

**Policy wording
for Excess JCT 21.2.1
(or equivalent)
insurance**



Operative clause

The Underwriters will indemnify the Assured against their liability to pay damages (including claimants' costs fees and expenses) arising from any claim or proceeding against the employer that results from damage to any property happening during the Period of Insurance and caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of works and caused otherwise than by the negligence, omission or default of the contractor, his servants or agents or any sub-contractor, his servants or agents in accordance with the terms and conditions of the Primary Policy and those contained herein

Limits of indemnity

The Underwriters total liability for damages and costs fees and expenses shall not exceed the Limit 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 be provided in respect of any judgement payment or settlement made in accordance with the law of the Courts of Law of Great Britain Northern Ireland and the Isle of Man and the Channel Islands and not to judgements obtained elsewhere nor to judgements or orders obtained in the said courts for the enforcement of foreign judgements whether by way of reciprocal agreements

Conditions

1. This Policy is subject to the warranties conditions definitions terms and exclusions as the Primary Policy (except as varied herein and except as regards the premium the obligation to investigate and defend and Limits of Indemnity and except as otherwise stated herein) which were applicable at the time of loss. 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
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. 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 could 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. 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
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
10. 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



Exceptions

(to apply only in the event that there is no similar Exception in the Primary Policy or that the Exception contained in the Primary Policy is less restrictive)

Underwriters shall not be liable in respect of

1. loss or damage attributable to errors or omissions in designing of the works
2. loss or damage which can reasonably be foreseen to be inevitable having regard to the nature of the works or the manner of execution thereof
3. loss or damage recoverable under any other policy effected for the benefit of the Assured or the employer
4. loss or damage to the works or material brought on the site of the Contract for the purposes of the execution of the Contract
5. loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to or arising from
 - a. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
 - b. the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof
6. any consequence of war, invasion, act of foreign hostilities (whether war may be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power
7. damage to property directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds
8. loss or damage arising out of Terrorism which 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
9. loss of or damage to any property which is the responsibility of the employer
10. any penalty or liquidated damages clause in any contract
11. loss or damage 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

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

1. Underwriters may avoid this Policy and refuse all claims if
 - a. such failure was deliberate or reckless and/or
 - b. 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

2. if Underwriters would have entered into the Policy but on different terms had the Assured made a fair presentation of the risk Underwriters may
 - a. 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
 - b. 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
1 Aldgate
London
EC3N 1RE

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

Telephone: +44 (0)30 0123 9123

Website: 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 Policy (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.

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 (please note that reference to “you” or “your” herein encompasses non-exhaustively “you, your company, employees and / or customers”).

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 Policy 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 Policy; 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 Policy.

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.