

Computer Contractor's Scheme Professional Indemnity Insurance

Policy Wording

This is a "claims made" Policy. This insurance only covers Claims reported to Insurers during the Period of Insurance.

1. INSURING CLAUSE

The Insured having made a proposal and declaration and having paid or agreed to pay the Premium, The Insurer will indemnify the Insured to extent stated herein against any Claim for which the Insured may become legally liable, first made against the Insured and notified to the Insurer during the Period of Insurance arising out of the professional conduct of the Insured's Business Activity alleging:

- a. negligence or breach of duty of care;
- b. negligent misstatement or negligent misrepresentation;
- c. unintentional infringement of intellectual property rights including copyright, patent, registered design right or breach or misuse of confidential information;
- d. defamation;
- e. loss of documents;
- f. dishonesty of employees excluding any claim or loss resulting from the dishonest, fraudulent, criminal or malicious acts or omissions committed after the Insured could reasonably have discovered or suspected improper conduct by the employee. No indemnity will be provided to any person committing or condoning any dishonest, fraudulent, malicious or criminal acts or omissions.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Policy, unless the context otherwise requires, the following words and expressions shall bear the meaning set out below:

Broker means Trafalgar Risk Management Limited, The Lloyds Building, 12 Leadenhall Street, London EC3V 1LP.

Business Activity means the activity(ies) shown in the Schedule, which the Insured performs in the ordinary course of business as a Computer Contractor for which the Insured is remunerated.

Claim means any one claim or series of claims arising from a circumstance or occurrence or a series of circumstances or occurrences consequent upon or attributable to one source or original cause.

Defence Costs means costs and expenses incurred by or on behalf of the Insured with the Broker's consent and agreement to investigate, settle or defend a Claim against the Insured.

Document means agreements, plans, records, deeds, books, letters, certificates, documents or forms of any description whether written, printed or reproduced by any other method or means excluding bearer bonds or coupons, stamps, bank or currency notes or other negotiable instruments.

Excess means the amount stated in the Schedule which the Insured must bear in Defence Costs before the Insurer is liable to make any payment under this Policy.

Inception Date means the date on which the Insured's insurance cover commences as specified in the Schedule.

Insured means the individual person, partner, company, firm or organisation (and any subsidiary company or other associated organisation) named in the Schedule including all directors, partners and employees engaged in the Insured's Business Activity.

Insurer means AmTrust Europe Limited, Market Square House, St. James's Street, Nottingham, NG1 6FG.

Limit of Indemnity means the maximum amount recoverable under this Policy as stated in the Schedule. The Limit of Indemnity shall include all costs and expenses incurred with the Insurer's consent and agreement in the investigation, settlement or defence of any Claim for which the Insurer's liability under this Policy is engaged.

Period of Insurance means from the Inception Date to the date on which insurance cover ceases as stated in the Schedule.

Policy means this policy of insurance between the Insurer and Insured together with the Schedule and Proposal.

Premium means the amount payable by the Insured for this Policy together with Insurance Premium Tax (IPT) as stated in the Schedule.

Proposal means the proposal for insurance provided under this Policy including any documentation or information submitted in support by the Insured to the Broker.

Schedule means the schedule of insurance issued by the Broker specifying inter alia the Policy number, Premium, the Insured's name, the Insured's Business Activity, the Limit of Indemnity and the Period of Insurance.

Territorial Limits means worldwide excluding USA and Canada their Dominions or Protectorates or as varied or excluded in the Schedule.

2.2 This Policy and Schedule shall be read together.

2.3 The headings are for ease of reference only and do not affect its interpretation.

2.4 References to any statute, statutory provision, Order or Rule include a reference to that legislation or those Rules as amended, extended, consolidated or replaced from time to time (whether before, on or after the Inception Date of this Policy) and include any former legislation or Rules which it re-enacts, consolidates or replaces and any order, regulation, instrument or other subordinate legislation made under the relevant legislation or rules.

2.5 Unless the context otherwise requires, words denoting the singular shall include the plural and vice-versa, references to any gender shall include all other genders.

