

PROFESSIONAL INDEMNITY INSURANCE POLICY
FOR
DESIGN AND CONSTRUCTION

Various words and phrases have a standard meaning within this policy of insurance and such meanings are defined in the section headed definitions

The headings used are for ease of reference only and are not to be construed as part of the policy wording

In consideration of the payment by the Insured of the premium stated in the schedule receipt of which by Underwriters is a condition precedent to liability to indemnify under this Policy Underwriters agree subject to the terms conditions and exclusions of this Policy to indemnify the Insured as provided for within the Insuring Clauses section of this Policy

Provided that

- a) this Policy shall not be in force unless the schedule page has been signed by or for and on behalf of Underwriters
- b) this Policy the schedule (including any schedule issued in substitution) and any memoranda or endorsements shall be considered one document and any word or expression to which a specific meaning has been attached shall bear such meaning wherever it appears

The Proposal (as defined) supplied by or on behalf of the Insured shall be incorporated in the contract and it is a condition of indemnity under this Policy that all statements answers and information supplied to Underwriters by or on behalf of the insured in connection with this Policy must be truthful and complete

In the event of any inconsistency between the Proposal and the rest of this Policy then the terms conditions and exclusions of this Policy shall prevail

DEFINITIONS

Award

A sum which the Insured become liable to pay by reason of an adjudicator's decision

Circumstance

Any matter likely to give rise to a claim against the Insured

Collateral Warranty

A collateral warranty or duty of care agreement between the Insured and a party with whom a contractual relationship would not otherwise exist

Defence Costs

All costs and expenses incurred with Underwriters prior written consent in the investigation defence or settlement of any claim or Circumstance notified to Underwriters within the terms of the Policy.

Documents

All forms of documents of whatsoever nature whether written printed or reproduced by any other method including computer system records (provided the Insured maintains duplicates of such computer systems records stored at a separate location) but excluding bearer bonds coupons bank notes currency notes and negotiable instruments

E-activities

E-activities means any use of electronic networks including the internet and private networks intranets extranets electronic mail worldwide web and similar medium carried out by the Insured or by any person, persons, partnership, firm or company acting for the Insured or on the Insured's behalf

Excess

The first amount of each claim for which indemnity would otherwise be provided by this Policy
The amount of Excess is as stated in the schedule which is inclusive of any costs and expenses incurred by Underwriters in the defence and investigation of any claim and/or Circumstance

Insured

- a) The firm company or persons named in the schedule
 - b) Any past present or future partner of the firm but only whilst acting or having acted within the scope of the Professional Activities and Duties carried out on behalf of the firm
- For the avoidance of doubt the only parties that have rights under this contract of insurance shall be the Insured and Underwriters

Limit of Indemnity

The maximum total liability (including the liability for claimants costs and Defence Costs) of Underwriters for all claims under this policy for the amount specified in the schedule or as may be specifically endorsed to this Policy

Policy

The contents of this document together with the schedule and all endorsements that may be issued from time to time by Underwriters for attachment to this Policy

Policy Period

The period specified in the schedule or as may be specifically endorsed to this Policy

Professional Activities and Duties

The performance by the Insured or any sub-contractor and/or sub-consultant acting on behalf of the Insured and for whom the Insured is responsible as a professional of any design or specification or inspection of construction or feasibility study or technical information calculation or surveying undertaken only by or under the direct control or supervision of a properly qualified Architect Engineer or Surveyor employed by the Insured or employed by any sub-contractor and/or sub-consultant acting on behalf of the Insured and for whom the Insured is responsible

For the avoidance of doubt PROFESSIONAL ACTIVITIES AND DUTIES do not include supervision by the Insured of its own or its sub-contractors work where such supervision is undertaken in its capacity as Building or Engineering Contractor

Proposal

The proposal for the insurance provided by this Policy including the proposal form identified in the schedule together with any other documentation or information submitted to Underwriters

