

Employers' Indemnity Insurance

Workers Compensation Policy Western Australia

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Schedule 3 – Workers Compensation Policy

1. Preamble

1. Under the *Workers Compensation and Injury Management Act 2023* an employer must obtain from a licensed insurer a workers compensation policy for the full amount of the following liabilities of the employer that arise in respect of employment during the period of insurance —
 - a. any liability of the employer that arises under the Act to pay compensation or make any other payment in respect of an injury to or the death of a worker;
 - b. any liability of the employer to pay damages in respect of an injury to or the death of a worker if the employer is liable to pay compensation under the Act in respect of the injury or death, other than an injury to or the death of a deemed worker (as defined in section 200 of the Act) of the employer.
2. The words “we”, “us” and “our” in this policy refer to Guild Insurance Ltd, which is a licensed insurer.
3. The words “you” and “your” in this policy refer to the employer named in the Schedule to this policy.
4. You have applied for the issue or renewal of a policy and provided the required information to be covered by this policy upon payment of an agreed premium. That application

and the supporting information, including the remuneration declaration, contain the particulars and statements which the employer and insurer agree are the basis of this policy and form part of this policy.

5. This policy covers only the employer entity described in the Schedule unless details of another entity have been supplied to us and we have confirmed its acceptance of the extension of the policy.
6. We have agreed to issue this policy to cover you for the policy period, on the following terms. The premium that you must pay us and the policy period are set out in the Schedule. The premium is subject to adjustment as set out in the conditions below.

2. Definitions

The following definitions apply in this policy —

Act means the *Workers Compensation and Injury Management Act 2023* as amended from time to time, including any rules and regulations under the Act;

act of terrorism has the meaning given in section 287(1) of the Act;

contractor means any individual contracted by you for the performance of work of a kind described in section 12(2)(c) of the Act;

damages has the meaning given in section 200 of the Act;

injury has the meaning given in section 6 of the Act;

policy —

- a. means a workers compensation policy as defined in section 202(1) of the Act; and
- b. includes —
 - i. this policy; and
 - ii. the Schedule to this policy; and
 - iii. the policy application; and
 - iv. the cover note; and

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- v. any endorsement, whether specified in the Schedule or in a separate document; and
- vi. any remuneration estimate, declaration or supporting information required by the Act pertaining to the policy or the policy period;

policy period means —

- a. a period of insurance beginning on the start date shown in the Schedule and ending on the end date shown in the Schedule; and
- b. any period for which the policy is renewed;

remuneration has the meaning given in —

- a. section 200 of the Act; and
- b. any regulations, rules or guidelines issued by WorkCover WA;

Schedule means the document attached to this policy titled Policy Schedule;

worker —

- a. has the meaning given in sections 12(2) and 13 to 15 of the Act; and
- b. means a working director, as defined in section 16 of the Act, if the issue or renewal of this policy under Part 5 of the Act is on the basis that the working director is a worker; and
- c. means a person who —
 - i. under section 215 of the Act is a worker for whom the principal and the contractor are taken to be the employers; or
 - ii. it has been determined works for you under an avoidance arrangement within the meaning of section 222 of the Act.

3. Liability for compensation

If you are liable under the Act to pay compensation or any other payment in respect of an injury or death to a worker from employment during the period of insurance, we will indemnify you against that payment and, in addition, will pay all reasonable costs and expenses you incur with our written consent.

4. Liability for damages

We will indemnify you against any damages you are liable to pay, and any reasonable costs and expenses you incur for that liability with our written consent, subject to any limits and exclusions authorised under the Act and the conditions of this policy if —

- a. you are liable to pay damages in respect of an injury or death to a worker from employment during the period of insurance; or
- b. the worker is entitled to receive compensation under the Act and recover damages (subject to Part 7 Division 3 of the Act) from you in respect of the injury or would have been entitled to so recover from you in respect of the injury if the worker had not died.

5. Policy limit on liability to pay damages

We will not pay more than the agreed amount specified in the Schedule for liability to pay damages (an amount that is not less than an aggregate amount of damages exceeding \$50 million) arising out of all claims in respect of a single event, regardless of how many workers are injured.

6. Exclusions to insurer's requirement to indemnify employer against liability to pay compensation or damages

We will not indemnify you for any liability to pay compensation or damages in respect of —

- a. a declared act of terrorism (see section 289 of the Act); or
- b. a claim directly or indirectly occasioned by any event happening through or in consequence of war, invasion, acts of foreign enemies, hostilities whether war is declared or not, civil war, rebellion, revolution, insurrection or military or usurped power (see regulation 100(2)); or
- c. any circumstance provided for in section 241 of the Act that permits us to refuse to indemnify you against liability for compensation or damages, or both.

