

Employees' Compensation Insurance Policy



INSURING CLAUSE

WHEREAS the Insured carrying on the Business by a Proposal and Declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to FWD General Insurance Company Limited (hereinafter called the "Company") for the insurance herein contained and has paid or agreed to pay the Premium specified herein as consideration for such insurance

NOW THIS POLICY WITNESSETH that if any Employee in the Insured's immediate employ shall sustain bodily injury or death by Accident occurring or Disease contracted during the Period of Insurance within the Geographical Area and arising out of and in the course of his employment by the Insured in the Business

THE COMPANY WILL subject to Policy Limit of Indemnity and to the terms exceptions and conditions contained in or endorsed on this Policy (all of which are hereinafter collectively referred to as "the Terms of this Policy") indemnify the Insured against his legal liability in respect of such bodily injury or death under the Ordinance and independently of the Ordinance to pay compensation and damages and claimant's costs and expenses and also indemnify the Insured against costs and expenses incurred by or on behalf of the Insured with the Company's written consent in connection therewith

PROVIDED THAT in the event of any change to the Ordinance during or subsequent to the Period of Insurance altering the legal liability of the Insured under the Ordinance the liability of the Company under this Policy shall be limited to such sums as the Company would have been liable to pay if the Ordinance had remained unaltered

FURTHER PROVIDED THAT:

- (a) the due observance and fulfilment of the Terms of this Policy in so far as they relate to anything to be done or not to be done or to be complied with by the Insured; and
 - (b) the truth of the statements and answers in the Proposal and Declaration and the Estimated Earnings Declaration and the Actual Earnings Declaration
- shall be conditions precedent to any liability of the Company to make payment or to provide indemnity under this Policy.

THE COMPANY WILL ALSO in the event of the death of the Insured indemnify the Insured's legal personal representatives in the Terms of this Policy in respect of liability incurred by the Insured provided that such legal personal representatives shall as though they were the Insured observe fulfill and be subject to the Terms of this Policy in as far as they can apply.

IMPORTANT NOTICE

Please examine this Policy carefully. For enquiry, please contact the Company or your Insurance Broker/Agent immediately.

請注意

請貴保戶詳細查閱此保單之內容，如有任何查詢，請從速與本公司或閣下之保險經紀/代理人聯絡。

IMPORTANT NOTICE

The Employees' Compensation Ordinance requires an employer to take out an insurance policy covering **ALL** employees engaged in his business with a **Minimum Amount** of insurance coverage. The Insured should ensure that this Policy complies with the Ordinance requirements. A subsequent change in number of employees may result in a higher amount of insurance coverage being required under the Ordinance. In this event, the Insured should consult the Company immediately.



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Thank you for considering Sun Flower to be one of your selected intermediaries.

We are pleased to get in touch should you have any enquiry regarding the captioned insurance.

DEFINITIONS

For the purposes of this Policy:

- (a) "Accident" means an accident or a series of accidents arising out of one event.
- (b) "The Business" means the usual work and activities carried on by the Insured pertaining to his business as specified in the Schedule and no others.
- (c) "The Company" means FWD General Insurance Company Limited
- (d) "Disease" means a disease contracted by an Employee of the Insured as a result of his exposure to the nature of his employment with the Insured. Such exposure may extend over a period of time and part of which period may fall outside the Period of Insurance under this Policy.
- (e) "Earnings" means all gross wages, salaries, remunerations, commissions, bonuses, overtime, termination payments, allowances and the like directors' fees or other benefits whether at piecework rates or otherwise and whether paid in cash or in kind by the Insured to his Employees.
- (f) "Employee" has the same meaning as assigned to that expression in the Ordinance.
- (g) "The Insured" means only the person or persons specified as such in the Schedule and no others.
- (h) "Noise-Induced Deafness" has the same meaning as assigned to that expression in the Occupational Deafness (Compensation) Ordinance (Chapter 469 of the laws of Hong Kong).
- (i) "The Ordinance" means the Employees' Compensation Ordinance (Chapter 282 of the laws of Hong Kong).
- (j) "Pneumoconiosis" & "Mesothelioma" have the same meaning as assigned to those expressions in the Pneumoconiosis & Mesothelioma (Compensation) Ordinance (Chapter 360 of the laws of Hong Kong).
- (k) "The Policy" means this Employees' Compensation Insurance Policy the Schedule and any memoranda and endorsements contained herein or endorsed hereon which shall be read together as one document and any word or expression to which a specific meaning has been assigned shall bear such meaning throughout.
- (l) "The Proposal and Declaration" means any signed proposal form and declaration and any information supplied by or on behalf of the Insured in addition thereto or in substitution therefor.
- (m) "The Company's Indemnity" means indemnity provided under this Policy including costs and expenses incurred by or on behalf of the Insured with the Company's written consent.
- (n) Unless the context otherwise requires, words and expressions importing the masculine gender also include the feminine and neuter genders and words and expressions in the singular include the plural and words and expressions in the plural include the singular.

POLICY LIMIT OF INDEMNITY

- (a) In respect of any Accident or Disease giving rise to a claim or claims against the Insured for which indemnity is provided under this Policy the Company's indemnity to the Insured shall in the aggregate be limited to the amount specified in the Schedule as "Policy Limit of Indemnity" irrespective of the number of Employees who may sustain bodily injury or death consequent on or attributable to the same occurrence of Accident or Disease.
- (b) In relation to any liability of the Insured in respect of a Disease contracted by an Employee due to the nature of his employment with the Insured which nature of employment applies during a period that extends over more than one policy period of insurance:
 - i. the aggregate of the Company's indemnity to the Insured under all insurance policies shall not exceed the limit of indemnity of the insurance policy that was in force at the time the nature of the Employee's employment to which such Disease was due first affected the Employee; and
 - ii. subject to the limitation of paragraph (b)(i) hereof, the Company's Indemnity to the Insured under this Policy shall be limited to such proportion of the Insured's liability in respect of such Disease as that part of the Employee's period of employment falling within the Period of Insurance of this Policy bears to the total period of his employment to the nature of which such Disease was due.
- (c) If the occurrence of any Accident or Disease results in indemnity hereunder to more than one Insured, the limitations of the Company's liability specified in paragraphs (a) and (b) hereof shall apply to the aggregate of indemnity to all Insureds.
- (d) At any time after the occurrence of any Accident or Disease giving rise to a claim or claims against the Insured for which indemnity is provided under this Policy the Company may pay to the Insured the full amount of the Company's liability specified in paragraph (a) or (b) hereof (after the deduction of any sums already paid) or any lesser amount for which such claim or claims can be settled and shall relinquish the conduct of any defence settlement or proceedings relating to such claim or claims and shall not thereafter be responsible for any compensation damages or costs in respect thereof or for any costs or expenses whatsoever incurred by the Insured after the Company have relinquished such conduct or for any loss damage or expenses caused to the Insured in

consequence of any act or omission of the Company in connection therewith or of the Company relinquishing such conduct.

- (e) If there should be any shortfall in the actual Earnings declared in accordance with paragraph (b) of INSURANCE PREMIUM of this Policy from the respective actual Earnings, the extent of the Company's Indemnity shall be reduced proportionately by the extent of under-insurance; and the balance shall be borne by the Insured himself. If no declaration of the actual Earnings by the Insured is received by the Company as prescribed, for the purpose of this clause the Earnings estimated by the Insured as at the commencement of the Period of Insurance shall be used in lieu of the actual Earnings that should have been declared to determine the extent of the under-insurance if any.

JURISDICTION CLAUSE

The Company shall not be liable under this Policy in respect of judgments against the Insured which are not in the first instance delivered by or obtained from a court of competent jurisdiction of Hong Kong.

EXCEPTIONS

The Company shall not be liable under this Policy in respect of:

- (a) the Insured's liability to employees of contractors to the Insured;
- (b) any liability of the Insured which attaches by virtue of an agreement but which would not have attached in the absence of such agreement;
- (c) any sum which the Insured would have been entitled to recover from any party but for an agreement between the Insured and such party;
- (d) any liability arising from Pneumoconiosis or Mesothelioma or Noise-Induced Deafness;
- (e) the Insured's liability to any person who is not an employee of the Insured within the meaning of the Ordinance;
- (f) any late payment surcharge fines penalties or punitive aggravated or exemplary damages for which the Insured may become liable under the Ordinance or independently of the Ordinance;
- (g) any injury by Accident or Disease attributable to war invasion act of foreign enemy hostilities or warlike operations (whether war be declared or not) civil war mutiny rebellion revolution insurrection or military or usurped power;
- (h) any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
 - i. nuclear weapons material;
 - ii. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel and for the purposes of this Exception combustion shall include any self-sustaining process of nuclear fission;
- (i) any injury by Accident or Disease where the Company has not been given sufficient notice of the institution of proceedings in a court or tribunal to enable the Company to be added as a party to the proceedings.

AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

If the Company is obliged by the Ordinance to pay an amount for which the Company would not otherwise be liable under this Policy the Insured shall forthwith repay such amount to the Company.

INSURANCE PREMIUM

- (a) Prior to the commencement of the Period of Insurance, the Insured shall supply the Company with a declaration estimating the Earnings of the Employees employed in the Business during the Period of Insurance (which declaration is referred to herein as "the Estimated Earnings Declaration") on the basis of which a deposit premium becomes payable to the Company.
- (b) The Insured shall within ninety (90) days after the expiry of the Period of Insurance or upon cancellation of the Policy supply the Company with a completed Premium Adjustment and Declaration of Earnings Form stating the actual Earnings of Employees and provide the relevant supporting documents during the Period of Insurance (which declaration is referred to herein as "the Actual Earnings Declaration"). If the actual Earnings shall differ from the estimated Earnings the difference in premium shall be met by a further proportionate adjustment premium to be paid to the Company or by a premium refund to the Insured as the case may be.
- (c) It is hereby declared that the Premium payable by the Insured in consideration of the indemnity provided under this Policy is the sum of the deposit premium and the adjustment premium calculated pursuant to paragraphs (a) and (b) hereof.

- (d) The name Hong Kong Identity Card number class of employment and Earnings of every Employee of the Insured employed in the Business from time to time during the Period of Insurance shall be properly recorded by the Insured and retained in a safe place so that a record exists of all persons who are Employees of the Insured for the purposes of this Policy and the Insured shall at all reasonable times allow the Company to inspect and obtain copies of such records.
- (e) If the Insured fails to cooperate with the Company in submitting the completed Premium Adjustment and Declaration of Earnings Form, without prejudice to any other rights of the Company, the Company shall retain the discretion not to renew this insurance upon expiry of the Policy.

CLAIMS SETTLEMENT CONDITIONS

(a) **Claims Notification Demands etc.**

In the event of any occurrence which may give rise to a claim under this Policy the Insured shall immediately give notice thereof in writing to the Company with full particulars.

The Insured shall also give the Company notice in writing immediately the Insured becomes aware of any intention to prosecute the Insured any impending prosecution inquest or fatal inquiry in connection with any occurrence which may give rise to a claim under this Policy. Every letter claim writ summons and process shall be forwarded to the Company immediately on receipt.

(b) **Claims Control by the Company.**

The Company shall be entitled upon notice to the Insured to take over and conduct in the Insured's name the defence or settlement of any claim demand or proceedings against the Insured. In that event:

- i. the Insured shall provide all such information and assistance and forward all such documents and other records to the Company for the conduct of such claim demand or proceedings as the Company in its discretion may from time to time require; and
- ii. the Insured shall not without the written consent of the Company incur any expenditure in connection with any such claim demand or proceedings or make any payment admission offer or enter into any settlement whatsoever.

(c) **Claims Payments by the Insured.**

Where the Insured pays all or any part of a claim for which he is liable and for which indemnity is provided by this Policy the Insured shall obtain duly witnessed signed receipts for such payments and shall retain in a safe place all such signed receipts and records and documents relating to such payments and the Insured shall at all reasonable times allow the Company to inspect and obtain copies of such records and documents.

(d) **Other Insurance.**

If at the time a claim is made by the Insured under this Policy there is any other insurance covering the same liability the Company shall not be liable to pay or contribute more than its rateable proportion of any such claim and costs and expenses in connection therewith.

(e) **Waiver of Claims.**

The Insured shall not become a party to any agreement the effect of which is that the Insured waives any claim which the Insured would otherwise have against any person in respect of or arising out of any occurrence resulting in liability on the part of the Insured for which indemnity is provided by this Policy or whereby any such claim is limited or qualified in any way.

(f) **Subrogation.**

The Company shall be entitled at its sole discretion to prosecute in the name of the Insured any claim for damages costs indemnity contribution or otherwise against any person who may be liable to the Insured in respect of any liability on the part of the Insured for which indemnity is provided by this Policy and shall have full discretion in the conduct of any such proceedings and in the settlement of any such claim. The Insured shall give all such information and assistance as the Company may from time to time require and execute any necessary documents for the purpose of vesting such rights in the Company. Any moneys recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by the Company in respect of any claim including any costs and expenses paid or incurred by the Company and costs and expenses incurred in prosecuting such recovery action.

GENERAL CONDITIONS

(a) **Notices.**

Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company and in the case of notice or communication to the Insured to his address specified in the Schedule.

(b) **Precautions.**

The Insured shall take all reasonable precautions to prevent Accidents and Diseases and shall comply with all relevant statutory requirements and obligations including but not limited to the provisions of the Factories and Industrial Undertakings Ordinance (Chapter 59 of the laws of Hong Kong) and any Regulations Rules or Notices issued made or promulgated thereunder.

(c) Changes in Risk.

The Insured shall immediately notify the Company in writing of any material change in the risk insured hereunder made by the Insured or any other person during the Period of Insurance including but not limited to:

- i. any merger with or acquisition of another company or business;
- ii. the Insured or any subsidiary or holding company of the Insured being placed in voluntary liquidation receivership or liquidation or entering into a composition with its creditors or being unable to pay its debts from its own resources; or
- iii. any material change in the nature of the Business or in the number of the Insured's Employees.

(d) Right of Inspection.

The Company shall have the right and opportunity at all reasonable times to inspect the works machinery plant and appliances used in the Business.

(e) Assignment.

No assignment of interest under this Policy shall bind the Company unless the written consent of the Company is first obtained and endorsed hereon.

(f) Cancellation.

This Policy may be cancelled by the Company or the Insured by written notice of cancellation from one party to the other. Cancellation shall take effect seven (7) days after the date of posting the notice of cancellation and in such event the Premium shall be adjusted in accordance with the provisions of "Insurance Premium".

(g) Arbitration.

All differences arising out of this Policy shall be determined by arbitration in accordance with the prevailing Arbitration Ordinance. If the parties fail to agree upon the choice of arbitrators or umpires, then the choice shall be referred to the Chairman for the time being of the Hong Kong International Arbitration Centre. It is expressly stipulated that it shall be a condition precedent to any right of action or suit upon this Policy that an arbitration award shall be first obtained. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

(h) Governing Law.

This Policy is subject to the exclusive jurisdiction of Hong Kong and is to be construed according to the laws of Hong Kong.

(i) Contracts (Rights of Third Parties) Ordinance

The Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) does not apply to this Policy, and only parties who may enforce the terms of the Policy are the Company and the Insured (or their authorized representatives).

(j) Renewal

The Company will send the Insured a renewal notice with the renewal terms (the terms may be different from this Policy) if the Company desire to renew this Policy. This Policy will be renewed if the required premium and documents for renewal are received by the Company in accordance with the renewal terms. The renewal of this Policy shall not constitute any waiver of the Company's right under this clause and/or the renewed Policy.

SPECIAL CLAUSES

(The following clauses apply to the Policy)

TERRORISM ENDORSEMENT

Notwithstanding any provision to the contrary in this Policy or any endorsement thereto it is hereby agreed that in respect of any bodily injury or death by accident or disease ("the Loss") directly or indirectly caused by, resulting from or in connection with any act of terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Loss :

- (a) the Policy Limit of Indemnity shall be such amount which the Company actually receives from the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("the Government") pursuant to an Agreement for Provision of Facility dated 11th January 2002 between the Government and the Company under which the Government agreed to make available to the Company and other direct insurance companies authorized to underwrite employees' compensation insurance business in Hong Kong a facility to enable them to meet claims

under employees' compensation insurance policies in respect of death and injury arising out of an event of terrorism ("the Facility Agreement");

- (b) the Company will only be required to make payment after it has received from the Government (i) an approval letter confirming that the Company should settle the claim and (ii) payment under the Facility Agreement; and
- (c) for the avoidance of doubt, the Company shall have no obligation to make payment if for whatever reason it does not receive payment from the Government under the Facility Agreement, whether or not due to the Government's contention that the Loss does not fall within the scope of the Facility Agreement or the Company's breach of the Facility Agreement.

For the purpose of the above an act of terrorism means the use of force or violence or other means or the threat thereof, of any person or persons, whether acting alone or on behalf of or in connection with any organization or government, for political, religious, or ideological purposes with an intention to influence any government and/or to put the public, or any section of the public, in fear.

If the Company alleges that the Loss falls within the scope of this Endorsement, the burden of proving the contrary shall be upon the Insured.

In the event any part of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

Words and phrases in this Endorsement shall have the same meaning as in the Policy.

ASBESTOS EXCLUSION CLAUSE

It is hereby understood and agreed that otherwise subject to the terms, exclusions and conditions contained in the policy or endorsed hereon, this Policy shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos in whatever form or quantity.

SANCTION EXCLUSION

Notwithstanding anything to the contrary in the Policy the following shall apply:

If, by virtue of any law or regulation which is applicable to the Company at the inception of this Policy or becomes applicable at any time thereafter, providing coverage to the Insured is or would be unlawful because it breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United States of America or The People's Republic of China/Hong Kong SAR, that the Company shall provide no coverage or benefit or have no liability whatsoever to the Insured, to the extent that it would be in breach of such law or regulation.

ENDORSEMENTS

(The following Endorsements only apply when Specified in the Schedule)

- W1 This Policy does not indemnify the Insured in respect of any claim arising in connection with the use of woodworking machinery driven by steam, gas, water, electricity or other mechanical power. The expression "woodworking machinery" shall not be deemed to include lathes, fret-saws, boring machines, sanding machines; or mechanically-driven portable tools applied to the work by hand, other than pendulum and swing saws.
- W7 This Policy does not indemnify the Insured in respect of any claim arising in connection with the carting or delivery of goods other than by hand or handcart.
- W8 This Policy does not indemnify the Insured in respect of any claim arising in connection with the use of machinery driven by steam, gas, water, electricity or other mechanical power.
- W12 It is a condition of this Policy that the indemnity granted is in respect of indoor staff only.
- W13 This Policy does not indemnify the Insured in respect of any claim arising in connection with work away from the Insured's shop or yard other than transport work.
- W18 This Policy does not indemnify the Insured in respect of any claim arising in connection with the handling of any unit exceeding 5 pounds in weight when completed for use.
- W32 This Policy does not indemnify the Insured in respect of any claim arising in connection with work at a height exceeding 9 metres above ground or floor level.
- W44 This Policy does not indemnify the Insured in respect of any claim arising in connection with press-packing other than by manual power; or in connection with press-packing of metal.
- W49 This Policy does not indemnify the Insured in respect of any claim arising in connection with
 - (a) employees receiving from or delivering to vessels or craft of any description, or employees on dock quayside or wharf;
 - (b) stevedores or lightermen;

- (c) the carting or delivery of goods other than by hand or handcart.
- W58 This Policy does not indemnify the Insured in respect of any claim arising in connection with castings exceeding 28 pounds in weight.
- W71 This Policy does not indemnify the Insured in respect of any claim arising in connection with
- (a) employees receiving from or delivering to vessels or craft of any description or employees on dock quayside or wharf;
- (b) stevedores or lightermen.
- W75 It is hereby understood and agreed that paragraphs (a) to (d) under Insurance Premium of this Policy is deleted and replaced by the following:
The first premium and all renewal premiums that may be accepted are to be regulated by the number and description of all domestic servants employed by the Insured during each Period of Insurance and the Insured shall supply the Company with a correct account of all domestic servants employed during any Period of Insurance within ninety (90) days from the expiry date of such Period of Insurance. If the number and description so disclosed shall differ from that on which premium has been paid the difference in premium shall be met by a further payment to the Company or by a refund by the Company as the case may be subject to the retention by the Company of a minimum premium.
- W81 This Policy does not indemnify the Insured in respect of any claim arising in connection with the printing of newspapers or the manufacture of paper.
- W97 This Policy does not indemnify the Insured in respect of any claim arising in connection with fitting, installing, repairing or testing away from the premises of the Insured.
- W100 This Policy does not indemnify the Insured in respect of any claim arising in connection with the handling of any unit exceeding 550 pounds in weight when completed for use.
- W204 It is hereby understood and agreed that the indemnity herein granted is extended to indemnify the Insured against liability at law (including liability under the Ordinance set out in the policy) to employees in the employ of sub-contractors performing work for the Insured while engaged in the Business in respect of which this Policy is granted.
It is further understood and agreed that Exceptions (a) of this Policy is deleted.
Subject otherwise to the Terms of the Policy.
- W338 It is hereby understood and agreed that this Policy is extended to indemnify.... (hereinafter called the Principal) against liability at law (including liability under the Ordinance set out in the policy) in like manner to the Insured but only so far as concerns the liability of the Principal to Employees of the Insured engaged in connection with a contract undertaken by the insured for the Principal.
Provided always that
- (1) the Company shall not be liable under this Endorsement (except under the Ordinance) in respect of any injury by Accident or Disease due to or resulting from any act default or neglect of the Principal his servants or agents.
 - (2) the Principal shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply.
 - (3) the Company shall have full conduct and control of all claims in respect of which indemnity is granted by this Endorsement.
- Subject otherwise to the Terms of this Policy.
- W348 It is hereby understood and agreed that the witnessing clause of the Policy is deemed to be deleted and replaced by the following:-
"Now this Policy witnesseth that if any Employee in the immediate employ of any of the parties jointly described as the Insured shall sustain bodily injury or death by Accident or Disease occurring during the Period of Insurance within the Geographical Area and arising out of and in the course of his employment by the Insured in the Business".
It is further understood and agreed that exception (a) of this Policy is deleted.
Subject otherwise to the Terms of this Policy.



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Thank you for considering Sun Flower to be one of your selected intermediaries.

We are pleased to get in touch should you have any enquiry regarding the captioned insurance.