Terrorism

Terrorism shall include but is not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear

UNDERWRITERS
AmTrust Europe Limited

INSURING CLAUSES

Underwriters will up to the Limit of Indemnity indemnify the Insured in respect of

1 BREACH OF DUTY

Any claim first made against the Insured and notified to Underwriters during the Policy Period arising from the exercise and conduct of the Insured's Professional Activities and Duties which gives rise to a legal liability (including liability for claimants' costs) as a result of a breach of their professional duty arising out of negligence by the Insured or any sub-contractor and/or sub-consultant acting on behalf of the Insured and for whom the Insured is responsible but subject always to Underwriters rights as contained in Condition 4 of this Policy and provided that all rights of recourse against such sub-contractors and/or sub-consultants are not waived or otherwise impaired by the Insured
Provided that

A) in respect of any claim under this clause the amount of the Excess shall be borne by the Insured at their own risk and Underwriters shall only be liable to indemnify the Insured in excess of such amount

B) No Indemnity shall be provided under this insuring clause for any liability arising from a decision given by an adjudicator under a construction contract as defined in Section 104 of the Housing Grants Construction and Regeneration Act 1996 ("the Act") unless the Insured complies with the following conditions precedent to indemnity under this Policy

- a) The Insured shall give notice directly to Underwriters in the manner appearing below within three working days of any of the following
- (i) the receipt by the Insured of any notice of intention to adjudicate ("Adjudication Notice")
 - (ii) upon the Insured having reasonable grounds to believe that an Adjudication Notice may be served upon them

Provided that in each such case the subject matter of the Adjudication Notice (or any part thereof) is likely to give rise to a claim under this Policy

- b) The Insured shall provide full and prompt co-operation to Underwriters complying with all their reasonable requests including those relating to response times and such co-operation shall extend to any subsequent challenge to the adjudicator's decision
- c) Underwriters shall be entitled at their discretion to appoint solicitors and experts to handle any adjudication on behalf of the Insured and Underwriters shall have the conduct of all matters relating to any such adjudication. Subject to the provisions of 1 B) e) of this clause and the application of any costs inclusive excess payable by the Insured Underwriters shall pay all costs and expenses incurred in the appointment of such solicitors and experts

- d) The Insured shall not at any time without the prior written consent of Underwriters make any admission in respect of the dispute being referred to adjudication or agree with any other party that adjudication shall finally determine any dispute
- e) If only part of the Award is covered within the Policy terms and conditions then Underwriters shall only be required to indemnify the Insured in respect of that part which is covered within the Policy terms and conditions and will only pay costs and expenses incurred in handling the adjudication in the same proportion as the insured part bears to the total amount of the Award

2 LOSS OF DOCUMENTS

any reasonable expenses which the Insured may incur during the Policy Period (and to which Underwriters have given prior written consent) in replacing or restoring Documents either owned by or the responsibility of or in the custody of the Insured in the conduct of their Professional Business which are discovered during the Policy Period to be damaged destroyed lost or mislaid and which after diligent search cannot be found

For the purposes of this insuring clause there shall be no Excess borne by the Insured and the Limit of Indemnity afforded by this clause shall be limited to £50,000 in all for the Policy Period

3 COMPENSATION FOR COURT ATTENDANCE

the cost of attendance at a court by any principal partner director or employee of the Insured when requested by Underwriters to be a witness in connection with a claim for which the Insured is entitled to indemnity under this Policy.

