



QBE Insurance (Australia) Limited

Statutory Liability Policy

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Statutory 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:

Insuring clauses

1. Cover

1.1 QBE will indemnify the Insured in accordance with the terms of this Policy in respect of any Fine payable by the Insured arising out of any Event.

Provided that the Event:

(a) happened on or after the Retroactive Date; and

(b) is first notified in writing to QBE by the Insured during the Period of Insurance, or within twenty-one (21) days after its expiry.

Any Events which do not comply with (a) and (b) of this Insuring Clause shall not be covered under this Policy.

1.2 In addition, QBE shall pay Defence Costs arising out of any Event covered under this Policy.

2. Limits of indemnity

2.1 QBE's maximum liability during any one Period of Insurance for all claims under Insuring Clause 1.1 is limited to the Limit of Indemnity specified in the Policy Schedule applicable for the Period of Insurance within which the Insured has or should have first notified QBE of the Event.

2.2 QBE's maximum liability during any one Period of Insurance for all claims under Insuring Clause 1.2 is limited to the Defence Costs 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.

2.3 Where an Event is alleged to have taken place on, over or between a number of specified dates, which fall within more than one Period of Insurance, for the purposes of the applicable Limit of Indemnity, Defence Costs limit of indemnity and Excess, the Event will be treated as if it occurred in the Period of Insurance in which the Insured has, or should have, first notified QBE of the Event.

3. Excess

The Excess specified in the Policy Schedule shall be borne by the Insured in respect of each and every Event.

Automatic extensions

The terms of this Policy apply to each extension to this Policy unless expressly stated otherwise. The terms of each extension apply only to that extension and not to the rest of the Policy unless expressly stated otherwise.

1. Consolidation or merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the commencement of the Period of Insurance, the Insured shall give written notice to QBE as soon as practicable, together with such information as QBE may require, and the Insured shall pay QBE any required additional premium.

2. Newly created or acquired subsidiary company

If any subsidiary company is created or acquired by the Insured after the commencement of the Period of Insurance, such subsidiary company shall be included as an Insured, provided that:

2.1 written notice of such creation or acquisition is given to QBE, together with appropriate underwriting information and payment of any required additional premium; and

2.2 in respect of acquisitions, cover granted under this Policy shall only apply to any Event discovered by the Insured after the date of such acquisition and which took place after the Retroactive Date, and if the Insured has agreed to indemnify the subsidiary company in respect of the Event.

3. Extended reporting period

If QBE refuses to renew this Policy, the Insured may, upon payment of an additional premium not exceeding one hundred per cent (100%) 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, provided that:

3.1 this option to extend the Policy must be notified in writing to QBE within thirty (30) days of the date of expiry; and

3.2 the extension shall only apply in respect of an Event before the expiry date; and

3.3 an offer by QBE of any renewal terms or premiums different from expiring terms or premiums shall not constitute a refusal to renew; and

3.4 the indemnity under this extension is included in and not in addition to the Limit of Indemnity specified in the Policy Schedule.

4. Enforceable undertakings

This Policy is extended to cover the following costs in respect of an enforceable undertaking accepted by the regulator under Section 123 of the Health and Safety at Work Act 2015 and arising out of an Event covered under this Policy, subject to the written consent of QBE, whose consent will not be unreasonably withheld.

4.1 any payment of amends in reparations paid to the victim(s) of the Event, up to a maximum amount of NZD 250,000 any one Period of Insurance which is included in and not in addition to the Limit of Indemnity specified in the Policy Schedule; and

4.2 reasonable Defence Costs incurred in the drafting and preparation of the enforceable undertaking whether accepted or rejected by the regulator, up to a maximum amount of NZD 250,000 any one Period of Insurance which is included in and not in addition to the Defence Costs limit of indemnity.

Provided that:

4.3 the Event has resulted in a charging document being filed under the Health and Safety at Work Act 2015; and

4.4 the payment of amends to the victim will not exceed the amount QBE would expect to pay to cover a reparation order at sentencing; and

4.5 the amount payable overall under this extension will not exceed the amount QBE would expect to pay had the Insured been convicted and sentenced.

There is no cover under this extension for:

4.6 any costs associated with the regulator's administration fee; or

4.7 any costs in connection with compliance, rectifications, consultation, improvements, training, donations, remedial actions or otherwise meeting the enforceable terms of the enforceable undertaking; or

4.8 any costs associated with compliance monitoring activities for the enforceable undertaking; or

4.9 any amount payable to any party other than the victim under the definition of victim under the Sentencing Act 2002 had the Event resulted in a conviction (or their estate in the event of death); or

4.10 any Fine, reparation orders and Defence Costs that may arise from the Insured's failure to comply with or cause the Insured to be in contravention of terms contained in the enforceable undertaking; or

4.11 any expert costs incurred in the drafting and preparation of the enforceable undertaking unless agreed to by QBE.

