



Employers Liability Insurance Policy Wording

Section 1: PREAMBLE

In consideration of the payment of the premium to US, WE shall provide the cover described in the POLICY, subject to its terms and conditions, for the INSURANCE PERIOD.

Section 2: INSURING CLAUSES

2.1 WE agree to indemnify the INSURED for any CLAIM up to the INDEMNITY LIMIT brought by an EMPLOYEE for: DAMAGES as a result of the EMPLOYEE sustaining BODILY INJURY in New Zealand that arose out of, or in the course of, such EMPLOYEE's employment in the BUSINESS.

Provided that:

The BODILY INJURY was not a BODILY INJURY for which coverage is determined to exist under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

or

2.2 PUNITIVE or EXEMPLARY DAMAGES as a result of the EMPLOYEE sustaining BODILY INJURY in New Zealand that arose out of, or in the course of, such EMPLOYEE's employment in the BUSINESS.

Provided that:

The BODILY INJURY was a BODILY INJURY for which coverage is determined to exist under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

The INDEMNITY LIMIT under Insuring Clause 2.2 PUNITIVE or EXEMPLARY DAMAGES is the lesser of the INDEMNITY LIMIT available under the POLICY or \$1,000,000 and which is part of, and not in addition to, the INDEMNITY LIMIT shown in the Schedule.

2.3 WE also agree to pay DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent.

2.4 The POLICY shall only provide cover for BODILY INJURY arising out of an event, circumstance, accident or happening which occurred after the RETROACTIVE DATE.

Section 3: INTERPRETATION

In the POLICY:

3.1 (a) Person includes individuals, partnerships, bodies corporate and associations.

(b) The singular includes the plural and the masculine includes the feminine.

(c) The headings are for descriptive purposes only.

3.2 In the event that any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.3 All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

Section 4: DEFINITIONS

In the POLICY:

4.1 BODILY INJURY means sickness, disease or infection including death resulting therefrom and shall further include disability, shock, fright, mental anguish or mental injury sustained by an EMPLOYEE which arose out of or in the course of such EMPLOYEE's employment in the BUSINESS.

4.2 BUSINESS means the Business specified in the Schedule.

4.3 CLAIM means:

(a) any legal proceedings brought against the INSURED: or

(b) a written or verbal demand for monetary damages or monetary relief.

4.4 DAMAGES means monies ordered to be paid or agreed to be paid pursuant to (respectively) a judgement or settlement of any common law claim brought or capable of being brought in the District or High Court of New Zealand in respect of BODILY INJURY to an EMPLOYEE of the INSURED, but not including any such monies payable pursuant to any remedy or relief provided in any statute of New Zealand, whether by way of damages, penalty, fine, reparation or other order.

4.5 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred investigating or defending a CLAIM covered by the POLICY and any necessary and reasonable fees, expenses, costs and disbursements incurred in determining whether the BODILY INJURY is properly the subject of cover pursuant to the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

4.6 EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship on a full-time, part-time or seasonal basis.

4.7 INDEMNITY LIMIT means the amount specified in the Schedule.

4.8 INSURANCE PERIOD means the period specified in the Schedule.

4.9 INSURED means:

(a) the person, partnership, company or other entity that is specified as the INSURED in the Schedule, including a SUBSIDIARY who was at the time of the BODILY INJURY a SUBSIDIARY; and

(b) any person who is during the INSURANCE PERIOD, or was at the time of the BODILY INJURY, a principal, partner, director or employee of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the BUSINESS.

4.10 POLICY means this policy wording, the Schedule, the PROPOSAL and any Endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.

4.11 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.

- 4.12 PUNITIVE OR EXEMPLARY DAMAGES means monies ordered to be paid as punitive or exemplary damages pursuant to a judgement of the District or High Court of New Zealand in respect of a common law action brought by an EMPLOYEE against the INSURED in relation to BODILY INJURY.
- 4.13 RETROACTIVE DATE means the date specified the Schedule but no earlier than the commencement of the INSURED's BUSINESS.
- 4.14 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the INSURED or in which the INSURED owns or controls, directly or indirectly more than 50% of the issued voting shares of such entity.
- 4.15 WE/US/OUR means DUAL New Zealand Limited for and on behalf of certain Underwriters at Lloyd's.

