

# Employers Liability Excess Layer Insurance

HCCI Excess EL XE2022 0923

Policy Wording

# Employers Liability Excess of Loss Insurance

## POLICY WORDING

## OPERATIVE CLAUSE

The Underwriters will indemnify the Assured against their legal liability to pay damages (including claimants' costs fees and expenses) arising from **Bodily Injury** sustained by any **Employee** arising out of the Assured's business and caused during the Period of Insurance as defined in the Primary Policy

## POLICY DEFINITIONS

1. **Underlying Policies** shall mean the Primary Policy and all Policies (if any) providing indemnity in excess of the Primary Policy up to the Underlying Limit specified in the Schedule
2. **Underlying Insurers** shall mean the Primary Policy Insurer and all insurers (if any) providing indemnity in excess of the Primary Policy Insurer up to the Underlying Limit specified in the Schedule
3. **Bodily Injury** shall mean death bodily injury illness disease shock mental injury and mental anguish
4. **Employee** shall mean any person under a contract of service or apprenticeship with the Assured and shall include any other person in respect of whom cover is afforded by the **Underlying Policies**
5. **Terrorism** shall mean an activity that (1) involves a violent act or the unlawful use of force or an unlawful act dangerous to human life tangible or intangible property or infrastructure or a threat thereof and (2) appears to be intended to (i) intimidate or coerce a civilian population or (ii) disrupt any segment of the economy of a government de jure or de facto state or country or (iii) overthrow influence or affect the conduct or policy of any government de jure or de facto by intimidation or coercion or (iv) affect the conduct of a government de jure or de facto by mass destruction assassination kidnapping or hostage-taking

## INSURING AGREEMENT

In consideration of the payment of the premium to the Underwriters they will indemnify the Assured

1. against all sums which the Assured shall become legally liable to pay as damages and claimant's costs and expenses in respect of **Bodily Injury** caused during the Period of Insurance to any **Employee** but only such **Bodily Injury** as insured in accordance with the terms of the Employers Liability Insurance afforded by the Primary Policy and subject always to the terms and conditions of this Policy
2. in respect of all other costs and expenses in relation to any matter which may form the subject of a claim for indemnity under 1 above incurred with the written consent of the Underwriters

Provided always that

1. no liability shall attach to the Underwriters under this Policy
  - a) unless and until the **Underlying Insurers** have paid or have been held liable to pay the Underlying Limit in full applying to each claim event occurrence or series or combination thereof as expressed in the **Underlying Policies**
  - and
  - b) such payment of or liability to pay the Underlying Limit relates solely to **Bodily Injury** caused during the Period of Insurance of this Policy
2. this Policy shall not automatically follow settlements in discharge of the **Underlying Insurers** Liability
3. irrespective of the number of parties entitled to indemnity or the number of claimants the total amount payable by the Underwriters for all damages compensation claimant's costs and expenses and all other costs and expenses shall not exceed

the Limit of Liability and shall be payable in excess of the Underlying Limit The Limit of Liability shall apply in respect of each claim event occurrence or series or combination thereof in the same manner as the Underlying Limit applies

4. the Underwriters shall not be liable to pay any amount in excess of any Underlying Limit which
  - a) is expressed in the **Underlying Policies** as applying in the aggregate
  - b) the **Underlying Insurers** have paid or have been held liable to pay in respect of a number of claims arising from one cause unless the **Bodily Injury** giving rise to such claims arises from a sudden and identifiable event

## EXCLUSIONS

This Policy shall not apply to any liability

1. in respect of any claim or claims arising in connection with **Bodily Injury** caused elsewhere than in Great Britain Northern Ireland the Channel Islands or the Isle of Man except where indemnity is afforded by the **Underlying Policies** in respect of **Employees** temporarily outside these territories
2. in respect of any claim or claims arising in connection with **Bodily Injury** sustained by any **Employee** while offshore

For the purposes of this Policy

- a. an **Employee** shall be deemed to be offshore from the time of embarkation onto a conveyance at the point of final departure to any offshore installation until the time of disembarkation onto land upon return therefrom
- b. the term 'offshore installation' shall include (but not by way of limitation) an offshore rig or platform
3. directly or indirectly occasioned by happening through or in consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power or confiscation or nationalisation or requisition
4. arising out of an act of **Terrorism**
5. arising out of exposure or alleged exposure to asbestos or materials containing asbestos

### Sanction Limitation and Exclusion Clause

Underwriters will not provide cover be liable to pay any claim or provide any benefit if to do so would expose Underwriters (or any parent company direct or indirect holding company of Underwriters) to any penalty or restriction (including extraterritorial penalties or restrictions so far as such do not contradict laws applicable to the Underwriters) arising out of any trade and economic sanctions laws or regulations which are applicable to Underwriters.

## CONDITIONS

1. This Policy shall be subject except as otherwise stated herein to all the terms conditions and endorsements of the **Underlying Policies** No amendment for which the **Underlying Insurers** require an additional premium shall be effective in extending the scope of this Policy without the written consent of the Underwriters
2. The **Underlying Policies** shall be maintained in full force and effect during the Period of Insurance
3. It is a condition precedent to liability of this Policy that if the Assured becomes aware of any claim event or occurrence which could involve more than 25% of the Underlying Limit then the Assured must immediately notify the Underwriters in writing and furnish them with all information documentation and assistance as the Underwriters may require No settlement of any claim by agreement shall be effected by the Assured for a sum in excess of the Underlying Limit without the written consent of the Underwriters
4. If the Assured shall make any claim knowing the same to be fraudulent or false as regards the amount or otherwise (including the provision of false or fraudulent documents or statements) then Underwriters shall:
  - a) refuse to pay the whole of the claim and
  - b) recover from the Assured any sums that it has already paid in respect of the claim

Underwriters may also notify the Assured that it will be treating all sections of this policy as having terminated with effect from the date of the earliest of any of the fraudulent act In that event the Assured will

  - i. have no cover under the Policy from the date of termination and
  - ii. not be entitled to any refund of premium
5. The Underwriters may cancel this Insurance by sending thirty days written notice to the Assured at the Assured's last known address whereupon the Assured shall become entitled to a refund of a proportionate part of the premium
6. If other valid and collectible Insurance with any other insurer is available to the Assured covering a loss also covered by this Policy (other than Insurance that is specifically stated to be in excess of this Policy) the Insurance afforded by this Policy shall be in excess of and shall not contribute with such other Insurance Nothing herein shall be construed to make this Policy subject to the terms conditions and limitations of other Insurance
7. All disputes concerning the interpretation of this Policy are understood and agreed by both the Assured and the Underwriters to be subject to the laws of England and Wales Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within England and Wales and to comply with all requirements necessary to give such court jurisdiction All matters arising hereunder shall be determined in accordance with the law and practice of such court
8. The insolvency bankruptcy receivership or any refusal or inability to pay of the Assured and/or any insurer shall not operate to
  - a) exhaust the Underlying Limit
  - b) increase the Underwriters liability under this Policy
9. If the Assured does not comply with any part of any condition which makes payment of any claim conditional upon such compliance Underwriters will not pay the claim except where:
  - a) compliance would tend to reduce the risk of loss of a particular kind, or at a particular time or location and
  - b) the Assured has demonstrated that the non-compliance could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred

## NOTICE

The Assured must make a fair presentation of the risk at inception renewal and variation of this Policy

If the Assured fails to make such a fair presentation of the risk

a) Underwriters may avoid this Policy and refuse all claims if

- (i) such failure was deliberate or reckless and/or
- (ii) Underwriters would not have entered into this Policy on any terms if the Assured had made a fair presentation of the risk

Should Underwriters avoid the Policy Underwriters shall return the premium paid to the Assured unless such failure was deliberate or reckless

b) if Underwriters would have entered into the Policy but on different terms had the Assured made a fair presentation of the risk Underwriters may

- (i) reduce proportionately the amount to be paid on any claim if Underwriters would have charged a higher premium calculated by applying the percentage that the actual premium charged bears to the premium that would have been charged had the Assured made a fair presentation of risk and/or
- (ii) treat the Policy as entered into on any such different terms (other than relating to the premium) that Underwriters would have entered into had the Assured made a fair presentation of risk

## Complaints

We are dedicated to providing you with a high quality service and we want to ensure that we maintain this at all times. If you feel that we have not offered you a first class service please write and tell us and we will do our best to resolve the problem. If you have any questions or concerns about your policy or the handling of a claim you should in the first instance contact

*Compliance Officer  
Tokio Marine HCC  
The St Botolph Building,  
138-139 Houndsditch,  
London, EC3A 7BT*

The Financial Ombudsman Service (FOS)

Should you be dissatisfied with the outcome of your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service. The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. Contacting the FOS does not affect your right to take legal action.

The FOS's contact details are as follows:

Financial Ombudsman Service

Exchange Tower

London E14 9SR

Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

Telephone: +44 (0)30 0123 9123

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

The European Commission Online Dispute Resolution Platform (ODR)

If you were sold this product online or by other electronic means and within the European Union (EU) you may refer your complaint to the EU Online Dispute Resolution (ODR) platform. Upon receipt of your complaint the ODR will escalate your complaint to your local dispute resolution service – this process is free and conducted entirely online. You can access the ODR platform on <http://ec.europa.eu/odr>. This platform will direct insurance complaints to the Financial Ombudsman Service. However, you may contact the FOS directly if you prefer, using the details as shown above.

## Data protection notice

Tokio Marine HCC respects your right to privacy. In our Privacy Notice (available at <https://www.tmhcc.com/en/legal/privacy-policy>) we explain who we are, how we collect, share and use personal information about you, and how you can exercise your privacy rights. If you have any questions or concerns about our use of your personal information, then please contact [DPO@tmhcc.com](mailto:DPO@tmhcc.com).

We may collect your personal information such as name, email address, postal address, telephone number, gender and date of birth. We need the personal information to enter into and perform a contract with you. We retain personal information we collect from you where we have an ongoing legitimate business need to do so.

We may disclose your personal information to:

- our group companies;
- third party services providers and partners who provide data processing services to us or who otherwise process personal information for purposes that are described in our Privacy Notice or notified to you when we collect your personal information;
- any competent law enforcement body, regulatory, government agency, court or other third party where we believe disclosure is necessary (i) as a matter of applicable law or regulation, (ii) to exercise, establish or defend our legal rights, or (iii) to protect your interests or those of any other person;
- a potential buyer (and its agents and advisers) in connection with any proposed purchase, merger or acquisition of any part of our business, provided that we inform the buyer it must use your personal information only for the purposes disclosed in our Privacy Notice; or
- any other person with your consent to the disclosure.

Your personal information may be transferred to, and processed in, countries other than the country in which you are resident. These countries may have data protection laws that are different to the laws of your country. We transfer data within the Tokio Marine group of companies by virtue of our Intra Group Data Transfer Agreement, which includes the EU Standard Contractual Clauses.

We use appropriate technical and organisational measures to protect the personal information that we collect and process about you. The measures we use are designed to provide a level of security appropriate to the risk of processing your personal information.

You are entitled to know what data is held on you and to make what is referred to as a Data Subject Access Request ('DSAR'). You are also entitled to request that your data be corrected in order that we hold accurate records. In certain circumstances, you have other data protection rights such as that of requesting deletion, objecting to processing, restricting processing and in some cases requesting portability. Further information on your rights is included in our Privacy Notice.

You can opt-out of marketing communications we send you at any time. You can exercise this right by clicking on the "unsubscribe" or "opt-out" link in the marketing e-mails we send you. Similarly, if we have collected and processed your personal information with your consent, then you can withdraw your consent at any time. Withdrawing your consent will not affect the lawfulness of any processing we conducted prior to your withdrawal, nor will it affect processing of your personal information conducted in reliance on lawful processing grounds other than consent. You have the right to complain to a data protection authority about our collection and use of your personal information.

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## Contact us

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tmhcc.com

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