Indemnity for such costs will be limited to payments by Underwriters of compensation at a rate of £250 per person per day on which attendance is required

For the purposes of this insuring clause there shall be no Excess borne by the Insured

4 PROSECUTION DEFENCE

costs and expenses incurred with the prior written consent of Underwriters in the defence of any criminal proceedings against the Insured during the Policy Period arising from any alleged breach of any statutory regulation relative to building or construction works

Provided that

- a) such alleged breach arises in the course of the Insured's Professional Business
- b) the circumstances giving rise to the proceedings could otherwise give rise to indemnity under this Policy
- c) in the reasonable belief of Underwriters the defence of such proceedings would assist in the defence of any claims against the Insured arising from such circumstances
- d) no claims shall attach unless Underwriters consider that the defence of criminal proceedings has a reasonable chance of success
- e) if circumstances change after Underwriters have given written consent then Underwriters reserve the right to have the express ability to withdraw such consent

For these purposes "proceedings" includes an appeal against the outcome of any initial proceedings

For the purposes of this insuring clause there shall be no Excess borne by the Insured

5 LIBEL AND SLANDER

sums that they become legally liable (including liability for claimants' costs) to pay in respect of any claim first made against the Insured and notified to Underwriters during the Policy Period in direct consequence of any libel or slander uttered in good faith by them in the conduct of their Professional Activities and Duties

Provided that in respect of any claim the amount of the Excess shall be borne by the Insured at their own risk and Underwriters shall only be liable to indemnify the Insured in excess of such amount

6 MITIGATION COSTS

Underwriters will indemnify the Insured subject to notification in accordance with Condition 1 of the policy which is a condition precedent to the Insured's right to be indemnified under this policy for costs

and expenses reasonably incurred with the prior written consent of Underwriters which will not be unreasonably withheld in respect of rectifying prior to practical completion of any part of the works already constructed by the Insured to the extent that the Insured is able to demonstrate on a balance of probabilities that the need for such rectification is due to the Insured's negligence (or the negligence of their sub contractors or sub consultants for whom they are responsible) in the conduct of their Professional Activities and Duties and is necessary to mitigate a claim or likely claim that would otherwise have been Insured under Insuring clause 1.

Provided that in respect of any claim the amount of the Excess shall be borne by the Insured at their own risk and Underwriters shall only be liable to indemnify the Insured in excess of such amount

7 COLLATERAL WARRANTY

any claim first made against them and notified to Underwriters during the Policy Period (including liability for claimants' costs) in direct consequence of any negligence whether by act error or omission by the Insured in the course of their Professional Activities and Duties arising from liability assumed by the Insured under any Collateral Warranty.

Provided that in respect of any claim the amount of the Excess shall be borne by the Insured at their own risk and Underwriters shall only be liable to indemnify the Insured in excess of such amount

EXCLUSIONS

This Policy shall not indemnify the Insured in respect of any claim or loss arising out of

- 1) the giving by the Insured of any warranty or guarantee where liability arises from any or more of the following terms
 - a) any express acceptance of or guarantee for fitness for purpose or similar provision
 - b) any express guarantee relating to the performance or period of a project
 - c) any acceptance of liability for liquidated damages or penalties or finesThis exclusion shall not apply to liability that would have attached to the Insured in the absence of such express warranty or guarantee as a consequence of a negligent breach of their professional duty
- 2) any negligence on the part of the Insured in connection with estimates of construction costs except where such estimates are compiled by professionally qualified Quantity Surveyors
- 3) any claim or Circumstance
 - a) known to the Insured prior to the inception of this Policy or which in the reasonable opinion of Underwriters ought to have been known to the Insured or
 - b) notified by the Insured under any other insurance prior to the inception of this Policy
 - c) disclosed on the latest Proposal made to Underwriters
- 4) loss distortion or erasure of computer records
 - a) whilst mounted in or on any machine for use or processing unless caused by fire lightning aircraft or water damage or any negligence on the part of the Insured
 - b) resulting from wear tear vermin or gradual deterioration
 - c) caused by climatic or atmospheric conditions or extremes of temperature
 - d) due to the presence of magnetic flux or loss of magnetism unless caused by lightning
- 5) bodily injury sickness disease or death of any person arising out of and in the course of their employment by the Insured

