



Camargue

Specialised Liability Management

Professional Indemnity Policy

Design and Construct

Index

Welcome	3
Your Insurance Policy.....	3
Definitions.....	4
Policy Conditions.....	6
Claims Conditions.....	9
General Exclusions	10
Professional Indemnity Cover.....	11
Exclusions.....	12
Special Conditions	14

Welcome

This is **Your** Professional Indemnity **Policy** which has been prepared in accordance with the information **You** have provided.

Your Policy, schedule and endorsements together with the **Statement of Fact** should be read together as if they were one document.

Please take time to read all these documents to make sure that the cover meets **Your** needs and that **You** understand the terms, exclusions and conditions.

If there is anything **You** do not understand or **You** need to change please contact **Your** insurance adviser immediately.

This is a legal document and should be kept in a safe place.

Your Insurance Policy

This **Policy** is underwritten by Mutual and Federal Insurance Company Limited and certain Underwriters at Lloyd's.

We will insure **You** as stated in this **Policy** during the **Period of Insurance** for which **Your** premium has been accepted provided all the terms and conditions of the **Policy** are kept.

Where the underwriters are a Lloyd's syndicate they are made up of Lloyd's Underwriters. Each Underwriter is only liable for their own share of the risk and not for any other's share. **You** can ask **Us** for the names of the Lloyd's Underwriters and the share of the risk each has taken.

The **Policy**, schedule and endorsements together with the **Statement of Fact** should be read together as if they were one document.

You have provided information to **Us** which includes but is not limited to the information detailed in the **Statement of Fact**. **You** agree that all the information provided to **Us** is true and forms the basis of the contract between **You** and **Us**.

Law Applicable

In the absence of any agreement in writing to the contrary this **Policy** will be governed by and construed in accordance with the laws of South Africa. Any dispute relating to this **Policy** will be subject to the jurisdiction of the courts of South Africa.

Definitions

General Definitions

Each time **We** use one of the words or phrases listed below it will have the same meaning wherever it appears in **Your Policy** unless **We** state otherwise. A defined word or phrase will start with a capital letter each time it appears in the **Policy** and is printed in bold type e.g. **Alternate**, except for headings and titles.

Throughout this **Policy** words in the singular include the plural and vice versa. The male gender includes the female and neuter. References to legislation include such legislation as amended and to any statutory re-enactment thereof.

Alternate

Any individual practitioner partnership limited liability partnership or company who is acting in connection with the arrangements to cover the incapacity or death of a sole practitioner.

Asbestos

Asbestos or asbestos dust or asbestos fibres or derivatives of asbestos or any material or product containing asbestos or asbestos dust or asbestos fibres or derivatives of asbestos.

Claim

The demand by a **Claimant** (including their costs) for compensation or damages or the assertion of a right or rights against **You**.

Claimant

Any person or entity making a **Claim**.

Computer System

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 (included but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode.

Contamination

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind.

Costs and Expenses

1. Reasonable costs and expenses of **Claimants** for which **You** are legally liable.
2. Costs and expenses incurred with **Our** written consent in respect of any **Claim** which may be the subject of indemnity under this **Policy**.
3. Fees incurred with **Our** written consent for:
 - a. defence in any Court of Summary Jurisdiction or on indictment in any higher court in respect of any proceedings brought against **You** in respect of breach or alleged breach of any statutory duty resulting in **Injury**.
 - b. representation at a Coroners Court or Fatal Accident Inquiry in respect of any death in connection with any event which is or may be the subject of

indemnity under this **Policy** Costs and Expenses do not include the costs of work done by **Your** own **Employees** nor any applicable tax.

Damage

Loss, destruction or damage.

Defence Costs

Legal costs and expenses incurred by **You** or on **Your** behalf in the investigation defence and settlement of a **Claim** with **Our** prior written and continuing consent. Defence costs do not include the costs of work carried out by **You** or **Your Employees** nor any applicable tax.

Document

All forms of document of whatsoever nature which are either the property of or deposited with **You** in connection with the **Professional Business Activity** including **Computer System** records but excluding bearer bonds, coupons, bank notes, currency notes and negotiable instruments.

Employee

Any person while working for **You** in connection with the **Professional Business Activity** who is:

1. under a contract of service or apprenticeship with **You**,
2. a person who is hired lent or borrowed by **You**,
3. a person engaged in connection with a work experience, training or similar scheme,
4. a self-employed person working on a labour only basis under **Your** control or supervision.

Excess

The amount **You** must pay as the first part of each and every **Claim**.

Injury

Bodily injury, death, illness, disease or nervous shock.

Limit of Indemnity

Limit of Indemnity stated in the Schedule.

Member

Any member of a limited liability partnership who carries on the **Professional Business Activity** for **You** or on **Your** behalf.

Our, Us, We

The Underwriters as set out in the section of the **Policy** headed **Your Insurance Policy**.

Period of Insurance

The period beginning with the Effective Date shown in the Schedule and ending with the Expiry Date and any other period for which **We** have accepted **Your** premium.

Policy

The **Policy** and schedule and any endorsements attached or issued with it.

Products

1. Work which has been completed.

2. Goods or other material property manufactured, sold, supplied, processed, altered, treated, repaired, serviced, tested, installed, constructed, erected or transported by **You** or on **Your** behalf in the course of the **Professional Business Activity** and which is no longer in **Your** custody or control.

Professional Business Activity

The professional services specified in the **Statement of Fact** by **You** in connection with the **Professional Business Activity** and conducted under **Your** name.

Statement of Fact

The proposal form or a statement of facts either in writing or provided electronically and any additional information supplied to **Us** by **You** or on **Your** behalf.

You Your Yours

The person people or company named in the Schedule and when requested by **You** the following persons each of whom is severally insured and each of whom agrees that **You** will act on their behalf for all purposes connected with this **Policy** including giving and receiving all notices and agreeing any cancellation or amendment.

1. A **Member** and any other person who may during the **Period of Insurance** become a partner or director or **Member**.
2. A former partner or director or **Member** including any former partner or director or **Member** whilst acting as a consultant to **You**.
3. Anyone who is or has been under a contract of service with **You**.
4. Anyone who is or has been under a contract of service with a **Member** but only in respect of any **Claim** arising out of the **Professional Business Activity** carried out on **Your** behalf.
5. The estates and/or legal representatives of any person noted under 1,2,3 or 4 above in the event of death, incapacity, insolvency or bankruptcy.
6. Any person who is acting on **Your** behalf as an **Alternate**.

Policy Conditions

The following Policy Conditions apply to this **Policy** unless otherwise stated.

If any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder will be in full force and effect.

Alteration of Risk

We will not indemnify **You** under this **Policy** if:

1. there has been any material alteration in the **Professional Business Activity** or in the occupancy or duties of **You** or **Your Employees** which increases the risk of **Damage** or **Injury** or,
2. **Your** interest ceases unless this is brought about by will or operation of law or,
3. the **Professional Business Activity** is wound up or carried on by a liquidator or receiver or permanently discontinued unless agreed by **Us** in writing.

Cancellation

1. If **You** decide **You** do not want to accept the **Policy** within 14 days of the **Policy** start date in the first year of insurance **You** may cancel this **Policy** by giving notice in writing to **Your** insurance adviser at the address shown in their correspondence or to **Us** at the address shown in the **Policy** quoting **Your Policy** details.

In this instance **We** will refund **Your** premium in full provided that there have been no **Claims** made or any **Injury, Damage** or consequential loss which could give rise to a **Claim** or circumstance which is likely to give rise to a loss or **Claim** under this **Policy**.

This right does not apply to any renewal of this **Policy**.

2. **You** may cancel this **Policy** at any other time by giving notice in writing to **Your** insurance adviser at the address shown in their correspondence or to **Us** at the address shown in the Schedule quoting **Your Policy** details.

If **You** cancel this **Policy** **You** may be entitled to the return of a proportionate amount of the premium corresponding to the unexpired **Period of Insurance**. Provided that during the current **Period of Insurance** there have been no **Claims** made or any **Injury, Damage** or consequential loss which could give rise to a **Claim** or circumstance which is likely to give rise to a loss or **Claim** under this **Policy**.

3. **We** may cancel this **Policy** by sending **You** 30 days written notice to **You** at **Your** last known address.

In such event **You** will be entitled to the return of a proportionate amount of the premium corresponding to the unexpired **Period of Insurance**. Provided that during the current **Period of Insurance** there have been no **Claims** made or any **Injury, Damage** or consequential loss which could give rise to a **Claim** or circumstance which is likely to give rise to a loss or **Claim** under this **Policy**.

4. If the premium has not been paid or if there has been a default under a linked credit agreement this insurance will cease immediately.

In such event **You** may be entitled to the return of a proportionate amount of the premium corresponding to the unexpired **Period of Insurance**. Provided that during the current **Period of Insurance** there have been no **Claims** made under this **Policy** or any **Injury, Damage** or consequential loss which could give rise to a **Claim** or circumstance which is likely to give rise to a loss or **Claim** under this **Policy**.

