

Brit Insurance Limited Design & Construct (Aggregate) Professional Indemnity Policy Wording

In consideration of the payment of premium specified in the Schedule the Insurer hereby agrees to insure against loss in accordance with the Policy terms and conditions.

This Policy, the Proposal, the Schedule including any Schedule issued in addition or substitution and any Endorsements or Memoranda 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.

Brit Insurance Limited is authorised and regulated by the Financial Services Authority
Member of the Association of British Insurers
Brit Insurance Limited is Registered in England and Wales No 2763688
Registered Office 55 Bishopsgate London EC2N 3AS

[BIL/D&C/0407/AGG/0252](#)

Basis of Insurance

On payment of the premium stated in the Schedule by the Insured to the Insurer the Insurer will subject to the provisions of this Policy indemnify the Insured as provided for within Section 1 The Policy Cover of this Policy.

The Proposal shall form the basis of this insurance contract and is incorporated herein.

Choice of Law

You and the Insurer are free to choose the law applicable to this contract but in the absence of agreement to the contrary, the law which will apply is the law of England and Wales.

Definitions And Interpretations

Various words and phrases have a standard meaning within this Policy and such meanings are defined in this section.

Any word or phrase which has a definition set out below is printed throughout this Policy in bold type. Where a more general meaning applies this will be apparent from the way it is used in this Policy.

Circumstance

Any Circumstance of which the Insured first becomes aware during the Policy Period which is likely to give rise to a claim against them and is subject to the indemnity provided under this Policy.

Defence Costs

All costs and expenses incurred with the prior written consent of the Insurer in the investigation, defence or negotiation of the settlement of any claim or Circumstance.

The Excess does apply to Defence Costs.

Documents

All forms of Documents of whatsoever nature including computer system records (provided the Insured maintains duplicates of computer system records).

Employee

Any person currently or previously employed under a contract of service with the Insured including partners, executive and non executive directors, consultants and temporary employees employed by the Insured.

Excess

The first amount of each claim which is payable by the Insured and for which no insurance is provided by this Policy.

The amount of the Excess is stated in the Schedule.

Firm

- (a) The Firm(s) identified as the Insured in the Schedule and named in the Proposal being either a partnership comprised solely of the partners and former partners, sole trader or corporate body.
- (b) Any firm(s) or business(es) or any subsidiary firm(s) or subsidiary business(es) for which the Insured is legally liable in consequence of their acquisition (whether partial or otherwise) either prior to the inception of this Policy or during the Policy Period provided the Insurer has been notified in writing of their existence and has agreed to insure such firm(s) or business(es).

Geographical Limits

Worldwide excluding USA and Canada, unless stated otherwise in the Schedule.

Insured

- (a) the Firm
- (b) any partner, director or principal of the Firm including any person appointed to such position during the Policy Period
- (c) any former partner, director or principal of the Firm
- (d) the estate, personal representatives or trustee or assignee in bankruptcy of (a), (b) and/or (c).

Insurer

Brit Insurance Limited.

Limit of Indemnity

The sum stated in the Schedule which applies in respect of all claims, inclusive of all costs and expenses including Defence Costs, for which indemnity is provided under this Policy. The Insurer's total aggregate liability shall not exceed the Limit of Indemnity during the Policy Period.

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 and for all purposes this Policy shall be considered as a joint policy with one Limit of Indemnity.

For the purposes of determining the Limit of Indemnity and the application of the Excess, all claims resulting from one and the same act, error or omission or a series of acts, errors or omissions arising out of the same cause or the acts, errors or omissions of one person or persons acting together or in which such person or persons is/are concerned or implicated shall be deemed to be one claim.

Policy Period

The period specified in the Schedule.

Policy

The contents of this document together with the Schedule incorporating all Endorsements issued from time to time by the Insurer to attach to this insurance together with the Proposal which shall all be read together as evidencing the contract of insurance.

Professional Business

The performance by the Insured of any professional

design or specification
supervision of construction
feasibility study
technical information calculation
surveying

undertaken only by or under the direction and direct control of a properly qualified architect, engineer or surveyor.

For the avoidance of doubt Professional Business does not include supervision by the Insured of its own or its subcontractors work where such supervision is undertaken in its capacity as Building or Engineering Contractor.

Proposal

The proposal for the insurance cover provided by this Policy including the proposal form identified in the Schedule together with any other documentation or information submitted to the Insurer for this purpose.

