



QBE Insurance (Australia) Limited

Employers Liability Policy

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Employers Liability Policy

In consideration of the payment of the premium to QBE Insurance (Australia) 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:

Operative clause

1. QBE shall indemnify the Insured in accordance with the terms of this Policy in respect of legal liability for any Claim brought by an Employee for:

Cover A Damages as a result of that Employee sustaining Personal Injury in New Zealand that arose out of, or in the course of such Employee's employment in the Business provided that the Personal Injury was not a Personal Injury for which coverage is determined to exist under the Accident Compensation Act 2001 or any preceding, amending or replacement legislation; or

Cover B Punitive or Exemplary Damages as a result of that Employee sustaining Personal Injury in New Zealand that arose out of, or in the course of, such Employee's employment in the Business provided that the Personal Injury was a Personal Injury for which coverage is determined to exist under the Accident Compensation Act 2001 or any preceding, amending or replacement legislation.

Provided that:

- (a) the Claim against the Insured was first made during the Period of Insurance; and
- (b) the Claim was immediately notified in writing to QBE by the Insured during the Period of Insurance or within twenty-one (21) days of expiry, time being of the essence; and
- (c) the Personal Injury arose out of an event, circumstance, accident or happening which occurred subsequent to the Retroactive Date and before the expiry of the Period of Insurance.

Any Claims which do not comply with (a), (b) and (c) of this Operative Clause shall not be covered under this Policy.

2. In addition, QBE shall pay Legal Costs and Expenses arising out of any Claim covered under this Policy.

Limits of indemnity

1. QBE's maximum liability during any one Period of Insurance for all Claims under Operative Clause 1 is limited to the Limit of Indemnity specified in the Policy Schedule, irrespective of:
 - 1.1 the number of Claims made; or
 - 1.2 the number of Personal Injuries sustained; or
 - 1.3 whether indemnity is granted for Claims under either or both Cover A or Cover B of this Policy.
2. QBE's maximum liability during any one Period of Insurance for all Claims under Operative Clause 2 is limited to the Legal Costs and Expenses limit of indemnity, which is in addition to the Limit of Indemnity specified in the Policy Schedule and in the amount equivalent to the Limit of Indemnity specified in the Policy Schedule or NZD 1,000,000, whichever is the lesser.
3. Where:
 - 3.1 the Insured gives notice of any Claim to QBE during the Period of Insurance; and
 - 3.2 the Employee in a subsequent period of insurance makes further Claims, or alleges further and/or different injuries ('the additional claims') were suffered in the event, circumstance, accident or happening which first gave rise to the original Claim;

then all such additional claims shall be treated for the purposes of the Limit of Indemnity, Legal Costs and Expenses limit of indemnity and Excess as if they had been incurred in the Period of Insurance in which the first notice of Claim was originally made.

Definitions

1. 'Business' means:

The Business specified in the Policy Schedule and any other activity which the Insured now undertakes, or may undertake, in accordance with their Memorandum of Association or Constitution.

2. 'Claim' means:

2.1 legal proceedings instituted and served upon the Insured; or

2.2 any threat or intimation of a Claim; or

2.3 any circumstance which may give rise to a Claim.

3. 'Damages' means:

For the purposes of Cover A, monies ordered to be paid or agreed to be paid pursuant to (respectively) a judgment 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 Personal 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. 'Employee' means:

Any person who is directly employed by the Insured in connection with its Business and in respect of whose remuneration the Insured deducts PAYE tax at source, and includes any temporary employees engaged either directly or indirectly by the Insured to be employed in connection with its Business.

5. 'Insured' means:

The named Insured specified in the Policy Schedule and if the Insured is a company it includes its directors and any subsidiary company and its directors.

6. 'Legal Costs and Expenses' means:

The legal costs and expenses and/or defence witness costs and expenses and/or defence expert costs and expenses incurred with the prior written consent of QBE in investigating and/or defending any Claim; including legal costs and expenses incurred where, in respect of a Claim, the Insured makes an application to the Court to determine whether the Personal Injury is properly the subject of cover pursuant to the Accident Compensation Act 2001 or any preceding, amending or replacement legislation.

