

# Policy wording for JCT clause 21.2.1 (and similar) insurance



## Operative clause

The Underwriters will indemnify the Assured against their liability to pay Damages (including claimants' costs fees and expenses) 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 or otherwise unless the Assured has requested that there shall be no such limitation and has accepted the terms offered by Underwriters in granting such cover which offer and acceptance must be signified by specific endorsement to this Policy

The indemnity applies only to such liability as defined under the Insurance Provided section of this Policy arising out of the Contract specified in the Schedule subject always to the terms Conditions and Exclusions of the Policy

The Assured and Underwriters agree

1. The Assured will pay the premium
2. Underwriters will provide the Insurance subject to the terms Conditions and Exclusions of this Policy

## Policy definitions

1. Assured shall mean the Assured stated in the schedule and the employer
2. Defence Costs shall mean all costs fees and expenses incurred by the Assured in the defence or settlement of any claim under this Policy
3. Damages shall mean monetary compensation capable of being awarded in civil proceedings but excluding aggravated and exemplary damages
4. Terrorism shall mean any action, threat of action, or attempt at action, by any individual(s) or group(s) of individuals or body or organisation(s), whether acting alone, on behalf of, or in concert with any other body, organisation, or government, where such action, threat, or attempt is designed to influence, intimidate, or coerce, any government or international governmental organisation or the population or any section of the population, or any community, and the action, threat, or attempt, is made for the purpose of advancing a political, religious, or ideological cause.

## Insurance provided

An indemnity to the Assured in respect of any expense liability loss, claim or proceeding which the employer may incur or sustain by reason of 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

The liability of Underwriters shall not exceed the Limit of Indemnity stated in the Schedule

Underwriters will in addition pay Defence Costs



## Exclusions

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 in effect 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 by 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 or 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. arising out of Terrorism
9. the amount of any Excess shown in the Schedule including costs and expenses
10. loss of or damage to any property which is the responsibility of the employer
11. any penalty or liquidated damages clause in any contract
12. 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)

## General conditions attaching to this insurance

(Conditions 1. 2. and 3. are precedent to Underwriters' liability to provide indemnity under this Policy)

### 1. Claims procedure

The Assured shall give written notice to the Underwriters as soon as reasonably practicable of any incident that may give rise to a claim under this Policy and shall give all such additional information



as the Underwriters may require every letter of claim writ summons or process and all documents relating thereto and any other written notification of claim shall be forwarded unanswered to the Underwriters immediately they are received

The Assured shall at all times in addition to their obligations set out above afford such information to and co-operate with the Underwriters or their appointed agents to allow the Underwriters to be able to comply with such relevant Practice directions and Pre-action Protocols as may be issued and approved from time to time by the Head of Civil Justice

No admission offer promise or payment shall be made or given by or on behalf of the Assured without written consent of the Underwriters who shall be entitled to take over the conduct in the name of the Assured the defence or settlement of any claim or to prosecute in the name of the Assured for their own benefit any claim for indemnity or Damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Assured shall give all such information and assistance as the Underwriters may reasonably require

## **2. Alterations in risk**

The Assured is required to notify the Underwriters of all material facts or alterations in the risk which come to his knowledge or arise during the currency of this Policy.

## **3. Reasonable precautions**

The Assured shall take reasonable precautions to prevent loss or damage and to comply with all obligations and regulations imposed by any Authority

## **4. Discharge of liability**

The Underwriters may at any time pay to the Assured in connection with any claim or series of claims under this Policy to which a Limit of Indemnity applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims

## **5. Proportionment of defence costs**

Except where the Limit of Indemnity is inclusive of Defence Costs if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim the liability of the Underwriters to pay all Defence Costs in connection therewith shall be limited to such proportion of the said Defence Costs as the Limit of Indemnity bears to the amount paid to dispose of a claim

## **6. Policy interpretation**

Any phrase or word in this Policy and the Schedule will be interpreted in accordance with the laws of England and Wales The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear

## **7. Other insurance**

If any claim covered by this Policy is also covered in whole or in part by any other insurance Underwriters shall have no liability to contribute to such claim



## 8. Fraudulent claims

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 Insured 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

## 9. Cancellation clause

Underwriters may cancel this Policy by sending thirty days' written notice to the Assured's last known address whereupon the Assured shall become entitled to a refund of a proportionate part of the premium

## 10. Contracts (Rights of Third Parties) Act 1999 Clarification Clause

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act

## 11. Policy disputes clause

Any dispute concerning the interpretation of the terms Conditions Limitations or 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 necessary to give such court jurisdiction All matters arising hereunder shall be determined in accordance with the law and practice of such court

## 12. Due observance

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 – International Group  
1 Aldgate  
London  
EC3N 1RE

## Lloyd's Business

In the event that you remain dissatisfied and wish to make a complaint it may be possible in certain circumstances for you to refer the matter to the Policyholder & Market Assistance. Their address is:

Policyholder & Market Assistance  
Lloyd's Market Services  
One Lime Street  
London  
EC3M 7HA

Tel No: 020 7327 5693

E-mail: [complaints@lloyds.com](mailto:complaints@lloyds.com)



## 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.

## Financial Services Compensation Scheme

Lloyd's Underwriters are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the Scheme if a Lloyd's Underwriter is unable to meet its obligations to you under this contract. If you were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this contract. Further information about the Scheme is available from the Financial Services Compensation Scheme (7th Floor, Lloyd's Chambers, Portoken Street, London E1 8BN) and on its website ([www.fscs.org.uk](http://www.fscs.org.uk)).

## 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](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 (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.