



# Offshore Market Placements

**EMPLOYERS LIABILITY**

**POLICY WORDING**



---

**POLICY WORDING CONTENTS**

INTRODUCTION.....3

INSURING CLAUSE.....3

THE SCHEDULE.....4

EXTENSIONS.....4

EXCLUSIONS.....5

CONDITIONS.....7

DEFINITIONS.....9



---

## INTRODUCTION

All parts of the printed Policy wording and the Schedule must be read as if they are one and the same document. The headings in this Policy are for reference only and do not form part of this Policy.

## INSURING CLAUSE

In consideration of payment of the premium and subject to the clauses of this Policy, the Insurer agrees as follows:

### Insured Liability

The Insurer will indemnify the Insured against any Claim that the Insured becomes legally liable to pay as:

- 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 Insured's business and for which the Employee is not covered under the Injury Prevention, Rehabilitation, and Compensation Act 2001; 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 Insured's business and for which the Employee is eligible for compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Provided that in respect of clauses a) and b) above:

- i) the Claim against the Insured was first made during the period of insurance; and
- ii) the Claim was notified to the Insurer as soon as practicable by the Insured during the period of insurance or within 30 days of expiry; and
- iii) the Personal Injury arose out of an event, circumstance or accident that occurred subsequent to the retroactive date and before the expiry of the period of insurance.

There is no indemnity under this Policy for Claims that do not comply with i), ii) and iii) of this clause.

### Defence Costs

The Insurer shall pay the Defence Costs arising out of any Claim covered by this Policy.

### Limits of liability

- a) The limit of The Insurer's liability in respect of any one Claim, inclusive of Defence Costs, shall not exceed the limit of indemnity stated in the Schedule.
- b) The total aggregate liability of the Insurer during any one period of insurance for all Claims and Defence Costs shall not exceed the limit of indemnity stated in the Schedule.

### Excess

Where an excess is specified in the Schedule the Insured must pay this amount in respect of each and every Claim inclusive of Defence Costs



---

## THE SCHEDULE

### Named Insured

(As detailed in the Policy Schedule)

### The Business

(As detailed in the Policy Schedule)

### Period of Insurance

(As detailed in the Policy Schedule and any subsequent period for which the Insured shall have paid or agreed to pay and the Company shall have accepted or agreed to accept a premium.)

### Premium

As agreed

### Limit Of Liability

\$500,000 any one claim or in the aggregate, unless otherwise stated in the Policy Schedule

### Retroactive Date

(As detailed in the Policy Schedule)

### Excess

(As detailed in the Policy schedule)

## EXTENSIONS

These Extensions apply automatically unless otherwise stated in the Policy Schedule.

### 1. Acquisitions and creations

The definition of Insured, if a company, will include any subsidiary acquired or created during the period of insurance. Provided that the Insured shall advise the Insurer within 30 days of the acquisition or creation, and the Insurer shall have the right to charge any additional premium. However, the Insurer will not pay on behalf of the Insured any Claim arising out of Personal Injury occurring before any such entity became a subsidiary of the Insured.

### 2. Previous subsidiaries

The definition of Insured, if a company, will include any entity that ceased to be a subsidiary before or during the period of insurance, but the Insurer will not pay on behalf of the Insured any Claim arising out of Personal Injury occurring after it ceased to be a subsidiary, nor will the Insurer pay on behalf of the Insured any Claim arising out of Personal Injury occurring before it became a subsidiary.

### 3. Continuous cover clause

The Insurer will indemnify the Insured for any Claim that would be covered under this Policy but is excluded by Exclusion 1 c) (Known Claims and circumstances), subject to the following additional conditions:

- a) the Insurer was the Insured's Employers Liability Insurer at the primary level under a policy ('the former policy') at the time when the Insured first became aware of the circumstances that subsequently gave rise to the Claim; and
- b) the Insurer continued without interruption as the Insured's Employers Liability Insurer at the primary level from the time when the Insured first became aware of the circumstances up until such time as the Claim was made against the Insured and notified to the Insurer; and
- c) the liability of the Insurer is limited to the amount for which the Insurer would have been liable at the time referred to in Extension 3 clause a) in accordance with the terms and conditions of the former policy; and
- d) the liability of the Insurer 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.



---

## EXCLUSIONS

### 1. Known Claims and circumstances

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim:

- a) made against, or intimated to, the Insured prior to the commencement of the period of insurance; or
- b) notified under any previous Policy; or
- c) arising out of or connected with any facts or circumstances that:
  - i) the Insured was aware of prior to commencement of the period of insurance; and
  - ii) a reasonable person in the position of the Insured would have considered may give rise to a Claim.

### 2. Intentional torts

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim based on or in any way arising out of a cause of action alleging intentional wrongdoing or conscious recklessness on the part of the Insured, including (but not limited to) causes of action alleging intentional infliction of harm, trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse.

### 3. Other activities

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim made 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.

### 4. Retroactive Date

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim that arose out of any event, circumstances or accident that occurred prior to the retroactive date.

### 5. War and Civil War Exclusion [NMA464]

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, 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 or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

### 6. Radioactive Contamination and Explosive Nuclear Assemblies [NMA 1622 4/4/68 (amended)]

This Policy does not cover loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### 7. Defamation

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim: for liability based on or in any way arising out of a cause of action based on defamation or injurious falsehood.

### 8. Punitive and Exemplary Damages, fines, wages and contractual obligations

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim:

- a) for Punitive or Exemplary Damages except by way of a Claim for Punitive or Exemplary Damages in respect of Personal Injury pursuant to Insuring Clause Insured Liability clause b) of this Policy;
- b) for fines, penalties, reparation, court costs, prosecution witness expenses or solicitors' costs ordered to be paid by the Insured upon conviction of an offence;
- c) for unpaid wages or other benefits due to any Employee;
- d) for any contractual obligation in the nature of a performance warranty or claim for liquidated damages.



**9. Legal jurisdiction**

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim:

- a) in respect of legal action or litigation first brought in a court outside New Zealand; or
- b) in respect of any legal action or litigation brought in a court within New Zealand to enforce a judgment handed down in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- c) in respect of any legal action in which the proper law to be applied to the issue or any of them in that action is that of a country other than New Zealand.

**10. Date recognition**

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim arising directly or indirectly out of or in connection with the failure or inability of:

- a) any electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- b) any similar device, or media or systems used in connection with any of them;

whether the Insured's property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including but without being limited to any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- i) anything referred to in a) or b) above recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
- ii) the operation of any command or logic that has been programmed or incorporated into anything referred to in a) or b) above.

**11. Dishonesty and fraud**

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim: resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of the Insured or any officer in control of the Insured.

**12. Health and Safety in Employment Act**

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of 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 or any amending or replacing legislation.

**13. Terrorism [NMA2951]**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes liability for loss, injury, damage, 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 endorsement an act of Terrorism means any act, including but not limited to the use of force or violence and/or the threat thereof, 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), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, injury, damage, 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.

If the Underwriters allege that by reason of this exclusion, and loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

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



**14. Asbestos**

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any claim arising in connection with the recall of any Products due to an asbestos health hazard.

**15. Silica**

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Silica or materials or products containing Silica whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

## **CONDITIONS**

**1. Reporting of Claims**

Irrespective of the quantum, the Insured must give the Insurer immediate notice in writing of:

- a) any Claim made against them; or
- b) the receipt of notice from, or information as to any intention by any party, to make a Claim against them; or
- c) any circumstance that a reasonable insured in the position of the Insured would have considered may give rise to a Claim. Where such notice is given to the Insurer by the Insured, any claim that may subsequently be made shall be deemed to be a Claim made against the Insured during the period of the insurance.

Provided that in order to qualify as a Claim capable of being covered by this Policy the Insured's notice in writing must:

- i) relate to a Claim that occurred during the period of insurance; and
- ii) be given during the period of insurance or within 30 days after its expiry.

**2. Conduct of Claims**

The Insured must not admit liability for or make any decision that affects the Conduct of a Claim, or incur any costs or expenses in connection therewith without the prior written consent of the Insurer.

The Insurer is entitled at any time to nominate a solicitor to act as the Insured's solicitor and shall have total discretion as to the Conduct of a Claim, in the name of the Insured. The solicitor shall at all times be at liberty to disclose to the Insurer any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and The Insurer in respect of such information.

If the Insurer believes that the Claim will not exceed the excess, the Insurer may instruct the Insured to assume responsibility for the Conduct of the Claim at the Insured's expense. Should the Claim subsequently exceed the excess, the Insurer agrees to reimburse the reasonable costs and expenses incurred by the Insured that exceed the excess. The Insured must advise the Insurer as soon as the total costs of the Claim exceed the excess or it becomes apparent that they are likely to do so.

**3. Defence of legal proceedings**

The Insurer will not require the Insured to defend any legal proceedings in respect of any Claim against the Insured, nor will the Insured require the Insurer to defend, on its behalf, any legal proceedings in respect of any such Claim unless a legal counsel (to be mutually agreed upon by the Insured and the Insurer) advises that such proceedings should be defended.

In formulating such advice, appointed counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion will be treated as part of the Defence Costs of any Claim.

In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended but should be settled, provided that settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then the Insured shall cooperate with the Insurer to effect such settlement in accordance with this Policy.

Provided always that if the Insured does not agree with a decision by the Insurer to settle a Claim, the Insured can elect to contest the Claim at its own expense but the liability of the Insurer will not exceed the amount for which the Claim could have been settled in the opinion of the counsel appointed.



**4. Allocation of costs**

If costs or expenses are incurred both in respect of a Claim insured under this Policy and a matter which is not insured under this Policy then the Insurer shall be liable to pay only a fair proportion of such costs or expenses. In the event that the Insured and the Insurer are unable to agree as to a fair proportion, then legal counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

**5. Reasonable precautions**

The Insured shall take all reasonable precautions to:

- a) prevent Personal Injury; and
- b) comply, and ensure that the Insured's employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.

**6. Change of facts or circumstances**

Notice in writing shall be given to the Insurer as soon as practicable of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of the Insured.

**7. Other insurance**

Upon giving notice of any Claim, the Insured agrees to provide to the Insurer written details of any other insurance that may cover or partially cover that Claim.

In the event that the Insured holds other insurance cover with another insurer in respect of any Claim then the indemnity under this Policy shall not be available until the limit of indemnity under any other policy has been exhausted.

**8. Subrogation**

In the event of payment under the Policy the Insurer is entitled to all of the Insured's rights of recovery (before a Claim has been paid and whether or not the Insured has been fully compensated for its actual loss) and the Insured will do everything necessary to secure and preserve such rights. This will include but not be limited to the execution of documents necessary to allow the Insurer to take any legal action in the name of the Insured. However, the Insurer shall not exercise any subrogated rights of recovery against any Employee of the Insured unless the Claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee. In the event that a recovery is made, the amount recovered shall be applied first to the costs of effecting the recovery, then the balance shall be paid to the Insurer and the Insured pro rata in proportion to the insured and the uninsured losses (excluding the excess) of the Insurer and the Insured respectively. Any balance shall be paid to the Insured in respect of its excess.