Schedule

The Schedule attaching to this Policy, incorporating all Endorsements.

Section 1 | The Policy Cover

The Insurer will indemnify the Insured in respect of:

1. Legal Liability

claims made against the Insured and notified to the Insurer during the Policy Period incurred in the conduct of the Insured's Professional Business which give rise to a legal liability as a result of :

- (a) breach of professional duty arising out of negligence on the part of:
 - (i) the Insured
 - (ii) any Employee
 - (iii) any specialist sub-contractor and/or sub-consultant acting on behalf of the Insured, under a written agreement, and for whom the Insured is responsible but subject always to the Insurer's rights under Condition 3(iii).
- b) libel and slander committed without intentional malice by
 - (i) the Insured
 - (ii) any Employee.
 - (iii) any specialist sub-contractor and/or sub-consultant acting on behalf of the Insured, under a written agreement, and for whom the Insured is responsible but subject always to the Insurer's rights under Condition 3(iii).
- (c) any dishonest or fraudulent act or omission on the part of:
 - (i) any Employee
 - (ii) any specialist sub-contractor and/or sub-consultant acting on behalf of the Insured, under a written agreement, and for whom the Insured is responsible but subject always to the Insurer's rights under Condition 3(iii)
- (d) any unintentional breach of confidentiality on the part of:
 - (i) the Insured
 - (ii) any Employee.

(iii) any specialist sub-contractor and/or sub-consultant acting on behalf of the Insured, under a written agreement, and for whom the Insured is responsible but subject always to the Insurer's rights under Condition 3(iii).

(e) any allegation of infringement of copyright, patent or registered design committed in good faith by:

(i) the Insured

(iii) any Employee.

(iii) any specialist sub-contractor and/or sub-consultant acting on behalf of the Insured, under a written agreement, and for whom the Insured is responsible but subject always to the Insurer's rights under Condition 3(iii).

In the case of any claim arising out of any dishonest or fraudulent act or omission the part of any Employee

(A) no person committing or condoning such dishonest or fraudulent act or omission shall be entitled to indemnity

(B) no indemnity shall be provided for dishonest or fraudulent acts committed by any person after discovery by the Insured thereof or reasonable cause for suspicion of fraud or dishonesty on the part of that person

(C) no indemnity shall be provided for dishonest or fraudulent acts committed by any partner or director of the Insured

(D) the following shall be deducted from any amount payable by the Insurer:-

(i) any monies which, but for such dishonest or fraudulent act or omission would be due from the Insured to the person committing or condoning such act or omission

(ii) any monies held by the Insured and belonging to such person

(iii) any monies recovered following action as described in Claims Condition 2(b)(iii).

2. Loss of Documents

any reasonable cost or expense incurred by the Insured (and to which the Insurer has consented) in replacing and restoring Documents either owned by or the responsibility of the Insured in the conduct of the Insured's Professional Business which are discovered lost or damaged and notified to the Insurer during the Policy Period.

For the purpose of this Clause only, the Excess payable by the Insured is GBP1,000, or equivalent currency, and the Limit of Indemnity shall be limited to GBP25,000, or equivalent currency, in all during the Policy Period. The equivalent currency exchange rate will be fixed at the time of any first payment applicable under this Clause.

3. Mitigation of Loss

any reasonable cost and expense incurred by the Insured in respect of any action taken to mitigate a loss or potential loss that otherwise would be subject of a claim under this Policy.

The onus of proving a claim under this Clause shall be upon the Insured who will be obliged to give prior written notice to the Insurer during the Policy Period of the intention to take action that will incur such loss.

4. Compensation for Court Attendance

the cost of attendance at any court of any of the undermentioned persons as a witness at the request of the Insurer in connection with a claim in respect of which the Insured is entitled to indemnity under clause 1 of the Policy Cover at the following rates per day on which attendance is required

(i) any principal, partner or director of the Insured GBP500

(ii) any Employee GBP200

PROVIDED THAT: -

(A) the liability of the Insurer in respect of all Policy Cover Clauses, including any Extensions, shall not exceed the Limit of Indemnity.

(B) in respect of any claim, costs or expenses, arising under Policy Cover Clauses 1, 3 and any Extensions, the Excess is payable by the Insured and the Insurer shall thereafter be liable to indemnify the Insured only in excess of such amount.

