

# EMPLOYER'S INDEMNITY

## INSURANCE POLICY

Tasmania

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## Business Insurance

The Proposal, Policy and any certificates and schedules annexed or attached hereto, and the Workers Rehabilitation & Compensation Act 1988 (as amended) and any rules and regulations issued thereunder shall be read together and any word or expression to which a specific meaning has been given in any part thereof shall bear such meaning wherever it may appear unless otherwise specifically indicated.

**Whereas** by virtue of the Workers' Rehabilitation & Compensation Act 1988 (hereinafter called "the Act", which term shall include any rules and regulations issued thereunder) it is provided that every employer who is not a self-insurer shall maintain in force with a licensed insurer a Policy of Insurance that indemnifies the Employer in respect to the matters referred to in Section 97 of the Act.

**And whereas** the Employer named in this Policy (hereinafter called "the Employer") is carrying on the business stated herein and employs workers in the occupations stated herein and has made to Insurance Australia Limited trading as CGU Workers Compensation, a licensed insurer (hereinafter called "the Insurer"), a written Proposal and Declaration containing certain particulars and statements which it is hereby agreed shall be the basis of this Contract and be considered as incorporated herein.

**Now this Policy witnesses** that in consideration of the payment by the Employer to the Insurer of the Premium shown on the Schedule hereto (which Premium is subject to adjustment as hereinafter provided), if during the period stated in the Schedule hereto or to 4 o'clock in the afternoon of the last day of any subsequent period in respect of which the Premium shall have been paid to and accepted by the Insurer subject always to the provisions of Section 97AA of the Act, in any employment by the Employer.

## Entitlement to compensation (Section 25)

### If in any employment:

- a worker suffers an injury, not being a disease, arising out of or in the course of his or her employment; or
- a worker suffers an injury, which is a disease and to which his/her employment contributed to a substantial degree, within the meaning of section 3(2a)

and the Employer is, except as is otherwise provided by the Act, liable to pay compensation in accordance with the Act, or to pay any sum independently of the Act in respect of an injury suffered by a Worker employed by him or her and in respect of such injury suffered by the Worker arising out of and in the course of the employment of that worker by the Employer and which the Employer is liable under Section 25 of the Act to pay compensation or if any person employed by the Employer is liable to pay any sum in respect of an injury suffered by a Worker arising out of or in the course of the employment of that Worker by the Employer.

Then in every case the Insurer will indemnify the Employer and each person employed by the Employer against all such sums for which the Employer and every Employee shall be so liable; the Insurer will in addition pay all costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceedings in which such liability is alleged.

Provided always that the indemnity granted by this Policy is subject always to the due observance and fulfilment of the conditions of this Policy and any memorandum endorsed hereon or attached hereto which conditions and memoranda are to be read as part of this Policy and provided further that the Employer shall at all times comply with its obligations to the Worker and Insurer under the Act and such observations and fulfilments shall be conditions precedent to any liability of the Insurer under this Policy.

Provided further that this Policy shall be subject to the Act and any rules and regulations made thereunder, all of which shall be deemed to be incorporated in and form part of this Policy.

## Conditions

### 1. Nature of risk

Notice in writing shall be given to the insurer as soon as possible and in any event no later than within five (5) days, of every change materially altering the business or occupation of the Employer or his or her Employees or affecting the nature or extent of the risk hereby insured.

### 2. Additional premium

Should any change materially altering the business or occupation of the Employer or his or her Employees or affecting the nature or extent granted by this Policy or any renewal thereof or should the cover for which insurance is required by the Workers' Compensation Act 1988 or any amendment thereto be altered during such period of renewal, then in any or all such cases the Employer shall pay to the Insurer such further or additional Premiums as the insurer shall impose for the balance of such period of insurance or renewal and such further or additional Premium shall be subject to adjustment under the succeeding provisions of these Conditions as if it had been originally imposed. 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.

### 3. Earning records

The Employer should supply the Insurer with a correct classified account of all wages, salaries and other forms of remuneration paid or allowed and the number of employees engaged during any period of indemnity within sixty (60) days of the expiry of such period of indemnity and at such other time or times during any period of indemnity that the Insurer may in writing nominate and if the amount so paid or if the number of employees engaged in each classification shall differ from that on which the Premium and any further or additional Premium has been paid, the difference in Premiums shall be met by a further payment to or a refund by the Insurer as the case may be, provided that the amount to be retained by the Insurer shall in no case be less than such minimum as may be prescribed.

#### **4. 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 and shall, wherever appropriate, comply with the requirements of the Act.

#### **5. Notice of Injury and claim**

The Employer shall give notice to the Insurer of any injury to a worker or claim for compensation by a worker 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 any representative of the Employer for the time being and shall forward to the Insurer forthwith every written or verbal notice of claim and all proceedings or information relating to such injury or claim.

In the case where the claim is for compensation under the Act (including any claim under Division 2 of Part VI of the Act), the Employer shall give notice to the Insurer in the manner set forth by Section 36 of the Act within 3 working days of receiving a claim. The insurer is not liable to indemnify weekly payments for the relevant period. (Relevant period is following the 3rd working day until and including the day the insurer is notified).

An employer shall, immediately on receiving a claim for compensation, complete the employer's report section of the form referred to in section 34(1)(a) and, within 5 working days after receiving the claim - forward the claim and a copy of the claim to the licensed insurer.

#### **6. Employer not to make admissions**

The employer shall not incur any expense, litigation or otherwise, or make payment settlement or admission of liability in respect of any injury or claim for which the Insurer may be liable under this Policy without the written authority of the Insurer. This Condition does not apply to the Employer's obligation to pay weekly payments under the Section 81 of the Act, provided that the Employer has complied with Condition 5 above.

#### **7. Subrogation**

The Insurer shall be entitled to use the name of the Employer and any Employees of the Employer in respect of anything indemnified under this Policy including the bringing, defending, enforcing or setting of legal proceedings for the benefit of the Insurer. The Employer and any Employee 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. The Insurer shall be entitled to use the name of the Employer and any Employee in any proceedings to enforce for the benefit of the Insurer, any orders for costs or otherwise shall have the right to subrogation in respect of all rights which the Employer and any Employee may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim 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.

#### **8. Agency**

The Employer expressly authorises the Insurer to make any application or reference to the Workers Rehabilitation & Compensation Tribunal as the Employer's Agent that the Employer itself could make and further authorises the

Insurer to state on any such application or reference that it is the Employer's Agent and has the Employer's express authority to make such application and to, if necessary, provide to the Tribunal a copy of this Policy as evidence of such Agency. The Employer further agrees that the Insurer's rights under this clause are not conditional upon the Insurer accepting liability under this Policy and any action by the Insurer under this clause shall not be taken to create a relationship of Agency for the purposes of any claim generally, nor that the Insurer in exercising its rights under this clause agrees to indemnify the Employer in respect to any claim for compensation however arising.

#### **9. Safety and rehabilitation**

The Employer shall take all reasonable precautions to prevent injuries and shall comply with all Statutory obligations. 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. The Employer shall cooperate with the Insurer in devising and implementing any reasonable rehabilitation program for and on behalf of the Employer's workers.

#### **10. Alterations and repairs**

So far as is reasonably practicable and subject to any lawful order made under any statute, no alteration or repair shall without the consent of the Insurer be made in any ways, works, machinery or plant after any accident shall have occurred in connection therewith until the Insurer is notified and had the opportunity of examining the same.

#### **11. Premium**

Subject to the Act, the first and every subsequent Premium that may be accepted shall be regulated by the amount of wages, salaries and all other forms of remuneration paid or allowed and/or the number of employees engaged in each class of employment during each period of indemnity to all persons included in the indemnity. Declared wages and salaries should be in accordance with the definition of wages provided by the Insurer.

#### **12. Employment records**

A record in the name, class of employment and earnings of every person included in this indemnity shall be kept by the Employer and the Employer shall at all times allow the Insurer or any officer duly authorised by the Insurer to inspect such records.

#### **13. Sub-contracting**

The Employer shall immediately notify the Insurer in the event of his letting any Contract during the period of insurance within the meaning of Section 4B of the Act and shall give the Insurer all such particulars with respect to such contract as the Insurer may require and shall pay to the Insurer forthwith on demand, the premium required to cover his liability with respect thereto.

#### **14. Contractors**

If at any time during the currency of this policy or any renewal thereof, the Employer makes a contract with a Contractor to perform work exceeding one hundred dollars (\$100.00) in value (the Contract) and that Contract is not in respect to work incidental to the trade or business regularly carried on by the Contractor in the Contractor's own name or under a business or firm name and the Contractor does

not sublet the Contract or employ any Worker and the Contractor would otherwise be deemed to be a Worker employed by the Employer, the Employer shall ensure that the Contractor has taken out or effected his or her own personal accident insurance for the period during which the Contractor is to perform work under the Contract and in the event of the failure to so ensure CGU Workers Compensation shall not be required or liable to indemnify the Employer in respect to any injury suffered by the Contractor during the currency of the Contract or arising out of or incidental to the Contract.

## 15. Workers lent on hire

The Employer shall immediately notify the Insurer in the event of his or her letting any contract during the period of indemnity within the meaning of Section 4A of the Act and shall give the Insurer all such particulars with respect to such contract as the Insurer may require and shall pay to the Insurer forthwith on demand the premium required to cover his or her liability with respect thereto.

## 16. Double insurance

If at any time during the currency of this Policy or any renewal thereof there be any other indemnity or indemnities subsisting whether effected by the Employer or any other person covering the same, the Insurer shall not be liable to pay or contribute more than a rateable proportion of the liability in respect of any claim.

## 17. Assignment

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

## 18. No Waiver of conditions

No Condition or provision of this Policy shall be waived or altered unless the consent of the Insurer has been previously obtained and signed 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 Policy or any part of it.

## 19. Cancellation of policy

The Insurer may, at any time, by giving written notice to the Employer, cancel this Policy. The Notice of Cancellation shall be posted to the Employer at the address noted in the Policy and the cancellation of the Policy shall be effective on the expiration of seven days from the date of posting the notice. Notwithstanding the cancellation of the Policy as aforesaid, the Employer shall furnish a statement of wages showing the amount paid up to the time of cancellation in respect to the various classifications of its employees, and the Premium for the Period of Insurance prior to cancellation shall be adjusted on a pro rata basis.

# Exclusions

## 1. Terrorism exclusion

Any claim for compensation in respect to an Act of Terrorism is subject to the provisions contained in the Workers' Rehabilitation & Compensation Act 1988.

Notwithstanding anything to the contrary within this policy or any endorsement thereto, it is agreed that this insurance excludes death, injury, illness, loss or damage directly or indirectly caused by, contributed to by, resulting from or arising out of 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 purposes of this exclusion, an Act of Terrorism includes any act, or preparation in respect of action, or threat of action designed to influence 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 which:

- i. involves violence against one or more persons; or
- ii. involves damage to property; or
- iii. endangers life other than that of the person committing the action; or
- iv. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

This insurance also excludes death, injury, illness, loss or damage directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any Act of Terrorism.