

# Public Liability Excess Layer Insurance

HCCI Excess PL XL2022 0923

Policy Wording

# Public/Products & Pollution 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 accidental death bodily injury illness or disease sustained by any person or accidental loss of or damage to tangible property arising out of the Assured's business and happening during the Period of Insurance as defined in the Primary Policy

## LIMITS OF INDEMNITY

The Underwriters total liability to pay damages and claimants' cost fees and expenses shall not exceed the Limits of Indemnity shown in the Policy Schedule and shall only be payable in excess of the Primary and Underlying Excess Insurers Policy Limits and after the Primary and Underlying Excess Insurers have paid or been held liable to pay the full amount of their Policy liability

## JURISDICTION

Indemnity will not be provided in respect of any judgement award payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement award or settlement in whole or in part) nor in respect of legal costs fees and expenses pertaining thereto

## CONDITIONS

1. This Policy is subject to the same warranties conditions definitions terms and exclusions as the Primary Policy (except as regards the premium the obligation to investigate and defend the renewal agreement (if any) the amount and Limits of Indemnity and except as otherwise stated herein) which were applicable at the time the bodily injury and/or property damage occurs This Policy shall not automatically follow settlements in discharge of Primary and Underlying Excess Insurers liability
2. Liability to pay under this Policy shall not attach unless and until the Primary and Underlying Excess Insurers shall have admitted liability for the Primary and Underlying Excess Limits or unless and until the Assured has by final judgement been held liable to pay an amount which exceeds such Primary and Underlying Excess Limits and then only after Primary and Underlying Excess Insurers have paid or have been held liable to pay the full amount of the Primary and Underlying Excess Limits
3. It is a condition precedent to liability of this Policy that the Primary and Underlying Excess Liability Policies are maintained in full force and effect during the currency of this Policy except for any reduction of any aggregate limits contained therein solely by payment of claims thereunder
4. In the event of reduction or exhaustion of any Underlying amount for which an aggregate is stated in the Primary and Underlying Excess Liability Policies this Policy subject to its terms conditions definitions and exceptions shall
  - a) in the event of reduction pay the excess of such reduced amounts
  - b) in the event of exhaustion apply in place of the Primary and Underlying Excess Liability Policiesbut not in respect of which any reduced inner aggregate Underlying amount applies
5. It is a condition precedent to liability of this Policy that the Assured shall give written notice to the Underwriters as soon as reasonably practical of any claim(s) made against the Assured (or any specific event or circumstance that may give rise to a claim(s) being made against the Assured) which is likely to exceed 25% of the total Primary and Underlying Excess Limits

6. In the event of a loss arising to which the Underwriters may be liable to contribute no costs shall be incurred on their behalf without their written consent being first obtained and if they so consent they shall contribute to the said costs in the proportion that their share of the loss as finally settled bears to the total sum payable. If however a settlement of the loss be practicable prior to taking the case into Court whether by compromise or otherwise for a sum not exceeding the Primary and Underlying Excess Limits no costs shall be payable by the Underwriters. No settlement of a loss by agreement shall be effected by the Assured for a sum in excess of the Primary and Underlying Excess Limits without the written consent of the Underwriters.
7. The Underwriters may at any time cancel the Policy by sending 30 days notice of cancellation by registered letter to the last known address of the Assured and in such case the Assured shall be entitled to a return of a proportionate part of the premium in respect of the unexpired Period of Insurance. Such cancellation shall be without prejudice to any rights or claims of the Assured or the Underwriters prior to the expiration of such notice.
8. Where any part of the premium for this Policy has been shown on the Schedule to be adjustable it is a condition that the necessary particulars shall be declared to the Underwriters within five months of the expiry of the Period of Insurance and any additional premium shall be paid within 30 days of advice to the Assured of any adjustment due.
9. Any dispute concerning the interpretation of the terms conditions limitations and exclusions contained herein is 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 to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.
10. 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
11. 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 will:

- 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

- a) have no cover under the Policy from the date of termination and
- b) not be entitled to any refund of premium

## EXCLUSIONS

1. Indemnity will not be provided for claims arising from an act of "Terrorism". "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
2. Indemnity will not be provided for claims arising from exposure or alleged exposure to asbestos or materials containing asbestos
3. Indemnity will not be provided for loss of damage to deterioration or corruption (whether permanent or temporary) of loss of use of reduction in functionality of repair of replacement of or restoration or reproduction of any "Data" or for any monetary amount pertaining to the value of such "Data"

For the purpose of this Exclusion the following definitions apply:

“Computer Systems” means any computer hardware software communications system electronic device (including but not limited to smart phone laptop tablet wearable device) server cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input output “Data” storage device networking equipment or back up facility

“Data” means information facts concepts code or any other information of any kind that is recorded or transmitted in a form to be used accessed processed transmitted or stored by “Computer Systems”

## **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

## **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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mail@tmhcc.com

tmhcc.com

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