Section 2 | Conditions

1. Duties of the Insured

It is a condition of this Policy that:

- (a) the Insured must pay to the Insurer all premiums due to the Insurer together with all taxes due on the premiums
- (b) the Insured must not notify any claim knowing it to be false or fraudulent as regards amount or otherwise
- (c) beginning with the Insured's Proposal and continuing to the end of the Policy Period the Insured is under a continuing duty to disclose to the Insurer as soon as is reasonably practicable all material changes.

Any breach of Condition 1(a), (b) or (c) by the Insured will entitle the Insurer at their discretion to terminate this Policy from the date of inception and all claims shall be forfeited.

2. Claims Conditions Precedent to Liability

The following Conditions are Conditions precedent to the Insurer's liability. No claim will be paid unless full and complete adherence to these Conditions is maintained by the Insured.

(a) Notification

The Insured shall give notice to the Insurer, as soon as practicable, of:

- (i) any claim made against the Insured or
- (ii) any Circumstance or
- (iii) receipt of a notice that a dispute is being referred to adjudication or on becoming aware that a dispute is likely to be referred to adjudication under the Housing Grants Construction and Regeneration Act 1996, in which the Insured is named or likely to be named as respondent, or
- (iv) receipt, or awareness as appropriate, of full written details of the matters notified under (iii) above, including any subsequent correspondence or notices received.
- (v) the discovery of, or any reasonable cause for suspicion of, any dishonest or fraudulent act or omission on the part of

any Employee, specialist sub-contractor and/or sub-consultant or any person acting on behalf and with the authority of the Insured.

Notification of any claim or Circumstance is to be made via the Brit Claims Notification Line by:-

- Telephone on 0800 587 6713
- E-mail to britinsurance@cl-claims.com
- Fax on 029 2066 6382
- Post to Brit Insurance, Oakleigh House, 14-16 Park Place, Cardiff, CF10 3DQ

(Notwithstanding anything contained to the contrary, receipt of notice by the Insured's intermediary will not be treated as notice to the Insurer).

Provided that such notice as required in 2(a)(ii) and (iii) of this Condition has been given during the Policy Period, any resultant claim arising from such matters notified, shall be deemed to have been given during the Policy Period, provided however that this deeming provision shall only have effect if the Insured complies within a reasonable time and at their own expense with: -

- (1) the Insurer's standard requirement that the notification should state precisely why a claim is likely and if so, from whom, and
- (2) any reasonable request by the Insurer for further information in relation to the matters notified and
- (3) any request by the Insurer 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 Insurer's 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 2(a)(1), (2) and (3) above.

(b) Co-operation

Following notification of a claim or Circumstance, the Insured shall at their own expense: -

- (i) give all information and assistance within timescales reasonably required by the Insurer and
- (ii) make no admission of liability, arrangement, compromise, offer, promise or payment without the consent of the Insurer.

- (iii) if the Insurer so requests, take all reasonable steps to effect recovery from any person committing or condoning any dishonest or fraudulent act or omission or from the estate and/or legal representatives of such person.

Following notification that a dispute is being referred or is likely to be referred to adjudication under the Housing Grants Construction and Regeneration Act 1996, the Insured shall :-

- (iv) provide full and prompt co-operation to the Insurer, complying with all reasonable requests, particularly those relating to response times, and such co-operation shall extend to any subsequent challenge to the adjudicator's decision
- (v) not, without the prior written consent of the Insurer, make any admission in respect of the dispute being referred to adjudication or agree to accept the decision of the adjudicator as finally determining the dispute with no reference to legal proceedings, arbitration or alternative dispute resolution.

3. Insurer's Rights

Following notification of a claim or a Circumstance the Insurer will be entitled: -

- (i) at its discretion, to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter
- (ii) at any time, to 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 the Insurer's opinion, any claim or claims can be settled and shall then cease to have conduct and control of the claim or proceedings and be under no further liability in respect of such costs, claim or claims. The Insurer shall not be responsible for any loss which the Insured may claim to have sustained by reason of the Insurer having so acted
- (iii) to be subrogated to all rights of recovery the Insured may have against any party and the Insured shall do nothing to prejudice such rights. It is agreed however that the Insurer shall not exercise such rights against any Employee unless such claim has been

brought about or contributed to by the dishonest fraudulent criminal or malicious act or omission of the Employee.

Furthermore, following notification of a dispute which has been referred to adjudication under the Housing Grants Construction and Regeneration Act 1996, where the sums claimed exceed the Excess and where the Insurer based on the facts known to them considers the notification is covered in whole or in part by this Policy:

- (iv) the Insurer will agree to be responsible for the costs incurred in the defence and/or settlement of that part of the notification covered by this Policy and shall then be entitled to take over the defence and/or settlement of the dispute notified under Conditions 2(a)(iii) above.

No solicitors' or claims consultants' costs shall be met by the Insurer unless agreed by the Insurer prior to the appointment of those solicitors or claims consultants.

4. Administrative Conditions

(a) Policy Disputes

Any dispute or difference between the Insured and the Insurer arising from this Policy shall be referred to a Queen's Counsel of the English Bar whose identity shall be mutually agreed upon between the Insurer and the Insured or to any other party as may be mutually agreed.

The findings of the appointed Queen's Counsel (or the party as may be mutually agreed) shall be binding upon the Insurer and the Insured and the costs of such an exercise shall be allocated by the Queen's Counsel (or the party as may be mutually agreed) on the basis he/she considers fair and equitable.

(b) Cancellation

The Insurer may terminate this Policy by giving thirty days notice to the Insured with any appropriate refund of premium.

Section 3 | Exclusions

This Policy shall not indemnify the Insured in respect of any claim, loss, liability or expense arising directly or indirectly out of :-

1. Asbestos and Toxic Mould

or in any manner related to, asbestos and Fungi.

For the purposes of this clause, Fungi shall mean any fungus or mycota or any by-product or type of infestation produced by such fungus or mycota, but not limited to mould, mildew, mycotoxins, spores or any biogenic aerosols.

In any claim and in any action, suit or other proceedings to enforce a claim under this Policy, the burden of proving that such claim does not fall within this Exclusion shall be upon the Insured.

2. Bodily Injury and Property Damage

- (a) any bodily, mental or emotional injury, sickness, disease or death or
- (b) any loss of or damage to property, other than covered under Policy Cover Clause 2

of any third party unless such claim, loss, liability or expense arises from negligent advice, design or specification by the Insured.

3. Breach of Contract of Employment

any contract of service or obligation owed by the Insured as employer including any claim for wrongful or unfair dismissal.

4. Claims and Circumstances Known at Inception

any claim or Circumstance

- (a) known to the Insured prior to the inception of this Policy or which in the reasonable opinion of the Insurer ought to have been known or
- (b) notified to the Insurer, or any other insurer, by the Insured under any other insurance prior to the inception of this Policy.

5. Computer Network and Data Corruption

- (a) the corruption, erasure, theft, alteration of, or
- (b) the access or lack of access to, or

- (c) the interference with

electronically held data of or by the Insured wholly or partly caused by any computer virus or by any person who is not a partner, director or employee currently employed by the Insured or any specialist sub-contractor and/or sub-consultant acting on behalf of the Insured, under a written agreement, and for whom the Insured is responsible

6. Computer Records

loss, distortion or erasure of computer records

- (a) whilst mounted in or on any machine for use or processing unless caused by any negligent act or omission on the part of the Insured or
- (b) resulting from wear, tear, vermin or gradual deterioration or
- (c) caused by climatic or atmospheric conditions or extremes of temperature or
- (d) due to the presence of magnetic flux or due to loss of magnetism.

7. Controlling Interest/Associated Companies

any claim by

- (a) any parent or subsidiary company of the Insured or any company having the same parent company as the Insured or
- (b) any other company in which the Insured has a majority shareholding in excess of 50% or
- (c) any other company in common ownership with the Insured

unless such claim emanates from an independent third party.

8. Employers' Liability

bodily injury, sickness, disease or death sustained by any person arising out of and in the course of their employment by the Insured in any capacity.

9. Estimation of Construction Costs

the estimation of construction costs except where such estimates are compiled by professional qualified Quantity Surveyors.

10. Financial Advice

the effecting or maintenance of insurance and/or the provision of finance or advice on financial matters.

11. Geographical and Jurisdiction Limits

- (a) work in connection with any contract performed outside the Geographical Limits or
- (b) any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada or
- (c) any order made anywhere in the World to enforce any judgement, award, payment or settlement either in whole or in part, made in the courts of or under the laws of the United States of America or Canada.

12. Insolvency

the insolvency, bankruptcy or liquidation of the Insured.

13. Nuclear Risks and War/Terrorist Risks

or caused by, or contributed to by:-

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel, waste or substance
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportion of or amounting to a popular 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, or
- (d) any act or acts, or threat thereof, 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.

In any claim and in any action, suit or other proceedings to enforce a claim under this Policy, the burden of proving that such claim does not fall within this Exclusion shall be upon the Insured.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall continue to be in full force and effect.

14. Other Insurance

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.

15. Ownership of Buildings

the ownership by the Insured of any buildings, premises or land or that part of any building leased, occupied or rented by the Insured.

16. Pollution

pollution, seepage or contamination, howsoever caused.

17. Punitive or Exemplary Damages

any fines, penalties, punitive or exemplary damages.

18. Retroactive Date

any act, error or omission committed or alleged to have been committed prior to the Retroactive Date (if any) specified in the Schedule.

19. Supply of Goods

the manufacture, construction, alteration, repair, servicing or treating of any goods or product sold, supplied or distributed by the Insured even though the same might be carried on by the Insured in conjunction with their Professional Business.

20. Warranty or Guarantee

the giving by the Insured of any warranty or guarantee under a contract or agreement where liability arises out of any of the following terms contained in a warranty or any agreement :-

- (a) an express acceptance of, or guarantee of fitness for purpose, or similar provision

- (b) any express guarantee including any relating to the performance and/or the period of a project
- (c) any acceptance of liability for liquidated damages
- (d) any financial obligation assumed by the Insured under contract unless such liability would have attached to the Insured notwithstanding such express agreement.

Overriding Exclusion

A person who is not a party to this Policy has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party, which exists or is available apart from that Act.

Further Information

Data Protection Act 1998

We may store your information on a computer and use it for administration, risk assessment, research and statistical purposes, marketing purposes and for crime prevention (see further details below). We will only disclose your personal details to third parties, if it is necessary for the performance of your contract with us.

In order to assess the terms of the insurance contract or administer claims that arise, we may need to collect data that the Data Protection Act defines as sensitive, such as medical history or criminal convictions. By proceeding with this contract you will signify your consent to such information being processed by us or our agents.

We will keep your information secure at all times. In certain circumstances, for example for systems administration purposes, we may have to transfer your information to another country, which may be a country outside the European Economic Area (EEA). By proceeding with your insurance application, we will assume you are agreeable for us to transfer your information to a country outside the EEA.

Should you wish to receive a copy of the information we hold on you, please contact:

[The Compliance Officer](#)
[Brit Insurance Limited](#)
55 Bishopsgate,
London EC2N 3AS

Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Further information about compensation scheme arrangements is available from the FSCS.

[Financial Services Compensation Scheme](#)
7th Floor Lloyds Chambers
Portsoken Street
London
E1 8BN
Fax: 020 7892 7301

Complaints Procedure

We are dedicated to providing you with a high quality service and we want to ensure that we maintain this at all times. If you feel we have not offered you a first class service please write and tell us and we will do our best to resolve the problem.

[In the first instance please contact your broker or agent from whom you bought your policy of insurance.](#)

In the unlikely event you remain dissatisfied, please contact:

[The Customer Relations Manager](#)
[Brit Insurance Limited](#)
55 Bishopsgate, London EC2N 3AS

Tel: 020 7984 8600
Fax: 020 7984 8859
E-mail: customer.relations@britinsurance.com

In the event you wish to pursue matters further you may be able to refer the matter to The Financial Ombudsman Service. The Financial Ombudsman Service can normally deal with complaints from private individuals and from small businesses with an annual turnover of less than £1 million (for a group of companies, this means a group annual turnover of less than £1 million). The Financial Ombudsman Service can also help with complaints from charities with an annual income of less than £1 million; and from trusts with a net asset value of less than £1 million.

[The Financial Ombudsman Service](#)
South Quay Plaza
183 Marsh Wall, London E14 9SR

Helpline: 0845 080 1800
Switchboard: 020 7964 1000
Website: www.financial-ombudsman.org.uk

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Authorised and regulated by the Financial Services Authority
Member of the Association of British Insurers
Brit Insurance Limited is registered in England and Wales number 2763688

[BIL/D&C/0407/AGG/0252](#)

SCHEDULE

Policy Number:

Date of Proposal:

Insured (the name of the firm or company,
and in the case of a partnership the names
of all the present partners):

Address(es) of the Insured:

Insured's Professional Business
(as stated in Proposal):

Policy Period:

From:
(Both dates inclusive)

To:

Limit of Indemnity:

GBP

Excess:

GBP

Premium:

Geographical Limits:

Retroactive Date:

Endorsements:

As detailed herein

Signed:

On behalf of Brit Insurance Limited

Date: