

# Your Professional Indemnity Design and Build Policy

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# Professional Indemnity for Design and Build

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## Introduction

Welcome to Aviva. We are committed to providing a first-class service. Aviva is the UK's largest insurer with over 200 years' experience in the insurance industry. This is your insurance policy which sets out your insurance protection in detail. Your premium has been calculated on the basis of the extent of cover you have selected which is specified in the schedule, the information you have provided and the declaration you have made. Please read the policy and the schedule carefully to ensure that the cover meets your requirements.

Please contact your insurance adviser if you have any questions or if you wish to make adjustments. Your insurance adviser's details are

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## Contents

This policy consists of individual sections. You should read this policy in conjunction with the schedule which confirms the sections you are insured under and gives precise details of the extent of your insurance protection.

**Contact details for claims and help**

**Complaints Procedure**

**Important Information**

**The Contract of Insurance**

**Definitions**

**Cover**

**Clauses**

**Exceptions**

**Claims Conditions**

**General Conditions**

**Special Conditions**

# Contact details for claims and help

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## Services

As an Aviva customer, you can access additional services to help you keep your business running smoothly. For our joint protection telephone calls may be recorded and/or monitored.

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## Claims Service

**Telephone: 0207 157 2569**  
**E-Mail: [prclms@aviva.co.uk](mailto:prclms@aviva.co.uk)**  
**Postal Address:**

The Senior Claims Manager  
Aviva Corporate and Speciality Risk  
Level 18  
St Helens  
1 Undershaft  
London EC3P 3DQ

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## Legal and Tax Helpline

**0345 300 1899**

Call this helpline anytime, day or night, for advice on legal or tax matters in the United Kingdom. Given in confidence, the advice is free and you pay for just the cost of the call

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## Risk Solutions Helpline

**0345 366 6666**

Call for advice on safety, fire, security and other issues that can affect your business. Most enquiries can be dealt with over the telephone, but if we can't give you an immediate answer, we will deal with your enquiry within one working day. This service is available during office hours with an answering service outside these times

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## Counselling Service Helpline

**0117 934 0105**

This is a confidential service available to your staff to help deal with personal issues such as bereavement, divorce, the threat of violence in the workplace and bullying at work

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## Our Promise of Service

Our goal is to give excellent service to all our customers but we recognise that things do go wrong occasionally. We take all complaints we receive seriously and aim to resolve all our customers' problems promptly. To ensure that we provide the kind of service you expect we welcome your feedback. We will record and analyse your comments to make sure we continually improve the service we offer

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## What will happen if you complain

- We will acknowledge your complaint promptly.
- We aim to resolve all complaints as quickly as possible.

Most of our customers' concerns can be resolved quickly but occasionally more detailed enquiries are needed. If this is likely, we will contact you with an update within 10 working days of receipt and give you an expected date of response.

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## What to do if you are unhappy

If you are unhappy with any aspect of the handling of your insurance we would encourage you, in the first instance, to seek resolution by contacting your insurance adviser or Aviva Insurance, Professional Indemnity, Pitheavlis, Perth PH2 0NH. You can write or telephone, whichever suits you, and ask your contact to review the problem.

If you are unhappy with the outcome of your complaint you may refer the matter to the Financial Ombudsman Service at:

The Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR

Telephone:

0800 023 4567 (free from landlines) or  
0300 123 9123

Or simply log on to their website at **[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)**.

Whilst we are bound by the decision of the Financial Ombudsman Service, you are not. Following the complaints procedure does not affect your right to take legal action

# Important Information

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## Choice of Law

The appropriate law as set out below will apply unless you and the insurer agree otherwise.

1. The law applying in that part of the United Kingdom, Channel Islands or Isle of Man in which you, the policyholder, normally live or (if applicable) the first named policyholder normally lives  
or
2. In the case of a business, the law applying in that part of the United Kingdom, Channel Islands or Isle of Man where it has its principal place of business  
or
3. Should neither of the above be applicable, the law of England and Wales will apply.

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## Financial Services Compensation Scheme

We are members of the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from this scheme if we cannot meet our obligations, depending on the type of insurance and the circumstances of your claim.

Further information about the scheme is available from the FSCS website [www.fscs.org.uk](http://www.fscs.org.uk), or write to

Financial Services Compensation Scheme  
10th floor, Beaufort House  
15 St Botolph Street  
London  
EC3A 7QU

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## Use of Language

Unless otherwise agreed, the contractual terms and conditions and other information relating to this contract will be in English.

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## Customers with Disabilities

This policy and associated documentation are available in large print, audio and braille. If you require any of these formats, please contact your insurance adviser.

# The Contract of Insurance

The policy, the information You have provided and/or the application form, the declaration made by You and The Schedule should be read together and form the contract of insurance between You, The Policyholder and Us, Aviva.

In return for You having paid or agreed to pay the premium for the Period of Insurance, We will indemnify You to the extent of and subject to the terms contained in or endorsed on the policy.

## Important

This policy is a legal contract. You must tell Us about any material circumstances which affect Your insurance and which have occurred either since the policy started or since the last renewal date.

A circumstance is material if it would influence Our judgement in determining whether to provide the cover and, if so, on what terms.

If You are not sure whether a circumstance is material ask Your insurance adviser. If You fail to tell Us it could affect the extent of cover provided under the policy.

You should keep a written record (including copies of letters) of any information You give Us or Your insurance adviser when You renew this policy.

## Breach of Term

We agree that where there has been a breach of any term (express or implied) which would otherwise result in Us automatically being discharged from any liability, then such a breach shall result in any liability We might have under this policy being suspended. Such a suspension will apply only from the date and time at which the breach occurred and up until the date and time at which the breach is remedied. This means that We will have no liability in respect of any loss occurring, or attributable to something happening, during the period of suspension.

## Terms not relevant to the actual loss

Where there has been non-compliance with any term (express or implied) of this policy, other than a term that defines the risk as a whole, and compliance with such term would tend to reduce the risk of

- loss of a particular kind, and/or
- loss at a particular location and/or
- loss at a particular time,

then We agree that We may not rely on the non-compliance to exclude, limit or discharge Our liability under this policy if You show that non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.



Aviva Insurance Limited  
Registered in Scotland No. 2116. Registered Office: Pitheavlis, Perth PH2 0NH.  
Authorised by the Prudential Regulation Authority and regulated by the  
Financial Conduct Authority and the Prudential Regulation Authority.

## Definitions

A definition is a statement of the meaning of a word, phrase or term. The definitions listed below will have the same meaning wherever they appear, unless We state otherwise. Defined words, phrases or terms will always start with a capital letter.

### Approved Person

- (1) A Fellow or Professional Member of the Royal Institution of Chartered Surveyors (RICS).
- (2) A Member of the Institution of Civil Engineers (MICE).
- (3) A Member of the Institution of Structural Engineers (MIStructE).
- (4) A Fellow or Associate of the Faculty of Architects and Surveyors (FFAS).
- (5) A Fellow or Associate of the Royal Institute of British Architects (RIBA).
- (6) A Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS).
- (7) Any person who has at least 5 years experience of undertaking Professional Activities and Duties but only in respect of advice or services which are normally undertaken by (1) to (6) above

### Asbestos Survey

Any management survey or refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006, or any other comparable inspection, whether of commercial or residential land or property.

### Bodily Injury

Any injury including death, illness, disease, sickness, psychological injury, emotional distress or nervous shock.

### Business

The provision of Professional Activities and Duties directly connected to the activities stated in the Schedule.

### Claim

Demand made against You consisting of or arising from any

- (1) demand for, or assertion of a right to, damages or compensation
- (2) notice of intention to commence legal proceedings
- (3) communication invoking any pre-action protocols
- (4) notification of arbitration, ombudsman or adjudication proceedings.

### Collateral Warranty or Duty of Care Agreement

Any contractual or other agreement entered into by You which acknowledges or accepts that You owe a duty of care to, or are or may be responsible for, the losses of any party other than Your direct client to whom You are contracted to provide services.

### Document

Any

- (1) deed, will, agreement, book, letter, certificate, form, map, plan, record, photograph, calculation or drawing
- (2) information or data stored on a computer

which is Your property, is under Your custody or control or for which You are responsible.

This definition does not include any bearer bond, evidence of share ownership (whether in electronic or other form), coupon, bank or currency note and other negotiable paper.

### Employee

Any person who is or has been under a contract of service or apprenticeship with You while working under Your control in connection with the Business.

### Environmental Audit

An investigation specifically intended to assess whether or not there is Pollution present.

### **Excess**

The first part of each and every payment in relation to a Claim or loss which is payable by You rather than Us. The amount of the Excess is stated in the Schedule.

The Excess does not apply to Other Costs.

### **Joint Venture**

Any limited liability company, limited liability partnership, partnership or other contractual arrangement formed by The Policyholder with others to engage in a joint business enterprise for profit under the terms of a legally binding joint venture agreement.

### **Limit of Indemnity**

The maximum amount stated in the Schedule We will pay in respect of any one Claim or loss and in total for all Claims first made or losses first discovered during any one Period of Insurance.

All Claims or losses arising from any dishonesty or fraud committed by a person acting alone or in collusion with others shall be treated as one Claim or loss.

### **Other Costs**

All costs and expenses incurred in the investigation, defence or settlement of any Claim or loss incurred with Our written consent.

### **Period of Insurance**

From the effective date until the expiry date shown in the Schedule.

### **Pollution**

Any pollution or contamination by naturally occurring or man-made substances, forces or organisms or any combination of them, whether permanent or transitory and however occurring.

This definition does not include pollution or contamination by asbestos.

### **Professional Activities and Duties**

The performance by any Approved Person of any professional

- (1) design or specification
- (2) supervision of construction
- (3) feasibility study including work in relation or to applications for planning consent
- (4) surveying
- (5) planning supervisory services
- (6) estimation of construction costs.

### **Schedule**

The document which specifies Your details and details of the Business, Excess, Limit of Indemnity, Period of Insurance, other limits and any endorsements applying to this policy.

### **Terrorism**

Any act or acts including but not limited to

- (1) the use or threat of force and/or violence  
and/or
- (2) harm or damage to life or to property (or the threat of such harm or damage) including but not limited to harm or damage by nuclear and/or chemical and/or biological and/or radiological means

caused or occasioned by any person(s) or group(s) of persons, or so claimed, in whole or in part for political, religious, ideological or similar purposes.

### **We / Us / Our / Aviva**

Aviva Insurance Limited.

## **You / Your / The Policyholder / The Insured**

- (1) Any individual, partnership, limited liability partnership, company or limited company named in the Schedule (The Policyholder) or any predecessor in business of such individual, partnership, limited liability partnership, company or limited company as declared to Us.
- (2) Any person who is or has been or who becomes a director, partner, member, principal or Employee of any person or body referred to in (1) above but only in respect of work undertaken for or on behalf of any person or body referred to in (1) above.
- (3) The estate, heirs, executors, legal or personal representatives of any person or body referred to in (1) or (2) above in the event of their death, incapacity, insolvency or bankruptcy.

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## **Cover**

### **Professional Indemnity**

We will cover You in respect of any Claim (including Other Costs associated with such Claim) arising out of the conduct of Your Business, first made against You during the Period of Insurance and notified to Us in accordance with the Claims Conditions, for any civil liability including claimant's costs and expenses arising from

- (1) any negligent act, error or omission committed by
  - (a) You or on Your behalf
  - (b) specialist designers, consultants or sub-contractors engaged by YouWe will not provide indemnity if Your rights of recourse against any specialist designers, consultants or sub-contractors engaged by You are waived or otherwise impaired
- (2) any dishonest, fraudulent, malicious or criminal act or omission committed by any Employee
- (3) Your failure to warn a client of any deficiency, alleged or otherwise, of Professional Activities and Duties provided by others which should reasonably have been identified by You in the conduct of the Business
- (4) any loss of or damage to Documents.

We will not provide cover in respect of any Claim

- (a) related to, in consequence of, contributed to or aggravated by, asbestos other than as specifically stated in the Asbestos clause below
- (b) arising directly or indirectly from Pollution other than as specifically stated in the Pollution clause below.

### **Asbestos**

We will cover You in respect of any Claim (including Other Costs associated with such Claim) arising directly or indirectly from asbestos first made against You during the Period of Insurance and notified to Us in accordance with the Claims Conditions arising solely from a negligent act, negligent error or negligent omission committed by You in the conduct of Your Business.

We will not cover You for any Claim arising directly or indirectly

- (1) from any Asbestos Survey carried out by You
- (2) out of or in any way involving Bodily Injury or fear of Bodily Injury related to, in consequence of, contributed to or aggravated by asbestos.

The maximum amount We will pay, which is part of and not in addition to the Limit of Indemnity, in respect of any one Claim and in total for all Claims (including claimant's costs and expenses and Other Costs) during any one Period of Insurance shall not exceed the amount stated in The Schedule.

## **Pollution**

We will cover You for any Claim (including Other Costs associated with such Claim) arising out of the conduct of Your Business, first made against You during the Period of Insurance and notified to Us in accordance with the Claims Conditions, arising from a negligent act, error or omission committed by You and concerning sudden or accidental Pollution.

We will not cover You for any Claim arising directly or indirectly from any Environmental Audit.

Our total liability under this Pollution cover, which is part of and not in addition to the Limit of Indemnity, in respect of any one Claim and in total for all Claims (including claimant's costs and expenses and Other Costs) during any one Period of Insurance shall not exceed the amount stated in The Schedule.

## **Mitigation of Loss**

We will cover You for reasonable costs and expenses incurred by You in respect of any reasonable action taken to mitigate a loss or potential loss or Claim that would otherwise be the subject of indemnity under this policy provided that

- (1) We give prior written consent to You incurring such costs and expenses
- (2) You prove to Our satisfaction that the amount of the costs and expenses to be incurred are less than any likely award of damages arising from the same potential Claim or (as applicable) any potential loss.

## **Joint Venture**

We will cover You for any Claim (including Other Costs associated with such Claim) arising out of the conduct of the business of a Joint Venture, first made against You during the Period of Insurance and notified to Us in accordance with the Claims Conditions, for any civil liability including liability for claimant's costs and expenses attaching to You and arising from Your participation in any Joint Venture from any negligent act, negligent error or negligent omission committed by You.

Provided that

- (1) all fees/turnover from such Joint Venture have been declared to and accepted by Us
- (2) this extension only applies to You and
  - (a) We will not provide cover for any other participant in the Joint Venture
  - (b) We have no liability to pay any contribution to the insurer of any other participant in the Joint Venture.

## **Limit of Indemnity**

The maximum We will pay for any Claim shall not exceed the Limit of Indemnity and Other Costs.

If the total cost of a Claim is more than the Limit of Indemnity, the most We will pay for Other Costs will be the same proportion that the Limit of Indemnity bears to the total cost of the Claim.

If there is more than one Insured, the total amount We will pay for any one Claim will not be more than the Limit of Indemnity.

We will not cover You for the Excess stated in Your Schedule.

We will not provide cover to any person committing or conspiring to commit or condoning any dishonest or fraudulent act or omission.

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## Clauses

**Clauses are payable in addition to the Limit of Indemnity.**

**The Excess does not apply to any clause.**

### Legal Defence Costs

We will pay on Your behalf any reasonable costs and expenses incurred with Our prior written consent in dealing with an investigation and the defence of any proceedings first brought against You and notified to Us during the Period of Insurance under

- (1) The Consumer Protection from Unfair Trading Regulations 2008 and/or
- (2) The Business Protection from Misleading Marketing Regulations 2008, and/or
- (3) Estate Agents Act 1979, and/or
- (4) The Health and Safety at Work etc Act 1974, and/or
- (5) The Health and Safety at Work (Northern Ireland) Order 1978, and/or
- (6) The Construction (Design and Management) Regulations 2015, and/or
- (7) The Corporate Manslaughter and Corporate Homicide Act 2007, and/or
- (8) The Bribery Act 2010, and/or
- (9) The Data Protection Act 1998, and/or
- (10) similar, prior or successor legislation to that detailed in (1) to (9) above.

The maximum We will pay under this clause shall not exceed the amount stated in the Schedule.

We will not provide cover

- (1) unless We believe that defending such proceedings could protect You against any concurrent or subsequent Claim arising from the Business and in respect of which We may be obliged to provide cover
- (2) in respect of any criminal penalties or fines.

### Payment for Court Attendance

We will compensate You, subject to Our prior written consent, if We require You to attend court as a witness in connection with a Claim for which You are entitled to cover.

The maximum We will pay under this clause shall not exceed the amount stated in the Schedule.

### Representation Costs

We will pay on Your behalf any reasonable costs and expenses incurred by You for representation at properly constituted hearings, tribunals or proceedings provided that

- (1) such costs and expenses are incurred with Our prior written consent
- (2) the subject of the hearing, tribunal or proceedings relates to a circumstance first notified to Us during the Period of Insurance which may become a Claim and in respect of which We may be obliged to provide an indemnity under the terms of this cover.

The maximum We will pay under this clause shall not exceed the amount stated in the Schedule.

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## Exceptions

We will not provide cover for

### Bodily Injury

any Claim or loss arising directly or indirectly from or caused by

- (1) any Bodily Injury of any Employee whilst in the course of their employment with You
- (2) any other Bodily Injury or loss of or damage to property unless arising from an alleged breach of professional duty in the conduct of Your Business.

### **Cladding & Fire Safety**

- (1) any Claim or loss directly or indirectly arising from or in any way connected to the combustibility or fire protection performance of any composite panels, external wall systems, associated core/filler insulation material or any ancillary fixing systems
- (2) any Claim or loss directly or indirectly arising from or in any way connected to the fire safety of a building.

### **Contractual Liability**

any Claim arising from any Collateral Warranty, Duty of Care Agreement or other contractual agreement in which You agree to

- (1) a standard of care greater than that reasonably expected of Your profession, or
  - (2) guarantee a particular outcome, or
  - (3) pay a contractual penalty or liquidated damages, or
  - (4) provide a greater or longer lasting benefit than that given to the party to the original contract
- unless such liability would have attached to You in the absence of the features listed above.

Part (4) above does not apply if the greater or longer lasting benefit arises only because such agreement has been executed as a deed.

This exception does not apply to liabilities required by

- (1) any applicable professional design standard such as the Eurocodes or British Standards series
- (2) the British Property Federation's or Construction Industry Council's standard collateral warranty wording.

### **Controlling Interest**

any Claim brought by any entity

- (1) in which You exercise a controlling interest
- (2) which exercises a controlling interest over Your Business by virtue of having a financial or executive interest in You

unless such Claim arises from or is caused by a claim made against such entity by an independent third party.

### **Defective Workmanship**

any liability arising from any

- (1) defective workmanship of any construction, installation, repair, alteration or maintenance work undertaken by You
- (2) manufacturing defect in any goods or products supplied by You.

### **Directors and Officers**

any Claim made against You solely in Your capacity as a director, officer or trustee unless arising from an alleged breach of professional duty in the conduct of Your Business.

### **Dishonesty or Fraud after Discovery**

any Claim or loss arising from any dishonest or fraudulent act or omission committed by any person after the discovery, in relation to that person, of reasonable cause for suspicion of any dishonest or fraudulent act or omission.

### **Employee Benefits Scheme**

any Claim or loss arising from any plan, programme or scheme established or maintained to provide benefits to You or any Employee.

### **Employee Disputes**

any Claim or loss arising directly or indirectly from or caused by any dispute between You and any present or former Employee or any person who has applied for or been offered employment with You.

### **Fines or Penalties**

any fines or penalties or any punitive, multiple, aggravated or exemplary damages where such can be identified separately within any award of any court or tribunal.

For avoidance of doubt, this exception does not

- (1) apply to any Claim relating to defamation arising from the conduct of Your Business
- (2) operate to exclude or limit any legal liability to meet an award made by any ombudsman appointed pursuant to any statute or recognised scheme.

### **Insolvency or Bankruptcy**

any Claim or loss arising out of and relating solely to Your insolvency or bankruptcy.

This exception shall not apply to any Claim that would otherwise be covered by this policy but for Your insolvency or bankruptcy.

### **Malicious Computer Code**

any Claim or loss arising directly or indirectly from or caused by the transmission or receipt of any computer virus or any other computer program or code designed to produce unexpected, unauthorised or undesirable effects or operations unless arising solely from a negligent act, error or omission committed by You in the conduct of Your Business.

### **Nuclear Risks**

any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

- (1) ionising radiations 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.

### **Other Policies**

any Claim or loss where You are entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such insurance had this cover not been effected.

### **Ownership, Possession or Use of Transport or Property**

any Claim or loss arising directly or indirectly from or caused by the ownership, possession or use, by You or on Your behalf, of

- (1) any aircraft, watercraft, hovercraft, motor vehicle or trailer.
- (2) any buildings, structures, premises or land, or
  - (a) that part of any building leased, occupied or rented by You, or
  - (b) any other property (mobile or immobile) belonging to You.

### **Prior Claims or Circumstances**

any Claim

- (1) You were or should have been aware of prior to the inception of this cover (including any claim notified under any insurance which was in force prior to the inception of this cover and accepted as notified by the insurer of that policy);
- (2) arising out of any circumstance which has been notified under any insurance which was in force prior to the inception of this cover and the insurers of that policy have accepted that the circumstance was properly notified to that policy

provided that this Exception shall not reduce Your rights under (or otherwise affect the application of) any Special Condition.

### **Retroactive Date**

any Claim or loss arising out of any act or omission prior to the Retroactive Date stated in the Schedule. For the avoidance of doubt, in the absence of a Retroactive Date this exception shall not apply.

### **Survey or Valuation Work**

any Claim arising out of a survey or valuation, unless it was undertaken by

- (1) anyone who is
  - (a) a Fellow, a Professional Member, a Technical Member or an Associate Member of the Royal Institution of Chartered Surveyors (RICS); or
  - (b) a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA); or
  - (c) a Fellow or Associate of the Architects and Surveyors Institute (ASI); or
  - (d) a Fellow or Associate of the Faculty of Architects and Surveyors (FFAS); or
  - (e) a Fellow or Associate of the Royal Institute of British Architects (RIBA); or
  - (f) a Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS) or
  - (g) a RICS Registered Valuer in accordance with the RICS Valuation Standards; or
- (2) anyone who has not less than five years' experience of such work or
- (3) any other person delegated by the You to execute such work subject always to
  - (a) supervision of such work by a person qualified in accordance with clause (1) (a) & (b) above, or
  - (b) agreement in writing having been obtained from Us prior to cover being granted.

### **Trading Losses**

any Claim or loss arising from any trading losses or trading liabilities incurred by any business managed by or carried on by You.

### **USA/Canada**

any Claim

- (1) instituted or pursued in the United States of America, its territories and possessions and/or Canada (including without limitation the enforcement of a judgement or finding of a court or tribunal of another jurisdiction or otherwise)
- (2) in which it is contended that the laws of the United States of America, its territories and/or possessions or Canada should or do apply
- (3) which involves the enforcement or attempted enforcement of a judgement or finding of a court or tribunal of the United States of America, its territories and/or possessions or Canada.

### **War & Terrorism**

any Claim, loss or consequence whatsoever resulting directly or indirectly from or in connection with any of the following regardless of any other contributory cause or event

- (1) war, invasion, act of foreign enemy, hostilities or a warlike operation or operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of, or amounting to, an uprising, military or usurped power
- (2) Terrorism
- (3) any action taken in controlling preventing suppressing or in anyway relating to (1) and/or (2) above.

In any action, suit or other proceedings, where We allege that any Claim or loss falls within (1) and/or (2) above, regardless of any other contributory cause or event, We shall not be required to prove the operation of the relevant exception. The burden of proving that the relevant exception does not apply shall be upon You.

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## Claims Conditions

### Notification

If in relation to any Claim or loss You fail to fulfil any of the following Claims Conditions You may lose Your right to cover for that Claim or loss.

- (1) You shall give written notice to Us as soon as practicable if, during the Period of Insurance and regardless of any Excess, You
  - (a) receive any Claim, or
  - (b) receive any notice of intention to make a Claim, or
  - (c) discover a reasonable cause for suspicion of any dishonesty or fraud on the part of any past or present director, partner, member or Employee of Yours, whether giving rise to a Claim or not.

In the event that it is not possible to give Us such notice before the end of the Period of Insurance then You must do so not later than 10 working days after the end of the Period of Insurance.

- (2) If You become aware of any circumstance that might give rise to a Claim or loss, You shall give written notice to Us of such circumstances as soon as practicable and in any event not later than the last day of the Period of Insurance.

Any Claim or loss subsequently arising from any circumstance notified to Us shall be deemed to have been made during the Period of Insurance in which the notice of such circumstances was first received by Us.

All written notices should be sent to  
The Senior Claims Manager  
Aviva Corporate and Speciality Risk  
Level 18  
St Helens  
1 Undershaft  
London EC3P3DQ  
Tel. 020 7157 2569

### Admission of Liability

In the event of a Claim or loss or the discovery of a circumstance that might give rise to a Claim or loss You must not admit liability for or settle any Claim or incur any related costs or expenses without Our written consent.

### Control of Defence and Co-Operation

In the event of a Claim or loss or the discovery of a circumstance that might give rise to a Claim or loss, We will be entitled, at Our own expense at any time, to take over and conduct in Your name (but at Our sole discretion) the defence or settlement of any such Claim or loss provided always that, if there is any dispute between You and Us as to whether a Claim should be defended, We cannot require You to continue to defend a Claim unless a Queen's Counsel (whose identity is agreed with Us) advises that the Claim should be defended.

If We do take over and conduct the defence or settlement of any such Claim or loss You shall give Us (and any consultants, agents or advisers who may be appointed by Us) all such information and assistance as We may reasonably require and that is in Your power to provide.

Your duty to assist Us includes

- (1) providing all such information, documents (including access to those held in computerised or electronic format), assistance, signed statements or depositions as may be required to facilitate compliance with any civil procedure rules, practice directions and pre-action protocols as may be issued
- (2) ensuring that all documents and records that might be relevant or otherwise required by Us are preserved (and, in the case of documents or records that are computerised or otherwise held electronically, ensuring that they are retained in a readily retrievable form)
- (3) allowing Us to present the best possible defence of a Claim within the time constraints available
- (4) ensuring ready access to all and any information that We may require in the defence of a Claim or investigation of a loss
- (5) ensuring the payment of the Excess in conjunction with the terms of any settlement agreed by Us.

## Adjudications

Notwithstanding the Notification condition above, in respect of any adjudication, We will not provide cover unless

- (1) You notify Us within 72 hours of
  - (a) receipt of any notice of adjudication served on You
  - (b) You becoming aware of any circumstance which may give rise to a notice of adjudication being served on You.
- (2) You do not serve any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract without Our prior consent unless, in Your reasonable opinion, service of such notice will not give rise to a Claim.

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## General Conditions

### Acquisitions

We will automatically extend cover for any entity acquired by You during the Period of Insurance provided that

- (1) In the 12 month period immediately preceding such acquisition, the revenue of the entity did not exceed 10% of Your annual revenue
- (2) In the five year period immediately preceding the acquisition, the entity has had no claims or losses in excess of £25,000 in the aggregate and is not aware of any circumstance which may give rise to a claim
- (3) You have undertaken due diligence prior to the acquisition and are not aware of any potential liability which could result in a Claim under this cover
- (4) The entity is domiciled in and provides all of its services within the United Kingdom
- (5) The services performed by the acquired entity are similar to those provided by You.

Any acquisition which does not meet provisos (a) – (e) above will be automatically covered for a period of 30 days following the acquisition or (if earlier) until the expiry of the Period of Insurance for acts committed after the date of acquisition. We are under no obligation to extend cover to the entity beyond that date. We may provide Our written consent to extend cover subject to You complying with any additional terms, conditions, endorsements and paying any additional premium which We, at Our sole discretion, deem appropriate.

If We decide not to extend cover, or Our amended terms, conditions or additional premium are not acceptable to You, We may cancel this cover.

### Cancellation

- (1) You may cancel this policy at any time after the date We have received the premium, by providing 30 days notice in writing to Us.
- (2) If there is a default under Your Aviva credit agreement which finances this policy, We may cancel this policy by providing notice in writing to You in accordance with the default termination provisions set out in Your Aviva credit agreement.

If Your policy is cancelled under (1) or (2) above, and provided that there have been no:

  - (a) claim(s) made under the policy for which We have made a payment
  - (b) claim(s) made under the policy which are still under consideration
  - (c) circumstances which might give rise to a Claim reported to Us or, if You are aware of any circumstances which might give rise to a Claim, have yet to be reported to Usduring the current Period of Insurance We may, at Our discretion, refund to You a proportionate part of the premium paid for the unexpired period.
- (3) Where there is no Aviva credit agreement to finance this policy, We will cancel this policy from the inception date if the premium has not been paid and no return premium will be allowed. