

Miscellaneous Risks Professional Indemnity Insurance

Professional Indemnity Insurance Policy

Introduction

Please read this Policy carefully to ensure that it meets your requirements. It is written on a Claims made and notified basis, which means that, subject to the Continuous Cover clause, it will only respond to Claims first made against the Insured and notified to the Insurer during the Period of Insurance. Any word or expression to which a specific meaning has been attached in any of them shall bear that specific meaning wherever it may appear.

Insurance Preamble

The Insured and the Insurer agree that the Insurer will provide insurance on the terms of this Policy.

Insuring Clause

The Insurer will indemnify the Insured against civil liability for compensation and claimant's costs and expenses in respect of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance resulting from the conduct of the Professional Services but not in respect of any such Claim or Claims resulting from any act, error or omission occurring or committed prior to the Retroactive Date.

Limit of Indemnity

The liability of the Insurer for compensation and claimant's costs and expenses in respect of all Claims first made against the Insured and notified to the Insurer during the Period of Insurance shall not exceed the Limit of Indemnity.

Insured Costs

The Insurer will, in addition to the Limit of Indemnity, pay Insured Costs, provided that if the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims exceeds the Limit of Indemnity, the liability of the Insurer for such Insured Costs shall be only that proportion which the Limit of Indemnity bears to the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims.

Excess

The Insured is liable for the amount of any compensation, claimant's costs and expenses or Insured Costs that are collectively less than the Excess for each Claim. The Excess is deducted from compensation, claimant's costs and expenses payable before the application of the Limit of Indemnity. The Insured is liable for the amount of any Inquiry Costs that is less than the Excess for each notice. The Excess is deducted from Inquiry Costs payable before the application of the aggregate limit stated in paragraph 4 of the Inquiry Costs Automatic Extension. The Insurer has no liability for the amount of compensation, claimant's costs and expenses, Insured Costs or Inquiry Costs that is less than the Excess for each Claim or notice.

The Insured agrees that the Excess must be retained by the Insured and is to remain uninsured.

Aggregation of Claims

All Claims arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be a single Claim and shall attract one Excess.

For the purposes of the Inquiry Costs Automatic Extension, all notices arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be a single notice and shall attract one Excess.

Insurance Clarification

For the purposes of clarifying the scope of cover under the Insuring Clause of this Policy, the Insuring Clause includes civil liability for:

Libel or Slander

Libel or Slander, provided that:

1. the libel or slander is committed by the Insured in the course of carrying on their Professional Services;
2. the Insured did not intend to publish the libel and slander with express malice.

Contractual Liability

Contractual liability, provided that:

1. the Insurer will not be liable for any liability assumed by the Insured under any express warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to the Insured in the absence of such agreement.
2. where a Claim is an alleged breach of contract the Insurer will not reduce their liability by the mere fact that contributory negligence is not available as a defence.

Trade Practices Act

Claims made under the Trade Practices Act, provided that the Insurer will not indemnify the Insured for Claims made where such Claim arises:

1. under the penal or criminal provisions of any of the Trade Practices Act 1974 (Cwth), the Fair Trading Act 1987 (NSW), or similar legislation in other States; or
2. from conduct of the Insured which is fraudulent or intended to mislead or deceive.

However the Insurer will only exclude such Claims where it is established by final adjudication that the Insured breached the penal or criminal provisions of the Acts, or where the conduct was established by final adjudication to be fraudulent or intended to mislead or deceive.

Intellectual Property

Infringement of rights of intellectual property, provided that the act, error or omission by the Insured is unintentional and is committed in the course of carrying on the Professional Services.

Sub-contractors and Consultants

Acts, errors or omissions of sub-contractors and consultants, provided that the Insurer will only indemnify the Insured for its civil liability in connection with the Professional Services provided by the subcontractor and/or consultant. Indemnity will not extend to the sub-contractor and/or consultant who committed the act, error or omission.

Automatic Extensions

These Automatic Extensions are subject to all the terms of the Policy, unless otherwise stated. The total of all payments made under the Automatic Extensions will be part of and not in addition to the Limit of Indemnity, unless otherwise stated.

Continuous Cover

Where the Insured:

1. first became aware of facts or circumstances that might give rise to a Claim, prior to the Period of Insurance; and
2. had not notified the Insurer of such facts or circumstances prior to the Period of Insurance,

then the Prior Claims or Known Circumstances exception will not apply to any notification during the Period of Insurance of any Claim resulting from such facts or circumstances, provided that:

- a) there is an absence of fraudulent non-compliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances; and
- b) the Insured has been continuously insured, without interruption at the time of the notification of the Claim to the Insurer, under a professional indemnity policy issued by the Insurer and was insured by the Insurer at the time when the Insured first became aware of such facts or circumstances; and
- c) the Insurer may reduce its liability under the Policy to the extent of any prejudice the Insurer may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance.

Lost Documents

The Insurer will, in the event of loss of or damage to Documents occurring in connection with the Professional Services, indemnify the Insured against all costs and expenses reasonably incurred by the Insured in replacing or restoring such Documents. Provided that:

- a) such loss or damage is sustained during the Period of Insurance while the Documents are either in transit or in the custody of the Insured or of any person to whom the Insured has entrusted them in the course of the normal conduct of the Professional Services; and
- b) the amount of any claim for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a solicitor to be nominated by the Insurer with the consent of the Insured or if such consent is withheld, by the President of the Law Society of whatever State where the Policy was issued; and
- c) the Insurer shall not be liable in respect of loss or damage caused by riot or civil commotion.

Inquiry Costs

The Insurer may, if it considers it reasonable to do so, indemnify the Insured for Inquiry Costs. Provided that:

- a) the notice requiring the Insured's attendance at the inquiry or hearing is first received by the Insured and notified to the Insurer during the Period of Insurance; and
- b) such attendance arises directly from conduct allegedly committed by the Insured in carrying on their Professional Services; and
- c) such indemnity is subject to the written consent of the Insurer prior to the incurring of the Inquiry Costs; and
- d) regular or overtime wages, salaries or fees of the Insured are excluded from this indemnity; and

- e) the total liability of the Insurer under this clause shall not exceed \$100,000 during the Period of Insurance.

Dishonesty of Employees

The Insurer will, notwithstanding the Dishonest, Fraudulent or Criminal Acts Exception, indemnify the Insured against civil liability for compensation and claimant's costs and expenses in respect of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance resulting from any dishonest, fraudulent, criminal or malicious act or omission by any employee occurring or committed in connection with the Professional Services.

The Insurer will in addition pay Insured Costs on the basis already set out in this Policy.

Provided that nothing in this Automatic Extension shall require the Insurer to indemnify any employee who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission or who by act or omission has condoned any such act or omission.

Automatic Reinstatement

The Insurer agrees, in the event of exhaustion (or partial exhaustion) of the Limit of Indemnity solely by reason of indemnity for compensation and claimant's costs and expenses in respect of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance, to reinstate (or partially reinstate in the case of partial exhaustion) the Limit of Indemnity in respect of compensation and claimant's costs and expenses.

Provided that:

1. the Insurer's liability for any single Claim will not exceed the Limit of Indemnity; and
2. the aggregate liability of the Insurer under this Policy will not exceed the sum of the Limit of Indemnity and, in the event of exhaustion or partial exhaustion of the Limit of Indemnity, a single reinstatement of the Limit of Indemnity, save that the Insurer will in addition pay Insured Costs on the basis already set out in this Policy.

Joint Venture Liability

The Insurer will indemnify the Insured against civil liability for compensation and claimant's costs and expenses in respect of any Claim or Claims first made against the Insured and notified to the Insurer during the Period of Insurance resulting from the Insured's participation in any joint venture in connection with the Professional Services. Provided that:

1. the indemnity given shall only relate to the Insured's proportion of any liability incurred by such joint venture; and
2. the Insured's income derived from participation in such joint venture shall have been included in the calculation of income furnished by the Insured for the purposes of calculating the premium for this Policy.

The Insurer will in addition pay Insured Costs on the basis already set out in this Policy.

Definitions; For the purpose of this Policy:

“Act of Terrorism” means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

“Claim” means any demand made by a third party upon the Insured for compensation, however conveyed, including a writ, statement of claim, application or other legal or arbitral process.

“Documents” means deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature (excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments) which is the property of the Insured or for which the Insured is

“Excess” means the amount shown in the Schedule and represents the first amount which is payable by the Insured in respect of any compensation, claimant’s costs and expenses or Insured Costs arising out of or in respect of any one Claim made against the Insured or in respect of any Inquiry Costs arising out of any one notice.

“Inquiring Body” means a court, tribunal or legally constituted industry or professional board.

“Inquiry Costs” means necessary and reasonable legal costs and expenses incurred by the Insured arising out of any notice requiring the Insured’s attendance at an inquiry or hearing held before an Inquiring Body.

“Insured” means:

- i. the legal entity or entities specified in the Schedule; and/or
- ii. past and/or present employees of the legal entity or entities specified in the Schedule, but only in his or her capacity as such; and/or
- iii. any past and/or present Principal of the legal entity or entities specified in the Schedule, but only in his or her capacity as such; and/or
- iv. the estate, heirs, legal representatives or legal assigns of any natural person insured under this Policy in the event of the death or legal incapacity of such person.

“Insured Costs” means all necessary and reasonable costs and expenses incurred by the Insurer, or by the Insured with the Insurer’s prior written consent, in defending, investigating or settling any Claim or Claims (not being Inquiry Costs or claimant’s costs and expenses).

“Insurer” means Lloyd’s of London

“Limit of Indemnity” means the Limit of Indemnity as shown in the Schedule.

“North America” means the United States of America and Canada and in each case its territories and protectorates.

“Period of Insurance” means the Period of Insurance as shown in the Schedule.

“Policy” means the Schedule, the terms of this policy and any endorsements.

“Principal” means a sole practitioner, a partner of a firm or a director of a company.

“Professional Services” means the professional business described in the Schedule, and no other, of the legal entity or entities specified in the Schedule.

“Retroactive Date” means the Retroactive Date shown in the Schedule.

“Schedule” means the current Schedule issued by the Insurer to the Insured.

Exceptions

The Insurer shall not be liable in respect of any Professional Services, Claim, liability, compensation, Inquiry Costs, claimant's costs and expenses or Insured Costs:

Asbestos

arising directly or indirectly from or in respect of asbestos, asbestos fibres or derivatives of asbestos.

Directors and Officers Liability

arising directly or indirectly from or in respect of the Insured's functions and duties as a director and/or officer of the Insured or any legal entity, corporation or other incorporated body.

Trading Debts

arising directly or indirectly from or in respect of any trading debt incurred, or any guarantee in respect of such debt given, by the Insured.

Dishonest, Fraudulent or Criminal Acts

arising directly or indirectly from or in respect of any dishonest, fraudulent, criminal or malicious act or omission by the Insured.

Employer's Liability

arising directly or indirectly from or in respect of:

- a) the death, bodily injury, disease or illness of any Insured arising out of or in the course of or in respect of his/her employment; or
- b) a breach of any obligation owed by an Insured to an Insured.

Controlling or Financial Interests

arising directly or indirectly from or in respect of work undertaken for or on behalf of any company related to any Insured which for the purposes of this Policy includes:

- (a) any other Insured; or
- (b) any subsidiary of an Insured; or
- (c) any company of which an Insured has or has held at least a 20% financial interest and has had or has board representation on that company.

Radioactivity

arising directly or indirectly from or in respect of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof.

Prior Claims or Known Circumstances

- a) first made against the Insured prior to the inception of the Period of Insurance; or
- b) directly or indirectly arising from or in respect of any facts or circumstances which were:

- i. known to the Insured prior to the inception of the Period of Insurance and which might give rise to a Claim or Inquiry Costs; or
- ii. notified under any insurance that was in force prior to the inception of the Period of Insurance.

War

arising directly or indirectly from or in respect of any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

Subrogation Waiver

arising directly or indirectly from or in respect of any liability which is incurred or affected by reason of the Insured at any time entering into a deed or agreement excluding, limiting or delaying the Insured's legal rights of recovery against another.

Assumption of Liability

arising directly or indirectly from or in respect of any liability which is assumed by the Insured outside the normal course of the Professional Services.

Fines, Penalties, Punitive or Aggravated Damages

arising directly or indirectly from or in respect of fines or penalties including civil penalties, punitive or aggravated damages.

Liquidated Damages

arising directly or indirectly from or in respect of liquidated damages imposed upon the Insured by contract or agreement, except to the extent that the Insured would have been liable for that damage in the absence of any such contract or agreement.

Terrorism

arising directly or indirectly from or in respect of:

- a) any Act of Terrorism; or
- b) any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

General Conditions

Claims Notifications

Every Claim made against the Insured shall be notified to the Insurer as soon as practicable and in any event prior to expiry of the Period of Insurance, and every letter, demand writ summons and legal process pertaining to such Claim shall be forwarded to the Insurer as soon as practicable after receipt.

All Claim notifications to the Insurer must be sent to:

The Claims Manager
Brooklyn Underwriting Pty Ltd
PO Box 101
Grosvenor Place NSW 1220

No Admission of Liability

No admission, offer, promise or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Insurer.

Claims Conduct

The Insurer shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim.

Claims Settlement

Should the Insured object to a proposal by the Insurer to settle or compromise any Claim and wish to contest or litigate the matter, then the Insured may so elect, provided that the Insurer's liability in respect of any such Claim so contested or litigated shall not exceed the amount for which, but for such election, it could have been settled or compromised by the Insurer, together with costs and expenses payable in accordance with the terms of this Policy and incurred up to the time of such election, but subject always to the Excess and to the Limit of Indemnity.

Assisting with Claims

The Insured shall give all such assistance as the Insurer may reasonably require but none of them shall be required to contest any legal proceedings if it objects to doing so unless a Senior Counsel or a person of similar authority (appointed by mutual agreement between the Insured and the Insurer and paid for by the Insurer) shall advise such proceedings could be contested to the extent that there is a reasonable probability of success.

Other Insurance

If at the time any Claim arises under this Policy there is any other insurance in force covering the same liability the Insured shall promptly notify to the Insurer full details of such other insurance, including the identity of the insurer and the policy number, and such further information as the Insurer may reasonably require.

Cancellation

The Insured may cancel this Policy at any time in writing to the Insurer. Upon receipt of such request, the Insurer will retain a short period premium calculated on its short term rates for the time it has been on risk and the Insured will receive a refund of any balance of the premium actually paid. The Insurer may cancel this Policy in accordance with the Insurance Contracts Act 1984 by giving notice in writing to the Insured of the date from which such cancellation is to take effect.

Governing Law

This Policy will be governed in accordance with the laws of Australia. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

Severability and Non Imputation

Where this Policy insures more than one party, any failure on the part of any of the parties to:

- a) comply with the Duty of Disclosure in terms of the Insurance Contracts Act 1984; or
- b) comply with any obligation in terms of this Policy; or
- c) refrain from conduct which is dishonest, fraudulent, criminal or malicious, shall not prejudice the right of the remaining party or parties to indemnity in terms of this Policy, provided that such remaining party or parties shall:
 - i. be entirely innocent of and have had no prior knowledge of any such failure; and
 - ii. as soon as practicable after becoming aware of any such failure, advise the Insurer in writing of all its relevant circumstances.

Payment of Premium

The Insured must pay the premium specified in the Schedule for the Period of Insurance to the Insurer by the Due Date. The Due Date is on or before thirty days after the inception date of the Period of Insurance specified in the Schedule or such other time that the Insurer agrees in writing. If the Insured fails to pay the premium by the Due Date, the Insurer is entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

Territorial and Jurisdictional Limits of Cover

This Policy provides cover for:

- a) any civil liability resulting from the conduct of the Professional Services anywhere in the world, except for any civil liability resulting from:
 - i. the conduct of the Professional Services within North America; or
 - ii. the provision of professional services to persons in North America as part of the conduct of the Professional Services; or
 - iii. any act, error or omission occurring within North America. and
- b) Claims made anywhere in the world, except for those Claims;
 - i. brought in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the Insured in North America; or
 - ii. arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in North America.

Goods and Services Tax

As part of the premium, the Insurer will charge the Insured an amount on account of GST. The Insured must inform the Insurer of the extent to which it is entitled to an input tax credit for that GST amount each time that it notifies a Claim under this Policy. No payment will be made to the Insured for any GST liability that it may incur on the settlement of a Claim if it does not inform the Insurer of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this Policy, the Insurer's liability to the Insured will be calculated taking into account any input tax credit to which the Insured is entitled for any acquisition which is relevant to the Claim, or to which it would have been entitled had it made a relevant acquisition. 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.