government agency by You or on Your behalf that relates to the financial year(s) represented by the Period of Insurance and any Retrospective Period specified in the Policy Schedule.

6. “You” or “Your” means:

- (a) Where You have applied as an “Individual” – the nominated individual, their spouse or partner and any Loss Acquiring Qualifying Company or trust, or
- (b) Where You have applied as a “Self Employed” person – a self employed person (who may be an individual, a business, body corporate, Loss Acquiring Qualifying Company, trust, superannuation fund, registered company, partnership, non-profit organisation or association, or other like entity but which does not have any employees other than You or Your spouse or partner), or
- (c) Where You have applied as a “Business” - a business (who may be a sole trader, a business, body corporate, Loss Acquiring Qualifying Company, trust, superannuation fund, registered company, partnership, non-profit organisation, association, joint venture, an entity that is only required to register for specific statutory purposes or other like entity and which does have employees) legally required to separately lodge Return(s), or
- (d) As otherwise specified, and named in the Policy Schedule.

EXCLUSIONS APPLICABLE TO SECTION 1

We will not cover You:

- 1. in respect of Returns lodged where the You are seeking a refund of tax, duty or levy that involves further substantiation between You and the relevant government agency. This exclusion doesn’t apply where the relevant government agency submits You to an official Audit
- 2. in respect of any Audit where a Return has been prepared, lodged or submitted dishonestly or fraudulently
- 3. In respect of any Audit where You culpable behaviour is assessed by the government agency as a case of deliberate evasion or recklessness.
- 4. for Professional Fees that are:
 - (a) associated with any criminal prosecution
 - (b) associated with any Return lodged outside the Territorial Limits, or
 - (c) for any Return lodged more than two months outside the lodgement date prescribed or the date prescribed in an authorised extension of time for lodgement, approved in writing by the relevant government agency.
- 5. for any tax amounts payable pursuant to an amended notice of assessment or adjustment including but not limited to any additional tax, duty, government impost or similar payments
- 6. for any fine or penalty imposed
- 7. in respect of a fraudulent claim
- 8. for a claim arising from any:
 - (a) circumstances known prior to or with a Notification Date prior to the Acceptance Date, or
 - (b) verbal or written notice of an impending Audit given to You or Your representative prior to the Acceptance Date or with a Notification Date prior to the Acceptance Date.
- 9. in respect of any Audit of that part of a Return that includes a deduction, rebate or claim for tax or duty relief arising out of an arrangement adopted for the principal purpose of obtaining that deduction, rebate or claim for tax relief, unless the arrangement has received written approval from the relevant government agency. In this clause the term ‘arrangement’ includes but is not limited to structures, instruments, products, plans, schemes that are intended to defer, reduce or avoid tax
- 10. in respect of any Audit of any form of managed investment
- 11. for any costs incurred for any legal action taken against You
- 12. for any costs incurred for any legal action instituted by You
- 13. for any Audits of Returns where You have entered into any form of external administration or receivership or are deemed to be insolvent under New Zealand legislation



OPTIONAL EXTENSION TO SECTION 1

Where a Retrospective Period is shown in the Policy Schedule, We will pay Professional Fees reasonably and properly incurred by You in connection with assisting in the response to an Audit of a Return lodged by You or on Your behalf for the financial year(s) specified in the Retrospective Period. Each financial year has its own Limit of Liability equal to that specified in the Policy Schedule.

SECTION 2: LEGAL FEE

YOUR COVER

Section 2 applies to Commercial Disputes that result in Legal Proceedings which first occur, and are notified to Us, during the Period of Insurance.

We will cover You for Your Legal Costs (and Your Opponent's Civil Costs) up to the Limit of Liability specified in the Policy Schedule that You reasonably and properly incur by engaging external legal counsel in responding to or defending a Legal Proceeding taken against Your business for a Commercial Dispute within New Zealand that first occurs, and which You notify to Us, during the Period of Insurance.

The words 'first occur, and are notified to Us' above means that, if during the Period of Insurance, You first become aware of Legal Proceedings and You notify Us within the Period of Insurance, then We will acknowledge that a claim has been lodged with Us. On the other hand, if You first become aware of Legal Proceedings and You don't notify Us within the Period of Insurance, then there is no claim under this Policy.

DEFINITIONS APPLICABLE TO SECTION 2

1. **"Co-Insurance"** means:

That We will share the amount of Your claim on the basis that We will be responsible for 75% and You 25% of the amount being claimed with a minimum of \$500 to apply to each claim. We will contribute to the amount of Your claim until such times as the Limit of Liability has been exhausted. If this occurs, We have no obligation to pay any further amounts.

