



Employers Indemnity Insurance

BusinessGuard

(Claims made)

AIG Insurance New Zealand Limited ("AIG") has received a written proposal which shall be the basis of this contract and which is incorporated in and forms part of this contract.

In consideration of the payment of the premium shown in the Schedule, the Company agrees to indemnify the Insured named in the Schedule against all claims (including Defence Costs) which the Insured becomes legally liable to pay as damages and which are notified to the Company during the Period of Insurance stated in the Schedule or within 21 days after expiry as a result of any employee including part-time and temporary employees of the Insured sustaining Personal Injury arising out of or in the course of their employment in the Business described in the Schedule.

Provided that the maximum amount payable in the aggregate inclusive of costs and expenses incurred with the written consent of the Company in the investigation defence or settlement of all claims under this policy shall not exceed the Limit of Indemnity stated in the Schedule during any one Period of Insurance.

Retroactive Exclusion Clause

Notwithstanding anything contained herein to the contrary no liability shall attach under this policy in respect of any Personal Injury sustained by any employee prior to the Retroactive Liability date specified in the Schedule.

Extended Reporting Period

If the Company or the Insured shall refuse to renew or cancel this policy, then the Insured shall have the right, upon payment of an additional premium of 50% of the full annual premium, to a period of 12 months following the effective date of non-renewal in which to give written notice to the Company of claims first made against the Insured during the said 12 months period for any Personal Injury occurring prior to the end of the Period of Insurance and otherwise covered by this policy.

The rights contained in this clause shall terminate, however, unless written notice of such election is received by the Company within 30 days of the effective date of non-renewal.

Definitions

"Personal Injury" shall mean bodily injury sickness or disease including death resulting therefrom and shall further include disability shock or mental anguish or injury.

For the purposes of this insurance disease shall be sustained when the employee is first exposed to conditions in New Zealand out of which the disease the subject of the claim, arose.

"Defence Costs" shall mean:

- (a) the costs and expenses (including defence witness costs and expenses and defence expert costs and expenses) of being represented at any hearing, prosecution, inquiry, investigation, proceeding, settlement negotiation or review relating to any Personal Injury;
- (b) the costs of applying to set aside a Court order or conviction or conducting an appeal of any action or proceeding relating to any Personal Injury;
- (c) the costs of applying to a Court to determine whether or not an employee's claim for Personal Injury is properly covered by the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amendment to or re-enactment of those Acts.



Excess

In respect of each Personal Injury sustained by an employee for which a claim is made under this policy the Insured shall bear the amount of the Excess stated in the Schedule to their own account.

Exclusions

This Policy shall not indemnify the Insured:

1. In respect of any claim for any costs or compensation for which cover to any extent is provided by the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Accident Insurance Act 1998 or the Accident Rehabilitation and Compensation Insurance Act 1992 or any amendment to or re-enactment of those Acts or would be provided by those Acts but for the Insured being an Exempt Employer in terms of said Acts.
2. In respect of any liability as a result of any judgement entered in any Court other than a New Zealand Court having jurisdiction to deal with the dispute and applying the law of New Zealand, or any debt incurred by the insured as the result of such a judgement.
3. In respect of any claim brought about or contributed to by any dishonest fraudulent criminal or malicious act or omission of the Insured.
4. In respect of any employee engaged in any occupation not directly part of the business described herein unless the Insured gives prior notice of such engagement to the Company and the Company signifies its agreement thereto by endorsement hereon and the Insured had paid such additional premium as the Company may require.
5. For any claim or costs directly or indirectly occasioned by, happening through or in consequence of war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, invasion, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution.
6. For any legal liability directly or indirectly caused by or contributed to by or arising from
 - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,
 - (b) the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof.
7. For any fine or penalty levied against the Insured. This exclusion does not apply in respect of any claims seeking punitive or exemplary damages.
8. In respect of any claim made, threatened or in any way intimated against the Insured prior to the commencement of the Period of Insurance stated in the Schedule or in respect of any circumstance or occurrence of which the Insured is aware or ought reasonably to be aware at the inception of this insurance which may give rise to a claim against the Insured whether notified under any other insurance or not.
9. In respect of claims resulting from mesothelioma, asbestosis or for any disease arising directly or indirectly out of or in connection with or in consequence of:
 - a) inhaling, ingesting or physical exposure to asbestos or goods or products containing asbestos, or
 - b) the use of asbestos in constructing or manufacturing any good, product or structure, or
 - c) the removal of asbestos from any good, product or structure, or
 - d) the manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by this policy does not apply to payment for the investigation or defence of any loss, injury or damage or any cost, fine or penalty or for any expense or claim or suit related to any of the above.
10. For any claim or costs arising directly or indirectly as a result of or in connection with Terrorism including, but not limited to, any contemporaneous claim made threatened or in any way intimated against the Insured caused by fire, looting or theft.



"Terrorism" means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

Terrorism shall also include any act which is verified or recognised by the government of any country in which the insured operates or exports products into, as an act of Terrorism.

11. In respect of any liability directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the Insured to indemnify any party because of Personal Injury arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

Conditions

Notice

1. Every notice to be given or made under this policy shall be delivered in writing to the Company.

Claims

2. The Insured shall as a condition precedent to their right to be indemnified under this policy give to the Company written notice as soon as practicable:
 - (a) of any claim made against them;
 - (b) of the receipt of notice from any person of any intention to hold the Insured responsible for the results of an alleged injury or disease;
 - (c) of any circumstance which the Insured shall become aware which may give rise to a claim or claims under this policy;

irrespective of whether the quantum is likely to be within or above the amount of the Excess specified in the Schedule.

Admissions

3. The Insured shall not in relation to any claim hereunder:
 - (a) make an admission of liability; or
 - (b) incur any expense; or
 - (c) make any payment or settlement of liability,without the prior written consent of the Company which shall not be unreasonably withheld, who shall be entitled if they so wish to take over and conduct in the name of the Insured the defence or settlement of any claim.

Assistance

4. The Insured shall give all necessary information and assistance and, forward all documents to enable the Company to settle or resist any such claim, litigation or proceedings as the Company may reasonably require.

Advancement of Defence Costs

5. If cover has been accepted in writing by the Company then the Company shall advance all reasonable Defence Costs as and when they are incurred and prior to the final outcome of the claim.



If cover has not been accepted in writing by the Company, the Company may at its absolute discretion agree to advance such reasonable Defence Costs.

The Company reserves its right to recover from the Insured any Defence Costs advanced in accordance with the above if subsequently it is established by judgment, settlement or other final adjudication that the Insured is not entitled to payment under this policy.

Subrogation

6. The Company shall be entitled to use the name of the Insured in any proceedings to enforce, for the benefit of the Company, any order made for costs or otherwise and shall have the right of subrogation in respect of all rights which the Insured may have against any person or persons who may be responsible to the Insured or otherwise in respect of any claim for any Personal Injury covered by this policy and the Insured shall as and when required execute any necessary documents for the purpose of vesting such rights in the Company. Any moneys recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by the Company in respect of that claim (including related costs and expenses) and any remaining moneys shall become the property of the Insured.

Precautions

7. The Insured shall take all reasonable precautions to prevent Personal Injury, and to make best efforts to comply with all statutory obligations. The Company shall have the right and opportunity at all reasonable times to inspect the plant, works, machinery, and appliances used in the Insured's business.

Other Insurance

8. If there is any other insurance or compensation in respect of any Personal Injury or would be but for the existence of this policy whether for the benefit of the Insured or their Employee this policy shall be in excess of such other insurance or compensation.

Assignment

9. No assignment of interest under this Policy shall bind the Company unless the written consent of the Company is endorsed hereon.

Cancellation

10. This policy or any extension stated in the Schedule as being included may be cancelled by the Company at any time by giving written notice to the last known address of the Insured. Such cancellation shall be effective from 4 p.m. on the 30th day after posting of such a written notice. After such cancellation the Company will refund a pro rata of premium for the unexpired Period of Insurance.

The Insured may cancel the insurance under this policy or any extension stated in the Schedule as being included at any time by notice to the Company whereupon the Company shall refund premium for the unexpired Period of Insurance calculated at the Company's customary short period rates.

Notwithstanding the cancellation of the Policy or any extension thereto the Insured shall furnish to the Company such particulars as the Company may require for the adjustment of the premium.

Jurisdiction

11. This policy shall be governed by the law of New Zealand whose Courts shall have jurisdiction in any dispute hereunder.

Fraud



12. If any claim under this Policy shall be in any respect fraudulent or any statement incorrect or if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf to obtain benefit under this Policy all benefit hereunder shall be forfeited.

Cessation

13. The insurance provided by this policy ceases absolutely at the time and date stated in the Schedule. However provided that notice referred to in Condition 2 above has been given to the Company prior to the expiration of the Period of Insurance any claim or loss arising from the circumstances thus notified which is subsequently made after the expiration of the Period of Insurance shall be deemed to have been made during the subsistence of the Policy.

GST

14. Where the Insured is liable to pay tax under Section 15(3) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Section or Act) on receiving any indemnity payment under this policy, the Company will indemnify the Insured for the cost of that tax, subject to the Company being able to recover such tax.

The indemnity under this clause is payable by the Company in addition to the amount set forth in the Schedule.

Non-Imputation

15. With respect to the Exclusions, no fact pertaining to or knowledge possessed by or any dishonest act committed by any Insured shall be imputed to any other Insured for the purpose of determining the availability of coverage for or with respect to claims made against any Insured.

Innocent Non-Disclosure

16. In the event of innocent non-disclosure the Company is entitled to avoid this policy from inception or from the time of any variation in cover, the Company may, at its discretion, maintain this policy in force, provided that:
- (a) the consequences of any matter which ought to have been disclosed at inception or at the time of any variation in cover are excluded from cover; and
 - (b) the Insured can establish to the satisfaction of the Company that such non-disclosure or misrepresentation was innocent; and
 - (c) the terms of the current Period of Insurance shall be adjusted at the discretion of the Company to those which would have applied had such notification/misrepresentation been made at inception or at the time of variation.



Continuous Cover

17. In the event of innocent non-disclosure, this policy extends to cover the Insured for claims and Defence Costs arising out of any Personal Injury which should or could have been notified to the Company under an earlier Employers Liability Insurance policy but which is notified under this Period of Insurance, provided that:
- (a) such insurance has been carried continuously between the dates such notification should or could have been given and was in fact given; and
 - (b) the Company may at its discretion apply the terms of this policy or of the policy which applied at the date on which such notification should or could have been given.

In witness where of, this policy has been signed on behalf of the company of the date stated in the Schedule incorporated herein.

For AIG Insurance New Zealand

Authorised Representative



Bring on tomorrow

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