Employers Liability – Costs in Addition

POLICY WORDING

Employers Liability – Costs in Addition / INSURANCE POLICY – CLAIMS MADE WORDING

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Employers Liability – Costs in Addition

INSURANCE POLICY – CLAIMS MADE WORDING

INTRODUCTION

WELCOME

Welcome to NZI. Thank you for selecting **us** as **your** insurer.

ABOUT THIS POLICY

Your Employers Liability Policy consists of:

(a) this policy document, and
(b) the **schedule**, and
(c) any endorsements or warranties that **we** apply, and
(d) the information **you** have provided in the **application**.

YOUR DUTY OF DISCLOSURE

When **you** apply for insurance, **you** have a legal duty of disclosure. This means **you** or anyone acting on **your** behalf must tell **us** everything **you** know (or could be reasonably expected to know) that a prudent insurer would want to take into account in deciding:

(a) to accept or decline **your** insurance, and/or
(b) the cost or terms of the insurance, including the excess.

You also have this duty every time **your** insurance renews and when **you** make any changes to it. If **you** or anyone acting on **your** behalf breaches this duty, **we** may treat this policy as being of no effect and to have never existed. Please ask **us** if **you** are not sure whether **you** need to tell **us** about something.

DEFINED WORDS

If a word is shown in **bold**, it has a specific meaning. There is a list of these words and what they mean in Section 8 -'Definitions'.

EXAMPLES

We have used examples and comments to make parts of this policy document easier to understand. These examples and comments, which appear in *italics*, do not affect or limit the meaning of the section they refer to.

HEADINGS

The headings in this policy document are for reference only and do not form part of it. They must not be used when interpreting the policy document.

SECTION 1 – INSURANCE AGREEMENT

1.1 OUR AGREEMENT

You agree to pay **us** the premium and comply with this policy. In exchange, **we** agree to insure **you** as set out in this policy.

SECTION 2 – WHAT YOU ARE INSURED FOR

2.1 LIABILITY

You are insured for all sums that **you** become legally liable to pay (including punitive or exemplary damages) arising from an **employee** sustaining **injury**, provided that:

(a) the **injury** is sustained:
  (i) in New Zealand, and
  (ii) after the **retroactive date** of this policy, and
  (iii) in connection with the **business**, and
(b) **you** first become aware of the **claim** during the **period of insurance**, and
(c) **you** have advised **us** of the **claim** as soon as possible, but no later than 30 days after the **period of insurance** ends.

2.2 DEFENCE COSTS

You are insured for **defence costs** necessarily and reasonably incurred by **you** with **our** prior written consent, to defend any legal action (or threat of legal action) that if proven, would be insured under Section 2.1 -'Liability'.

We will meet these costs even if the legal action seems groundless.

SECTION 3 – AUTOMATIC POLICY EXTENSIONS

The following Automatic Policy Extensions are included automatically and are subject to the policy terms, unless otherwise stated. The amounts payable under all Automatic Policy Extensions are included within the **sum insured** and are not in addition to it.

3.1 CONTINUOUS COVER

We will indemnify **you** for any **claim** that would be covered under this policy but for the operation of Exclusion 4.8 – 'Known Claims and Circumstances', subject to the following:

(a) **we** were **your** employers liability insurer at the primary level under a policy ("the former policy") at the time when **you** first became aware of the circumstances, that subsequently gave rise to the **claim,** and

(b) **we** continued without interruption as **your** employers liability insurer at the primary level from the time when **you** first became aware of the circumstances up until such time as the **claim** was made against **you** and notified to **us,** and

(c) **our** liability is limited to the amount **we** would have been liable for at the time referred to in sub-clause (a) above in accordance with the terms and conditions of the former policy, and

(d) **our** liability will be reduced by the amount that fairly represents the extent to which liability for the **claim** could have been reduced had the circumstances been duly reported under the former policy.

3.2 EXTENDED REPORTING PERIOD

If **we** elect to cancel or refuse to offer a renewal of this policy, then **you** may pay **us** an additional premium (being 90% of the last premium), to extend **your** cover under this policy for another 12 months.

However, this will only cover **you** for **events** that happened before the expiry of the effective date of such cancellation or non-renewal.

This right of extension will lapse unless written notice of such election, together with payment of the additional premium due, is given to **us** within 30 days following the effective date of cancellation or non-renewal. If the right of extension lapses then cover under this policy ceases as at the effective date of the cancellation or non-renewal.