**9. Cancellation**

a) Method of cancellation:

- i) The Insured may cancel this Policy at any time by notifying the Insurer in writing.
- ii) The Insurer may cancel this Policy at any time by giving 30 days' notice in writing to the Insured of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the Insured at the address last notified to The Insurer. Proof of mailing is sufficient proof of notification.

b) Adjustment of premium:

- i) After cancellation by the Insured, the Insurer will retain or be entitled to the premium for the period during which this Policy has been in force based on the Insurer's cancellation rates.
- ii) After cancellation by the Insurer, the Insured is entitled to a pro-rata refund of the premium.

**10. GST**

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 reenactment of the section or Act) upon receiving any indemnity payment under this Policy, the Insurer will indemnify the Insured for the costs of that tax. The indemnity under this clause is payable by the Insurer in addition to the limit of indemnity.

**11. Policy disputes**

This Policy shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute arising herein.



**12. Insured's warranty**

It is agreed between the Insured and the Insurer that the written Proposal provided by the Insured forms the basis of the Policy and the Insured warrants the truth of all statements made therein.

**13. Overseas Jurisdiction Clause**

It is hereby agreed that:

- a) The insurance shall be governed by the law of New Zealand whose courts shall have jurisdiction in any dispute arising hereunder; and
- b) Any summons, notices or process to be served upon the Underwriters for the purpose of instituting any legal proceedings against them in connection with this Insurance may be served upon

Scott Galloway  
Lloyd's General Representative in New Zealand  
Hazelton Law  
Level 3, Molesworth House  
101 Molesworth St  
PO Box 5639  
Wellington, New Zealand

who has the authority to accept service on their behalf.

## DEFINITIONS

Any word or expression that this Policy defines as having a particular meaning will have that meaning everywhere it appears.

### Claim

'Claim' means:

- a) legal proceedings instituted and served upon the Insured;
- b) any threat or intimation that legal proceeding will be issued against the Insured;
- c) any circumstance that a reasonable insured in the position of the Insured would have considered may give rise to a demand for damages.

### Conduct of the Claim

'Conduct of a/the Claim' means the investigation, defence, compromise or handling of the Claim in any manner whatsoever on behalf of the Insured.

### Damages

'Damages' means monetary compensation ordered to be paid or agreed to be paid pursuant to a judgment or settlement of any common law action brought or capable of being brought in a New Zealand court in respect of Personal Injury to an Employee of the Insured, but does not include any such monies payable pursuant to any remedy, relief or penalty provided in any statute of New Zealand, whether by way of damages, fine, reparation or other order.

### Defence Costs

'Defence Costs' means reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with the prior written consent of the Insurer that:

- a) relate directly to the Conduct of the Claim; or
- b) are associated with the Insured making application to the Court to determine whether a Personal Injury is properly the subject of cover under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or any amending or replacing legislation; or
- c) is an amount required to be paid by the Insured as security for costs in any legal proceeding.

'Defence Costs' does not include charges for time spent by directors, officers, partners or employees of the Insured or reimbursement of any remuneration for such people.

### Employee

'Employee' means any person who is employed by the Insured in connection with the Insured's business and in respect of whose remuneration the Insured deducts PAYE tax at source.



---

**Insured**

'Insured' means the entity specified in the Schedule and if the Insured is a company it includes its directors and any subsidiaries and their directors.

**Insured's Business**

'Insured's Business' means the business and undertakings of the Insured, as defined in the Schedule.

**Insurer**

'Insurer' means administered by Offshore Market Placements Limited on behalf of Certain Underwriters at Lloyd's

**Personal Injury**

'Personal Injury' means bodily injury, sickness, disease or infection, including death resulting therefrom, and shall include disability, shock, fright, mental anguish or mental injury.

**Punitive and Exemplary Damages**

'Punitive and Exemplary Damages' means monies ordered to be paid as punitive or exemplary damages pursuant to a judgment of a New Zealand court in respect of a common law action brought by an Employee against the Insured in relation to Personal Injury.

**Schedule**

'Schedule' means the most recent Policy Schedule, Revised Policy Schedule or insurance certificate issued by the Insurer.

**END OF DOCUMENT**