7. 'Limit of Indemnity' means:

The limit of indemnity specified in the Policy Schedule.

8. 'Period of Insurance' means:

The period of time specified in the Policy Schedule as the Period of Insurance.

9. 'Personal Injury' means:

Bodily injury, 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.

10. 'Policy' means:

This document, the Policy Schedule and any endorsements issued by QBE.

11. 'Policy Schedule' means:

The current schedule or any replacement schedule issued by QBE.

12. 'Punitive or Exemplary Damages' means:

For the purposes of Cover B, monies ordered to be paid as punitive or exemplary damages pursuant to a judgment 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 Personal Injury.

13. 'Retroactive Date' means:

The date specified as such in the Policy Schedule.

Specific exclusions to Cover A

Under Cover A, QBE will not indemnify the Insured in respect of:

1. Any Personal Injury suffered by an Employee for which cover to any extent is provided by the Accident Compensation Act 2001 or any preceding, amending or replacement legislation, or would be so provided if the Insured were not an exempt employer under such legislation, or would have been so provided had a claim been lodged under such legislation; or
2. Any Claim seeking aggravated, punitive, or exemplary damages; or
3. Any Claim as a result of an Employee sustaining Personal 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; or
4. Any Claim resulting from, or contributed to by, any dishonest, fraudulent, criminal, or malicious act or omission of the Insured; or
5. Any Claim as a result of an Employee sustaining Personal 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 Employees under the Health and Safety at Work Act 2015.

Specific exclusions to Cover B

Under Cover B, QBE will not indemnify the Insured in respect of:

1. Any Claim in respect of Personal Injury suffered by an Employee, which, if made the subject of a claim under the Accident Compensation Act 2001 or any preceding, amending or replacement legislation, would not be eligible for cover under such legislation; or
 2. Any Claim seeking any relief other than Punitive or Exemplary Damages; or
 3. Any Claim by an Employee as a result of that Employee sustaining Personal Injury which was caused by any wilfully reckless and/or contumelious conduct of the Insured; or
 4. Any Claim as a result of an Employee sustaining Personal 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 at Work Act 2015.
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General exclusions

QBE will not indemnify the Insured in respect of:

1. 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; or
2. 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; or
3. Any Claim as a result of an Employee sustaining Personal Injury that arose out of any event, circumstances or accident that occurred prior to the Retroactive Date; or
4. Any liability under any judgment entered in any court other than a New Zealand court or any debt incurred by the Insured as the result of such a judgment; or
5. Any Claim arising from any event, circumstance, accident or happening of which the Insured had become aware prior to the inception of the Period of Insurance and which a reasonable person in the Insured's Business would at any time prior to such inception have considered may give rise to a Claim; or
6. Any actual or alleged liability whatsoever for any Claim or Claims in respect of losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity; or
7. Any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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 threat 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), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

8. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is understood and agreed that this Policy does not insure any loss or provide any benefit under this Policy where a Claim payment would breach any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulation of any country.

General conditions

1. Additional insureds

The Insured shall be entitled to request QBE to add as an Insured any new company or entity formed or acquired by it during the Period of Insurance provided that the Insured exercises active management control over its activities and first obtains QBE's written consent and endorsement to its inclusion as an Insured. QBE shall be entitled to charge an additional premium for such additional Insureds.

2. Assignment

No assignment of interest under this Policy shall bind QBE unless with QBE's written consent on the Policy Schedule.

3. Cancellation

3.1 This Policy may be cancelled by QBE at any time by sending written notice to the Insured at its last known address. Such cancellation shall be effective from 4pm on the thirtieth (30th) day after sending of the notice. After cancellation, QBE will refund the premium for the unexpired Period of Insurance, calculated on a pro-rata basis from the effective date of cancellation.

3.2 This Policy may be cancelled by the Insured by giving written notice to QBE. If prior to such cancellation:

- (a) no Claim or circumstance has been notified under this Policy, QBE shall refund premium for the unexpired Period of Insurance, calculated on a pro-rata basis from the effective date of cancellation, subject to any minimum premium charge;
- (b) there has been any Claim or circumstance notified under this Policy, any premium refund will be considered and determined by QBE at the time of cancellation.

4. Cessation

The insurance provided by this Policy ceases absolutely at the time and date specified in the Policy Schedule.

5. Change of risk

The Insured shall advise QBE of any material change to the Insured's Business activities during the Period of Insurance.

6. Circumstances notified

Provided that notice referred to in General Condition 7 (Claims Notification and Duties) of this Policy has been given to QBE prior to the expiration of the Period of Insurance, any Claim arising from the circumstances thus notified which is subsequently made after the expiration of such Period of Insurance shall be deemed to have been made and notified to QBE during the currency of this Policy.

7. Claims notification and duties

The Insured shall give QBE prompt advice in writing upon becoming aware of any circumstance(s) or event(s) that may constitute a Personal Injury or Claim. At the same time, or as soon thereafter as possible, the Insured shall:

- 7.1 provide full details of such, together with any documentation, information and details that are relevant to the Claim;
- 7.2 co-operate with QBE or our authorised representatives in the investigation, settlement or defence of the Claim;
- 7.3 not make any admission of liability, offer, promise, payment or settlement in connection thereto without the prior consent in writing of QBE;
- 7.4 if the Personal Injury is a continuing one, promptly take, at its own expense, all reasonable steps to prevent its continuation.

8. Conduct of defence

Upon acceptance by QBE of the Insured's Claim to be indemnified, QBE shall have the right to nominate a solicitor to act as the Insured's solicitor and shall have total discretion as to the conduct of defence of any Claim, prosecution, inquiry, settlement negotiation or proceedings instituted by any person against the Insured.

9. Excess

The Excess specified in the Policy Schedule shall be borne by the Insured, uninsured and at its own risk, in respect of each and every Claim under this Policy. QBE's liability shall be in excess of this amount.

10. Extended reporting period

If QBE refuses to renew this Policy, the Insured may, upon payment of an additional premium of fifty per cent (50%) of the full annual premium payable for the expiring Period of Insurance, extend the cover under this Policy for a further twelve (12) months from the date of expiry, but only in respect of any Claims arising out of any Personal Injury which occurred before such expiry. This option to extend the Policy must be notified in writing to QBE within thirty (30) days of the Policy expiring.

11. Goods and 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 Tax Act 1985, QBE will indemnify the Insured for the cost of that tax. The indemnity under this clause is in addition to the Limit of Indemnity specified in the Policy Schedule.

12. Jurisdiction

This insurance shall be governed by the laws of New Zealand whose courts shall have jurisdiction in any dispute arising hereunder.

13. Other insurance

If in respect of any Claim, the Insured is, or but for the existence of this Policy would be, entitled to indemnity under any other policy, QBE shall not be liable, except in respect of any excess beyond the amount which would have been payable under such other policy had this Policy not been effected.

14. Prejudice

Where the Insured's breach or non-compliance with General conditions 7 (Claims Notification and Duties) and 15 (Reasonable Precautions) of this Policy results in prejudice to QBE in relation to the handling of any Claim which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Claim shall be reduced to such sum as would have been payable by QBE in the absence of such prejudice.

15. Reasonable precautions

The Insured shall take all reasonable precautions to prevent Personal Injury and comply with all statutory obligations relating to the Insured's Business.

16. References to legislation

Legislation referenced in this Policy includes Subsequent Legislation. Any term used in this Policy and defined by reference to legislation will have the meaning given in any replacement definition or definition with materially the same object or purpose in Subsequent Legislation.

For the purposes of this General Condition, 'Subsequent Legislation' means:

16.1 an Act or regulation as amended, replaced or re-enacted; and

16.2 where an Act or regulation has been repealed, the current equivalent Act or regulation with materially the same object or purpose whether in whole or in part.

17. Subrogation

In the event of a payment under this Policy to or on behalf of the Insured, QBE shall be subrogated to and/or receive assignment of all the Insured's rights of recovery against all persons and organisations. The Insured shall do all that is necessary to assist QBE in the exercise of such rights, including prosecuting proceedings in the name of the Insured at QBE's expense. Any such amount so recovered shall first be apportioned to reimburse QBE to the extent of its actual payment hereunder, and secondly to pay the Insured's excess.