2. **"Commercial Dispute"** means:

A dispute between You and another party arising out of or in connection with Your business and does not include disputes between directors, executives, staff, consultants or contractors as it relates to employment and employment practice issues or any other party or individual where the matter is of a personal, domestic or household nature.

3. **"Contract"** means:

A contract entered into and governed by the laws of New Zealand and the performance of the contract must take place in whole in New Zealand.

4. **"Legal Costs"** means:

Legal fees, Mediation costs, opponent civil costs and disbursements originating from a Commercial Dispute reasonably and properly incurred and charged to You in accordance with the appropriate statutory or court scale where there is one and at reasonable rates where there is not. Where You and We cannot agree whether legal fees, costs or disbursements have been reasonably and properly incurred and charged, You and We will refer the matter to assessment or decision of a legal costs consultant approved by Us, and be bound by their decision.

5. **"Legal Proceedings"** means:

Any proceedings taken against You or any appeal in any court or tribunal of competent jurisdiction within the Territorial Limits and which are subject to New Zealand law.

6. **"Mediation"** means:

A mediation presided over by a qualified mediator mutually agreed by You and the opponent party or such other alternative dispute resolution as agreed between You and Us that is appropriate for the particular Commercial Dispute.



7. **“Opponents Civil Costs”** means:

Any fees, charges, expenses and disbursements ordered to be paid by You by a court or tribunal in connection with Legal Proceedings arising from a Commercial Dispute, such costs to be assessed or agreed to by Us or assessed through the court processes.

8. **“You” or “Your”** means:

The Insured(s) named in the Policy Schedule

EXCLUSIONS APPLICABLE TO SECTION 2

We will not cover You:

1. for legal fees where You are instigating legal action
2. for any fact or circumstance, act, omission or dispute which You knew or ought reasonably to have known prior to or existing at the commencement of this Policy was likely to give rise to a Commercial Dispute, including any knowledge or advice of a Commercial Dispute, which, prior to the Period of Insurance, You knew, or ought reasonably to have known, was likely to give rise to a Commercial Dispute
3. for Legal Costs or Opponents Civil Costs incurred prior to notification and acceptance of a claim by Us
4. for personal injury or property damage
5. for Legal Costs or Opponents Civil Costs where any two or more parties are named in the Policy Schedule
6. when You are bankrupt or have committed an act of bankruptcy or have made an arrangement with Your creditors or have entered into a deed of arrangement or are in liquidation or part or all of Your affairs or property are in the care or control of a receiver or the like
7. for any Commercial Dispute that is not within the jurisdiction of a court or tribunal within the Territorial Limits
8. for any fine, penalty, civil penalty, punitive, exemplary, multiple, or aggravated damages or compensation
9. in relation to any matter involving the recovery of any monies owed by You or to You
10. for Legal Proceedings that involve defamation, slander or libel
11. in relation to any matter directly or indirectly caused by or arising from, in whole or part, any criminal act committed deliberately by You except as expressly provided for in this Policy
12. for costs which You may be ordered to pay by a criminal jurisdiction
13. for any allegations against You in relation to intellectual property rights (i.e. patents, copyrights, trademarks, merchandise marks, secrecy and confidentiality agreements and the like) including but not limited to the infringement, misappropriate, invalidity or revocation of any intellectual property rights
14. in relation to any matter involving the giving of professional advice or service which means the provision of any advice or service usually provided by the members of a profession
15. arising from Your holding a directorship or office in an incorporated or unincorporated body
16. in relation to any matter arising from or relating to a Commercial Dispute caused by or arising from the use by You or any of Your employees of any motor vehicle whilst under the influence of non-prescribed drugs and whilst the driver's blood alcohol level exceeds the level permitted by law, or commenced You or Your employees resulting from refusing to provide a blood or urine sample
17. in relation to any matter arising from or relating to contracts for work on land or buildings related to Your business



18. in relation to any matter arising from or relating to any matters or actions arising from the preparation, registration and distribution of a prospectus or similar offering used to raise equity or funding from a investors
19. in relation to any matter arising from or relating to You participating in any form of game of chance, competitions or trials of any kind
20. where You have failed to act in accordance with the advice of Your legal representative
21. where You have caused a delay that is prejudicial to the successful outcome of the Legal Proceedings
22. for financial loss directly or indirectly caused by or arising from, in whole or part, any form of environmental impact, including but not limited to, contamination or pollution caused by any trade waste, smoke, soot, fumes, liquids, gases, mould or other substances discharged, dispersed, released or which have escaped into or upon land, the atmosphere or any watercourse or body of water unless such discharge, dispersal, release or escape is instantaneously caused by a sudden, unexpected and unintended happening that occurs at a specific time and place

GENERAL DEFINITIONS

If words and terms are only used in just one Section of the Policy, We have defined their special meaning in that Section. The words or terms defined below share the same meaning in both Section 1 and Section 2.

1. **“Acceptance Date”** means:

The date of receipt of the Proposal Form by International Underwriting Agencies Limited or Your insurance intermediary.

2. **“Limit of Liability”** means:

The maximum amount payable under Section 1 for all claims for all financial years You have insured and Section 2 for all claims during the Period of Insurance regardless of the number of claims or the number of insured parties. This amount will not be reinstated whether automatically or not.

The Limit of Liability under Section 1 is independent of claims incurred under Section 2 and vice versa and each section is not available to meet any claims in excess of the Limit of Liability under the other Section.

3. **“Period of Insurance”** means:

The period shown in the Policy Schedule.

4. **“Policy”** means:

This policy wording and the Policy Schedule describing the insurance contract between You and Us.

5. **“Policy Schedule”** means:

The schedule of insurance or any endorsement schedule We give You.

6. **“Premium”** means:

The amount shown as Premium on the Policy Schedule or Tax Invoice.

7. **“Tax Invoice”** means:

The invoice sent to You by Your insurance intermediary.

8. **“Territorial Limits”** means:

New Zealand

9. **“We”, “Our” or “Us”** means:

QBE Insurance (International) Limited



GENERAL EXCLUSIONS

This Policy excludes loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. War, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or
2. Any act(s) of Terrorism

For the purpose of this exclusion, an act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- involves violence against one or more persons, or
- involves damage to property, or
- endangers life other than that of the person committing the action, or
- creates a risk to health or safety of the public or a section of the public, or
- is designed to interfere with or to disrupt an electronic system.

3. Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.
4. Any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, or in consequence of asbestos in whatsoever form or quantity.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to 1, 2, 3 or 4 above.

GENERAL CONDITIONS

1. Changes to information previously advised

You must tell Us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of loss, damage or injury.

2. Changing Your Policy

If You want to make a change to this Policy, the change becomes effective when:

- We agree to it, and
- We give You a new Policy Schedule detailing the change.

3. GST

Where, upon receiving any indemnity payment under this Policy, You are liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) and/or under the equivalent legislation in any other jurisdiction specified in the Schedule, QBE will indemnify the Insured for the amount of that tax. The indemnity under this clause is payable by QBE in addition to the Limit of Indemnity.

4. Notices

Any notice We give You will be in writing, and it will be effective:

- if it is delivered to You personally, or
- if it is delivered or posted to Your address last known to Us.

It is important for You to tell Us of any change of address as soon as possible.

5. Our right of recovery

If You have agreed not to seek compensation from another person who is liable to compensate You for any loss, damage or liability which is covered by this Policy, We will not cover You under this Policy for that loss, damage or liability.



6. Termination

- We may cancel this Policy in any of the circumstances permitted by law by informing You in writing.
- We will give You this notice in person or send it to Your address last known to Us.

WHAT YOU MUST DO WHEN YOU HAVE A POLICY

You must:

- use Your best endeavours and give due consideration to compliance with the various legislation, procedures or guidelines issued by the relevant government agency
- fully comply with all legal requirements in respect of the proper maintenance of records, books and other documents common for insureds in accordance with relevant government agency guidelines
- use Your best endeavours to properly respond to any Audit undertaken
- ensure that You and Your representatives assist Us to settle any claim in a timely manner, and
- tell Us of any other insurance You have that may also cover claims under this Policy
- co-operate with Us and provide any information and documentation reasonably required for the administration or payment of claims under this Policy.

OTHER CONDITIONS

1. You must use Your best endeavours to or at Our direction have any Commercial Dispute resolved through Mediation including proposing resolution of the Commercial Dispute by Mediation.
2. To the extent to which the law permits, We are entitled to prosecute for Our own benefit and in Your name any claim which You may have against another party to recover Legal Costs or Opponents Civil Costs for which We have indemnified You, in whole or in part, under this Policy. You must fully cooperate with Us in any actions We may take and We will have full discretion as to the conduct or settlement of those proceedings.
3. Where any Legal Proceedings costs are awarded to You, You must at Our expense take all reasonable steps to recover those costs and account for them to Us by way of reimbursement to Us of Legal Costs that We have paid to You or on Your behalf in the case.
4. You must ensure that Your representative keeps Us fully informed of developments in the Legal Proceedings and You must ensure that We are given direct access to Your legal representative at all reasonable times.
5. You must ensure that Your legal representative immediately produces to Us any documents or information that We may reasonably require.
6. Where You refuse to accept an offer or payment into court which We have reasonably instructed You to accept, We will not then be liable to pay Legal Costs or Opponents Civil Costs from that date on unless You recover an amount which exceeds that which was offered or paid into court.
7. We will not be liable for Legal Costs for an appeal brought by You unless We are satisfied that there are reasonable prospects of the appeal succeeding.
8. If You abandon a claim, without Our prior consent, then future Legal Costs and Opponents Civil Costs will become Your responsibility.
9. All accounts for Legal Costs and Opponents Civil Costs payable under this Policy must be submitted to Us as soon as possible. Any delay that invokes interest or penalty costs will be at Your expense.
10. Any dispute between You and Us in relation to this Policy must be brought in a court within New Zealand.



