

# Employers' Liability

## Definitions

### 1 Injury

Bodily injury, death, disease, illness, mental injury, mental anguish or nervous shock.

### 2 Employee

- A** Any person under a contract of service or apprenticeship with the Insured
  - B** Any of the following persons whilst working for the Insured in connection with the Business
    - i** any labour master or labour only subcontractor or person supplied by him
    - ii** any self-employed person providing labour only
    - iii** any trainee or person undergoing work experience
    - iv** any voluntary helper
    - v** any person who is borrowed by or hired to the Insured
    - vi** any person working under the Community Offenders Act 1978, the Community Offenders (Scotland) Act 1978 or similar legislation
    - vii** any prospective employee being assessed by the Insured as to their suitability for employment
- and where the Insured requests any outworker or home worker when engaged on work on behalf of the Insured.

### 3 Business

The Business specified in the Schedule and conducted solely from the United Kingdom and including

- A** the ownership repair and maintenance of premises used in connection therewith
- B** the provision and management of canteen social sports or welfare organisations for the benefit of Employees and the ambulance first aid fire medical and security services of the Insured
- C** the execution of private duties by Employees for any director partner or senior official of the Insured
- D** the repair and/or servicing of the Insured's motor vehicles
- E** the training or retraining of any Employee at Government or other training centres
- F** participation at trade shows or exhibitions by the Insured
- G** sponsorship by the Insured of sporting charity literary and theatrical events and competitions
- H** provision of nursery crèche or child care facilities where incidental to the Business
- I** provision of car parking for the benefit of Employees, customers and visitors.

### 4 Territorial Limits

- A** The United Kingdom
- B** Elsewhere in the world in respect of Injury sustained by any Employee resident within the United Kingdom and caused whilst such Employee is temporarily employed outside the United Kingdom provided that any action for compensation in respect of such Injury is brought in a court of law within the United Kingdom or any other member country of the European Union.

## **5 Offshore Installations**

- A** Any installation in the sea or tidal waters which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation
- B** Any installation in the sea or tidal waters which is intended for the storage or recovery of gas
- C** Any pipe or system of pipes in the sea or tidal waters
- D** Any installation which is intended to provide accommodation for persons who work on or from the locations specified in A., B. or C. above.

## **6 An Act of Terrorism**

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 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.

## Cover

- A** The Insurer will indemnify the Insured against legal liability to pay compensation and claimants' costs and expenses in respect of Injury sustained by any Employee arising out of and in the course of the employment or engagement of such person by the Insured in connection with the Business and caused within the Territorial Limits during the Period of Insurance.

In addition the Insurer will pay costs and expenses incurred by the Insurer or with the written consent of the Insurer

- a** in connection with the defence of any claim
- b** for representation of the Insured
  - i** at any coroner's inquest or fatal accident inquiry in respect of death
  - ii** at proceedings in any court of summary jurisdiction or on indictment in any higher court in respect of any alleged breach of statutory duty resulting in Injury which may be the subject of indemnity under this Section.

**B** Indemnity to Other Parties

The indemnity provided by this Section will also apply:

- a** in the event of the death of the Insured, to any personal representative of the Insured in respect of liability incurred by the Insured
- and if the Insured so request the Insurer will indemnify the following parties
- b** any officer or committee member or other member of the Insured's canteen, social, sports or welfare organisations or ambulance, first aid, fire, medical or security services against liability incurred in such capacity
  - c** any partner, director or Employee of the Insured against liability incurred in such capacity and in respect of which the Insured would have been entitled to indemnity under this Section if the claim had been made against the Insured
- as though each party was individually named as the Insured in this Section
- d** any principal for whom the Insured have agreed to execute work under contract or agreement against liability arising out of the performance of such work by the Insured and in respect of which the Insured are legally liable and would have been entitled to indemnity under this Section if the claim had been made against the Insured.

Provided that

- i** each such party shall observe fulfil and be subject to the terms and conditions of this Section in so far as they can apply
- ii** the Insurer's liability to the Insured and all parties indemnified shall not exceed in total the Limit of Indemnity.

### Limit of Indemnity

The Insurer's liability for all compensation, costs and expenses payable (including interest thereon and the costs of defending a Health and Safety legislation prosecution) in respect of any one claim or series of claims arising out of one occurrence shall not exceed the Limit of Indemnity stated in the Schedule provided that

**A** Act of Terrorism

The Limit of Indemnity shall not exceed £5,000,000 in respect of an Act of Terrorism.

If the Insurer alleges that by reason of this limitation any loss damage cost or expense is not covered the burden of proving the contrary shall be upon the Insured.

**B** Corporate Manslaughter and Corporate Homicide Act 2007

In respect of the indemnity provided under this Section for the Corporate Manslaughter and Corporate Homicide Act 2007:

- a** the liability of the Insurer shall not exceed £5,000,000 in any one Period of Insurance
- b** all amounts payable will form part of and not be in addition to the Limit of Indemnity as stated in the Schedule
- c** where the Insurer has already indemnified the Insured in respect of legal costs or expenses incurred in connection with the defence of any criminal proceedings including appeals arising from such proceedings arising out of the same occurrence which gave rise to said proceedings under another Section of the Policy the amount paid under that Section shall contribute to the maximum amount payable under this Section.

## Extensions

(Subject to the terms limits conditions and exclusions of this Section and the Policy)

### A Health and Safety at Work – Legal Defence Costs

The Insurer will indemnify the Insured and if the Insured so request any partner, director or Employee of the Insured in the terms of this Section in respect of

- a costs and expenses incurred with the Insurer's written consent
- b costs and expenses of the prosecution awarded against any such party in connection with criminal proceedings or an appeal against conviction arising from such proceedings brought in respect of any offence under the Health and Safety at Work etc. Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 committed or alleged to have been committed during the Period of Insurance in connection with the Business

Provided that

- i the proceedings relate to the health, safety or welfare of any Employee
- ii the Insurer shall have the conduct and control of all the said proceedings and appeals.

the Insurer will not pay for

- a fines or penalties of any kind
- b proceedings or appeals in respect of any deliberate act or omission
- c costs or expenses insured by any other policy.

### B Unsatisfied Court Judgements

If a judgement for compensation or costs in respect of Injury sustained by any Employee arising out of and in the course of employment or engagement by the Insured in connection with the Business and caused within the Territorial Limits during the Period of Insurance

- a is obtained by such Employee in any court situate within the United Kingdom against any person or corporate body domiciled or operating from premises within the United Kingdom and
- b remains wholly or partly unsatisfied six months after the date of such judgement

the Insurer will if the Insured so request pay to the said Employee the amount of any such compensation and costs to the extent that they remain unsatisfied

Provided that

- i there is no appeal outstanding
- ii the Employee shall have assigned the judgement to the Insurer
- iii this Section was shown in the Schedule at the time of the Injury.

### C Court Attendance Compensation

If during the Period of Insurance any partner, director or Employee of the Insured is required to attend court as a witness at the request of the Insurer in connection with a claim which is the subject of indemnity under this Section the Insurer will pay compensation to the Insured on the following scale for each day that attendance is required:

- i any director or partner £500
- ii any Employee £250.

#### **D Corporate Manslaughter and Corporate Homicide Act 2007**

This Section extends to indemnify the Insured in respect of

- a** legal costs and expenses incurred with the prior written consent of the Insurer and
- b** costs of the prosecution awarded against the Insured

in connection with the defence of any criminal proceedings (including any appeal against conviction arising from such proceedings) brought under The Corporate Manslaughter and Corporate Homicide Act 2007 or any equivalent legislation in the Channel Islands or the Isle of Man in respect of any fatal injury sustained and caused during the Period of Insurance in the course of the Business and which may be the subject of indemnity under this Section

Provided that

- a** the Insurer agrees details of the specific solicitor or counsel who are to act on behalf of the Insured prior to their appointment
- b** the Insurer's liability under this Extension shall not exceed the Limit of Indemnity B.

In respect of this Extension the Insurer will not pay for

- i** any fines or penalties imposed on the Insured or the cost of implementing any remedial order or publicity order
- ii** legal costs and expenses in connection with an appeal unless a solicitor or counsel advise that there are strong prospects of succeeding in the appeal or recovering costs awarded against the Insured at all times throughout the appeals process. Any change to such prospect of success during the appeals process may result in cover being removed
- iii** costs and expenses provided by another source or any other insurance or where but for the existence of this Extension would have been provided by such source or insurance
- iv** costs and expenses in connection with the defence of any criminal proceedings brought in any country other than in the United Kingdom
- v** costs and expenses in connection with the defence of any criminal proceedings resulting from any deliberate or intentional criminal act or omission by the Insured or any partner or director of the Insured or any Employee.

## Exclusions

This Section does not cover

- 1 liability in respect of Injury to any Employee arising out of the ownership, possession or use by or on behalf of the Insured of any mechanically propelled vehicle or trailer attached thereto if such liability is required by any road traffic legislation to be the subject of compulsory insurance or other security.
- 2 liability in respect of Injury to any Employee who is working on, visiting or travelling to or from Offshore Installations.

## Section Conditions

### 1 Compulsory Insurance Legislation

The indemnity granted by this Section is deemed to be in accordance with the provisions of any law relating to compulsory insurance of liability to Employees in the United Kingdom but the Insured shall repay to the Insurer all sums paid by the Insurer which the Insurer would not have been liable to pay but for the provisions of such law.

### 2 Certificate of Employers' Liability

If this Policy or Section is cancelled any certificate of Employers' Liability insurance issued hereunder is similarly cancelled from the same date.

### 3 Other Insurances

The Insurer will not indemnify the Insured in respect of liability which is insured by or would but for the existence of this Section be insured by any other policy or section except in respect of any rateable proportion, other than in excess of the amount payable under such other policy or section or which would have been payable under such other policy or section, had this Section not been effected.

### 4 Alteration in Risk

The Insured must notify the Insurer as soon as possible if during the Period of Insurance there is any alteration:

- a in or to the Business
- b in the ownership of the Insured
- c to the facts or matters set out in the Schedule or otherwise comprising the risk presentation made by the Insured to the Insurer at inception, renewal or variation of the Policy

which materially increases the risk of legal liability to pay costs and expenses as insured by this Section.

Upon being notified of any such alteration, the Insurer may, at its absolute discretion

- a continue to provide cover under this Section on the same terms
- b restrict the cover provided under this Section
- c impose additional terms
- d alter the premium
- e cancel this Section and the Policy.

If the Insured fails to notify the Insurer of any such alteration, the Insurer may

- a treat this Section and the Policy as if it had come to an end as at the date of the alteration of the risk, returning a proportionate amount of the premium for the unexpired Period of Insurance, if the Insurer would have cancelled this Section and the Policy had it known of the increase in risk
- b treat this Section and the Policy as if it had contained such terms (other than relating to premium) or other restrictions (if any) from the date of the alteration in risk as the Insurer would have applied had it known of the increase in risk
- c reduce proportionately the amount paid or payable on any claim, the proportion for which the Insurer is liable being calculated by comparing the premium actually charged as a percentage of the premium which the Insurer would have charged had it known of the increase in risk.



## 5 Declaration Condition

If the premium or part of any premium is calculated on estimates supplied to the Insurer by or on behalf of the Insured the Insured shall keep a record of all such relevant particulars and shall allow the Insurer to inspect such records at any reasonable time.

The Insured shall furnish the Insurer with such information as the Insurer may require at the expiry of each Period of Insurance. The premium shall be adjusted annually and any difference shall be paid by or returned to the Insured subject to any agreed minimum or deposit premium.