Fraud

If **You** or anyone acting on **Your** behalf makes any false or fraudulent **Claim** or supports a **Claim** by false or fraudulent document device or statement this **Policy** will be void and **You** will forfeit all rights and benefits under this **Policy**. In such circumstances **We** retain the right to keep the premiums and to recover any sums paid by way of benefit under this **Policy**.

Non Disclosure, Misrepresentation or Misdescription

This **Policy** will be voidable if **You** or anyone acting for **You** fails to disclose, misrepresents or misdescribes any material fact.

Observance of Conditions

Your due observance and fulfilment of the terms and conditions of this **Policy** will be conditions precedent to **Our** liability to make any payment under this **Policy**.

Other Insurance

If any **Claim** covered under this **Policy** is also covered by any other **Policy** (or would be but for the existence of this **Policy**) **We** will only indemnify **You** in respect of any excess beyond the amount which would be payable under such other insurance had this **Policy** not been effected.

Premium Payment

You undertake that the **Premium** will be paid in full to **Us** within forty five days of inception of this **Policy** (or, in respect of instalment premiums, when due).

If the premium has not been paid to **Us** by midnight on the premium due date or if there is a default under a linked credit agreement this insurance will cease immediately.

Reasonable Precautions

You must:

1. exercise care in the selection and supervision of **Alternate** , **Employees** or **Member**,
2. use due diligence and ensure that all reasonable and practicable steps are taken to avoid or diminish any liability,
3. comply with all relevant legal requirements, safety regulations and manufacturers recommendations and conduct the **Professional Business Activity** in a lawful manner,

Subrogation

In the event of any payment under this **Policy** or the notification by **You** of any **Claim** or any **Injury Damage** or consequential loss which would give rise to a **Claim** or circumstance which is likely to give rise to a loss or **Claim** **We** will be subrogated to all **Your** rights of recovery and **You** will execute all papers required and will do everything necessary to secure and preserve those rights including the execution of documents necessary to enable **Us** to effectively bring proceedings in **Your** name.

We agree not to exercise such rights against any company standing in the relationship to subsidiary or of subsidiary to parent to **You** or any company which is a subsidiary to **Your** own parent company current at the time the **Injury Damage** or consequential loss was incurred.

We agree not to exercise such rights against any principal partner director **Member** or **Employee** consultant sub-contractor or **Alternate** of **Yours** unless the **Claim** or loss is brought about or contributed to by the dishonest fraudulent criminal or malicious act or omission of that principal partner director **Member** or **Employee** consultant sub-contractor or **Alternate** of **Yours**.

Any **Claimant** under this **Policy** will at **Our** request and expense take and permit to be taken all necessary steps for enforcing the rights against any other party in **Your** name before or after any payment is made by **Us**.

Claims Conditions

The following Claims Conditions apply to this Policy.

1. **You** will give **Us** written notice within the **Period of Insurance** and in any event within 30 days of when you first became aware of:
 - a. any **Claim** or circumstance which is likely to give rise to a loss or **Claim** including any circumstance likely to give rise to a need to incur mitigation costs ,
 - b. the receipt of notice from any party of an intention to make a **Claim**,
 - c. the discovery that any **Document** has been destroyed damaged lost or mislaid.

Where any circumstance is notified during the **Period of Insurance** in accordance with this condition and supplying **Us** with full particulars of the circumstances including the dates and persons involved and the reasons for anticipating a **Claim** or prosecution any later **Claim** or prosecution arising out of the circumstances so notified will be deemed to have been first made at the date of notification.

2. **You** will not:
 - a. admit liability for or settle any **Claim** without **Our** written consent,
 - b. incur any **Defence Costs and Costs and Expenses** in connection with any **Claim** or circumstances which may give rise to a **Claim** without **Our** written consent.

In the event that **You** wish to contest a **Claim** which **We** consider should be settled the maximum amount of **Our** liability for that **Claim** will be the amount for which it could be settled plus **Defence Costs and Costs and Expenses** down to the date when **We** consider the **Claim** should have been settled subject always to the **Limit of Indemnity**.

3. **You** will:
 - a. use due diligence and ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a **Claim** or loss,
 - b. disclose to **Us** all relevant information and in addition will provide assistance to **Us** to enable **Us** or **Our** agents to investigate and/or defend any **Claim** or loss under this **Policy** and/or enable **Us** to determine **Our** liability under this **Policy**.
4. **We** will be entitled at **Our** expense at any time to take over and conduct in **Your** name the defence investigation or settlement of any **Claim** and to conduct an investigation into circumstances which may give rise to a **Claim** and to receive at all times **Your** full co-operation for this purpose.

Allocation

In the event that both indemnity for a **Claim** or loss payable by this **Policy** and liability for a **Claim** or loss not payable by this **Policy** arises either because:

1. a **Claim** or a loss against **You** includes both payable and non payable matters; or
2. a **Claim** against **You** is made and others are party to the proceedings or demand to which the **Claim** relates;

then both **You** and **Us** will use their best efforts to agree the allocation of such amount between payable loss and non payable loss based on a fair and proper assessment of the relative legal and financial exposures.

Any allocation of **Defence Costs and Expenses** on account of a **Claim** which is negotiated or determined in accordance with this condition will be applied retrospectively to all **Defence Costs and Expenses** on account of such **Claim**.

General Exclusions

The following General Policy Exclusions apply to this **Policy** and all Clauses, Extensions and Endorsements unless otherwise stated.

We will not be liable for any **Claim** in respect of:

1. **Sonic Bangs**

Damage directly caused by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

2. **Radioactive Contamination Nuclear Risks**

Damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss or legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from.

- 1) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,
- 2) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

3. **War, Government Action and Terrorism**

- a. **Damage** to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
 - i. War Government Action or Terrorism,
 - ii. Civil Commotion in Northern Ireland.
- b. Legal liability of whatsoever nature or any costs or expenses whatsoever directly or indirectly caused by or contributed to by or arising from War Government Action or Terrorism.

War will mean war, invasion, acts of foreign enemies, hostilities or warlike operation or operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, insurrection, rebellion, revolution, or military or usurped power.

Government Action means martial law, confiscation, nationalisation, requisition, seizure or destruction of property by or under the order of any government or public or local authority or any action taken in controlling preventing suppressing or in any way relating to War.

Terrorism means any act or acts of any person(s) or organisation(s) involving including but not limited to:

- i. the causing occasioning or threatening of harm of whatever nature and by whatever means,

- ii. putting the public or any section of the public in fear in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) are wholly or partly of a political religious ideological or similar nature.

In any action suit or other proceedings where **We** allege that by reason of this Exclusion as far as it relates to Terrorism any **Claim** is not covered by this insurance the burden of proving such **Claim** is covered will be upon **You**.

What is Covered

Insuring Clauses

We will indemnify **You**:

1. **Legal Liability**

against all sums that **You** become legally liable to pay as compensatory damages including **Claimants** costs for any **Claim** first made against **You** during the **Period of Insurance** as a result of any negligent act, negligent error, negligent omission or negligent breach of contract committed by **You** or by any consultant, sub-contractor or agent for whose acts or omissions **You** are liable in connection with the performance of any **Professional Business Activity**.

2. **Defence Costs**

For all **Defence Costs**.

3. **Loss of Documents**

For:

- a. any **Claim** first made against **You** and notified in writing to **Us** during the **Period of Insurance** in respect of third party liabilities as a consequence of any **Document** having been destroyed, damaged, lost or mislaid,
- b. for reasonable and necessary costs incurred with **Our** prior written consent in the repair, replacement or reconstitution of any **Document** which during the **Period of Insurance** is discovered and notified in writing to **Us** to have been unintentionally destroyed, damaged, lost or mislaid (and which after diligent search cannot be found).

Excluding:

- a. any loss destruction or **Damage** to computer records caused by the presence of magnetic flux or due to loss of magnetism or defects in the computer records,
- b. any loss destruction or **Damage** to computer records unless there is physical loss of or **Damage** to the media on which such records were stored,
- c. any loss destruction or **Damage** of any **Documents** caused by wear tear vermin **Damage** or gradual deterioration.

4. **Libel and Slander**

For any **Claim** in respect of any unintentional libel or slander committed by **You** in the performance of **Your Professional Business Activity**.

5. **Mitigation of Potential Claim**

For **Costs and Expenses** reasonably incurred with **Our** written consent in respect of rectifying prior to any practical completion, take-over certificate or defects period any part of the works constructed by **You** to the extent that **You** are able to demonstrate on a balance of probabilities that the need for such rectification is due to **Your** negligence in the performance of **Your Professional**

Business Activity and is necessary to mitigate a **Claim** or likely **Claim** that would otherwise been paid by Clause 1 Legal Liability.

Limit of Liability

Our aggregate liability under this **Policy** will not exceed the **Limit of Indemnity** inclusive of **Defence Costs**.

In respect of Clause 3 Loss of Documents the maximum amount **We** will pay is limited to 5% of the **Limit of Indemnity** in respect of any one **Claim** or series of **Claims** against **You** arising out of one event and in the aggregate in any one **Period of Insurance** which shall be part of and not in addition to the **Limit of Indemnity**.

Where **We** are liable to indemnify more than one person company or body the total amount of indemnity payable under this insurance will not exceed the **Limit of Indemnity**.

All **Claims** arising out of the same originating cause or source or the same act, error or omission, or series of acts, errors or omissions that are in any way related will be regarded as one **Claim** for the purposes of the **Limit of Indemnity**.

What is Not Covered

We will not be liable for:

1. The amount of **Excess** shown in the Schedule,
2. any loss or **Claim**
 - a. arising directly or indirectly out of or connected with **Asbestos**,
 - b. arising directly or indirectly from **Injury** sustained by any **Employee** or any **Member** arising out of or in the course of his or her employment or for any breach of duty owed to any such person or any person who has made an application for employment with **You** or any **Member**,
 - c. arising directly or indirectly from **Damage** to property, except in respect of loss under Insuring Clause 3,
 - d. for the **Injury** of any person (not being an **Employee** or a **Member**), but this will not apply to any loss or to any **Claim** for psychological injury, emotional distress or anguish or shock which arises from a breach of duty in the performance of (or failure to perform) the **Professional Business Activity**,
 - e. arising from any breach by **You** of a personal duty owed solely in the capacity of a member, director, secretary or officer of a body corporate,
 - f. arising out of faulty workmanship by **You** or on **Your** behalf, defective materials, manual labour operations, or any defective materials, workmanship or production techniques used in the actual manufacture of any product But Not where such liability arises from negligent design or negligent specification of materials where such negligent design or negligent specification arises from the performance of **Professional Business Activity**,

- g. arising directly or indirectly out of, or in any way involving **Products** or goods sold, supplied, recalled, repaired, altered, manufactured, constructed, fabricated, installed or maintained by **You** or anyone on **Your** behalf,
- h. for taxes, fines or penalties or any **Claim** deemed uninsurable by law,
- i. arising out of or in any way involving any actual or alleged dishonest, fraudulent, criminal or malicious act or omission by **You** or anyone on **Your** behalf,
- j. arising out of or relating to **Your** insolvency or bankruptcy other than:
 - i. In respect of monies held on behalf of third parties and/or,
 - ii. For which **You** would otherwise be indemnified by this insurance but for **Your** insolvency or bankruptcy,
- k. arising directly or indirectly from the ownership, possession or use by **You** of land, buildings, mobile or immobile goods or property or vehicles,
- l. arising out of any circumstance or event which has been notified under any insurance which was in force prior to the **Period of Insurance** or which was known or should have been known to **You** prior to the **Period of Insurance** which might reasonably have been expected to produce a **Claim**,
- m. arising out of or in connection with any trading losses or trading liabilities incurred by any business managed by or carried on by **You**,
- n. brought in any court of the United States of America or Canada or anywhere in the world under the laws of the United States of America or Canada or to enforce a judgement first obtained in the courts of or under the laws of the United States of America or Canada or arising from **Professional Business Activity** carried out from any office or other premises in The United States of America or Canada,
- o. arising out of any performance warranty, guarantee, penalty clause, liquidated damages clause or similar provision unless **Your** liability would have existed to the same extent in the absence of such warranty, guarantee, clause or similar provision,
- p. arising out of any collateral warranty agreement which extends **Your** liability beyond that which would have existed under the contract to which the collateral warranty agreement is supplemental. For the avoidance of doubt, this exclusion shall not restrict the number of parties with whom **You** may enter into a collateral warranty,
- q. arising out of or relating directly or indirectly to or in consequence of seepage, pollution or contamination of any kind, save that this exclusion will not apply to any loss or any **Claim** which arises from a breach of duty in the performance (or failure to perform) **Professional Business Activity**,
- r. in respect of errors in any financial estimates of probable construction or other costs. This exclusion will not apply to any liability arising out of cost advice and cost planning services provided by Quantity Surveyors and other cost

advice provided to independent third parties by professionally qualified personnel,

- s. arising out of the giving of any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments.

Special Conditions

Sub Consultants

Where **You** divest responsibility for the completion of the **Professional Business Activity** to others it is **Your** responsibility to ensure that the party to whom responsibility is divested is suitably qualified to carry out such activity and that **Your** contract with them requires them to have in force their own professional indemnity insurance for the duration of the contract and for 3 (three) years thereafter.