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3. INSURANCE

Observance of Terms

The Insured must observe and comply with the terms and conditions of this Policy. Any term or condition of this Policy insofar as it relates to anything to be done or complied with by the Insured shall be conditions precedent to the Insurer's liability to make any payment under this Policy.

- 3.1 Subject to the terms and conditions of this Policy, the Insurer agrees to indemnify the Insured against the payment of Defence Costs up to the Limit of Indemnity stated in the Schedule arising from Claims made within the Territorial Limits.
- 3.2 The Insurer shall only be liable to bear VAT to the extent that VAT is irrecoverable by the Insured. For the avoidance of doubt, any element of VAT which the Insurer is obliged to pay shall be encompassed within the Limit of Indemnity.
- 3.3 If the Insured is adjudged bankrupt or deemed insolvent during the Period of Insurance, the Insurer reserves the right to withdraw cover under the Policy in which case the Insurer shall have no liability to make any payment in respect of Defence Costs.

4. EXCLUSIONS

- 4.1 Any Claim or loss involving death or bodily injury to any person or physical loss or damage to property (except in so far as indemnified by the Loss of Documents extension).
- 4.2 Any Claim, potential Claim or circumstance known to the Insured prior to inception of this Policy and which the Insured knew or ought reasonably to have known might result in a Claim against the Insured.
- 4.3 Any Claim made against the Insured from an entity in which the Insured exercises a financial or managerial interest.
- 4.4 Any Claim arising from the Insured's insolvency or impecuniosity or lack of financial resources.
- 4.5 Any Claim arising from services undertaken prior to the Insured's incorporation.
- 4.6 Any Claim, potential Claim or circumstance which has or ought to have been notified under any other policy of insurance prior to the Inception Date.
- 4.7 Any Claim made against any Insured by any other Insured.
- 4.8 Any fines, penalties, punitive or exemplary damages or other non-compensatory damages the Insured is ordered to pay by a Court.
- 4.9 Any Claim, potential Claim or circumstance in respect of which the Insured is, or would be but for the existence of this Policy, entitled to indemnity under any other policy of insurance.
- 4.10 Any fees claimed back or withheld by a customer of the Insured arising from non-performance of the Insured's contractual obligations unless such fees form part of a compromise settlement of a Claim.
- 4.11 Any Claim arising out of the Insured's contractual liability unless such liability would have existed and/or attached in the absence of such contract or agreement.
- 4.12 Any Claim arising from the sale and/or supply of hardware other than advice provided in connection therewith.
- 4.13 Any Claim arising from the recommendation of any goods or products where their use is not in accordance with the manufacturer's specification.
- 4.14 Any Claim arising from the manufacture, installation, maintenance or servicing of any product sold, supplied or distributed by the Insured.
- 4.15 Any Claim arising from obscenity, blasphemy or pornographic material.
- 4.16 Any Claim, potential Claim or circumstance emanating from within the United States of America or Canada or any territories which are within the jurisdiction of the United States of America or Canada.
- 4.17 Any Claim arising from date recognition failure.
- 4.18 Any Claim arising from the Insured's loss or distortion of electronically held data.
- 4.19 Any Claim involving asbestos.
- 4.20 Nuclear risks:
 - 4.20.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - 4.20.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 4.21 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government, or public or local authority, any act or acts of terrorism, force of violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation. The burden of proving that a Claim does not fall within this exclusion shall be upon the Insured.
- 4.22 Transmission of a computer virus arising out of the exercise and conduct of the Business Activity.

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- 4.23 Any inherent or latent defect in any software, hardware, firmware, cabling or electronic equipment supplied by the Insured directly or via a third party.
- 4.24 Any contract where the Insured has failed to take reasonable steps, either before or during the contract, to ensure they could meet the requirements of the contract having regard to the resources and skills available to them.
- 4.25 Any Claim arising from any contract where the Insured does not either exclude or limit their liability in respect of loss of data, software, profits, turnover, revenue, sales or any other consequential loss, where it was reasonable for them to do so.
- 4.26 Any contract where the Insured and/or others acting on behalf of the Insured undertake to host any web-site and/or host any chat room. However, this exclusion shall not apply to advice given under contract by the Insured in relation to the hosting of any web-site and/or hosting of any chat room.
- 4.27 Any claim howsoever arising relating to down time. It being understood and agreed that the onus of proof that any claim does not howsoever relate to down time shall be upon the Insured.

