

DUAL Liability Insurance

# Employers Liability

**DUAL**

# DUAL New Zealand Mind the Gap

Employers Liability Policy Wording

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# Section 1: Insuring Clauses

We agree to pay on behalf of the **insured** up to the **indemnity limit** all **loss** resulting from any **claim** first:

- a. Made against the **insured**, and
- b. Notified to **us**

During the **insurance period**, brought by an **employee** for:

- a. **Damages** as a result of the **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 amending or replacement legislation.
- or
- b. **Punitive or exemplary damages** as a result of the **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:

- i. The **personal injury** was a **personal injury** for which coverage is determined to exist under the Accident Compensation Act 2001 or any amending or replacement legislation.
- ii. The **indemnity limit** under Insuring Clause 1 (b) 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**.

## 1.1 Defence Costs in Addition

We agree to pay to or on behalf of the **insured** any **defence costs** in respect of a **claim** for **loss** covered by this **policy** in addition to the **indemnity limit**, in an amount not exceeding the same **indemnity limit**.

We will only pay **defence costs** however if:

- a. We incur them; or
- b. The **insured** incurs them after obtaining **our** agreement in writing and the **defence costs** are in **our** view reasonable and necessary.

We will not defend or continue to defend any **claim** to which the **policy** would provide indemnity, or pay or continue to pay any **defence costs** associated with such defence, once the **defence costs indemnity limit** has been exhausted.

## 1.2 Retroactive Date

This Section of the **policy** shall only provide cover for **personal injury** arising out of an event, circumstance, accident or happening which occurred after the **retroactive date**.

# Section 2: Automatic Coverage Clauses

## 2.1 Continuous Cover

Notwithstanding General Exclusion 6.13 (Prior Knowledge) (a) and (b), **we** agree to provide cover in respect of any **claim** made in the **insurance period** where the **insured**:

- a. first became aware, prior to the **insurance period**, that a **claim** might or could arise from facts or circumstances known to it; and
- b. had not notified **us** of such facts or circumstances prior to the **insurance period**.

Provided that:

- i. **we** were the insurer of the **insured** when the **insured** first became aware of such facts and circumstances; and
- ii. **we** have continued, without interruption, to be the **insured's** insurer up until this **policy** came into effect; and
- iii. there has not been any fraudulent non-disclosure or fraudulent misrepresentation by the **insured** in respect of such facts or circumstances; and
- iv. **we** have the discretion to apply either the terms of the **policy** on foot when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms of this **policy**; and
- v. the **insured** agrees to only make a **claim** under one **policy** issued by **us**.

For the purpose of this Automatic Coverage Clause only, the definition of **we/us/our** in Definition 5.18 also includes the Underwriter(s) for which **we** were the agent on any previous **policy** issued by **us**. Subject to the terms of this Automatic Coverage Clause and the terms of the **policy**, the intention of this Automatic Coverage Clause is to provide continuous cover to the **insured** notwithstanding any change in the identity of the Underwriters for which **we** presently act, or have previously acted, as agent.

## 2.2 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to a matter which **we** have accepted as notification of circumstances which may give rise to a **claim** under this **policy**.

**We** consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

# Section 3: Exclusions

**We** will not cover the **insured** for or in connection with:

## 3.1 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.

## 3.2 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 **business**.

## 3.3 Wilful Intent

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**.

## Exclusions Applying To Insuring Clause 1 (a)

**We** will not cover the **insured**, including for **defence costs** or other **loss** under Insuring Clause 1 (a) in respect of:

### 3.4 Accident Compensation Act

Any **personal injury** suffered by an **employee** for which cover to any extent is provided by the Accident Compensation Act 2001, or would be so provided if the **insured** were not an exempt employer under that Act, or any amending or replacement legislation, or would have been so provided had a **claim** been lodged under such legislation.

### 3.5 Damages

Any **claim** seeking aggravated, **punitive or exemplary damages**.

### 3.6 Health and Safety at Work Act - Compliance

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, suspension or non-disturbance notice issued to the **insured** or its employee under the Health and Safety at Work Act 2015.

#### Exclusions Applying To Insuring Clause 1 (b)

We will not cover the **insured**, including for **defence costs** or other **loss** under Insuring Clause 1 (b) in respect of:

### 3.7 Health and Safety at Work Act - Compliance

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, suspension or non-disturbance notice issued to the **insured** under the Health and Safety at Work Act 2015 or any amending or replacement legislation.

### 3.8 Other Relief

Any **claim** seeking any relief other than **punitive or exemplary damages**.

### 3.9 Wilful Reckless Conduct

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**.

## Section 4: Conditions

### 4.1 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** 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. 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**.
- d. 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 **personal injuries** sustained; or whether indemnity is granted under Insuring Clause 1 (a), Insuring Clause 1 (b) or both; **claims** arising from the same **personal injury** event shall be regarded as one **claim**.



## 4.2 Indemnity Limit

Our total liability under the **policy** for any one **claim** and in the aggregate from all **claims** 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 **personal injuries** sustained; or whether indemnity is granted under Insuring Clause 1 (a), Insuring Clause 1 (b) or both; **claims** arising from the same **personal 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.

## 4.3 Severability and Non-Imputation

Except for General Exclusion 6.13 (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:

- a. any state of mind or knowledge possessed by any past or present principal, director or partner of the **insured** will be imputed to the **insured** in Definition 5.10 (a) (Insured) of this **policy**.
- b. where the insured named in the **schedule** is a company with a sole director the knowledge of the sole director shall be imputed to the **insured**.

The terms of this **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 Automatic Coverage Clauses will apply to all **insureds** combined.

# Section 5: Definitions

For the purposes of this **policy** only:

- 5.1 **Act of Parliament** means any Act of the New Zealand Parliament, including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act.
- 5.2 **Business** means the Business of the **insured** specified in the **schedule**.
- 5.3 **Claim** means:
  - a. any civil proceeding brought by a third party against the **insured** for recovery of compensation or damages;
  - b. any written or verbal demand by a third party upon the **insured** for monetary relief.
  - c. any circumstance that the **insured** becomes aware of, and the **insured** or a reasonable insured should consider may give rise to either of (a) or (b) above.
- 5.4 **Damages** means 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.
- 5.5 **Deductible** means the amounts specified in the **schedule**

- 5.6 **Defence costs** means any necessary and reasonable fees, expenses, costs and disbursements incurred investigating, defending or settling a **claim** covered by the **policy** and any necessary and reasonable fees, expenses, costs and disbursements incurred in determining whether the **personal injury** is properly the subject of cover pursuant to the Accident Compensation Act 2001 or any amending or replacement legislation. **Defence costs** shall not include any internal or overhead expenses of the **insured**, the cost of the **insured's** time or any **loss** of earnings or profits.
- 5.7 **Employee** means any person who is a past, present or prospective **employee** of the **insured** under a contract of service or apprenticeship on a full-time, part-time or casual basis.
- 5.8 **Indemnity limit** means the amounts specified in the **schedule**.
- 5.9 **Insurance period** means the period specified in the **schedule** and includes, where applicable, the **discovery period**.
- 5.10 **Insured** means:
- a. the person, partnership, **company** or other entity that is specified as the **insured** in the **schedule**, including any **subsidiary** who was at the time of the **personal injury** a **subsidiary**; and
  - b. any person who is during the **insurance period**, or was at the time of the **personal 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**.
- 5.11 **Personal 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**.
- 5.12 **Policy** means this Employers Liability **policy** wording, the DUAL New Zealand Mind the Gap General Conditions and Exclusions, the **schedule**, the **proposal** and any endorsement attaching to and forming part of the policy either at commencement or during the **insurance period**.
- 5.13 **Proposal** means the **insured's proposal** made to **us** together with any attachments and material referred to therein.
- 5.14 **Punitive or exemplary damages** means 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**.
- 5.15 **Retroactive date** means the date specified in the **schedule**.
- 5.16 **Schedule** means the **policy** schedule issued by **us**.
- 5.17 **Subsidiary** means:
- a. any entity which, at the commencement of the **insurance period**, is a subsidiary of the **insured** as defined in section 5 of the Companies Act 1993 (or any equivalent amendments or re-enactments of that provision); or
  - b. any entity which, at the commencement of the **insurance period**, by virtue of any applicable legislation or law, is deemed to be a subsidiary of the **insured**; or
  - c. any entity over which, at the commencement of the **insurance period**, the **insured** is in a position to exercise effective direction or control by means of a direct or uninterrupted succession of **subsidiaries** as defined in clauses (a) or (b) above; or
  - d. any entity with total gross assets in value of 30% or less of the total gross assets of the **insured** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**; or

- e. any entity with total gross assets in value greater than 30% of the total gross assets of the insured which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**, provided that within 60 days of the completion of the acquisition of such entity the **insured** provides **us** with full particulars of the entity and agrees to the imposition of any additional terms, including any additional premium, that **we** may require. If any part of this clause is not complied with the entity shall not be an **insured** under this **policy**.

**5.18** **We/us/our** means DUAL New Zealand Limited for and on behalf of Certain Underwriters at Lloyd's.

**5.19** **You/your** means the **insured**.

## Helping you do more

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