- 6) work in connection with any contract performed outside the geographical limits as stated in the schedule or any claim made in a court outside the jurisdiction limits as stated in the schedule
- 7) the insolvency of the Insured
- 8) any negligence on the part of the Insured in connection with the effecting or maintenance of insurance and/or in connection with the provision of finance or advice on financial matters
- 9) or contributed by
 - a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any waste or substance from the combustion of nuclear fuel or
 - b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof or
 - c) war invasion acts of foreign enemies hostilities (whether war be declared or not) civil war rebellion revolution insurrection military or usurped power
 - d) Terrorism
- 10) a situation where the Insured is entitled to indemnity under any other insurance except in respect of any sum beyond the amount which would have been payable under such other insurance had this Policy not been effected
- 11) any act error omission committed or alleged to have been committed prior to any retroactive date stated in the schedule
- 12) any fines penalties punitive or exemplary damages
- 13) the ownership use occupation or leasing of mobile or immobile property by to or on behalf of the Insured or of any party for whom and for which the Insured are responsible
- 14) any claim by any
 - a) parent or subsidiary company or associated company of the Insured
 - b) other company in which the Insured has a financial majority or
 - c) other company in common ownership with the Insured
 - d) shareholder of the Insured or shareholder of any parent or subsidiary company or associated company of the Insured where such claim is in relation to the sharehold value of the Insured company or any parent or subsidiary company or associated company of the Insured

unless in respect of a) b) or c) such claim emanates from an independent third party
- 15) any claim by any person comprising the Insured under 'Insuring Clause 1' against any other person comprising the Insured
- 16) the supply of defective materials or defective workmanship by the Insured or its sub-contractors or the supervision by the Insured of its own or its sub-contractors work where such supply of defective materials or defective workmanship or supervision is undertaken in its capacity as Building or Engineering Contractor
- 17) dishonest or fraudulent acts or omissions committed by any person after discovery of such person's fraud or dishonesty or of reasonable cause for suspicion by the Insured of fraud or dishonesty on the part of that person. Nor shall this Policy indemnify any person committing or condoning any dishonest or fraudulent act or omission

- 18) any trading losses or trading liabilities incurred by any business managed or carried on by the Insured including loss of any client account or business
- 19) the Insured's E-activities (whether directly or indirectly and/or whether deliberate or otherwise) including the spreading of computer viruses and the like malicious and/or inappropriate E-mail and/or any breach of Data Protection Act or similar statutes laws or regulations

This exclusion does not apply to the erroneous transmission or non-transmission by the Insured of electronic messages drawings plans and other documents in the normal course of the Insured's business (as defined in the schedule) except where the cause of the claim or Circumstance is directly or indirectly attributable to a computer virus and the like malicious and/or inappropriate E-mail use and/or any breach of the Data Protection Act or similar statutes laws or regulations

CONDITIONS

- 1) It is a condition precedent to the Insured's right to be indemnified under this Policy that
 - a) in the event of a claim or the discovery of information that may give rise to a claim the Insured shall not admit liability and no admission arrangement offer promise or payment shall be made by the Insured without Underwriters prior consent
 - b) the Insured shall give to the person(s) named for this purpose in the schedule under the heading 'Notification of Claims' immediate notice in writing of
 - i) any claim first made against the Insured during the Policy Period
 - ii) any Circumstance of which the Insured shall first become aware during the Policy Period
 - iii) the discovery of any loss that is likely to be the subject of indemnity hereunder
 - iv) the discovery of any reasonable cause for suspicion of any dishonesty or fraud on the part of a present partner or director or employee of the Insured whether giving rise to a claim or loss under this Policy or not

Such notice having been given as required in 1) b) ii) or iii) or iv) above during the Policy Period any subsequent claim arising from such Circumstance or loss shall be deemed to have been made during the Policy Period provided however that this deeming provision shall only have effect if the Insured complies within a reasonable time and at the Insured's own expense

- A) with the Underwriters standard requirement hereby stated that the notification should state precisely why a claim is likely and if so from whom
- B) with any reasonable request by the Underwriters for further information in relation to the matters notified
- C) with any request by the Underwriters, reasonable by reference to the risk and potential amount of any consequent claim for steps to be taken to reduce or avert the said risk

For the avoidance of doubt no other condition of this Policy shall have the effect of limiting the Underwriters right to refuse to give effect to this deeming provision in the event of a failure by the Insured to comply with a request under 1) b) ii) iii) or iv) above

- c) following notification of a claim or Circumstance Underwriters shall be entitled at their discretion to take over and conduct in the name of the Insured the investigation defence or settlement of any such matter

Nevertheless neither the Insured nor Underwriters shall be required to contest any legal proceedings unless a Queens Counsel (to be mutually agreed upon by the Insured and Underwriters) shall advise that such proceedings should be contested

- d) it is a condition precedent that every letter of claim writ or summons shall be forwarded unanswered to the persons named in the schedule immediately that they are received. The Insured shall at all times in addition to their obligations set out above provide such information and co-operation and respond within such times as to allow Underwriters to comply with relevant practice directions and protocols as may be issued from time to time by the Head of Civil Justice and the timetables contained therein

- e) it is a condition precedent that the Insured shall at their own expense give all such assistance and information within the timescale that Underwriters may reasonably require
- 2) It is a condition precedent to the Insured's right to be indemnified under this policy that the Insured has and will continue to use its best endeavours to ensure that all sub contractors and/or sub consultants appointed by the Insured and/or for whom the Insured are responsible as a professional maintain Professional Indemnity Insurance to a level of not less than £500,000
In the event that the Insured are not able to verify the existence of such Insurance the Insured undertake to inform Underwriters as soon as practicable and furnish Underwriters with such additional information as may be reasonably requested
It is further understood and agreed that in such circumstances Underwriters will be entitled to charge an additional premium
- 3) Underwriters may at any time pay to the Insured the amount of the Limit of Indemnity (less the Excess and any sum already paid or expended during the Policy Period) or any lesser amount for which in Underwriters opinion any claim or claims can be settled and any related Defence Costs incurred and consented to for any claim and such payment shall be deemed to be a total and full discharge of Underwriters liability for that claim
Underwriters shall not be responsible for any loss that the Insured may claim to have sustained by reason of Underwriters having so acted
- 4) If any payment is made under the terms of this Policy the Insured grants to Underwriters all rights of recovery against any parties from whom recovery may be made. However Underwriters agree to waive any rights of recovery against any employee or former employee of the Insured unless liability has resulted in whole or in part from a dishonest fraudulent criminal or malicious act or omission on the part of any such employee
- 5) If the Insured notifies any claim knowing it to be false or fraudulent as regards amount or otherwise this Policy shall become void and all claims hereunder shall be forfeited
- 6) Any claim or claims resulting from one and the same act error or omission or a series of acts errors or omissions arising out of the same proximate cause shall for the purpose of the Limit of Indemnity and the Excess under this Policy be treated as a single claim
- 7) For the avoidance of doubt it should be noted that the indemnity afforded under the terms of this Policy is provided jointly to all parties constituting the Insured as defined herein and for all purposes this Policy shall be considered as a joint Policy with a single Limit of Indemnity
- 8) Any dispute or difference between the Insured and Underwriters arising from this Policy shall be referred to a Queen's Counsel of the English Bar to be mutually agreed upon between Underwriters and the Insured or to any other party as may be mutually agreed
The dispute shall be arbitrated in accordance with the statutory provisions as to arbitration for the time being in force. The findings of the appointed arbitrator shall be binding upon Underwriters and the Insured and the costs of such an exercise shall be allocated by the arbitrator on the basis he/she considers fair and equitable
- 9) The parties are free to choose the law applicable under this contract but unless specifically agreed to the contrary this Policy is subject to English law
- 10) The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The



subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.