

The General terms and conditions and the following terms and conditions all apply to this section. Cover under this section is given on an aggregate basis unless otherwise specified.

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

Special definitions for this section

Advertising	Advertising, publicity or promotion in or of your products or services.
Applicable courts	The courts of competent jurisdiction in those countries stated as the applicable courts in the schedule.
Business activity	The activities stated in the schedule, which you perform in the course of your business .
Computer system	Any computer network, hardware, software, information technology and communications system, including any email, intranet, extranet or website.
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend a claim against you .
Hacker	Any third party, other than an employee of yours , who maliciously targets you and gains unauthorised access to or unauthorised use of your computer system or data held electronically by you or on your behalf.
Pollution	Any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
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	If during the period of insurance, and as a result of your business activity or advertising on or after the retroactive date within the geographical limits, any party: - brings a claim, including any injunctive proceedings, against you for: - 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; or - refers a dispute arising directly from your breach of a duty of care to adjudication under the Housing Grants Construction and Regeneration Act 1996 or any similar or successor legislation; unless excluded under What is not covered below, we will indemnify you against the sums you have to pay as compensation, including any liability for claimants' legal costs and expenses. We will also pay defence costs but we will not pay costs for any part of a claim not covered by this section.
Negligence	
Intellectual property infringement	
Breach of confidentiality	
Deficiency in any design	
Housing Grants Adjudication	

Potential claims capable of rectification

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 agreement 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 stated in the schedule.

Your own losses

Loss of documents

If during the **period of insurance** any tangible document of **yours** which is necessary for the performance of **your business activity** is physically lost, damaged or destroyed while in **your** possession, **we** will pay the reasonable expenses **you** incur with **our** prior written agreement in restoring or replacing it. The most **we** will pay for the total of all such expenses is the relevant amount stated 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 agreement to defend **you** if, in **our** opinion, a successful defence may avoid a claim which would be covered by this section.

Additional cover

Court attendance compensation

If any person within the definition of **you**, or any employee of **yours**, has to attend court as a witness in connection with a claim against **you** covered under this section, **we** will pay **you** the amount shown in the schedule as compensation for each day or part of a day that their attendance is required by **us**. The most **we** will pay for the total of all court attendances is the amount shown in the schedule.

What is not covered

A. **We** will not make any payment for any claim or part of a claim or loss directly or indirectly due to:

Investments

1. any investment advice, financial advice, investment of client funds or any activity regulated by the Financial Conduct Authority, Prudential Regulation Authority or any other similar or successor regulatory body.

Design and survey

2. 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.

Pension schemes

3. 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.

Taxation and competition

4. any liability for any breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.

Pollution

5. **pollution**.

Virus

6. transmission of a **virus**.

Discrimination and harassment

7. any discrimination, harassment or unfair treatment, unless arising directly from **your** breach of a duty of care in the performance of a **business activity**.

Injury

8. the death of 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.

Property damage	9. 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 a sub-contractor. This clause does not apply to your own loss under the Loss of documents cover in What is covered .
Negotiable instruments	10. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
Hacker	11. the loss, copying or distortion of any data by a hacker .
Directors and officers' liability	12. 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.
Deliberate, reckless or dishonest acts	13. any act, breach, omission or infringement you deliberately, spitefully, dishonestly or recklessly commit, condone or ignore.
Pre-existing problems	14. anything, including any actual or alleged shortcoming in your work, or that of your sub-contractor, or any dispute in connection with a contract, likely to lead to a claim or criminal proceedings being made against you , which you knew or ought reasonably to have known about before the start of the period of insurance .
Date recognition	15. date recognition .
War, terrorism and nuclear	16. war, terrorism or nuclear risks .
Asbestos	17. asbestos risks .
Contractual liabilities and collateral warranties	18. 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: a. any fitness for purpose guarantee; b. any greater or longer lasting benefit than that given to the party with whom you originally contracted; c. any express guarantee, contractual penalty or liquidated damages; and d. your agreement to exercise a standard of care greater than would normally be expected in your profession.
Employees	19. anyone's employment with or work for you , or any breach of an obligation owed by you as an employer.
Patent/trade secret	20. any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret.
Defective workmanship	21. 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.
Specialist, designer or consultant work	22. 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.
Overcharging of fees	23. any overcharging of fees or commission by you .

Failure to obtain insurance	24. your failure to obtain and maintain adequate insurance for a project.
Failure to obtain financing	25. your failure to obtain and maintain adequate financing for a project.
Failure to account for money	26. your failure to account for any money received.
Estimates for construction costs	27. your provision of estimates for construction costs.
Insolvency or financial difficulties	28. your insolvency or financial difficulties or the insolvency or financial difficulties of any sub-contractor.
Joint ventures	29. activities carried out in the name of a consortium, joint venture or profit-sharing scheme in which you are a party.
Claims brought by a related party	B. We will not make any payment for: 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.
Restricted recovery rights	2. that part of any claim where your right of recovery is restricted by any contract.
Lost profit and VAT	3. your lost profit, mark-up or liability for VAT or its equivalent.
Trading losses	4. any trading loss or trading liability including those arising from the loss of any client, account or business.
Non-compensatory payments	5. 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.
Claims outside the applicable courts	6. any claim, including arbitration, brought outside the 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 .
Adjudication costs	7. 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: 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; and d. the adjudicator cannot reach a decision on commercial considerations as opposed to the legal liabilities and obligations of the parties in dispute.
Criminal proceedings costs	8. any costs awarded against you as a result of criminal proceedings.

How much we will pay

Paying out the limit of indemnity

The most **we** will pay for the total of all claims, their **defence costs**, and losses is the overall limit of indemnity stated in the schedule, irrespective of the number of claims or losses, unless limited below or in the schedule. **You** must pay the relevant **excess** stated in the schedule.

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, including payments in relation to other claims. **We** will then have no further liability for that claim or its **defence costs**.

Your obligations

- If a problem arises
1. **We** will not make any payment under this section unless:
 - a. **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:
 - i. **your** first awareness of anything, including any actual or alleged shortcoming in any work, 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;
 - ii. any claim or threatened claim against **you**;
 - iii. **your** first awareness of any actual or threatened criminal proceedings against **you**.
 - b. during an adjudication, **you** comply with any request, direction or timetable of the adjudicator;
 - c. **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.
 2. When dealing with **your** client or a third-party, **you** must not admit that **you** are liable for what has happened or make any offer, deal or payment, unless **you** have **our** prior written agreement. If **you** do, **we** may reduce any payment **we** make under this **policy** by an amount equal to the detriment **we** have suffered as a result.

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 the claim or part of the claim.

Appointment of legal representation

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 taking into account the commercial considerations of the costs of defence.

Partially covered claims

If a claim which is only partially covered by this section is brought against **you**, amounts relating to the non-covered parts of the claim will be deducted from **our** final settlement. **We** and **you** agree to use best efforts to determine a fair allocation of covered and non-covered parts of any claim. If **you** and **we** cannot agree on a fair allocation, **you** and **we** agree to refer any such dispute to a single arbitrator in accordance with the Arbitration Act then in force.

Payment of full limit of indemnity

We will not defend **you** against any claim where **we** pay **you** the applicable limit of indemnity as described in **How much we will pay**, Paying out the limit of indemnity, or if the overall limit of indemnity stated in the schedule has been exhausted.

Payment of excess

Our duty to make any payment under this section arises only after the applicable **excess** is fully paid. The **excess** will only be eroded by the covered parts of a claim.

Notification for adjudication

In view of the strict timetable relating to an adjudication **you** must notify **us** by email 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** insurance adviser if **you** use one, at hicliability.claims@hiscox.com.

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