7. Exclusion to insurer's requirement to indemnify employer against liability to pay damages

In addition to the exclusions listed in clause 6, we will not indemnify you against liability to pay damages —

- a. to a person other than the worker who suffered the injury, unless the person is a person to whom damages are due and payable, or may be claimed, in respect of the definition of damages in section 200 of the Act; or
- b. in relation to a claim brought in respect of an injury occurring outside Australia (see regulation 100(3)(a)); or
- c. in relation to a claim brought against you outside Australia (see regulation 100(3)(b)); or
- d. to a person who —
 - i. under section 215 of the Act, you, as the principal, are taken to be the employer of; or
 - ii. is found to work for you under an avoidance arrangement, within the meaning of section 222 of the Act;
 or
- c. that are exemplary or punitive damages (see regulation 100(4)(a)).

8. Policy conditions

The following conditions apply to the insurance cover provided by this policy —

- a. misrepresentation — subject to section 240 of the Act, the proposal for the insurance, and any other information supplied to us by you or on your behalf, form the basis of this policy and must contain no misrepresentations, whether unintentional or otherwise;
- b. written notice — every notice or communication given to us under this policy must be delivered in writing, which may be in electronic form, to the office from which the policy was issued;
- c. notice of injury —
 - i. you must notify us of any injury as soon as practicable after you (or your representative) receive information about the occurrence of an injury or about any incapacity arising from an injury; and
 - ii. you must give us every written notice of claim or legal proceedings, and information as to any verbal notice of claim or legal proceedings, immediately after it is received by you;
- d. litigation, settlement or admission of liability — you must not, without our written authority, incur any litigation expense, or make any payment, settlement or admission of liability, in respect of an injury to, or claim made by, a worker;
- e. defence of proceedings, subrogation and use of your name —
 - i. we are entitled to use your name in any legal proceedings in respect of anything indemnified under this policy and to exercise any rights you may have against anyone to recover any payments that we make on your behalf; and
 - ii. we are entitled to be subrogated to all rights that you may have against any persons who may be responsible in relation to a claim for an injury covered by this policy and, when we require it, you must execute any necessary documents to assist us in taking action in your name;
- f. assistance — in respect of any injury, you must give us any information, documents and assistance we request and otherwise cooperate with us in the management, defence or settlement of any claim;
- g. right of inspection —
 - i. after an injury to a worker, you must not, as far as reasonably practicable, alter, repair or dispose of any works, machinery, plant, tools or equipment involved in the injury, or documents pertaining to the injury, without our consent, which will not be unreasonably withheld; and
 - ii. we may, at all reasonable times, inspect the works, machinery, plant, tools, equipment and documents pertaining to the injury;
- h. premium calculation — unless you have an adjustable premium policy, the first premium and every renewal premium payable to us will be calculated on the amount of the remuneration you estimate you will pay or be liable to pay during the year following the issue or renewal of the policy, including all amounts you estimate you will pay contractors;
- i. adjustment of premium —
 - i. within 1 month after the expiry of the policy period you must provide us with a statement of the aggregate amount of all remuneration paid or payable by you in that year (including remuneration paid to contractors) and, if required, the number of workers and contractors you employed or engaged in that year; and
 - ii. unless you have an adjustable premium policy, if the amount of the remuneration, the number of workers and contractors or the type of business in which they were engaged differs from the information on which the premium for that year was calculated, the premium will be adjusted and you must pay a further premium to us or we will refund part of the premium to you, subject to our retaining a customary minimum premium;
- j. remuneration records — you must keep current and accurate records (*remuneration record*) of the names of, amounts paid to and dates of payments to, your workers and contractors unless —
 - i. you are a principal with respect to remuneration paid to contract workers employed by a contractor and the contractor holds a workers compensation policy that extends to indemnifying the principal; and
 - ii. at the issue or renewal of a policy you provide details of the workers compensation policy under which the principal is indemnified (see section 221 of the Act);
- k. inspection or audit of remuneration record — at any time, not limited to the policy period, you must allow an officer authorised by us to inspect your remuneration record and any other record given to us that is relevant to the calculation of your premium or to arrange for an audit of those records;
- l. assignment — you must not assign your interest in this policy without our written consent;
- m. waiver — you must not rely on any waiver of any provision of this policy unless we have confirmed the waiver to you in writing;
- n. cancellation — if permitted by WorkCover WA to do so, we may cancel this policy and, in that event —
 - i. you must provide us with an account of the remuneration you have paid in the most recent year of the policy period up to the day of cancellation; and
 - ii. we will adjust the premium as described above and refund any unearned premium.

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