Definitions

In this Policy, including any endorsements, unless specifically stated to the contrary:

1. 'Acquitted' means:

Dismissal of charges before or after a defended hearing, or entry of a not guilty verdict (but shall not include the disposition of a charge pursuant to a plea bargain where multiple informations have been laid).

2. 'Act of Parliament' means:

Any Act of the New Zealand Parliament other than an Excluded Act (including any amendment to or re-enactment, and any code, rules, regulations, by-laws or other subordinate legislation made under such Act).

3. 'Business' means:

The business specified in the Policy Schedule and any other commercial activity which the Insured now undertakes, or may undertake, provided that the Insured has given written notice to QBE and has obtained QBE's acknowledgement.

4. 'Defence Costs' means:

The legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred with the prior written consent of QBE in relation to:

4.1 investigating, defending, settling or appealing any action arising out of an Event;

4.2 Investigation;

4.3 proceedings before a Human Rights or Privacy Complaints Review Tribunal.

5. 'Event' means:

Any act or omission occurring in the course of the Business that gives rise, or may give rise, to an action under an Act of Parliament.

6. 'Excluded Act' means the following:

Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Arms Act 1983

Aviation Crimes Act 1972

Crimes Act 1961

Criminal Proceeds (Recovery) Act 2009

Land Transport (Road Safety and Other Matters) Amendment Act 2011

Real Estate Agents Act 2008

Summary Offences Act 1981

and any other Act of Parliament specified in the Policy Schedule as an Excluded Act.

7. 'Fine' means:

Any fine or monetary penalty or costs assessed by a court to be paid by the Insured upon being found guilty of an offence in connection with an Event for which QBE may legally indemnify the Insured. This does not include a fine imposed pursuant to the Health and Safety at Work Act 2015, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.

8. 'Inception Date' means:

The commencement date of the Period of Insurance specified in the Policy Schedule.

9. 'Insured' means:

The named insured specified in the Policy Schedule, and includes any person who is, or was at the time of the Event, a trustee, director, officer, sole trader, partner or employee of the insured. If the named insured is a company, the insured also includes any company that is, or was at the time of the Event, a subsidiary of the named insured for the purposes of the Companies Act 1993, subject to Automatic Extension 2 (Newly Created or Acquired Subsidiary Company) above.

10. 'Investigation' means:

Any official inquiry, investigation, public examination or commission into the affairs of the Business:

10.1 which is instigated by a person or government authority that is legally empowered to conduct such an investigation or inquiry etc; and

10.2 which an Insured is legally compelled to attend; and

10.3 which alleges an Event by that Insured; and

10.4 that is not of a general nature which affects the industry of the Business, as a whole.

11. 'Period of Insurance' means:

The period of insurance specified in the Policy Schedule.

12. 'Policy' means:

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

13. 'Policy Schedule' means:

The current schedule of insurance or any future schedule issued for renewal and any endorsements attached thereto.

14. 'Retroactive Date' means:

The date specified in the Policy Schedule.

Exclusions

QBE shall not indemnify the Insured in respect of:

1. Asbestos

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.

2. Daily continuing offences/orders and costs

2.1 the cost or payment of any enforcement order, remedial order or compliance order; or

2.2 any Fine imposed in relation to a daily continuing offence where the Fine is imposed in relation to a period of time after the Insured first received notice from the informant or his/her employing body of the intention to commence an action in relation to that offence; or

2.3 any pecuniary penalty, restitution, compensation or order for payment pursuant to sections 78, 80, 83 or 89(3)(b) of the Commerce Act 1986; or

2.4 any order for payment of costs made under the Commissions of Inquiry Act 1908; or

2.5 any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety at Work Act 2015 prosecution; or

2.6 any action, proceeding, inquiry, Investigation or prosecution taken against the Insured by the Inland Revenue Department or any other revenue collecting authority.

3. Deliberate disregard

Any Defence Costs, unless the Insured is Acquitted, arising out of any Event which has allegedly resulted from the:

3.1 deliberate disregard by the Insured of any of the provisions of any Act of Parliament which the Insured is alleged to have contravened; or

3.2 Insured instructing another person to discharge one or more of its obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that the Insured's obligations were discharged as instructed; or

3.3 failure by the Insured to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.

4. Dishonest acts

Any Event actually or allegedly brought about or contributed to by any dishonest, fraudulent or malicious act or omission by or on behalf of the Insured.

5. Personal grievances

Any contract of service or any intended contract of service with any current, former or prospective employee, including any personal grievance or like action by an employee, but this exclusion shall not apply to any investigation, inquiry or prosecution by the WorkSafe pursuant to the Health and Safety at Work Act 2015.

