

Miscellaneous
Professional Indemnity Insurance Policy

Underwritten by W.R. Berkley Insurance (Europe), Limited



PROFESSIONAL INDEMNITY INSURANCE POLICY

IMPORTANT NOTICE TO THE INSURED

This insurance is a legal contract. Please read it carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Insurance Broker or other intermediary who arranged this insurance should be contacted immediately if any correction is necessary. Your attention is particularly drawn to the notice that appears overleaf.

NOTICE TO THE INSURED

It is always our intention to provide a first class standard of service. However, if you have any cause for complaint or you wish to make any enquiry regarding this insurance you should, in the first instance, contact the Insurance Broker or other intermediary who arranged this insurance for you. Alternatively you may contact ourselves at the following address:

Compliance Officer,
W.R. Berkley Insurance (Europe), Limited
6th Floor
40 Lime Street
London
EC3M 7AW

If you are not satisfied with the way a complaint has been dealt with you have the right to request that the Financial Ombudsman Service ("FOS") review your case. Their address is:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR
Telephone: 0845 080 1800
www.financial-ombudsman.org.uk

There are, however, some circumstances in which the FOS is not empowered to consider complaints.

If you contact the FOS in respect of any complaints, this will not affect any rights you have in law.

"THIS IS A CLAIMS MADE AND CIRCUMSTANCE NOTIFIED INSURANCE"

The INSURED having made a written proposal to INSURERS bearing the date shown in the SCHEDULE containing particulars and statements which it is hereby agreed are the basis of this insurance and are to be considered as incorporated herein, and in consideration of the INSURED having agreed to pay the premium shown in the SCHEDULE, INSURERS agree to indemnify the INSURED, subject to the terms, conditions, exclusions and limitations of this insurance.

1.1 Insuring Clause

INSURERS shall indemnify the INSURED, up to the INDEMNITY LIMIT, for the amount of any claim including claimant's costs and expenses first made against the INSURED and notified to INSURERS during the POLICY PERIOD in respect of any legal liability which arises out of the exercise and conduct of the BUSINESS.

1.2 DEFENCE COSTS

INSURERS shall also indemnify the INSURED for DEFENCE COSTS where such costs have been incurred with INSURERS' prior written consent. Such DEFENCE COSTS shall be payable in addition to the INDEMNITY LIMIT.

In the event that a settlement is made with any party in excess of the INDEMNITY LIMIT, INSURERS' liability in respect of DEFENCE COSTS shall be in the same proportion that the INDEMNITY LIMIT bears to the sum which would be payable by INSURERS but for the INDEMNITY LIMIT.

EXTENSIONS

The following extensions are granted as part of this insurance, subject to the terms, conditions, exclusions and limitations of this insurance.

2.1 Loss of or Damage to DOCUMENTS

In the event of physical loss of or damage to DOCUMENTS suffered and notified to INSURERS during the POLICY PERIOD, the INSURED is indemnified for any claim or reasonable and necessary costs and expenses incurred in replacing, restoring or reconstituting any DOCUMENTS which are the property of the INSURED or are in the INSURED's care, custody or control.

The maximum amount payable by INSURERS shall be £50,000 in the aggregate. An EXCESS of £1,000 each and every claim shall apply. Should the EXCESS shown in the SCHEDULE be less than £1,000 each and every claim then the EXCESS shown in the SCHEDULE shall apply.

2.2 Infringement of Copyright or Patents

The INSURED is indemnified for reasonable DEFENCE COSTS incurred during the POLICY PERIOD with INSURERS' prior written consent (not to be unreasonably withheld) in the defence of any injunction and/or proceedings in respect of infringement or alleged infringement of any copyright or patents or other intellectual property rights vested in or otherwise enjoyed by the INSURED.

The maximum amount payable by INSURERS shall be £50,000 in the aggregate. An EXCESS of £1,000 each and every claim shall apply. Should the EXCESS shown in the SCHEDULE be less than £1,000 each and every claim then the EXCESS shown in the SCHEDULE shall apply.

2.3 Joint Venture/Consortium

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD which the INSURED may become legally liable to pay, whether jointly or severally, which arises out of the exercise and conduct of the BUSINESS whilst a member of a joint venture or consortium where such joint venture or consortium together with the turnover/fees of the joint venture or consortium (not just the INSURED's proportion) has been declared to INSURERS, whether or not the joint venture or consortium is conducted through a separate legal entity.

2.4 Self Employed Persons

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD which the INSURED may become legally liable to pay, arising out of the use of self employed or contract hire persons in the exercise and conduct of the BUSINESS. The use of individual persons need not be disclosed to INSURERS, but details of payments to such persons must be declared to INSURERS at renewal of this insurance. For the purpose of this insurance such persons are deemed to be employees of the INSURED.

2.5 Indemnity to Employees, Former Employees and/or Consultants

Employees or former employees of the INSURED are indemnified for any claim first made against them and notified to INSURERS during the POLICY PERIOD which arises out of the exercise and conduct of the BUSINESS.

Former partners, former directors or former employees of the INSURED who have continued as consultants to the INSURED and any persons who were formerly consultants to the INSURED are indemnified in respect of any claim first made against them and notified to INSURERS during the POLICY PERIOD which arises out of the exercise and conduct of the BUSINESS.

2.6 Defamation, Libel and Slander

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD in direct consequence of any defamation, libel or slander by the INSURED which arises out of the exercise and conduct of the BUSINESS.

An EXCESS of £1,000 each and every claim shall apply, unless the EXCESS shown in the SCHEDULE is greater than £1,000 each and every claim, in which event the EXCESS shown in the SCHEDULE shall apply.

2.7 Dishonesty of Employees

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD which arises out of the exercise and conduct of the BUSINESS brought about, or contributed to, by the fraudulent, criminal or malicious act or omission of any person at any time employed by the INSURED provided that:-

2.7.1 no person committing such fraudulent, criminal or malicious act or omission shall be entitled to indemnity

2.7.2 any monies which but for such fraudulent, criminal or malicious act or omission would be due from the INSURED to the person committing such act, or any monies held by the INSURED and belonging to such person, shall be deducted from any amount payable under this insurance.

CLAIMS CONDITIONS

The following claims conditions apply to this insurance:-

3.1 Conditions Precedent to Liability

All conditions set out below (3.2 – 3.5 inclusive) are deemed to be conditions precedent to INSURERS' liability under this insurance.

3.2 Discovery of a Claim or CIRCUMSTANCE

3.2.1 If during the POLICY PERIOD the INSURED receives notice of any claim that is indemnifiable under this insurance other than any claim provided for in 3.2.2, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS as soon as practicable

3.2.2 If during the POLICY PERIOD the INSURED receives a LETTER OF CLAIM, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS as soon as practicable and in any event within 7 working days from receipt of such LETTER OF CLAIM and not later than expiry of the POLICY PERIOD

3.2.3 If during the POLICY PERIOD the INSURED becomes aware of any CIRCUMSTANCE, the INSURED shall give notice (in accordance with condition 3.3) to INSURERS of such CIRCUMSTANCE as soon as practicable
INSURERS agree that any CIRCUMSTANCE notified to them during the POLICY PERIOD which subsequently gives rise to a claim after expiry of this insurance shall be deemed to be a claim first made during the POLICY PERIOD.

3.3 Notice

Notice to INSURERS under condition 3.2 shall not be valid unless it has been received in writing by the persons shown in the SCHEDULE.

3.4 Admission of Liability

In the event of any claim or CIRCUMSTANCE, the INSURED shall not admit liability and no admission, offer, promise or payment shall be made by the INSURED without INSURERS' prior written consent.

3.5 Conduct of Claims

Following notification of any claim or CIRCUMSTANCE, INSURERS shall be entitled to take over and conduct in the name of the INSURED the investigation, defence or settlement of any such matter. The INSURED shall CO-OPERATE with and give all such assistance as INSURERS may reasonably require.

If the INSURED and INSURERS cannot agree a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution), the dispute will be resolved by the operation of condition 4.3.

GENERAL CONDITIONS

The following general conditions apply to this insurance:-

4.1 Retroactive Date

Where a retroactive date is specified in the SCHEDULE, this insurance shall not indemnify the INSURED for any claim notified to INSURERS and arising out of the exercise and conduct of the BUSINESS prior to the said retroactive date.

4.2 Subrogation

If any payment is made by INSURERS, the INSURED grants to INSURERS all rights of recovery against any parties from whom a recovery may be made and the INSURED shall take all reasonable steps to preserve such rights. However, INSURERS agree to waive any rights of recovery against any employee of the INSURED or former employee, self employed person or consultant of the INSURED unless liability has resulted in whole or part from any act or omission on the part of such person which is dishonest, fraudulent, criminal or malicious.

4.3 Insurance Disputes

This insurance is governed by the laws of England and Wales. Any dispute or difference between the INSURED and INSURERS arising from this insurance shall be referred for determination to Senior Counsel of the English Bar, to be mutually agreed between INSURERS and the INSURED, or any other person as may be mutually agreed. In the event of disagreement regarding the appointment, the Chairman of the Bar Council shall appoint a suitable person. The findings of the agreed or appointed person shall be binding on INSURERS and the INSURED, and the cost of such referral shall be allocated by the agreed or appointed person on a fair and equitable basis.

4.4 Claim Settlements

INSURERS may at any time pay to the INSURED in connection with any claim or claims the INDEMNITY LIMIT (less any sums already paid) or any lesser sum for which such claim or claims can be settled and upon such payment INSURERS shall not be under any further liability in respect of such claim or claims except for DEFENCE COSTS incurred prior to such payment with INSURERS' prior written consent.

4.5 Contracts (Rights Of Third Parties) Act 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999, and for the avoidance of doubt:

4.5.1 this insurance is not intended to confer any enforceable rights upon any third party, whether or not an interest of such third party is acknowledged by INSURERS

4.5.2 the parties to this insurance shall be entitled to rescind or vary this insurance without the consent of any third party, whether or not an interest of such third party is acknowledged by INSURERS

4.5.3 in the event of proceedings by a third party against INSURERS for the enforcement of any provision of this insurance, INSURERS shall have available to them any defence or set off which would have been available if the proceedings had been brought by the INSURED.

4.6 Several Liability Notice

The subscribing INSURERS' obligations under insurances 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 whatsoever does not satisfy all or part of its obligations.

4.7 Disclaimer of Liability by Insurers

In the event of INSURERS at any time being entitled to avoid this insurance ab initio by reason of any materially inaccurate or misleading information given to INSURERS in the written proposal or at any time during the negotiations leading to the inception of this insurance or as a result of failure to disclose material facts before the inception of this insurance or for any other reason at law, INSURERS may at their election instead of avoiding this insurance ab initio give notice to the INSURED that they regard this insurance as being of full force and effect except that there shall be excluded from the indemnity provided hereunder any claim which has arisen or which may arise out of any CIRCUMSTANCE which ought to have been disclosed to INSURERS in the written proposal or which arises out of materially inaccurate or misleading information given to INSURERS.

4.8 Data Protection Act 1998

It is understood by the INSURED that any information provided to INSURERS regarding the INSURED will be processed by INSURERS in compliance with the provisions of the Data Protection Act 1998 for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.

4.9 Cancellation

This insurance may be cancelled at any time by or on behalf of INSURERS by 60 days' notice given in writing to the INSURED at the INSURED's last known address or registered office (if a company) and the premium shall be adjusted on a pro rata basis.

4.10 Combined claims

Where the same original cause or single source or event gives rise to an entitlement on the part of the INSURED to indemnity under insuring clause 1.1 and any extension(s) under this insurance, the maximum amount payable by INSURERS under insuring clause 1.1 and such extension(s) shall not exceed the INDEMNITY LIMIT.

EXCLUSIONS

This insurance shall not indemnify the INSURED in respect of any liability for, or directly or indirectly arising out of, or in any way involving:-

5.1 EXCESS

The EXCESS. DEFENCE COSTS referred to in insuring clause 1.2 shall not be the subject of any EXCESS.

5.2 Liability involving Transport or Property owned by the INSURED

The ownership, possession or use by or on behalf of the INSURED of any aircraft, watercraft, hovercraft, motor vehicle or trailer or any buildings, structures, premises or land or that part of any building leased, occupied or rented by the INSURED or any property of the INSURED.

5.3 Liability arising out of Employment

Any injury, disease, illness (including mental stress) or death of any employee under a contract of service with the INSURED or any claim arising out of any dispute between the INSURED and any present or former employee or any person who has been offered employment with the INSURED.

5.4 Supply of Goods

The manufacture, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including the sale and/or supply of hardware and/or software by the INSURED.

5.5 Fraud, Dishonesty or Criminal Act

Any act, error or omission of any partner or director of the INSURED which is dishonest, fraudulent, criminal or malicious, or any claim where any person has committed a dishonest, fraudulent, criminal or malicious act after discovery by the INSURED of reasonable cause for suspicion that such act has been committed.

5.6 Controlling Interest

Any claim made against the INSURED by either:-

- 5.6.1 any entity in which the INSURED exercises a controlling interest, or
- 5.6.2 any entity exercising a controlling interest over the INSURED by virtue of having a financial or executive interest in the operation of the INSURED

unless such claim is made against the INSURED for an indemnity or contribution in respect of a claim made by an independent party against the said entities detailed in 5.6.1 or 5.6.2 and arises out of the exercise and conduct of the BUSINESS.

5.7 Liquidated Damages

Any claim in respect of liquidated damages or penalties due to liability assumed by the INSURED under any contract or agreement where such liability would not have existed in the absence of such contract or agreement.

5.8 Nuclear Risks

Any of the following:-

- 5.8.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- 5.8.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.9 War and Terrorism

Any of the following:-

- 5.9.1 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, 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
- 5.9.2 any act or acts of terrorism, force or 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
- 5.9.3 any action taken in controlling, preventing, suppressing or in any way relating to 5.9.1 and/or 5.9.2 above.

The burden of proving that a claim does not fall within this exclusion shall be upon the INSURED.

5.10 Area of Activities

Any work or activities undertaken by the INSURED outside the GEOGRAPHICAL LIMITS.

5.11 Jurisdiction

Any claim brought (or the enforcement of any judgement or award entered against the INSURED) in the courts of the United States of America and/or Canada or their Dominions or Protectorates.

5.12 Fines, Penalties, Punitive, Multiple or Exemplary Damages

Fines, penalties, punitive, multiple or exemplary damages, other than in respect of defamation, libel or slander where such have been identified separately within any judgement or award.

5.13 Loss of DOCUMENTS - Magnetic or Electrical Media

The physical loss of or damage to DOCUMENTS which are stored on magnetic or electrical media unless such DOCUMENTS are duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the DOCUMENTS to their original status.

5.14 POLLUTION

POLLUTION unless it was caused by a negligent act, negligent error or negligent omission by the INSURED and/or by others acting on behalf of the INSURED, provided that such POLLUTION was not caused by an intentional act of the INSURED.

In respect of any claim arising from POLLUTION the INDEMNITY LIMIT shall be amended to "each and every claim and in the aggregate" and not as shown in the SCHEDULE.

Furthermore, for the purposes of this clause only, DEFENCE COSTS shall not be paid in addition to but shall be included within the INDEMNITY LIMIT and shall be subject to the EXCESS shown in the SCHEDULE and not as stated in exclusion 5.1.

5.15 Directors' and Officers' Liability

Any claim arising from being a director, officer or trustee of the INSURED (as opposed to those duties and functions carried out in furtherance of the BUSINESS) or from the acceptance of any directorship or trusteeship in any other company not forming part of the INSURED.

5.16 Other Insurance

Any claim where the INSURED is entitled to indemnity under any other insurance(s) except in respect of any amount for which the INSURED would otherwise be entitled to indemnity under this insurance beyond the amount for which the INSURED is entitled to indemnity under such other insurance.

5.17 Previous Claims and Circumstances

Any claim or circumstance that may give rise to a claim which has been notified and accepted by insurers in respect of any other insurance attaching prior to the inception of this insurance or as disclosed as a material fact to INSURERS which formed the basis of this insurance or any claim or circumstance that may give rise to a claim of which the INSURED was or should have been aware prior to the inception of this insurance.

5.18 Trading Losses

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.

5.19 Failure to Arrange Insurance and/or Finance

Any consequential loss arising from the failure of the INSURED to arrange and/or maintain insurance and/or finance.

5.20 Asbestos

Any claim involving asbestos.

5.21 Electronic Data Recognition

Any claim:-

- 5.21.1 caused or contributed to by or arising from or in connection with any COMPUTER SYSTEM, whether or not the property of the INSURED, not being YEAR 2000 COMPLIANT, or
- 5.21.2 caused or contributed to by or arising from or in connection with any or any attempted correction, conversion, renovation, rewriting or replacement of any COMPUTER SYSTEM, related to YEAR 2000 COMPLIANCE.

5.22 Investment Advice

Any depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets, and any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments.

In addition, no cover shall be provided in connection with any investment advice given or services performed which have not been authorised where such authorisation is required under any statutory regulation by an appropriate statutory authority.

5.23 Pension Trustee Liability

The INSURED acting in the capacity of trustee, fiduciary or administrator of any employee-sponsored pension or superannuation scheme or superannuation programme.

5.24 Bodily Injury and/or Property Damage

Any claim arising out of injury, disease, illness (including mental stress) or death of any person(s) or loss of or damage to property (except as provided under extension 2.1) unless such claim arises directly out of any negligent act, negligent error or negligent omission by the INSURED arising from the exercise and conduct of the BUSINESS.

DEFINITIONS AND INTERPRETATIONS

Headings and notes are for information purposes only and are not to be construed as part of this insurance. Various words and phrases are used in this insurance and wherever they appear, whether they are used in the plural or singular form, they are deemed to have the meaning set out below:-

6.1 INSURED

Shall mean the corporate body or bodies named as the INSURED in the SCHEDULE including:-

6.1.1 Any predecessors in business

6.1.2 Any business for which the INSURED is legally liable in consequence of the INSURED'S acquisition of such business (whether partial or otherwise) prior to inception of this insurance provided INSURERS have been notified in writing of the existence of such other business and have not refused to insure it

6.1.3 Any office or division of the INSURED as specified above unless expressly stated otherwise.

6.2 BUSINESS

Shall mean advice given and service(s) performed by or on behalf of the INSURED as detailed in the SCHEDULE.

Where the INSURED is liable for a sub-consultant the definition of BUSINESS is extended to include any professional activities of the sub-consultant for which the INSURED is liable.

6.3 INSURERS

Shall mean the insurance companies or Lloyd's syndicates subscribing to this insurance.

6.4 SCHEDULE

Shall mean the document entitled "Schedule" that relates to this insurance.

6.5 INDEMNITY LIMIT

Shall mean the sum shown in the SCHEDULE which is available to indemnify the INSURED in respect of each claim provided always that where more than one claim arises from the same original cause or single source or event all such claims shall be deemed to be one claim and only one INDEMNITY LIMIT shall be payable in respect of the aggregate of all such claims.

6.6 POLICY PERIOD

Shall mean the period shown in the SCHEDULE plus any extensions to the period which may be granted by INSURERS.

6.7 DEFENCE COSTS

Shall mean all costs and expenses incurred in the investigation, defence or settlement of any claim or CIRCUMSTANCE notified under the terms of this insurance and/or the cost of representation at any enquiry or other proceedings which have a direct or indirect relevance to the investigation, defence or settlement of any matter notified under the terms of this insurance.

6.8 CIRCUMSTANCE

Shall mean information or facts or matters of which the INSURED is aware which is likely to give rise to a claim against the INSURED which the INSURED could become legally liable to pay and which arises out of the exercise and conduct of the BUSINESS.

6.9 DOCUMENTS

Shall mean project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and shall include computer software and systems records (electronic data shall be deemed to be physical property for the purposes of this insurance). This definition excludes bearer bonds, coupons, bank or currency notes and other negotiable paper.

6.10 EXCESS

Shall mean the sum shown in the SCHEDULE unless otherwise stated in this insurance and shall be the first amount of each claim which is payable by the INSURED. Where, however, more than one claim is made during the POLICY PERIOD which arises from the same original cause or single source or event then only a single EXCESS shall apply in respect of such claims.

6.11 LETTER OF CLAIM

Shall mean the Letter of Claim as detailed in any applicable Pre-Action Protocol.

6.12 CO-OPERATE

Shall mean that the INSURED

6.12.1 assists INSURERS and their duly appointed representatives to put forward the best possible defence of a claim within the time constraints available

6.12.2 shall have adequate internal systems in place, which will allow ready access to material information

6.12.3 shall at all times and at its own cost give to INSURERS or their duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Civil Procedure Rules, Practice Directions and Pre-Action Protocols and recoveries.

6.12.4 shall pay the EXCESS on demand of INSURERS or their duly appointed representatives to comply with any settlement agreed by INSURERS.

6.13 GEOGRAPHICAL LIMITS

Shall mean anywhere in the world excluding the United States of America and/or Canada or their Dominions or Protectorates or as varied in the SCHEDULE.

6.14 POLLUTION

Shall mean any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing HARM to any person or any living organism, into or onto any water, land or air.

6.15 HARM

Shall mean any harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, shall include offence caused to any of their senses.

6.16 COMPUTER SYSTEM

Shall mean any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode.

6.17 YEAR 2000 COMPLIANT/COMPLIANCE

Shall mean that neither performance nor functionality of the COMPUTER SYSTEM is affected by any changes prior to, during and/or after, the Year 2000. In particular:-

6.17.1 No value for current date will cause or give rise to any interruption in the operation of the COMPUTER SYSTEM

6.17.2 Date based functionality and performance must behave consistently for dates prior to, during and/or after, the Year 2000

6.17.3 In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferring rules

6.17.4 The Year 2000 must be recognised as a leap year.