GENERAL CLAIMS CONDITIONS

1. Notification

You must:

- (a) give written notice to International Underwriting Agencies Ltd that an Audit is to be conducted by a relevant government or government agency within one (1) month or within five (5) business days of Legal Proceedings being taken against You. The written notice must include a copy of the notice from the relevant government agency that clearly identifies the type of Audit to be conducted or a copy of the notice of Legal Proceedings being taken against You, or
- (b) where an Audit has commenced in the absence of any notification document being issued by a relevant government agency, for e.g. upon a visit by an officer of a relevant government agency, provide International Underwriting Agencies Ltd with a letter signed by You verifying that an Audit has in fact commenced, including details of the date of the first visit by the officer of the relevant government agency, together with the officer's full name, title and telephone contact details.

Address for Notification

International Underwriting Agencies Ltd
PO Box 7238
Wellesley Street
Auckland

Ph: (09) 914 6440
Email: iua@iua.co.nz

2. Claims submissions

With respect to the Section 1, You must submit claims documentation for assessment by Us as follows:

- Claim form
- Where the relevant government agency has issued a document notifying or informing You of the commencement of an Audit, a copy of that document
- a detailed breakdown of the Professional Fees incurred, as evidenced by the professional's Tax Invoice, identifying partners/employees involved, activities undertaken, number of hours involved, any disbursement costs, the hourly rate, and total amount of Professional Fees incurred
- a copy of the professional's Tax Invoice signed by You acknowledging that the activities undertaken by the professional concerned is fair and reasonable and that the amount being claimed will reduce the Limit of Liability that will be available for possible future claims, and
- upon completion of the Audit, final written confirmation from the relevant government agency advising that the Audit has been finalised
- proof of lodgement dates of the relevant Returns being audited.

With respect to Section 2, You must submit claims documentation for assessment by Us as follows:

- Claim form
- where Legal Proceedings are taken against You, a copy of the documents received and await Our instructions to proceed with any response
- a detailed breakdown of the Professional Fees incurred, as evidenced by the professional's Tax Invoice, identifying: partners/employees involved, work undertaken, number of hours involved, any disbursement costs, the hourly rate, and total amount of Professional Fees incurred
- a copy of the professional's Tax Invoice signed by You acknowledging that the activities undertaken by the professional concerned is fair and reasonable and that the amount being claimed will reduce the Limit of Liability that will be available for possible future claims
- upon completion of Legal Proceedings a copy of relevant documentation that outlines or confirms the outcome of the Legal Proceedings.



3. Claims payments

With respect to claims payments:

1. We will pay the amount of Your claim less 2 and/or 3 below.
2. You are liable for \$500 or 25% of the amount (before GST), whichever is the greater, being claimed under Section 2 and must pay this amount direct to the relevant professional.

What We do

We may take over and conduct the defence or settlement of any claim or issue Legal Proceedings for damages. If We do this We will do it in Your name. We have full discretion in the conduct of any Legal Proceedings and in the settlement of any claim. You must co-operate by giving Us any statements, documents or assistance We require. This may include giving evidence in any Legal Proceedings.

What can affect a claim

We will reduce the amount of a claim by the Excess shown in the Policy Terms and Conditions or on the Policy Schedule. We may refuse to pay a claim if You are in breach of Your Duty of Disclosure or any of the conditions of this Policy, including any endorsements noted on or attached to the Policy Schedule. We pay only once for loss or damage from the same event covered by this Policy even if it is covered under more than one section of the Policy. We may be entitled to refuse to pay or to reduce the amount of a claim if:

- it is in any way fraudulent
- any fraudulent means or devices are used by You or anyone acting on Your behalf to obtain any benefits under this Policy
- Professional Fees incurred where the amount of any amended assessment issued by a relevant government agency is greater than 25%. Large amended assessments tend to indicate that there has not been complete disclosure at time of lodgement or Audit and that additional Professional Fees have been incurred to manage the issue.