



**PROFESSIONAL INDEMNITY INSURANCE
FOR DESIGN AND CONSTRUCT**

POLICY WORDING

Specimen

**OUR PROMISE
TO YOU**

**PROFESSIONAL INDEMNITY FOR
DESIGN AND CONSTRUCT**

In return for the premium **you** have paid, **we** agree to insure **you** in accordance with the terms and conditions of this **policy**.

Signed for and on behalf of Hiscox Insurance Company Ltd:



Broniek Masojada
Managing Director

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**COMPLAINTS
PROCEDURE**

We pride ourselves on providing a first class, reliable and efficient service to all of **our** customers. Complaints are a key to monitoring **our** service and wherever possible, **we** seek to take action to prevent recurrence of a problem.

We define a complaint as any expression of dissatisfaction, whether oral or written, and whether justified or not, about a service or activity provided by the insurance company.

If **you** have a complaint, please contact **your** insurance broker in the first instance. If **your** complaint cannot be resolved satisfactorily by **your** insurance broker, please contact **our** customer services team:

Customer Services
Telephone: 0870 084 3777
Email: customerservices@hiscox.com

Hiscox Insurance Company Ltd, 1 Great St Helen's, London EC3A 6HX.

You may also, in accordance with the Rules of the Financial Services Authority, be able to refer **your** complaint to the Financial Ombudsman Service without affecting **your** legal rights. The address is:

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

Telephone: 0845 080 1800

DEFINITIONS

PROFESSIONAL INDEMNITY FOR DESIGN AND CONSTRUCT

Words shown in **bold** type have the same meaning wherever they appear in this policy.

Asbestos risks	<ul style="list-style-type: none"> a. the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, asbestos fibres or material containing asbestos; or b. exposure to asbestos, asbestos fibres or materials containing asbestos; or c. the provision of instructions, recommendations, notices, warnings, supervision or advice given, or which should have been given, in connection with asbestos, asbestos fibres or structures or materials containing asbestos
Business	Your business or profession as shown in the schedule.
Date recognition	Any failure by any equipment (including any hardware or software) to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date.
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend a claim against you .
Endorsement	A change to the terms of the policy .
Excess	The amount you must bear as the first part of each agreed claim.
Geographical limits	The geographical area shown in the schedule.
Nuclear risks	<ul style="list-style-type: none"> a. Any sort of nuclear material, nuclear reaction, nuclear radiation or radioactive contamination; b. any products or services which include, involve or relate in any way to anything in (a) above, or the storage, handling or disposal of anything in (a) above; c. all operations carried out on any site or premises on which anything in (a) or (b) above is located.
Period of insurance	The time for which this policy is in force as shown in the schedule.
Policy	This insurance document and the schedule, including any endorsements .
Terrorism	<p>An act, or the threat of an act, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, that:</p> <ul style="list-style-type: none"> a. Is committed for political, religious, ideological or similar purposes; and b. is intended to influence any government or to put the public, or any section of the public, in fear; and c. <ul style="list-style-type: none"> i. involves violence against one or more persons; or ii. involves damage to property; or iii. endangers life other than that of the person committing the action; or

**DEFINITIONS
(CONT.)****PROFESSIONAL INDEMNITY FOR
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- vi. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

Virus	A piece of unauthorised executable code which propagates itself through your computer system or network.
War	War, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.
We / us / our	Hiscox Insurance Company Limited.
You / your	The insured named in the schedule, and 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** within the **geographical limits** for clients, any party brings a claim against **you** for:

- a. negligence or breach of a duty of care arising from the performance of any design or specification, supervision of construction or installation, feasibility study, technical information calculation or survey performed by **you** or on **your** behalf by sub-contractors,
- b. infringement of intellectual property rights including copyright, patent, trademark or moral rights or any act of passing-off,
- c. inadvertent breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use,

or refers a dispute arising directly from matters covered above to adjudication under the Housing Grants Construction and Regeneration Act 1996,

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

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

Mitigation costs

If a problem arises which is capable of being rectified but which, if left, is likely to lead to a claim against **you** which would be covered by this **policy**, **we** will pay the expenses **you** reasonably and necessarily incur with **our** prior written consent in rectifying the problem to avoid the claim. **We** will only do this if **we** agree that these expenses are less than the amount of a potential claim. It is for **you** to satisfy **us** that **you** have acted reasonably in seeking to rectify the problem in this way. If, following rectification, a claim is still brought against **you**, **we** will deal with it but **our** total payment, including what **we** have already paid, will not exceed the limit of indemnity shown in the schedule.

Criminal proceedings

If **you** are charged with a criminal offence during the **period of insurance** under a statute or regulation that applies to **your business**, **we** will pay the reasonable costs incurred with **our** prior written consent to defend **you** if, in **our** opinion, a successful defence may avoid a claim which would be covered by this **policy**.

PROFESSIONAL INDEMNITY FOR DESIGN AND CONSTRUCT

WHAT IS NOT COVERED

Pre-existing problems

Matters specific to your business

Sub-contractors

Collateral warranties

- A. We** will not make any payment for any claim or cost directly or indirectly due to:
1. any shortcoming in **your** work or that of **your** sub-contractor, or any dispute in connection with a contract, which could lead to a claim or criminal proceedings being made against **you**, which **you** knew about, or ought reasonably to have known about, before the start of the **period of insurance**.
 2. any design, specification, supervision of construction or installation, feasibility study, technical information calculation, survey or inspection which is not carried out by or under the direct supervision of a properly qualified engineer, architect, surveyor or quantity surveyor, unless **you** have notified **us** and **we** have agreed in writing to cover it.
 3. any investment of, or direct advice on the investment of, client funds.
 4. **your** or **your** sub-contractor's defective workmanship, or any defective materials **you**, **your** sub-contractor or a third party have supplied, or **your** or **your** sub-contractor's failure to supervise or inspect the work **you** or **your** sub-contractor have carried out.
 5. any overcharging of fees or commission by **you**.
 6. **your** failure to obtain and maintain adequate insurance.
 7. **your** failure to obtain and maintain adequate financing for a project.
 8. any liability of **yours** connected with the provision of estimates for construction costs.
 9. **your** insolvency or financial difficulties or the insolvency or financial difficulties of any sub-contractor.
 10. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
 11. transmission of a computer **virus**.
 12. **your** failure to account for any money received.
 13. any acts or omissions of a specialist, designer or consultant working for **you** as a sub-contractor unless:
 - a. **you** have taken reasonable steps to ensure that the sub-contractor has, and maintains, professional indemnity insurance with a reputable insurer, and
 - b. there is a written contract between **you** and the sub-contractor which is subject to English or Scottish 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 contract.
 14. **your** agreement to take on any legal liability under any express agreement, warranty, indemnity, waiver or guarantee, unless:
 - a. **you** would be liable even if **you** had not given any such agreement, warranty, indemnity, waiver or guarantee; or
 - b. the liability arises from a Collateral Warranty or Duty of Care agreement, in which case **we** will not indemnify **you** for any liability arising from:
 - i. any fitness for purpose guarantee;

WHAT IS NOT COVERED (CONT.)

PROFESSIONAL INDEMNITY FOR DESIGN AND CONSTRUCT

- ii. any greater or longer lasting benefit than that given to the party with whom **you** originally contracted;
 - iii. any express guarantee, contractual penalty or liquidated damages;
 - iv. **your** agreement to exercise a standard of care greater than would normally be expected in **your** profession.
- Joint ventures** 15. activities carried out in the name of a consortium, joint venture or profit sharing scheme in which **you** are a party.
- Matters insurable elsewhere** 16. the death or any bodily or mental injury or disease suffered by:
- a. anyone employed by or working for **you** and arising out of their work for **you**;
 - b. anyone else, unless arising directly from any design, specification, feasibility study, technical information calculation or survey performed by **you** or on **your** behalf by sub-contractors.
17. the loss, damage or destruction of any tangible property, unless arising directly from any design, specification, feasibility study, technical information calculation or survey performed by **you** or on **your** behalf by sub-contractors.
18. 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, or any statement, representation or information concerning **you** or **your business** contained in **your** accounts, reports or financial statements.
- Deliberate, reckless or dishonest acts** 19. any act, breach, omission or infringement **you** deliberately, spitefully, dishonestly or recklessly commit, condone or ignore.
- Date recognition** 20. **date recognition**.
- War, terrorism and nuclear** 21. **war, terrorism or nuclear risks**.
- Asbestos** 22. **asbestos risks**
- B. We will not make any payment for:**
- Claims brought by a related party** 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**.
- Adjudication costs** 2. a claim referred to adjudication under the Housing Grants Construction and Regeneration Act 1996 where **your** contract with **your** client failed to provide that:
- a. an adjudicator will be appointed to resolve any disputes under the contract;
 - b. the adjudicator is independent of the parties to the dispute;
 - c. the decision of the adjudicator is not the final determination of the dispute;
 - d. the adjudicator cannot reach a decision on commercial considerations as opposed to the legal liabilities and obligations of the parties in dispute.

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WHAT IS NOT
COVERED (CONT.)

Restricted recovery
rights

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

Consequential loss

4. **your** lost profit, mark-up or liability for VAT or its equivalent.

5. any trading loss or trading liability including those arising from the loss of any client, account or business.

Non-compensatory
payments

6. fines and contractual penalties, aggravated, punitive or exemplary damages, additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section.

7. any costs awarded against **you** as a result of criminal proceedings.

Claims outside the
applicable courts

8. 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

The most **we** will pay for the total of all claims, their **defence costs** and any mitigation and criminal proceedings costs combined is the single limit of indemnity shown in the schedule, irrespective of the number of claims. **You** must pay the relevant **excess** for each claim including costs.

Special limit for criminal
proceedings

The most **we** will pay for the costs to defend all criminal proceedings is the amount shown in the schedule. This does not increase the limit of indemnity. **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. This includes **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for any claim or costs.

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.

PROFESSIONAL INDEMNITY FOR
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**YOUR
OBLIGATIONS**

**During the period of
insurance**

The obligations shown below are all conditions precedent to **our** liability. **We** will not make any payment under this insurance unless **you** comply with all the following requirements.

1. *Change of circumstances*

You must tell **us** as soon as reasonably possible of any change in circumstances during the **period of insurance** which may materially affect this **policy**. (A material fact or circumstance is one which might affect **our** decision to provide insurance or the conditions of that insurance.) **We** may then change the terms and conditions of this **policy**.

2. *Due diligence*

You must take reasonable steps to prevent accident or injury and to protect **your** property against loss or damage. **You** must keep any property insured under this **policy** in good condition and repair.

3. *Premium payment*

We will not make any payment under this **policy** unless **you** have paid the premium.

If a problem arises

We will not make any payment under this **policy**:

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 or that of **your** sub-contractor which is likely to lead to a claim or criminal proceedings being made 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. **your** first awareness of any actual or threatened criminal proceedings against **you**.

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.

3. unless, during an adjudication, **you** comply with any request, direction or timetable of the adjudicator.

4. unless **you** start, at **our** expense, any court or arbitration proceedings which **we** reasonably require to challenge, re-open or stay the enforcement of an adjudication decision.

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Notification for adjudication

In view of the strict timetable relating to an adjudication **YOU MUST NOTIFY US** by fax or electronic mail within two (2) working days of **your** receipt of any notice of an intention to adjudicate, or of **your** intention to serve such a notice which may lead to a claim against **you** being dealt with by adjudication.

You should make this notification directly to **us**, and not through **your** broker, as follows:

Claims Department
Hiscox Insurance Company Ltd.
1 Great St Helen's
London
EC3A 6HX

Fax: 020 7448 6298

Email: hicliability.claims@hiscox.com

We will not indemnify **you** under this insurance unless **you** comply with the above.

Specimen

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1. *Basis of insurance*

Because of its importance, all information which **you** or anyone on **your** behalf provided before **we** agreed to insure **you** is incorporated into and forms the basis of this **policy**.

All facts and matters which might be relevant to **our** consideration of **your** proposal must be disclosed and all material representations made to **us** must be true, otherwise **we** are entitled to treat this insurance as if it had never existed.

2. *Fraud*

If **you**, or anyone on **your** behalf, tries to deceive **us** by deliberately giving **us** false information or making a fraudulent claim under this **policy** then **we** will treat this **policy** as if it had never existed.

3. *Cancellation*

You and **we** can cancel the **policy** by giving 30 days' written notice. **We** will give **you** a refund of the premium for the remaining period.

If **you** pay the premium by instalments and an instalment remains unpaid after 14 days, **we** may cancel this **policy** from the date the last instalment was due.

4. *Multiple insureds*

The most **we** will pay is the relevant amount shown in the schedule.

If more than one insured is named in the schedule, the total amount **we** will pay will not exceed the amount **we** would be liable to pay to any one of **you**.

You agree that the insured named in the schedule, or if there is more than one insured named in the schedule the first of them, is authorised to receive all notices and agree any amendments to the **policy**.

5. *Rights of third parties*

You and **we** are the only parties to this **policy**. Nothing in this **policy** is intended to give any person any right to enforce any term of this **policy** which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

6. *Other insurance*

This **policy** does not cover any claim where **you** would be entitled to be paid under any other insurance if this **policy** did not exist.

7. *Governing law*

Unless some other law is agreed in writing, this **policy** will be governed by the laws of England.

9. *Arbitration*

Any dispute arising out of or relating to this insurance, including over its construction, application and validity, will be referred to a single arbitrator in accordance with the Arbitration Act then in force.