Section 5: EXCLUSIONS

INSURING CLAUSE 2.1 EXCLUSIONS

WE will not cover the INSURED, including for DEFENCE COSTS or other loss under Insuring Clause 2.1, in respect of:

5.1 Accident Rehabilitation and Compensation Insurance Act

Any BODILY INJURY suffered by an EMPLOYEE for which cover to any extent is provided by the Accident Rehabilitation and Compensation Insurance Act 1992, or would be so provided if the INSURED were not an exempt employer under the Act, or the Accident Insurance Act 1998 or any amending or replacement legislation, or would have been so provided had a claim been lodged under such legislation.

5.2 Damages

Any CLAIM seeking aggravated, punitive or exemplary damages.

5.3 Health and Safety in Employment Act - Compliance

Any CLAIM as a result of an EMPLOYEE sustaining BODILY INJURY which arose out of the failure by the INSURED to comply with any improvement, prohibition or suspension notice issued to the INSURED or its EMPLOYEE under the Health and Safety in Employment Act 1992.

INSURING CLAUSE 2.2 EXCLUSIONS

WE will not cover the INSURED, including for DEFENCE COSTS or other loss under Insuring Clause 2.2, in respect of:

5.4 Accident Rehabilitation and Compensation Insurance Act

Any CLAIM in respect of BODILY INJURY suffered by an EMPLOYEE, which if made the subject of a claim under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation and would not be eligible for cover under such legislation.

5.5 Health and Safety in Employment Act - Compliance

Any CLAIM as a result of an EMPLOYEE sustaining BODILY INJURY which arose out of the wilfully reckless omission of the INSURED to comply with any improvement, prohibition or suspension notice issued to the Insured under the Health and Safety in Employment Act 1992 or any amending or replacement legislation.

5.6 Other Relief

Any CLAIM seeking any relief other than PUNITIVE OR EXEMPLARY DAMAGES.

5.7 **Reckless Conduct**

Any CLAIM by an EMPLOYEE as a result of that EMPLOYEE sustaining BODILY INJURY which was caused by any wilfully reckless and/or contumelious conduct of the INSURED.

GENERAL EXCLUSIONS

WE will not cover the INSURED, including for DEFENCE COSTS or other loss, in respect of:

5.8 **Asbestos**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of, or in any way involving the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of, asbestos or other things that contain it.

5.9 **Fraud and Dishonesty**

Any CLAIM resulting from or contributed to by any dishonest, fraudulent, criminal, or malicious act or omission of the INSURED.

5.10 **Jurisdiction**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any judgement entered in any Court other than a New Zealand Court or any debt incurred by the INSURED as the result of such a judgement.

5.11 **Prior Knowledge**

- (a) Any CLAIM arising from or in connection with a fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM; or
- (b) any CLAIM arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance; or
- (c) any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD; or
- (d) any CLAIM arising from any litigation or other proceeding pending or begun before the commencement of this POLICY.

5.12 **Physical Harm**

Any damages or PUNITIVE OR EXEMPLARY DAMAGES sought by, or awarded to, an EMPLOYEE pursuant to a cause of action pleading or alleging against the INSURED trespass to the person, assault, battery, false imprisonment, intentional physical harm, malicious prosecution, sexual harassment, or sexual abuse.

5.13 **Sanctions Limitation and Exclusion**

Any claim or any benefit to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose US 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.

5.14 **Usual Activities**

Any CLAIM as a result of the INSURED directing an EMPLOYEE to undertake activities otherwise than in the course of or in connection with the usual activities of the INSURED's BUSINESS.

5.15 **War / Terrorism**

Any CLAIM or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike 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
- (b) any ACT OF TERRORISM; or
- (c) any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

For the purposes of this exclusion, an ACT OF TERRORISM means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

5.16 **Wilful Intent**

Any CLAIM as a result of an EMPLOYEE sustaining BODILY INJURY which arose out of any wilfully intentional or deliberate conduct of the INSURED which it knew or should have known could cause injury to any EMPLOYEE.

Section 6: **CLAIM CONDITIONS**

6.1 **Co-operation**

- (a) The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM or loss.
- (c) The INSURED waives all claims to legal professional privilege between themselves and any solicitor retained by US to act on the INSURED'S behalf in relation to any CLAIM. The INSURED will allow the solicitor to disclose to US and OUR reinsurers any information obtained in the course of his duties.
- (d) If the BODILY INJURY is a continuing one, the INSURED shall promptly take, at its expense, all reasonable steps to prevent its continuation.
- (e) WE may, upon receipt of notice from the INSURED of any request for indemnity under this POLICY, take whatever action WE consider appropriate to protect the INSURED'S position in respect of the CLAIM, and such action by US will not be regarded in any way as prejudicing the INSURED'S or OUR position and will not be an admission of the INSURED'S entitlement to indemnity.

6.2 **Goods & Services Tax**

Where upon receiving any indemnity payment under this POLICY, the INSURED is 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) WE will indemnify the INSURED for the amount of that tax. The indemnity under this clause is payable by US in addition to the INDEMNITY LIMIT.

6.3 **Insured's Right to Contest**

In the event that WE recommend settlement of a CLAIM and the INSURED does not agree to the settlement of the CLAIM, and the INSURED decides to contest the CLAIM, OUR liability shall not exceed the amount for which the CLAIM could have been settled, and DEFENCE COSTS incurred up to the date upon which the CLAIM could have been settled.

Legal Defence and Settlement

- (a) Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.
- (b) WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM. WE shall be entitled to settle a CLAIM if WE so choose.
- (c) The INSURED agrees not to admit liability for or settle any CLAIM or loss, make any admission, offer any payment or assume any obligation in connection with any CLAIM or loss, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR written consent.
- (d) WE shall not be liable for any settlement, DEFENCE COSTS, admission, offer, payment or assumed obligation made, incurred or entered into without OUR written consent.
- (e) If WE are of the opinion that a CLAIM will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the CLAIM. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then WE will pay the amount in excess of the DEDUCTIBLE.

Notification

The INSURED shall notify US as soon as practicable and within the INSURANCE PERIOD of:

- (a) any CLAIM; or
- (b) any INCIDENT of which the INSURED becomes aware, and which the INSURED or a reasonable INSURED should consider may give rise to a CLAIM.

If during the INSURANCE PERIOD, the INSURED notifies US of any INCIDENT which the INSURED considers or a reasonable INSURED should have considered may give rise to a CLAIM, and this INCIDENT later gives rise to a CLAIM first made to the INSURED after expiry of the INSURANCE PERIOD, WE will treat the CLAIM as first made against the INSURED during the INSURANCE PERIOD. In this context, the INCIDENT must be sufficiently specific that the INSURED can and does provide to US details of name(s) of potential claimants and potential wrongful acts/ omissions.

Notice of any CLAIM or loss shall be given to US in writing via:

- (i) your insurance broker (email or letter); or
- (ii) the DUAL New Zealand Limited office for the attention of the Claims Manager.

The Claims Manager
DUAL New Zealand Limited
Level 20
191 Queen Street
Auckland 1010

claims@dualnewzealand.co.nz

Other Insurance

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy entered into by the INSURED even if the other insurance or indemnity has a term to that effect.

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary even if the other insurance or indemnity has a term to that effect (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the INDEMNITY LIMIT provided in this POLICY.

If such other insurance is provided by US, or any other member company, associate or affiliate, and it covers a loss covered by this POLICY in respect of a CLAIM or INQUIRY, the INDEMNITY LIMIT under this POLICY in respect of that CLAIM or inquiry shall be reduced by any amount paid by US (or member company, associate or affiliate) under such other insurance.