5. CLAIMS CONDITIONS

- 5.1 It is a condition precedent to the Insurer's liability to indemnify the Insured that the Insurer is notified in writing within 30 days of any circumstance, act, alleged act, omission or any other event giving rise to or may give rise to a Claim as soon as such is known by the Insured. In any event, such notification must be made during the Period of Insurance.
- 5.2 The Insured shall not admit liability or attempt to compromise, settle or defend a Claim without the Insurer's prior written consent.
- 5.3 The Insurer and Broker reserve the right, but not the obligation, to take control of and conduct in the Insured's name the investigation, settlement or defence of any Claim.
- 5.4 Legal proceedings against the Insured will only be defended if in the opinion of the Insurer there is a reasonable prospect of success after taking account of the commercial considerations and economics of defending such Proceedings.

6. SUBROGATION

- 6.1 The Insurer shall be subrogated to the Insured's rights of recovery in relation to any claim or loss paid or payable under this Policy. The Insured shall co-operate fully with the Insurer in connection with any action which may be necessary to enforce any rights, remedies, relief or indemnity from other parties arising from the Insurer's rights of subrogation.

7. NON-DISCLOSURE AND MISREPRESENTATION

- 7.1 For the avoidance of doubt The Insurer shall be entitled to void the Policy ab initio where there has been any non-disclosure of material facts or untrue statements made by the Insured prior to or at inception or at any time during the the Period of Insurance.

8. ASSIGNMENT

- 8.1 The Insured shall not be entitled to assign the benefit of this Policy without the Insurer's prior written consent.
- 8.2 This Policy shall be for the exclusive benefit of the Insured and that in no event shall anyone other than the Insured have any right of action under this Policy.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 9.1 Unless expressly stated nothing in this Policy will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Policy.

10. CANCELLATION

- 10.1 This Policy may be cancelled by the Insurer or on its behalf on 30 days written notice of cancellation to the Insured with an adjustment of Premium such that the Insurer receives or retains pro-rata Premium.
- 10.2 This Policy may be cancelled by the Insured on giving written notice to the Broker with an adjustment such that the Insurer receives or retains Premium at the short-term cancellation rate.
- 10.3 No return of Premium will be made to the Insured where a Claim or potential claim has been notified during that Period of Insurance.

11. COMMUNICATIONS

- 11.1 All communications and notices to the Insurer, and the Broker shall be deemed duly given if sent by first class post. All communications and notices to the Insured shall be deemed to have been duly given if sent by first class post to the Insured at his last known address.

12. GOVERNING LAW

- 12.1 This Policy shall be subject to and construed in accordance with the laws of England and Wales.

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IMPORTANT INFORMATION

CLAIMS NOTIFICATION

Initial notification of a Claim or potential Claim and request for a claim form must be made by the Insured in writing to the Insurer via:

Trafalgar Risk Management Ltd
The Lloyds Building
12 Leadenhall Street
London
EC3V 1LP

Tel: 0333 800 0000
Fax: 0333 800 0001

e-mail: info@trafalgar.uk.com

COMPLAINTS PROCEDURE

We aim to provide a first class service at all times. If you have a complaint concerning the service you have received, please contact the Managing Director at Trafalgar Risk Management Limited.

If your complaint remains unresolved please write to:

The Managing Director
AmTrust Europe Limited
Market Square House
St. James's Street
Nottingham NG1 6FG

The Insurer will endeavour to resolve the matter within 8 weeks. If the Insurer has not resolved the issue to your satisfaction within that time, you can refer the matter to:

The Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

AmTrust Europe Limited and Trafalgar Risk Management Limited are authorised and regulated by the Financial Services Authority. The Insurer is covered by the Financial Services Compensation Scheme (FSCS). Further information concerning the Scheme is available from the Financial Services Authority.

This complaints procedure does not affect your statutory or legal rights you may have to take action against the Insurer.