

## **Employers' Indemnity Policy**

Western Australia Workers' Compensation

and Rehabilitation Act 1981

Indemnity

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**Whereas** the Insured named in the Schedule herein (and hereinafter call the "the Employer") carrying on the business described, whether carried on at the situation set out in the Schedule or elsewhere, has made to **Allianz Australia Insurance Limited** (hereinafter called "the Insurer") a written proposal, agreement and declaration which it is hereby agreed shall be the basis of the contract and incorporated herein.

**Now this Policy witnesseth** that in consideration of the payment to the Insurer of the premium shown in the Schedule for the period stated therein or until 4 o'clock in the afternoon of the last day of any subsequent period in respect of which the premium required shall have been paid to and accepted by the Insurer **IT IS HEREBY AGREED** that if during the said period a disability of any worker of the Employer occurs in the business described in the Schedule and the Employer is legally liable to make any payment in respect of such disability under the Workers' Compensation and Rehabilitation Act 1981 as amended ("the Act"), the Insurer will indemnify the Employer against the payments for which the Employer is so liable and in addition will pay all reasonable costs and expenses incurred with the written consent of the Insurer.

**It is hereby further agreed** (provided always that the Employer is not otherwise indemnified in respect of the liability hereinafter referred to) that the Insurer will indemnify the Employer against legal liability to pay damages and in addition will pay all reasonable costs and expenses incurred with the written consent of the Insurer under the Fatal Accidents Act, 1959, the Law Reform (Miscellaneous Provisions) Act, 1941, the Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act, 1947, and any amendments of such Acts and at Common Law for personal injury sustained by any person employed by the Employer under a contract of service or apprenticeship if such injury is an injury in respect of which such person is entitled to recover from the Employer both compensation under the Act and (subject to section 92 of the Act) damages independently thereof and if the Employer would be entitled to indemnity hereunder in respect of any compensation so recovered **PROVIDED THAT** such indemnity:

- (a) shall not apply with respect to personal injury occurring outside a State or Territory of the Commonwealth of Australia nor with respect of claims brought against the Employer outside a State or Territory of the Commonwealth of Australia;
- (b) except in the case of the Employer's liability under the Fatal Accidents Act, 1959, the Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act, 1947, and the Law Reform (Miscellaneous Provisions) Act, 1941, and any amendments of such Acts shall apply only to the Employer's liability to the injured worker and shall not apply to the Employer's liability to any other person arising from the worker's injury;
- (c) shall not apply where the injured worker is a "Worker" by reason only of section 175 of the Act;
- (d) shall be limited to \$50 million any one person or number of persons arising out of the one event; and
- (e) shall not apply to Exemplary or Punitive Damages.

**Provided further that** the Insurer shall not be liable under this policy to indemnify the Employer in respect of a liability against which the Employer was required by any law in force at the date on which event or events giving rise to the liability to have indemnity under another policy of insurance occurred except to the extent of the amount if any by which the liability exceeds the amount to which the indemnity under that other policy was permitted by the relevant law at the date aforesaid to be and where the Employer at the date aforesaid had obtained such another policy which was thereby limited.

**Provided also** that the truth of the written proposal, agreement and declaration and any other information supplied to the Company and the due observance and fulfilment of the Conditions of this Policy and any memoranda endorsed or otherwise expressed hereon or attached hereto, which conditions and memoranda are to be read as part of this Policy, shall be conditions precedent to any liability of the Insurer.

## Conditions

- 1. Notices**

Every notice or communication to be given or made under this Policy shall be delivered in writing at the Office of the Insurer from which the Policy has been Issued.
- 2. Accidents**

The Employer shall give notice to the Insurer of any disability as soon as practicable after information as to the happening of such, or of any incapacity arising therefrom, comes to the knowledge of the Employer or of the Employer's representative for the time being and shall forward to the Insurer forthwith after receipt thereof every written notice of claim or proceedings and all information as to any verbal notice of claim or proceedings.
- 3. Litigation, Settlement or Admission of Liability**

The Employer shall not, without the written authority of the Insurer, incur any expenses of litigation or make any payment, settlement or admission of liability in respect of any disability to or claim made by any worker.
- 4. Insurer may take action**

The Insurer shall in respect of anything indemnified under this Policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer, be entitled to use the name of the Employer. The Employer shall give all necessary information and assistance and forward all documents to enable the Insurer to settle or resist any claim as the Insurer may think fit.
- 5. Right of Subrogation**

The Insurer shall be entitled to use the name of the Employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise and shall have the right of subrogation in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any disability covered by this Policy and the Employer shall as and when required execute any necessary documents for the purpose of vesting such rights in the Insurer.
- 6. Reasonable Precautions**

The Employer shall take all reasonable precautions to prevent disability and reasonably comply with all relevant Statutory requirements, which include The Occupational Health, Safety and Welfare Act 1984 as amended.
- 7. Right of Inspection**

So far as reasonably practicable, no alteration or repair shall, without the consent of the Insurer, be made in any ways, works, machinery or plant after any disability to a worker shall have occurred in connection therewith until the Insurer shall have had an opportunity of examining the same.
- 8. The Insurer shall have the right and opportunity at all reasonable times to inspect the plant, works, machinery and appliances used in the Employer's business.**
- 9. Premium Calculation**

The first and every renewal premium that may be accepted shall be regulated by the amount of wages (as defined hereunder) paid or allowed to all workers engaged during the period of indemnity and the value of contracts and sub contracts but shall be calculated and paid in the first instance on an estimate of the amount of such wages and the value of such contracts and sub contracts and at the end of such indemnity period an adjustment as provided by Condition 11 hereof shall be made.
- 10. Wages Record**

The name and wages (as defined hereunder) of every worker employed by the Employer shall be entered regularly in proper Wages Records so that details may exist of such workers as are entitled to call upon the Employer for compensation. A record shall also be kept of all Contracts and Sub Contracts and shall show separate values for labour, plant and materials.
- 11. Inspection of Wages Records**

The Employer shall at all times allow any officer duly authorised by the Insurer to inspect the Wages Records and other records to verify the total amount paid or the correctness of a claim and shall supply the Insurer within one month after the expiry of any period of indemnity with a correct account of all wages (as defined hereunder) paid or allowed and where required the number of workers engaged during such period and the value of the contracts or sub contracts referred to in Condition 10 of this Policy. If the total amount or the number of employees or the types of business or occupation of the industry in which they are engaged shall differ from those on which premium has been paid, the difference in premium shall be met by a further proportionate payment to the Insurer or by a refund by the Insurer, as the case may be, subject always to the retention by the Insurer of the recommended Minimum Premium.
- 12. Assignment**

No assignment of interest under this Policy shall bind the Insurer, unless the written consent of the Insurer is endorsed hereon.
- 13. Waiver**

No condition or provision of this Policy shall be waived or altered unless the consent of the Insurer be previously obtained and signified by endorsement hereon, nor shall notice to any agent, nor shall knowledge possessed by any agent or by any person be held to effect a waiver or alteration in this contract, or any part of it.
- 14. Cancellation**

Subject to permission to do so being granted by the Worker's Compensation and Rehabilitation Commission in accordance with section 160(3)(a) of the Act, the Insurer may cancel this Policy and in such event the Employer shall supply a correct account of all wages (as defined hereunder) and in accordance with Condition 11 of this Policy for the period the Insurer has been on risk. The Insurer will re-calculate the actual term premium and refund any unearned premiums.

**15. War etc Excluded**

Other than as provided by the Act, this Policy does not indemnify the Employer in respect of claims directly or indirectly occasioned by any happening through or in consequence of war, invasion, acts of foreign enemies, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power.

**16. Industrial Diseases**

This Policy does not indemnify the Employer in respect of claims for pneumoconiosis or mesothelioma arising from employment in any mine or mining operation or claims in respect of other industrial diseases as may be specified by the Minister from time to time, liability for such disabilities being required to be separately insured in accordance with the provisions of Section 151 (a)(iii), 162 and 163 of the Act.

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**Definitions**

The word “wages” means all gross wages, salaries, remunerations, commissions, bonuses, overtime, termination payments, allowances and the like, directors fees and other benefits paid (whether at piece work rates or otherwise and whether paid in cash or in kind) to or in relation to a worker before deduction of income tax, but excluding termination payments not legally payable in accordance with the contract of employment or industrial award or industrial agreement and weekly payments of compensation under the Act.



**Allianz Australia Insurance Limited**

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