

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

Special definitions for this section

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

What is covered

Claims against you	<p>If during the period of insurance, and as a result of your business activity on or after the retroactive date within the geographical limits, any party:</p> <ol style="list-style-type: none">brings a claim against you for:<ol style="list-style-type: none">negligence or breach of a duty of care arising from the performance of any design or specification, feasibility study, technical information calculation or survey performed by you or on your behalf by sub-contractors ;infringement of intellectual property rights including copyright, trademark or moral rights or any act of passing-off;breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use;failure to warn that there is a deficiency in any design undertaken by another party; orrefers a dispute arising directly from matters covered above to adjudication under the Housing Grants Construction and Regeneration Act 1996 or any similar or successor legislation; <p>we will indemnify you against the sums you have to pay as compensation.</p> <p>We will also pay defence costs but we will not pay costs for any part of a claim not covered by this section.</p>
Potential claims capable of rectification	<p>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 section, 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 would be acting 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.</p>
Your own losses	
Loss of documents	<p>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 pay the reasonable expenses you incur with our prior written consent in restoring or replacing it. The most we will pay for the total of all such expenses is the relevant amount shown in the schedule.</p>
Criminal proceedings	<p>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 section.</p>

What is not covered

Matters specific to your business

- A. **We** will not make any payment for any claim or part of a claim or loss directly or indirectly due to:
1. any investment of, or direct advice on the investment of, client funds.
 2. any 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 any breach of any legislation or regulation related to these activities.
 3. any design, specification, feasibility study, technical information calculation or survey which is not carried out by or under the direct supervision of a properly qualified engineer, architect, surveyor, quantity surveyor or other person with five years' practical experience of such activity unless notified to **us** and agreed by **us** in writing.
 4.
 - a. **your** or **your** sub-contractor's defective workmanship, or any defective materials **you**, **your** sub-contractor or a third-party have supplied;
 - b. **your** or **your** sub-contractor's failure to supervise the work **you** or any sub-contractor have carried out.
 5. any work performed by a specialist, designer or consultant working for **you** as a sub-contractor where:
 - a. **you** have not taken reasonable steps to ensure that the sub-contractor has, and maintains, professional indemnity insurance with a reputable insurer; and
 - b. there is no written contract between **you** and the sub-contractor which is subject to English or Scottish law.
 6. any overcharging of fees or commission by **you**.
 7. **your** failure to obtain and maintain adequate insurance for a project.
 8. **your** failure to obtain and maintain adequate financing for a project.
 9. **your** failure to account for any money received.
 10. **your** provision of estimates for construction costs.
 11. **your** insolvency or financial difficulties or the insolvency or financial difficulties of any sub-contractor.
 12. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
 13. transmission of a computer **virus**.
 14. any liability for any breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
 15. any infringement, use or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret.

Contractual liabilities and collateral warranties

16. **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 either case **we** will not indemnify **you** for any liability arising from:

 - i. any fitness for purpose guarantee;
 - 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

17. activities carried out in the name of a consortium, joint venture or profit-sharing scheme in which **you** are a party.

Professional indemnity for design and construct professionals

Policy wording

Matters insurable elsewhere	<p>18. anyone's employment with or work for you, or any breach of an obligation owed by you as an employer.</p> <p>19. any discrimination, harassment or unfair treatment.</p> <p>20. the death of or any bodily or mental injury or disease suffered by:</p> <ol style="list-style-type: none"> 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. <p>21. the loss, damage or destruction of any tangible property:</p> <ol style="list-style-type: none"> a. other than documents in your care, custody or control in connection with a business activity for a client; or b. unless arising directly from any design, specification, feasibility study, technical information calculation or survey performed by you or on your behalf by a sub-contractor. <p>This clause does not apply to your own loss under the Loss of documents cover in What is covered.</p> <p>22. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.</p> <p>23. any personal liability incurred by a director or officer of yours when acting in that capacity or managing your business, or a breach of any fiduciary duty, or any statement, representation or information concerning you or your business contained in your accounts, reports or financial statements.</p>
Deliberate, reckless or dishonest acts	24. any act, breach, omission or infringement you deliberately, spitefully, dishonestly or recklessly commit, condone or ignore.
Pre-existing problems	25. 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 .
Date recognition	26. date recognition .
War, terrorism and nuclear	27. war, terrorism or nuclear risks .
Asbestos	28. asbestos risks .
Claims brought by a related party	<p>B. We will not make any payment for:</p> <p>1. any claim brought by an insured within the definition of you or any party with a financial, executive or managerial interest in you, including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third-party directly arising out of the performance of your business activity.</p>
Adjudication costs	<p>2. a claim referred to adjudication under the Housing Grants Construction and Regeneration Act 1996, or any similar or successor legislation, where your contract with your client failed to provide that:</p> <ol style="list-style-type: none"> 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.
Restricted recovery rights	3. that part of any claim where your right of recovery is restricted by any contract.
Lost profit and VAT	4. your lost profit, mark-up or liability for VAT or its equivalent.
Trading losses	5. any trading loss or trading liability including those arising from the loss of any client, account or business.

Non-compensatory payments	<p>6. fines and contractual penalties, tax liabilities or debts, aggravated, punitive or exemplary damages, and also additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section.</p> <p>7. any costs awarded against you as a result of criminal proceedings.</p>
Claims outside the applicable courts	<p>8. 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 judgment or award from outside the applicable courts.</p>

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 **defence costs** combined is the single limit of indemnity shown in the schedule, irrespective of the number of claims, unless limited below or in the schedule. **You** must pay the relevant **excess** for each claim including costs.

Paying out the limit of indemnity

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

Your obligations

If a problem arises

We will not make any payment under this section:

1. unless **you** notify **us** promptly of the following within the **period of insurance** or at the latest within 14 days after it expires for any problem **you** first become aware of in the seven days before expiry:
 - a. **your** first awareness of a shortcoming in any 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**.
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.

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 design and construct professionals

Policy wording

Notification for adjudication

In view of the strict timetable relating to an adjudication **you** must notify **us** by 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, by telephone or email to:

Hiscox Liability Claims Team
Telephone: 0800 840 2432
Email: liability.claims@hiscox.com.

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