3.3 MERGERS AND CONSOLIDATIONS

If the company named as the Insured in the **schedule**:

(a) is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company, or

(b) sells all or substantially all of its assets to another company,

this policy will be extended to insure the new company, provided that:

(i) the operations and activities of the merged, amalgamated or consolidated company are the same as those undertaken by **you** as described in the **schedule**, and

(ii) **you** give **us** notice that **you** wish to extend cover within 30 days of the merger, amalgamation consolidation or sale, and

(iii) **we** shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

There is no cover for any **claim** in connection with any **event** that has occurred prior to the date of the merger, amalgamation or consolidation.

3.4 NEW SUBSIDIARY COMPANIES

This policy is extended to insure a subsidiary company created or acquired by **you** during the **period of insurance** provided that:

(a) the operations and activities of the merged new subsidiary company are the same as those undertaken by **you** as described in the **schedule**, and

(b) **you** give **us** notice that **you** wish to extend cover within 30 days of the acquisition or creation of the new subsidiary company, and

(c) **we** shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

We will only cover **events** that happen after the acquisition.

3.5 PREVIOUS SUBSIDIARY COMPANIES

The definition of **you** is extended to include any entity that ceased to be **your** subsidiary company before or during the **period of insurance**. However, **we** will not indemnify any such previous subsidiary for any **claim** arising out of an **injury** after it ceased to be **your** subsidiary.

SECTION 4 – EXCLUSIONS

4.1 ACC

You are not insured for liability if compensation:
(a) is available under the Accident Compensation Act 2001,
(b) would have been available under that Act, except for **your** status as an exempt employer under that Act.

4.2 ASBESTOS

You are not insured for liability in connection with asbestos.

4.3 DISHONESTY OR FRAUD

You are not insured for liability in connection with any:
(a) wilful breach of duty or wilful breach of an Act of Parliament,
(b) dishonest, fraudulent or malicious act or omission,
(c) act or omission committed with a criminal intent,
(d) unlawful profit or advantage,
(e) insider trading.

4.4 EMPLOYMENT DISPUTES

You are not insured for liability arising out of the Employment Relations Act 2000 or unpaid wages or other benefits due to any **employee**.

4.5 EXISTING LITIGATION

You are not insured for liability in connection with any litigation in existence at the commencement of the **period of insurance**.

4.6 FINES AND CONTRACTUAL OBLIGATIONS

You are not insured for liability for:
(a) any fine or penalty imposed on **you** (whether under contract or statute),
(b) any contractual obligation in the nature of a performance warranty or **claim** for liquidated damages.

4.7 HEALTH AND SAFETY IN EMPLOYMENT ACT

You are not insured for liability if **you** fail to comply with any lawful notice that **you** receive from an appropriate authority under the Health and Safety in Employment Act 1992.

4.8 KNOWN CLAIMS AND CIRCUMSTANCES

You are not insured for liability in connection with any **claim** that **you** first knew of, or ought to have known of, prior to the inception date of this policy.

4.9 LEGAL JURISDICTION

You are not insured for liability in connection with:
(a) proceedings or a prosecution first brought in a court or tribunal outside New Zealand,
(b) proceedings or a prosecution brought in a court or tribunal within New Zealand to enforce a judgment made by a court or tribunal outside of New Zealand,
(c) legal liability arising under the proper law of a country other than New Zealand.

4.10 NUCLEAR

You are not insured for liability in connection with:
(a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices,
(b) the use, handling or transportation of radioactive materials,
(c) the use, handling or transportation of any weapon of war, explosive device employing nuclear fission or fusion.

4.11 RETROACTIVE DATE

You are not insured for liability in connection with any **event**, circumstances or accident that occurred prior to the **retroactive date**.

4.12 TERRORISM

You are not insured for any **claim** of any type in connection with an **act of terrorism**, including in connection with controlling, preventing, suppressing, retaliating against, or responding to an **act of terrorism**.

4.13 WAR

You are not insured for any **claim** of any type in connection with any of the following, including controlling, preventing or suppressing any of the following: war, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not), civil war, mutiny, rebellion, revolution, civil commotion assuming the proportions of or amounting to an uprising, insurrection, military or usurped power.

SECTION 5 – BASIS OF SETTLEMENT

5.1 MAXIMUM AMOUNT PAYABLE

A. Liability

The most **we** will pay in total for liability arising from all **claims** (excluding **defence costs**), during the **annual period** is the **sum insured.**

B. Defence costs

The most **we** will pay in total for **defence costs** arising from all **claims**, during the **annual period** is the **sum insured.**

C. Separate Limits

For the avoidance of doubt, the limits under 5.1 A – 'Liability' and 5.1 B –'Defence Costs' are separate. This means the **sum insured** under 5.1 A – 'Liability' cannot be used to meet **defence costs**, and the **sum insured** under 5.1 B – 'Defence Costs' cannot be used to meet liability for **claims.**

5.2 EXCESS

The excess shown in the **schedule** will be deducted from the amount **we** pay for a **claim.**

SECTION 6 – GENERAL CONDITIONS

6.1 HOW WE ADMINISTER THIS POLICY

A. Assignment

You may not assign this policy or any interest under this policy without **our** prior written consent.

B. Cancellation

BY YOU

You may cancel this policy at any time by notifying **us**. If **you** do, **we** will refund any premium that is due to **you** based on the unused portion of the **period of insurance**. **You** must pay any outstanding premium due for the used portion of the **period of insurance.**

BY US

We may cancel this policy by giving **you**, **your** broker or agent notice in writing or by electronic means at **your**, **your** broker's or agent's last known address. **Your** policy will be cancelled from 4pm on the 30th day after the date of the notice. **We** will refund **you** any premium that is due to **you** based on the unused portion of the **period of insurance**.

C. Change of Terms

We may change the terms of this policy (including the excess) by giving **you**, **your** broker or agent notice in writing or by electronic means at **your**, **your** broker's or agent's last known address. Unless otherwise specified in this policy the change in terms will take effect from 4pm on the 30th day after the date of the notice.

D. Currency

Any amounts shown in this policy or in the **schedule** are in New Zealand dollars, unless otherwise specified in the **schedule**.

E. GST

Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:

(a) all sums insured exclude GST, and

(b) all sub limits exclude GST, and

(c) all excesses include GST, and

(d) GST will be added, where applicable, to claim payments.

F. Other Insurance

You must notify **us** as soon as **you** know of any other insurance policy that covers **you** for any of the risks covered under this policy.

This policy does not cover **your** liability or loss at all if it is insured to any extent under any other insurance policy. **We** will not contribute towards any **claim** under any other insurance policy.

G. Premium Payment Options

If **you** choose to pay the premium other than annually, then:

(a) **you** must use the Deduction Authority **we** require, and

(b) this policy is for the initial **period of insurance** starting on the 'From' date and ending on the 'To' date stated in the **schedule**.

This policy will be renewed for further monthly or quarterly **periods of insurance** (as indicated in the **schedule**) by payment of each premium due under the Deduction Authority.

H. Premium Adjustments

If the premium for this policy has been calculated based on estimated figures, then the premium is only a provisional premium for the **annual period**.

Within three months of the expiry of an **annual period**, you must tell **us** what the actual figures are. **We** will re-calculate **your** actual premium based on the actual figures.

The difference between the actual and the provisional premiums will either be payable to **us** or refunded to **you** depending on the outcome of the adjustment, but any refund will be limited to a maximum of 50% of the provisional premium.

I. Separate Insurance (Cross Liability)

Where the 'Insured' consists of more than one legal entity, then all parties are insured separately (as though a separate policy has been issued to each person/entity). However, this does not increase the amount of cover available under this policy.

6.2 LAWS AND ACTS THAT GOVERN THIS POLICY

A. Disputes about this Policy

The law of New Zealand applies to disputes about this policy and the New Zealand Courts have exclusive jurisdiction.

B. Legislation Changes

Any reference to any Act of Parliament or subordinate rules referred to in this policy includes any amendments made or substitutions to that law.

C. Insurance Law Reform Acts

The exclusions and conditions in this policy are subject to **your** rights under the Insurance Law Reform Act 1977 and Insurance Law Reform Act 1985.

6.3 YOUR OBLIGATIONS

A. Comply with the Policy

You (and any other person or entity **we** cover) must comply with the conditions of this policy at all times.

B. Breach of Any Condition

If:

(a) **you**, or

(b) any other person or entity **we** cover under this policy, or

(c) anyone acting on **your** behalf,

breaches any of the terms and/or conditions of this policy, **we** may:

(i) decline **your** claim either in whole or in part, and/or

(ii) declare either this policy or all insurance **you** have with **us** to be of no effect and to no longer exist.

C. True Statements and Answers

True statements and answers must be given, whether by **you** or any other person, when **you**:

(a) apply for this insurance, and/or

(b) notify **us** regarding any change in circumstances, and/or

(c) make any claim under this policy, and communicate with **us** or provide any further information regarding the claim.

D. Reasonable Care

You must take reasonable care at all times to avoid circumstances that could result in a **claim**. **Your** claim will not be covered if **you** are reckless or grossly irresponsible.

E. Change in Circumstances

You must tell **us** immediately if there is a material:

(a) increase in the risk insured, or

(b) alteration of the risk insured.

Once **you** have told **us** of the change, **we** may then cancel or alter the premium and/or terms of this policy.

If **you** fail to notify **us** about a change in the risk insured, **we** may:
(a) declare this policy unenforceable, and/or
(b) decline any subsequent claim either in whole or in part.
These actions will be taken from the date **you** knew, or ought to have known, of the increase or alteration in the risk insured.
For avoidance of any doubt, information is 'material' where we would have made different decisions about either:
(i) accepting your insurance, or
(ii) setting the terms of your insurance,
if we had known that information. If in any doubt, notify us anyway.

F. Confidentiality

You must not:
1. reveal that **you** hold this policy,
2. disclose the terms of this policy.

You may only give this information if:
(a) **we** agree in writing,
(b) **you** are bound to give the information by law.

SECTION 7 – MANAGING YOUR CLAIM

7.1 YOUR OBLIGATIONS

A. Do Not Admit Liability

You must not:
(a) admit **you** are liable,
(b) do or say anything that may prejudice **our** ability to defend the **claim** against **you** or take recovery action in **your** name.

B. Advise us

If **you** become aware of any event that is likely to give rise to a claim, **you** must contact **us** immediately.

C. Minimise the Loss

You must take all reasonable steps to minimise the **claim** and avoid any further loss or liability arising.

D. Provide Full Information

When **you** make a claim **you** consent to **your** personal information in connection with the claim being:
(a) disclosed to **us**, and
(b) transferred to the Insurance Claims Register Limited.

You must:
(a) give **us** free access to examine and assess the **claim**, and
(b) send any relevant correspondence or documents to **us**, and
(c) complete a claim form and/or statutory declaration to confirm the claim if **we** request it, and
(d) provide any other information, proof of ownership or assistance that **we** may require at any time.

E. Dishonesty

If **your** claim is dishonest or fraudulent in any way, **we** may:
(a) decline **your** claim either in whole or in part, and/or
(b) declare either this policy or all insurance **you** have with **us** to be of no effect and to no longer exist from the date of the dishonest or fraudulent act.
This is at **our** sole discretion.

F. What you must obtain our agreement to do

You must obtain **our** agreement before **you**:
(a) incur any expenses in connection with any claim under this policy,
(b) negotiate, pay, settle, admit or deny any **claim** against **you**,
(c) do anything that may prejudice **our** rights of recovery.

7.2 MANAGING YOUR CLAIM

A. Allocation of Defence Costs

If a **claim** is covered only partly by this policy, then **we** will attempt to ensure fair and proper allocation of the **defence costs** for insured and uninsured portions.

If all parties are unable to agree upon the allocation of the **defence costs** then that allocation shall be referred to a lawyer that **we** and **you** agree to instruct, whose determination shall be binding upon all parties.

The cost of the lawyer's determination is to be taken as part of the **defence costs** covered under Section 2.2 – 'Defence Costs'..

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

B. Apportionment

If **we** pay **defence costs** in excess of the maximum amount payable under Section 5.1 B 'Defence Costs', then **you** must refund to **us** all amounts in excess of the maximum amount payable.

C. Your Defence

If the lawyer appointed to defend **you** advises that the claim should not be defended, then **we** are not required to defend a claim against **you** unless a second lawyer that **we** and **you** agree to instruct advises that the claim should be defended.

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. In formulating their advice, the lawyer must be instructed to consider the:

(a) economics of the matter, and
(b) damages and costs likely to be recovered, and
(c) likely costs of defence, and
(d) prospects of successfully defending the claim.

The cost of the second lawyer's opinion is to be taken as part of the **defence costs** covered under this policy.

If the second lawyer advises that the claim should be settled and if the terms of settlement that **we** recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters they are required to consider), then:

(i) **you** cannot object to the settlement, and
(ii) **you** must immediately pay the excess shown in the **schedule**.

D. Defence of Liability Claims

After **you** have made a claim under this policy, subject to '7.2 C – 'Your Defence'', **we** have the sole right (which shall be a precedent to **your** right to be covered) to act in **your** name and on **your** behalf to defend, negotiate or settle the **claim** as **we** see fit (this will be done at **our** expense).

We may appoint **our** own lawyers to represent **you**. They will report directly to **us**.

E. Discharge of Liability Claims

We may elect at any time to pay **you**:

(a) the maximum amount payable under clause 5.1 A -'Liability', or
(b) any lesser sum that the **claim** against **you** can be settled for.

Once **we** have paid this (including any **defence costs** already incurred up to **our** date of election), **our** responsibility to **you** under the policy is met in full.

F. Waiver of Professional Privilege

The lawyers **we** instruct to act on behalf of **you** are at liberty to disclose to **us** any information they receive in that capacity, including information they receive from **you**.

You authorise the lawyers to disclose this information to **us**.

SECTION 8 – DEFINITIONS

The definitions apply to the plural and any derivatives of the bolded words. For example, the definition of 'accidental' also applies to the words 'accidentally', 'accident' and 'accidents'.

accidental
Unexpected and unintended by **you**.

act of terrorism
Includes any unlawful act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:
(a) involves violence against one or more persons,
(b) involves damage to property,
(c) endangers life other than that of the person committing the action,
(d) creates a risk to health or safety of the public or a section of the public,
(e) is designed to interfere with or disrupt an electronic system.

annual period
The **period of insurance**. However, if:
(a) **you** pay the premium monthly or quarterly,
(b) the **period of insurance** is for more than 12 months,
the annual period is the current 12 month period calculated consecutively from the date this policy first started.

application
The information provided by **you** to **us** when **you** purchased this insurance or requested a quotation for this insurance from **us**. It also includes any subsequent information **you** provide **us** with.

business
The business described in the **schedule**.

claim
Any of the following:
(a) any proceeding commenced against **you** in connection with an **employee** sustaining an **injury**,
(b) any notice **you** receive from any other person that they intend to commence a proceeding against **you**, in connection with an **employee** sustaining an **injury**,
(c) any circumstance that a reasonable person in **your** position would have considered may give rise to a demand for damages.

defence costs
The reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with **our** prior written consent.
Defence costs does not include charges for time spent by **you** or **your** partners, directors, officers or **employees** or reimbursement of any form for remuneration of such people.

employee
Any person who is employed by **you** in connection with **your business** and in respect of whose remuneration **you** deduct PAYE tax at source.

event
Any one **claim** or series of **claims** arising from one source or original cause.

injury
The **accidental** death of, or the **accidental** bodily injury to any person including sickness, disease, disability, shock, fright, mental anguish or mental injury.

period of insurance
The period shown in the **schedule**, that specifies the start and end dates of this insurance contract.

retroactive date
The retroactive date shown in the **schedule**.

schedule
The latest version of the Schedule **we** issue to **you** for this policy.

sum insured
The amount shown in the **schedule**.

we
NZI, a business division of IAG New Zealand Limited.
We may also use the words 'us', 'our' or 'company' to describe NZI.

you

Any person or entity named in the **schedule** as 'Insured' and if the named insured is a company it includes its directors, officers or **employees** and any subsidiaries and their directors, officers or **employees**, but only while the person is acting within the scope of their duties in such capacity and does not extend to include any person or **employee** who is bringing a **claim**.
We may also use the word 'Insured' to describe you.

NZI is a business division of IAG New Zealand Limited, a wholly owned subsidiary of Insurance Australia Group, Australasia's largest general insurer. Established in 1859, it is today one of the country's largest and longest-serving fire and general insurance brands, protecting tens of thousands of New Zealanders every year.

Through our broad range of commercial, personal, marine, professional risks and rural insurance products, we pride ourselves on helping people to achieve the best protection for their assets.

We partner with a network of skilled and experienced brokers and other insurance intermediaries who distribute our products. We pay remuneration to our brokers and intermediaries when they issue our policies, and when these policies are renewed or varied.

To find out more about the advantages of choosing NZI, talk to your broker or visit nzi.co.nz.

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nzi.co.nz

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