6.7 **Senior Counsel**

- (a) WE shall not require the INSURED to contest a CLAIM unless a Senior Counsel (to be mutually agreed upon by the INSURED and US, or in default of agreement, nominated by US) advises that the CLAIM should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the CLAIM and the damages and costs likely to be recovered by the third party claimant.
- (b) The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

6.8 **Severability and Non-Imputation**

Except for Exclusion 5.11 (Prior Knowledge) no state of mind or knowledge possessed by any one INSURED will be imputed to any other INSURED for the purpose of determining whether any provision in this POLICY applies. However, any state of mind or knowledge possessed by any past or present principal, director, partner of the INSURED will be imputed to the INSURED in Definition 4.9 (Insured) (a) of this POLICY.

The terms of the POLICY apply to each INSURED provided that the failure by any INSURED to observe and fulfil the terms of this POLICY will not prejudice this insurance in relation to any other INSURED.

Notwithstanding the above, the maximum aggregate amount payable under all Insuring Clauses and Extensions will apply to all INSUREDs combined.

Section 7: GENERAL CONDITIONS

7.1 **Alteration to Risk**

The INSURED must notify US in writing as soon as practicable but always within 90 calendar days of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) The INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) The INSURED failing to pay debts as and when those debts become due; or
- (c) The INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (d) Any material change in the nature of the BUSINESS.

WE may impose additional premiums or terms and conditions arising from such alteration of the risk.

WE may not cover the INSURED for any CLAIM if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

7.2 **Assignment**

The INSURED must not assign the POLICY or any rights under the POLICY without OUR prior written consent by way of endorsement to the POLICY.

7.3 **Cancellation**

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.
- (b) WE may cancel the POLICY at any time by sending 30 days notice in writing to the INSURED named in the Schedule of the date from which cancellation is to take effect. Such notice may be delivered personally, posted, emailed or faxed to the INSURED named in the Schedule or their representative last notified to US.

- (c) On cancellation of this POLICY, we will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

7.4 **Complaints Procedures**

Any enquiry or complaint relating to this POLICY should be referred to US in the first instance. If this does not resolve the matter or YOU are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's General Representative in New Zealand
c/o Hazelton Law
Level 3
101 Molesworth Street
PO Box 5639
Wellington
New Zealand

For the purpose of this clause only, YOU means the INSURED.

7.5 **Governing Law and Jurisdiction**

This POLICY is governed by the laws of New Zealand. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.

7.6 **Several Liability Notice**

The subscribing Underwriters' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

7.7 **Subrogation**

- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the CLAIM or loss, to the extent of OUR payment.
- (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.
- (c) WE shall not exercise any subrogated rights of recovery against any EMPLOYEE of the INSURED unless the CLAIM has been brought about or contributed to the dishonest, fraudulent, criminal or malicious act or omission of the EMPLOYEE.

Section 8: LIMIT OF LIABILITY

8.1 **Deductible**

- (a) The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM. Subject to clause (c) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE.
- (b) Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (c) Unless otherwise expressed in the Schedule, all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- (d) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (e) For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) covered by the POLICY, irrespective of the number of CLAIMS made; or the number of BODILY INJURIES sustained; or

whether indemnity is granted under Insuring Clause 2.1, Insuring Clause 2.2 or both; CLAIMS arising from the same BODILY INJURY event shall be regarded as one CLAIM.

8.2 Indemnity Limit

OUR total liability under the POLICY for any one CLAIM including DEFENCE COSTS and in the aggregate from all CLAIMS including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT.

For the purposes of determining the INDEMNITY LIMIT applicable to any CLAIM(S) covered by the POLICY, irrespective of the number of CLAIMS made; or the number of BODILY INJURIES sustained; or whether indemnity is granted under Section 2.1, Section 2.2 or both; CLAIMS arising from the same BODILY INJURY event shall be regarded as one CLAIM.

WE may at any time pay the INDEMNITY LIMIT applying to any one CLAIM or series of CLAIMS (after deduction of sums already paid) or any lesser amount for which such CLAIMS can be settled and will then be under no further liability in connection with such CLAIMS except for its proportion of DEFENCE COSTS incurred prior to the date of payment.

Section 9: AUTHORITY

9.1 This is to certify that authorisation is granted under contract to the undersigned by the Underwriters.

9.2 In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon.