

## Professional indemnity for consulting engineers

### Policy wording

The general terms and conditions and the following terms and conditions all apply to this section.

**Please pay special attention to the Notification for adjudication section in the grey box at the end of this section.**

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### Special definitions for this section

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

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### What is covered

Claims against you	<p>If during the <b>period of insurance</b>, and as a result of <b>your business activity</b> within the <b>geographical limits</b> for clients, any party brings a claim against <b>you</b> for:</p> <ol style="list-style-type: none"><li>negligence or breach of a duty of care,</li><li>negligent misstatement or negligent misrepresentation,</li><li>infringement of intellectual property rights including copyright, patent, trademark or moral rights or any act of passing-off,</li><li>inadvertent breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use,</li><li>defamation,</li><li>dishonesty of <b>your</b> individual partners, directors, employees or self-employed individuals directly contracted to <b>you</b> and under <b>your</b> supervision,</li><li>any other civil liability unless excluded under what is not covered below,</li></ol> <p>or refers a dispute arising directly from <b>your</b> breach of a duty of care to adjudication under the Housing Grants Construction and Regeneration Act 1996, <b>we</b> will indemnify <b>you</b> against the sums <b>you</b> have to pay as compensation.</p> <p><b>We</b> will also pay <b>defence costs</b> but <b>we</b> will not pay costs for any part of a claim not covered by this section.</p>
Avoiding a potential claim against you	<p>If <b>your</b> client has reasonable grounds for being dissatisfied with the work <b>you</b> have done, refuses to pay for any or all of it, including amounts <b>you</b> legally owe to sub-contractors at the date of the refusal, and threatens to bring a claim against <b>you</b> for more than the amount owed, it may be possible to settle the dispute with the client by <b>your</b> agreeing not to press for the disputed amount. If so, <b>we</b> will pay <b>you</b> the amount owed to <b>you</b> at that time if <b>we</b> believe that this will avoid a legitimate claim for a greater amount and <b>we</b> have given <b>our</b> prior written approval to settling in this way and for this amount.</p> <p>Alternatively, if it is not possible to reach agreement with the client on this basis but <b>we</b> still believe that by not pressing for the disputed amount <b>you</b> will avoid a legitimate claim or counterclaim for a greater amount, <b>we</b> will pay the amount owed to <b>you</b> at that time. If a claim is still brought, <b>we</b> will deal with it but <b>our</b> total payment, including what <b>we</b> have already paid <b>you</b> or on <b>your</b> behalf, will not exceed the applicable limit of indemnity shown in the schedule. <b>You</b> must return the amount <b>we</b> have paid if <b>you</b> eventually recover the debt less <b>your</b> reasonable expenses.</p> <p>Once <b>we</b> agree to make this payment <b>you</b> will assign to <b>us</b> such rights as <b>you</b> have in relation to the amounts owed to <b>you</b>.</p> <p><b>We</b> will not make any payment for any part of a claim not covered by this section.</p>

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#### Your own losses

##### 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 activity**, **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 being made against **you** which would be covered by this section.

##### Copyright claim

If **you** discover during the **period of insurance** that someone has infringed any copyright **you** own in work **you** have created in the performance of **your business activity**, **we** will pay **your** legal costs incurred with **our** prior written consent in pursuing a claim for the infringement, provided that **we** are satisfied that **your** claim has a reasonable chance of success and **you** do not settle the claim without **our** approval.

If the claim is settled or finally determined on the basis that **you** are entitled to:

- a. payment of **your** own costs, and/or
- b. payment of any damages or compensation or ongoing royalties or licence fees, and/or
- c. any injunction, undertaking or non-financial relief,

**we** will be entitled to reimbursement of any legal costs **we** have paid on **your** behalf from any payment **you** receive from the opponent.

##### 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 individuals 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.

##### Loss of documents

If during the **period of insurance**, any document, information or data of **yours** which is necessary for the performance of **your business activity** is lost, damaged or destroyed while in **your** possession, **we** will cover **you** against the cost of restoring or replacing it.

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### 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. any construction or erection work **you** undertake or for which **you** are responsible as a building or engineering contractor.
  3. any work **you** undertake as a project manager which results in:
    - a. **you** failing to obtain and/or maintain adequate financing;
    - b. **you** failing to obtain and maintain adequate insurance;
    - c. any party involved in the project becoming insolvent;
    - d. errors and/or omissions on **your** part in the provision of cost estimates including where such estimates are exceeded.
  4. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
  5. **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.
  6. **your** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
  7. the work of any personnel supplied by **you** to a client, unless **you** have breached a duty of care in supplying them.
  8. transmission of a computer **virus**.

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- Surveys, inspections and valuations
9. any survey, inspection or valuation of real or leasehold property not carried out by a fellow or associate of the Royal Institute of British Architects, the Royal Institute of Irish Architects, the Royal Incorporation of Architects in Scotland, the Royal Society of Ulster Architects, the Royal Institution of Chartered Surveyors, or by a Registered Architect with not less than one year's relevant experience, or by any person with more than five years' relevant experience in undertaking surveys, inspections or valuations of a similar nature.
- Subcontractors
10. any acts or omissions of a specialist, designer or consultant working for **you** as a sub-contractor unless:
- you** have taken reasonable steps to ensure that the sub-contractor has and maintains professional indemnity insurance with a reputable insurer, and
  - 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, and
  - you** have disclosed the sub-contractor's fees to **us**.
- Collateral warranties
11. **your** agreement to take on any legal liability under any express agreement, warranty, indemnity, waiver or guarantee, unless:
- you** would be liable even if **you** had not given any such agreement, warranty, indemnity, waiver or guarantee; or
  - 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:
    - any fitness for purpose guarantee;
    - any greater or longer lasting benefit than that given to the party with whom **you** originally contracted;
    - any express guarantee, contractual penalty or liquidated damages;
    - any assignment of the warranty or agreement to any purchaser or tenant after the first two assignments;
    - your** agreement to exercise a standard of care greater than would normally be expected in **your** profession.
- Joint ventures
12. activities carried out in the name of a consortium, joint venture or profit sharing scheme in which **you** are a party.
- Matters insurable elsewhere
13. the death or any bodily or mental injury or disease suffered by:
- anyone employed by or working for **you** and arising out of their work for **you**;
  - anyone else, unless arising directly from your breach of a duty of care in the performance of a business activity.
14. any breach of an obligation owed by **you** as an employer or any kind of discrimination, harassment or unfair treatment.
15. the ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle.
16. the loss, damage or destruction of any tangible property:
- other than documents in **your** care, custody or control in connection with a **business activity** for a client; or
  - unless arising directly from any design, specification, technical information calculation, survey or inspection carried out by **you**.
- This clause does not apply to **your** own loss under the loss of documents cover in What is covered.
17. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
18. the loss or distortion of any data held electronically.

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Deliberate, reckless or dishonest acts	<p>19. any personal liability incurred by a director or officer of <b>yours</b> when acting in that capacity or managing <b>your</b> business, or <b>your</b> breach of any fiduciary duty, other than when performing a <b>business activity</b> for a client, or any statement, representation or information concerning <b>you</b> or <b>your</b> business contained in <b>your</b> accounts, reports or financial statements.</p> <p>20. <b>your</b> supply, manufacture, sale, installation or maintenance of any product.</p>
Pre-existing problems	<p>21. any statement <b>you</b> knew, or ought reasonably to have known, was defamatory at the time of publication.</p> <p>22. any act, breach, omission or infringement <b>you</b> deliberately, spitefully, dishonestly or recklessly commit, condone or ignore. This does not apply to any claim or <b>your</b> own loss under the dishonesty cover in <b>what is covered</b>, but <b>we</b> will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty.</p>
Date recognition	<p>23. any shortcoming in <b>your</b> work or <b>your</b> own loss which <b>you</b> knew about, or ought reasonably to have known about, before <b>we</b> agreed to insure <b>you</b>.</p>
War, terrorism and nuclear	<p>24. <b>date recognition</b>.</p>
Asbestos	<p>25. <b>war, terrorism or nuclear risks</b>.</p> <p>26. <b>asbestos risks</b>.</p>
Claims brought by a related party	<p>B. <b>We</b> will not make any payment for:</p> <p>1. any claim brought by an insured within the definition of <b>you</b> or any party with a financial, executive or managerial interest in <b>you</b>, 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 <b>your business activity</b>.</p>
Adjudication costs	<p>2. a claim referred to adjudication under the Housing Grants Construction and Regeneration Act 1996 where <b>your</b> contract with <b>your</b> client failed to provide that:</p> <ul style="list-style-type: none"> <li>a. an adjudicator will be appointed to resolve any disputes under the contract;</li> <li>b. the adjudicator is independent of the parties to the dispute;</li> <li>c. the decision of the adjudicator is not the final determination of the dispute;</li> <li>d. the adjudicator cannot reach a decision on commercial considerations as opposed to the legal liabilities and obligations of the parties in dispute.</li> </ul>
Restricted recovery rights	<p>3. that part of any claim where <b>your</b> right of recovery is restricted by any contract.</p>
Consequential loss	<p>4. <b>your</b> lost profit, mark-up or liability for VAT or its equivalent.</p> <p>5. any trading loss or trading liability including those arising from the loss of any client, account or business.</p>
Non-compensatory payments	<p>6. fines and contractual penalties, aggravated, punitive or exemplary damages, and additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section.</p>
Claims outside the applicable courts	<p>7. any claim, including arbitration, brought outside the countries set out in the schedule under Applicable Courts.</p> <p>This applies to proceedings in the applicable courts to enforce, or which are based on, a judgement or award from outside the applicable courts.</p>

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#### 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.

For lost, damaged or destroyed documents, information or data, **we** will pay the reasonable expenses **you** incur with **our** prior written consent in restoring or replacing them.

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 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 costs to defend all criminal proceedings is the amount shown in the schedule. **We** will not pay any costs awarded against **you** as a result of such proceedings. **You** must pay the relevant **excess** shown in the schedule.
3. The most **we** will pay for **your** costs to pursue all claims for infringement of copyright 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**.

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#### 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. **your** first awareness of any actual or threatened criminal proceedings against **you**.
  - d. **your** first awareness that a copyright of **yours** has been infringed.
  - e. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any partner, director, employee or self-employed individual has acted dishonestly.
2. if, when dealing with **your** client or a third party, **you** admit that **you** are liable for what has happened or 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 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 **Collegiate Management Services**, and not through **your** advisor if you use one, as follows:

Claims department  
Collegiate Management Services Ltd  
5th Floor, Mint House  
77 Mansell Street  
London  
E1 8FE

Fax: 020 7459 3455  
Email: [claims@collegiate.co.uk](mailto:claims@collegiate.co.uk)

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

#### 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.