

PROFESSIONAL INDEMNITY FOR THE MARKETING, ADVERTISING AND COMMUNICATIONS CONSULTANTS

The General Terms and Conditions and the following terms and conditions all apply to this section.

SPECIAL DEFINITIONS FOR THIS SECTION

Business activity	The activities shown in the schedule, which you perform in the course of your business .
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend a claim against you .
You / your	Also includes any person who was, is or during the period of insurance becomes your partner or director or senior manager in actual control of your operations.

WHAT IS COVERED

Claims against you

If during the **period of insurance**, and as a result of **your business activity** within the **geographical limits** for clients, any party brings a claim against **you** for:

- a. negligence or breach of a duty of care,
- b. negligent misstatement or negligent misrepresentation,
- c. infringement of intellectual property rights including copyright, patent, trademark, music rights, performance rights, broadcasting rights or moral rights or any act of passing-off,
- d. breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use,
- e. defamation,
- f. product disparagement or breach of any comparative advertising regulations,
- g. infringement of any right to privacy,
- h. dishonesty of **your** individual partners, directors, employees or self-employed freelancers directly contracted to **you** and under **your** supervision,
- i. any other civil liability but not any liability for dishonesty beyond that specifically set out above,

we will indemnify **you** against the sums **you** have to pay as compensation.

We will also indemnify **you** against the sums **you** have to pay as compensation if any party brings a claim against **you** during the **period of insurance** for infringement of intellectual property rights or defamation which is not a result of **your business activity** for clients but arises from the advertising or marketing of **your own business**.

We will pay **defence costs** but **we** will not pay costs for any part of a claim not covered by this section.

WHAT IS COVERED

Avoiding a potential claim against you

If **your** client has reasonable grounds for being dissatisfied with the work **you** have done, refuses to pay for any or all of it, including amounts **you** legally owe to subcontractors at the date of the refusal, and threatens to bring a claim against **you** for more than the amount owed, it may be possible to settle the dispute with the client by **you** agreeing not to press for the disputed amount. If so, **we** will pay **you** the amount owed to **you** at that time if **we** believe that this will avoid a legitimate claim for a greater amount and **we** have given **our** prior written approval to settling in this way and for this amount.

Alternatively, if it is not possible to reach agreement with the client on this basis but **we** still believe that by not pressing for the disputed amount **you** will avoid a legitimate claim or counterclaim for a greater amount, **we** will pay the amount owed to **you** at that time. If a claim is still brought, **we** will deal with it but **our** total payment, including what **we** have already paid **you** or on **your** behalf, will not exceed the applicable limit of indemnity shown in the schedule. **You** must return the amount **we** have paid if **you** eventually recover the debt less **your** reasonable expenses.

Once **we** agree to make this payment **you** will assign to **us** such rights as **you** have in relation to the amounts owed to **you**.

We will not make any payment for any part of a claim not covered by this section.

Your own losses

Potential claims capable of rectification

If while performing **your business activity you**, but not **your** client, become aware of anything covered by (a) to (g) above which is capable of being successfully rectified without leading to a claim against **you** by that client, **we** will pay the additional expenses directly incurred with **our** prior written consent in rectifying the problem. **We** will only do this if **we** agree that these expenses are less than the amount of a potential claim covered by this insurance which would have arisen if the problem was not rectified.

However in practice **we** accept that **you** are sometimes unable to obtain **our** approval due to time constraints or because the problem occurs out of office hours or **we** cannot give **our** consent due to lack of sufficiently detailed information. Therefore, if **you** satisfy **us** that **your** client has received the same level and quality of service or deliverables that they were originally entitled to, **you** have spent the minimum necessary to achieve this and these expenses were less than the amount of a potential claim covered by this insurance, **we** will pay these reasonable expenses provided that **you** have informed **us** of the problem within ten working days of the problem occurring and subsequently give **us** the information and documentation **we** require to support the expenses incurred and actions taken.

Acting outside your authority

If **your** client refuses to pay for media space or print time which **you** are legally committed to pay in the performance of **your business activity**, **we** will pay the amount **you** are committed to pay which **you** satisfy **us** cannot be legally recovered from **your** client. **We** will only do this provided:

1. the client is not liable to pay **you**,
2. **you** made this commitment in good faith in the belief that **you** had **your** client's authority to do so, and
3. **you** have taken all reasonable steps to reduce **your** loss.

Losses from dishonesty

If during the **period of insurance**, and in the performance of **your business activity** within the **geographical limits**, **you** suffer a loss from the dishonesty of **your** employees or self-employed freelancers directly contracted to **you** and under **your** supervision, where there was a clear intention to cause **you** loss or damage and to obtain a personal financial gain over and above any salary, bonus, or commission, **we** will indemnify **you** against **your** direct financial loss.

**WHAT IS NOT
COVERED**

**Matters specific to your
business**

- A. We** will not make any payment for any claim or loss directly or indirectly due to:
1. any investment of, or direct advice on the investment of, client funds.
 2. the outcome or operation of any game promotion, contest or lottery.
 3. anything shown or described in any advertising, educational or promotional material which results in any adverse change in a claimant's health, lifestyle or relationship with others.
 4. the mimicking in any way by anyone of anything shown in or described in any advertising, educational or promotional material.
 5. any stunt or other activity during the making or production of any advertising, educational or promotional material.
 6. any statement, representation or information concerning **you** or **your business** contained in **your** accounts, reports or financial statements.
 7. any obscenity, blasphemy or pornographic material.
 8. any product, including alcohol, tobacco, nicotine or any pharmaceutical product, which is, or becomes, defective, dangerous or hazardous to health in any way.
 9. **your** operation or administration of any pension or employee benefit scheme or trust fund, or the sale or purchase of or dealing in any stocks, shares or securities or the misuse of any information relating to them, or **your** breach of any legislation or regulation relating to these activities.
 10. **your** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
 11. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
 12. transmission of a computer **virus**.
 13. **your** liability under any contract which is greater than the liability **you** would have at law without the contract.
 14. any construction or erection work unless:
 - a. **you** sub-contracted the work to a specialist sub-contractor;
 - b. **you** have taken reasonable steps to ensure that the sub-contractor has and maintains adequate and appropriate insurance with a reputable insurer;
 - c. there is a written sub-contract between **you** and the sub-contractor which is subject to English law, includes an arbitration clause and provides that the sub-contractor will indemnify **you** against any liabilities **you** incur as a result of the sub-contractor's performance of the sub-contract.

**Construction and
erection work**

**WHAT IS NOT
COVERED**

**Matters insurable
elsewhere**

15. the death or any bodily or mental injury or disease suffered by anyone, unless arising directly from **your** breach of a duty of care in the performance of a **business activity**.
16. anyone's employment with or work for **you**, or any breach of an obligation owed by **you** as an employer or any kind of discrimination, harassment or unfair treatment.
17. the ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle.
18. the loss, damage or destruction of any tangible property, unless arising directly from **your** breach of a duty of care in the performance of a **business activity**.
19. the loss, damage or destruction of exposed or unexposed film, negative, prints or sound tapes or video tapes or visual images or sound held in any media or any library stock.
20. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
21. any personal liability incurred by a director or officer of **yours** when acting in that capacity or managing **your** business, or **your** breach of any fiduciary duty, other than when performing a **business activity** for a client.
22. **your** supply, manufacture, sale, installation or maintenance of any product.
23. any statement **you** knew, or ought reasonably to have known, was defamatory at the time of publication.
24. any act, breach, omission or infringement **you** deliberately, spitefully, dishonestly or recklessly commit, condone or ignore. This does not apply to any claim or **your** own loss under the dishonesty cover in WHAT IS COVERED, but **we** will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty.
25. any shortcoming in **your** work or **your** own loss which **you** knew about, or ought reasonably to have known about, before **we** agreed to insure **you**.
26. **date recognition**.
27. **war, terrorism or nuclear risks**.
28. **asbestos risks**.

**Deliberate, reckless or
dishonest acts**

Pre-existing problems

Date recognition

War, terrorism and nuclear

Asbestos

**Claims brought by
a related party**

- B. We will not make any payment for:**
1. any claim brought by an insured within the definition of **you** or any party with a financial, executive or managerial interest in **you**, including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third party directly arising out of the performance of **your business activity**.

Restricted recovery rights

2. that part of any claim where **your** right of recovery is restricted by any contract.

**WHAT IS NOT
COVERED**

Consequential loss

3. **your** lost profit, mark up or liability for VAT or its equivalent.
4. trading loss, trading liability, management time, lost time, lost business or commissions from any other client, potential client or account.

**Non-compensatory
payments**

5. fines, contractual penalties and also additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section.
6. aggravated, punitive or exemplary damages, unless the law where the claim is brought allows **us** to pay them.

**Claims outside the
applicable courts**

7. any claim, including arbitration, brought outside the countries set out in the schedule under Applicable Courts.
This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts.

**HOW MUCH WE
WILL PAY**

We will pay up to the limit of indemnity shown in the schedule unless limited below. **We** will also pay for **defence costs**. However, if a payment greater than the limit of indemnity has to be made for a claim **our** liability for **defence costs** will be limited to the same proportion that the limit of indemnity bears to the amount paid. **You** must pay the relevant **excess** shown in the schedule.

When **we** settle **your** own losses from dishonesty, **we** will deduct any sums **you** owe or the value of any property **you** hold belonging to the perpetrator.

All claims and losses which arise from the same original cause, a single source or a repeated or continuing shortcoming in **your** work will be regarded as one claim. This includes such claims and losses arising after, as well as during, the **period of insurance**.

Special limits

1. For claims and **your** own losses arising from dishonesty and from the physical loss or destruction of or damage to tangible property and from the death, disease or bodily or mental injury of anyone, the most **we** will pay is a single limit of indemnity for the total of all such claims, their **defence costs** and **your** own losses. **You** must pay the relevant **excess** shown in the schedule.
2. The most **we** will pay for the total of all amounts **you** are committed to pay due to acting outside **your** authority is the amount shown in the schedule. **You** must pay the relevant **excess** shown in the schedule.

**Paying out the limit
of indemnity**

At any stage of a claim **we** can pay **you** the applicable limit of indemnity or what remains after any earlier payment from that limit. **We** will pay **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for that claim or its **defence costs**.

YOUR OBLIGATIONS

If a problem arises

We will not make any payment under this section:

1. unless **you** notify **us** promptly of the following within the **period of insurance** or at the latest within 14 days after it expires for any problem **you** first become aware of in the seven days before expiry:
 - a. **your** first awareness of a shortcoming in **your** work for a client which is likely to lead to a claim against **you**. This includes any criticism of **your** work even though regarded by **you** as unjustifiable.
If **we** accept **your** notification **we** will regard any subsequent claim as notified to this insurance.
 - b. any claim or threatened claim against **you**.
 - c. any refusal by **your** client to pay any amount owed for media space or print time.
 - d. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any partner, director, employee or self-employed freelancer has acted dishonestly.
2. if, when dealing with **your** client or a third party, **you** admit that **you** are liable for what has happened, make any offer, deal or payment, unless **you** have **our** prior written agreement. **You** must also not reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your** client or have **our** prior written agreement.

CONTROL OF DEFENCE

We have the right, but not the obligation, to take control of and conduct in **your** name, the investigation, settlement or defence of any claim. If **we** think it necessary **we** will appoint an adjuster, solicitor or any other appropriate person to deal with the claim. **We** may appoint **your** own solicitor but on a similar fee basis as **our** solicitor and only for work done with **our** prior written approval. Proceedings will only be defended if there is a reasonable prospect of success and taking into account the commercial considerations of the costs of defence.