

# **Westport Insurance Corporation**

## **GENERAL TERMS & CONDITIONS**

Throughout this “policy” the words “you” and “your” refer to the “named insured” shown in the Declarations. The words “we,” “us,” and “our” refer to the company providing the insurance. The word “insured” means any person or organization qualifying as such in each “coverage unit.” Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS.

These terms and conditions shall constitute the GENERAL TERMS & CONDITIONS of the “policy” and shall apply to all “coverage units” issued by us as part of the “policy.” Such terms and conditions may be specifically amended in a “coverage unit” solely for that “coverage unit.”

In consideration of the payment of the premium and in reliance upon the statements in the application and supplements, and subject to the Declarations and all terms of the “policy,” we agree with you as follows:

### **I. REPORTING AND NOTICE**

INSURED’S DUTIES in the event of “claim” or any “potential claim”:

A. The insured shall not, without our written consent, do any of the following:

1. Admit liability;
2. Participate in any settlement discussions nor enter into any settlement; or
3. Incur any costs or expense.

B. The insured shall:

1. provide written notice of any “claim” to us or the producing agent shown on the Declarations Page as soon as practical. Any “potential claims” must be reported to us in writing during the “policy period” or Extended Reporting Period. If, during the “policy period,” you, or any owner, officer or partner of the “named insured” first become aware of a “potential claim” and give written notice of such “potential claim” to us during the “policy period,” any “claims” subsequently made against an insured arising from the “potential claim” shall be considered to have been made during the “policy period” that you, or any owner, officer or partner of the “named insured” first became aware of such “potential claim”;
2. provide copies of all documents we request;
3. cooperate with us and the attorney we retain to defend you, and, upon our request, attend hearings and trials and assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of “suits”;
4. include within any notice of “claim” or “potential claim” a description of the “claim” or “potential claim,” the alleged “wrongful act(s),” including the date(s) it was committed, a summary of the facts upon which the “claim” or “potential claim” is based, the alleged or potential damage or “loss” that may result from the “wrongful act,” the names of actual or potential claimants, the names of insured(s) and employee(s) against whom the “claim” was or may be made, and the date and circumstances by which you, or any owner, officer or partner of the “named insured” first became aware of the “claim,” or “potential claim.”

Notice to us under the "policy" shall be given to:

Westport Insurance Corporation  
5200 Metcalf  
Overland Park, KS 66201  
Attention: Westport Claims Department  
Telephone Number: 1-800-241-3470  
Facsimile Number: 1-800-388-0931

All notices under the "policy" shall be in writing, shall comply with the time requirements as stated in the "coverage units," and shall be given by confirmed facsimile, prepaid express courier, certified U.S. Mail, return receipt requested.

Except as provided in the Termination of Coverage Section of these GENERAL TERMS & CONDITIONS, any notice shall be effective on the date of our receipt at the above address.

## II. EXCLUSIONS

In addition to the Exclusions contained in each "coverage unit," the following exclusions apply to all "coverage units."

This "policy" shall not apply to any "claim" based upon, arising out of, attributable to, or directly or indirectly resulting from:

- A. **BODILY INJURY, PROPERTY DAMAGE.** "Claims" for:
  - 1. bodily injury, sickness, disease, or death of any person; or
  - 2. injury to or destruction of any property, including the loss of use of the property.
- B. **CONTRACTUAL LIABILITY.** Any liability assumed by the insured under contract, unless the insured would have been legally liable in the absence of such contract.
- C. **ERISA, COBRA.** "Claims" arising out of any duties or activities assumed under contract by an insured as a plan administrator or fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA), the Pension Benefits Act or the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) including any amendments, regulations, or enabling statutes pursuant thereto, or any other similar federal, state, or provincial statute or regulation.
- D. **FUNDS.** Conversion, misappropriation, or improper commingling of client funds or funds held for the benefit of a client.
- E. **INSURED VS. INSURED.** "Claims" or disputes:
  - 1. between insureds under this "policy." However, this exclusion does not apply if the "wrongful act" arises out of "professional services" by an insured rendered to such other insured as a client, provided the insured rendering such "professional services" does not have an equity interest in the property to be insured; or
  - 2. by an enterprise which one or more insureds have a total of ten percent (10%) or more equity interest, or operate, control, or manage; or

3. by an enterprise which either has a ten percent (10%) or more equity interest in an insured or, operates, controls, or manages an insured.
- F. INTENTIONAL ACTS. Any “claim” for Intentional acts, including but not limited to acts of dishonesty, fraud, criminal conduct, malice, or assault and battery.
- G. PERSONAL PROFIT. Any insured having gained, in fact, any personal profit or advantage to which he or she was not legally entitled.
- H. PRIOR CLAIMS. Any act, error, omission, circumstance, or “personal injury” occurring prior to the effective date of this “policy,” or any Employers Reinsurance Corporation or Westport Insurance Corporation “policy” this “policy” replaces, if you or any owner, officer or partner of the “named insured” at the effective date knew of a “claim” or a “potential claim.”

### III. DEFINITIONS

In addition to the Definitions contained in each “coverage unit,” the following Definitions shall apply to all “coverage units”:

- A. CLAIM. “Claim” or “claims” means:
1. that an insured has received a summons, a subpoena, or any other notice of legal process;
  2. that an insured has received notice of any “suit”;
  3. that an insured has received notice of a written demand, or a written demand for money or services; or
  4. that an insured has received a request to provide a recorded statement.
- B. CLAIM EXPENSE. “Claim expense” or “claim expenses” means:
1. all expense incurred in the defense of any “claim” or “potential claim” first made against an insured seeking damages for a “wrongful act” even if a “claim” or “potential claim” is groundless, false, fraudulent, or for an amount less than your Deductible;
  2. fees charged by any lawyer, designated by us, or required by law to defend the interests of any insured; and
  3. if authorized by us, all other fees, costs, and expenses resulting from the investigation, adjustment, defense, or appeal of any “claim,” or “potential claim” including but not limited to:
    - a. all costs taxed against any insured in any “suit”;
    - b. all prejudgment and post judgment accrued interest on that portion of any judgment which does not exceed the applicable Limit of Liability. If we tender or pay a “loss” on any judgment up to our Limits of Liability, we have no further obligation to pay any additional interest;

- c. all premiums on bonds to release attachments and appeal bonds, limited to that portion of a bond which does not exceed the "policy" Limit of Liability. We will obtain the bond on behalf of the insured. You shall reimburse us for the additional cost of the bond we obtain for any exposure in excess of our Limit of Liability;
- d. all reasonable expenses incurred by an insured at our request while assisting us in the investigation and defense of any "claim" or "potential claim," or
- e. Reimbursement for loss of earnings or temporary staff due to an insured attending depositions or trials at our request. Such reimbursement is subject to \$100 per insured per day and a maximum of \$1,000 per "policy period."

"Claims expenses," except as provided in B.3.e., shall not include salaries, loss of earnings, or expenses of regular employees, our officials, or you.

- C. **COVERAGE UNIT.** "Coverage unit" means the terms, conditions, definitions, and exclusions as stated in each attachment hereto for each of the coverages selected by the insureds and listed in the Declarations including endorsements thereto. Each "coverage unit" is a separate and distinct coverage.
- D. **INSURED.** Insured is defined in each "coverage unit." Refer to the Who Is An Insured section of each "coverage unit."
- E. **LOSS.** "Loss" is defined in each "coverage unit."
- F. **NAMED INSURED.** "Named Insured" means the person or entity listed in the Declarations.
- G. **POLICY.** "Policy" means the combination of:
  - 1. all "coverage units" issued by us to you and listed in the Declarations; and
  - 2. these GENERAL TERMS & CONDITIONS.
- H. **POLICY PERIOD.** "Policy period" means the period stated in the Declarations, unless terminated earlier pursuant to the Termination Of Coverage Section of these GENERAL TERMS & CONDITIONS.
- I. **POTENTIAL CLAIM.** "Potential claim" means that you, or any owner, officer or partner of the "named insured" has become aware of a proceeding, event, or development which has resulted in or could in the future result in the institution of a "claim" against the insured.
- J. **RETROACTIVE DATE.** "Retroactive date" means the date, as specified in the Declarations or in any endorsement attached hereto, on or after which any "wrongful act," as defined in each of the attached "coverage units," must have occurred in order for "claims" arising therefrom to be covered under this "policy." "Claims" arising from any "wrongful act," as defined in each of the attached "coverage units," occurring prior to this date are not covered by this "policy."
- K. **SUIT.** "Suit" means a civil proceeding alleging "loss" against an insured for a "wrongful act." "Suit" includes arbitration or other alternative dispute resolution proceedings to which the insured must submit, or does submit with our consent, and in which "loss" is requested.

L. WRONGFUL ACT. "Wrongful act" is defined in each "coverage unit."

#### **IV. LIMITS OF LIABILITY**

- A. All Limits of Liability shall apply in excess of the Deductible. All amounts paid in satisfaction of "claims" are subject to the applicable Limit of Liability. All "claim expenses" shall be in addition to the applicable Per Claim Limit of Liability.
- B. Our liability for the combined total of all "loss," as defined in each of the attached "coverage units," shall not exceed the amount stated in the Declarations as Per Claim Limit of Liability for that "coverage unit."
- C. There shall be no stacking of "coverage unit" limits. If more than one "coverage unit" covers a "claim," our liability for the combined total of all "loss" for the "claim" shall not exceed the highest single Per Claim Limit of Liability as stated in the Declarations for the "coverage unit(s)" which cover the "claim."
- D. Our liability for the combined total of all "loss" for all "claims" covered by a "coverage unit" shall not exceed the amount stated in the Declarations as Aggregate Limit of Liability for that "coverage unit."
- E. Our liability under the "policy" for the combined total of all "loss" for all "claims" covered by any and all "coverage unit(s)" shall not exceed the amount stated in the Declarations as Policy Aggregate Limit of Liability.

#### **V. DEDUCTIBLE**

You shall be responsible for the Deductible indicated on the Declarations shown as "each claim." The Deductible applies to "loss" and not "claim expenses." The total Deductible you shall be responsible to pay during the "policy period" will not exceed the aggregate each "policy period" amount shown on the Declarations.

#### **VI. SUBROGATION**

If we pay any "loss" or "claim expense," we have subrogation rights of the insured against any person or organization. The insured(s) shall execute all papers we require and shall do everything that may be necessary to preserve, secure, and pursue our rights, including the execution of such documents as may be necessary to enable us to bring "suit" in the name of the insured(s). All insureds shall cooperate with us and do nothing to jeopardize, prejudice, or terminate such rights. We shall not exercise any subrogation rights against any insured(s), unless the "claim" arises from any dishonest, fraudulent, or malicious act, error, or omission of such insured.

#### **VII. REIMBURSEMENT TO COMPANY**

If we have paid any amounts as "loss" in satisfaction of any "claims" in excess of the applicable Limit of Liability, or have paid "loss" within the amount of the applicable Deductible, you shall be liable to us for any and all such amounts and, shall pay such amounts to us within 30 days of our demand.

#### **VIII. CHANGES**

No change or modification of this "policy" shall be effective except when made by a written endorsement to this "policy" which is signed by our authorized representative.

## **IX. NO ASSIGNMENT**

Neither this “policy” nor any insured’s interest in this “policy” may be assigned without our written consent.

## **X. TERMINATION OF COVERAGE**

The “policy” shall terminate at the earliest of the following:

- A. if the “policy” is terminated for failure to pay a premium when due, the effective date of cancellation stated in a written notice of cancellation from us to you, provided such notice is received by you at least ten (10) days prior to the effective date of cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the “policy period.” Any earned premium shall be computed pro rata;
- B. if the “policy” is terminated by us for any reason other than non-payment of premium, the effective date of cancellation stated in our written notice of cancellation, provided you receive such notice at least thirty (30) days prior to the effective date of cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the “policy period.” Any earned premium shall be computed pro rata;
- C. upon your surrender of the “policy” to us or upon our receipt of your written notice of termination stating when thereafter such cancellation shall be effective. Any earned premium shall be computed in accordance with the customary short rate table and procedure; or
- D. upon expiration of the “policy period” as set forth in the Declarations.

## **XI. EXTENDED REPORTING PERIOD:**

- A. **EXTENDED REPORTING PERIOD TERMS.** The following provisions are applicable to all Extended Reporting Periods:
  - 1. The Extended Reporting Periods cover “claims” arising out of “wrongful acts” that occurred prior to cancellation or expiration of the “policy” and on or after any “retroactive date” applicable to the expired or terminated “policy.”
  - 2. If you have obtained a replacement “policy,” the Extended Reporting Period will apply only in the event the replacement “policy” limits have been exhausted for a “claim” that qualifies for coverage under this section.
  - 3. The Limit of Liability during the final “policy period” immediately preceding the cancellation or non-renewal of the “policy” shall apply to “claims” reported during the final “policy period” together with “claims” reported during the Extended Reporting Period.
  - 4. If any Extended Reporting Period option is exercised, it cannot be terminated by us or you.

- B. **AUTOMATIC EXTENDED REPORTING PERIOD.** If we or you choose to cancel or not renew this "policy," this "policy" will apply to "claims" first made against you and reported in writing to us during the sixty (60) days immediately following the date of cancellation or expiration.
- C. **OPTIONAL EXTENDED REPORTING PERIODS.** Subject to the above identified terms and conditions, payment of all outstanding premiums or Deductibles due, and your electing within sixty (60) days from the date of cancellation or non-renewal of the "policy," the following Extended Reporting Periods are available:

1. If we or you choose to cancel or not renew the "policy," you have the right to extend the time for reporting "claims" made against any insured under the "policy" per the following schedule. The additional premium for the Extended Reporting Period shall be:

<b>Extended Reporting Period</b>	<b>Additional Premium</b>
12 months	50% of the last annual premium of this "policy"
36 months	100% of the last annual premium of this "policy"

You must send us written notice of your intent to purchase the option along with the annual expiring premium stated on the Declarations page within sixty (60) days of the cancellation or non-renewal of the "policy."

2. In addition to the above, we will issue an Extended Reporting Period Endorsement for an unlimited period at no additional premium following the cancellation or non-renewal of this "policy" provided that:
- you are the sole owner and the sole producer; and
  - retire from the profession of insurance and your retirement is for reasons other than a suspension, revocation, or surrender of your license; and
  - you have reached the age of 65 and have been insured by us for 10 consecutive years prior to the "policy" termination or cancellation.
3. In addition to the above, if you are the sole owner and sole producer, we will issue a 10 year Extended Reporting Period endorsement at no additional premium provided:
- cancellation or termination of the "policy" is due to your death or you are totally and permanently disabled during the "policy period"; and
  - in the event of disability, you are continuously totally and permanently disabled from your profession for a minimum of six (6) months after issuance of this "policy"; and
  - any death or total and permanent disability does not arise from a self-inflicted injury, suicide, alcohol, or drug abuse; and
  - satisfactory written evidence of death or total and permanent disability is provided by you or your legal representative within sixty (60) days of death or total and permanent disability.

4. In addition to the above, if this "policy" is canceled by you, due to your merger, consolidation, or sale to another entity, or death or retirement of the owner, you shall also have the right to purchase an Extended Reporting Period provided:
  - a. such merger, consolidation, or sale is not due to suspension, revocation, or surrender of an insured's license; and
  - b. you send us written notice of your intent to purchase the option along with the annual expiring premium within sixty (60) days of the cancellation or non-renewal of the "policy."

Schedule:

<b>Extended Reporting Period for Sale, Merger, Death, or Retirement</b>	<b>Premium (the percent of the last annual premium)</b>
3 years	100%
4 years	120%
5 years	140%
6 years	155%
7 years	170%
8 years	185%
9 years	195%
10 years	200%

## **XII. MULTIPLE INSUREDS, CLAIMS, AND CLAIMANTS**

The inclusion of more than one insured in any "claim" or the making of "claims" by more than one person or organization shall not increase the Limits of Liability or the Deductible. Two or more "claims" arising out of a single "wrongful act," as defined in each of the attached "coverage units," or a series of related or continuing "wrongful acts," shall be a single "claim." All such "claims," whenever made, shall be considered first made on the date on which the earliest "claim" was first made arising out of such "wrongful act," as defined in the applicable "coverage unit," and all such "claims" are subject to one Per Claim Limit of Liability and Deductible.

## **XIII. OTHER INSURANCE**

Except as provided in the Exclusions in this "policy," if there is other insurance applicable to a "claim" covered by this "policy," this "policy" shall be deemed excess insurance over and above the applicable Limits of Liability of all such other insurance unless such other insurance is specifically written as excess insurance over the Limits of Liability provided in the "policy."

## **XIV. ACTION AGAINST US**

No action shall lie against us unless, as a condition precedent thereto, all insureds shall have fully complied with all the GENERAL TERMS & CONDITIONS of this "policy" and the terms and conditions of all attached "coverage units," and not until the amount of all insureds' obligations to pay has been finally determined either by judgment against all insureds after actual trial or by written agreement of you, the claimant, and us.

Nothing contained in the “policy” shall give any person or organization any right to join us as a co-defendant in any action against any insured to determine any insured’s liability.

**XV. APPLICABLE LAWS**

Any terms of the “policy” which are in conflict with any laws and regulations governing the “policy” are hereby amended to conform to such laws and regulations.

**XVI. TERRITORY**

This “policy” applies to “wrongful act(s)” that occur anywhere in the world, but the insured’s responsibility to pay “loss” must be determined in a “suit” on the merits or in a settlement to which we have agreed.

**XVII. WAIVER**

Our failure to insist on strict compliance with any of the terms, provisions, or conditions to coverage of these GENERAL TERMS & CONDITIONS or the attached “coverage units” or the failure to exercise any right or privilege shall not operate or be construed as a waiver thereof or of any subsequent breach thereof or a waiver of any other terms, provisions, conditions, privileges, or rights.

**XVIII. ENTIRE AGREEMENT**

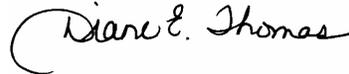
By acceptance of this “policy,” all insureds reaffirm as of the effective date of this “policy” that (a) the statements in the Declarations and your most recent application(s) and all information communicated by the insureds to us are true and accurate and are all insureds’ agreements and representations, (b) this “policy” is issued in reliance upon the truth and accuracy of such representations which are material to our issuance of this “policy” and (c) this “policy” embodies all agreements between all insureds and us or any of our agents relating to this insurance.

IN WITNESS WHEREOF, we have caused the signatures of our executive officers to be affixed hereto, and have caused this “policy” to be countersigned by our authorized representative.

**WESTPORT INSURANCE CORPORATION**



President



Secretary