6. Private prosecutions

Any investigation of and defence of any action, proceeding, inquiry, Investigation or prosecution taken against the Insured by a person other than the statutory authority or enforcement agency given that responsibility under the relevant Act of Parliament.

This exclusion does not apply to any private prosecution brought under the Health and Safety at Work Act 2015.

7. Radioactivity

Ionising radiations, or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or any self-sustaining process of nuclear fusion.

8. Retroactive date

Any Event after the Retroactive Date but before the Inception Date, if the Insured knew, or ought reasonably to have known, of the Event and failed to notify the Event to QBE before the Inception Date.

9. Sanctions

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.

10. Terrorism

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 Policy also excludes any 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.

11. War

Any consequence of war, invasion, act of foreign hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.

Conditions

1. Apportionment of costs

1.1 If there are claims against the Insured which contain uninsured allegations or allegations against other parties, then the Insured, and QBE, shall use their best efforts to agree upon fair and proper allocation of Defence Costs between insured and uninsured allegations.

1.2 If the Insured and QBE disagree over the allocation of Defence Costs, then QBE shall advance such Defence Costs we believe to be covered under this Policy, until a different allocation is negotiated, arbitrated or judicially determined. In this case QBE will, if requested by the Insured, refer the dispute for determination of allocation to an expert mutually agreeable to all parties and such determination shall apply retrospectively to all Defence Costs incurred in the defence of that particular claim or Event.

2. Assignment

No assignment of interest under this Policy shall bind QBE unless QBE has endorsed its 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. Claims notification and duties

As a condition precedent to QBE's liability, the Insured shall give QBE immediate notice in writing of any Event. At the same time, or as soon thereafter as possible, the Insured shall:

4.1 provide full details of any notice, circumstance or Event, together with any documentation, information and details that are relevant to the claim;

4.2 use its best endeavours to preserve all property, products, appliances, plant and other items which may assist QBE in the investigation or conduct of a claim. As far as may be reasonably practical, no alteration or repair shall be effected until QBE has first had the opportunity of inspection;

4.3 co-operate with QBE or our authorised representatives in all aspects of the claim;

4.4 not make any admission of fact or liability, offer, promise or payment or settlement without the prior consent in writing of QBE;

4.5 if the offence alleged is a continuing one, immediately take, at its expense, all reasonable steps to prevent its continuation.

5. Conduct of defence

5.1 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 the total discretion as to the conduct and control of the Insured's defence, including strategy, in respect of any prosecution, inquiry, settlement negotiation or proceedings against the Insured.

5.2 Where the Insured disagrees with QBE over the Insured's defence, including strategy, QBE shall provide the Insured in writing with our reasons and shall refer them to an independent barrister for a final determination as to their reasonableness. This independent determination shall be binding on both the Insured and QBE.

6. Fraud

If any answers or statements in support of any claim, or in any information provided to obtain, amend or renew this insurance, are false in any way, QBE shall not provide any indemnity under this Policy.

7. 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.

8. Inspection

QBE shall be permitted, but not obligated, to inspect the Insured's property and operations at any reasonable time.

9. Material change of risk

The Insured shall give immediate notice to QBE of any material change to any of the facts or circumstances existing at the commencement of the Period of Insurance. QBE shall be entitled to charge an additional premium.

10. Other insurance

If the Insured shall be entitled to indemnity under any other policy of insurance, any benefit under this Policy shall be in excess of such other insurance.

11. Policy disputes

This Policy shall be governed by the laws of New Zealand whose courts shall have jurisdiction in relation to any dispute.

12. Prejudice

Where the Insured's breach or non-compliance with Conditions 4 (Claims Notification and Duties) and 14 (Reasonable Precautions) of this Policy results in prejudice to QBE in relation to the handling of any claim, 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.

13. Progress payment of legal expenses

In the event of an Event for which QBE has agreed to indemnify the Insured, on production of acceptable evidence of expenditure prior to the final settlement of the claim, QBE shall pay Defence Costs necessarily and reasonably incurred by the Insured.

14. Reasonable precautions

As a condition precedent to QBE's liability, the Insured shall take all reasonable precautions to:

- 14.1 avoid, prevent or minimise any circumstances that may give rise to an Event
- 14.2 comply with all relevant statutory obligations.

15. 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 Condition, 'Subsequent Legislation' means:

- 15.1 an Act or regulation as amended, replaced or re-enacted; and
- 15.2 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.

16. Severability and non-imputation

To the extent that this Policy insures more than one Insured, the application of any exclusion to any Insured shall not prejudice the right of any other Insured to indemnity under this Policy.

Provided that such remaining parties shall:

- 16.1 be entirely innocent of such fact or misstatement; and
- 16.2 QBE's total liability in the aggregate shall not exceed the Limit of Indemnity specified in the Policy Schedule.

17. Subrogation

In the event of a payment under this Policy to or on behalf of the Insured, QBE shall be subrogated to 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.

