

Policy

Wordings.

Employers Liability
Policy

DUAL

Employers Liability Policy

It is declared that the Insured named in the Policy Schedule (“insured”) carrying on the Business stated in the Policy Schedule (“Business”) has made to the Insurer a written proposal and declaration which it is agreed is the basis of this contract and incorporated herein. In consideration of the payment of the agreed premium the Insurer agrees to indemnify the Insured in accordance with the coverage provided herein.

Operative Clause

The Insurer shall indemnify the Insured in respect of legal liability for any Claim brought by an Employee for:

1. 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 Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any 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 Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation

PROVIDED THAT in respect of Cover A and B above:

- 1.1 the Claim against the Insured was first made during the Period of Insurance; and
- 1.2 the Claim was immediately notified in writing to the Insurer by the Insured during the Period of Insurance or within 21 days of expiry, time being of the essence; and
- 1.3 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

PROVIDED THAT claims which do not accord with 1.1, 1.2 and 1.3 of this Operative Clause are not the subject of this insurance or any indemnity;

2. Legal Costs and Expenses incurred in the defence of such Claims;
3. 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 Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

Limits of Indemnity

1. The Insurer’s maximum liability for all Claims that are notified to the Insurer during the Period of Insurance 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 B of this Policy.
2. Where:
 - 2.1 the Insured gives notice of any Claim to the Insurer during the Period of Insurance; and
 - 2.2 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 purpose of the 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:
 - 1.1 legal proceedings instituted and served upon the Insured; or
 - 1.2 any threat or intimation of a Claim; or
 - 1.3 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 in investigating and/or defending any Claim.
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 the Insurer.
11. **"Policy Schedule"** means:

the schedule issued by the Insurer.
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 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, the Insurer 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 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;
2. any Claim seeking aggravated, punitive, or exemplary damages;
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;
4. any Claim resulting from or contributed to by any dishonest, fraudulent, criminal, or malicious act or omission of the Insured;
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 in Employment Act 1992.

Specific exclusions to Cover B

Under Cover B, the Insurer 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 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;
2. any Claim seeking any relief other than Punitive or Exemplary Damages;
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;
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 in Employment Act 1992 or any amending or replacement legislation.

General exclusions

The Insurer 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;
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;
3. any Claim as a result of an Employee sustaining Personal Injury that arose out of any event, circumstance or accident that occurred prior to the Retroactive Date;
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;
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;

-
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;
 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 purpose of this exclusion an “Act of Terrorism” means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(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. Any consequence of war, invasion, act of foreign hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military, or usurped power.
9. Cyber Exclusion Endorsement – NMA2981
Notwithstanding any provision to the contrary within this Policy or any endorsement thereto it is agreed that this Policy excludes liability for any Loss, directly or indirectly caused by, resulting from or in connection with the Insured's use of or reliance upon or sale or supply of any computer hardware or related information technology or communication system, any computer software, internet, intranet, website or similar facility, system or network and/or any electronic data or related information.

PROVIDED THAT

this endorsement shall not exclude claims for personal injuries caused by an accident involving physical contact with computer hardware.

“Loss” in this endorsement shall include (but shall not be limited to) injury, loss, damage, cost or expense of whatsoever nature including consequential and pure financial loss, and loss of, damage to, deterioration or corruption (whether permanent or temporary) or loss of use of any computer hardware or related information technology or communication system, any computer software, internet, intranet, website or similar facility, system or network and/or any electronic data and related information.

If the Insurers maintain that by reason of this endorsement any Loss is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

If any part of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

General conditions

1. 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. The Insurer's liability shall be in excess of this amount.

2. Claim notification and duties

The Insured shall give the Insurer 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:

- 2.1 provide full details of such, together with any documentation, information and details that are relevant to the Claim;
- 2.2 co-operate with the Insurer or their authorized representatives in the investigation, settlement or defence of the Claim;

2.3 not make any admission of liability, offer, promise, payment or settlement in connection thereto without the prior consent in writing of the Insurer

2.4 if the Personal Injury is a continuing one, promptly take, at its expense, all reasonable steps to prevent its continuation.

3. 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.

4. Conduct of defence

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

5. Prejudice

Where the Insured's breach or non-compliance with General Conditions 2 (Claims Notifications and Duties) and 3 (Reasonable Precautions) of this Policy results in prejudice to the Insurer 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 the Insurer in the absence of such prejudice.

6. Other Insurance

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

7. Jurisdiction

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

8. Subrogation

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

9. Cancellation

This Policy may be cancelled:

9.1 by the Insured at any time by giving notice in writing to the Insurer stating when the cancellation shall be effective. In the event of such cancellation the Insurer will be entitled to a pro-rata proportion of the premium for the time the Policy has been in force subject to any minimum premium chargeable;

9.2 by the Insurer at any time by giving notice in writing to the Insured of the Insurer's intention to cancel this Policy. The notice may be delivered personally or posted by registered mail to the Insured's last known postal address, or by facsimile transmission. The cancellation will take effect at 4 p.m. on the 30th day after the notice has been delivered or posted. In the event of such cancellation, the Insurer's will refund to the Insured a pro-rata proportion of the premium.

10. Assignment

No assignment of interest under this Policy shall bind the Insurer unless the Insurer's written consent is endorsed herein.

11. Goods and services tax

Where the Insured is liable to pay tax under section 5(13) 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 QBE will indemnify the Insured for the cost of that tax. Under this condition such tax payment will be payable by the Insurer in addition to the Limit of Indemnity specified in the Policy Schedule.

12. Cessation

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

13. **Circumstances notified**

Provided that notice referred to in General Condition 2 (Claim Notifications and Duties) of this Policy has been given to the Insurer prior to the expiration of the Period of Insurance, any Claim arising from the circumstance thus notified which is subsequently made after the expiration of such Period of Insurance shall be deemed to have been made and notified to the Insurer during the currency of this Policy.

14. **Change of risk**

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

15. **Additional insureds**

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

16. **Extended reporting period**

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



Auckland | Wellington | Christchurch

Tel: +64 09 973 0190 | www.dualnewzealand.co.nz

DUAL New Zealand | Part of the DUAL International Group | Registered in New Zealand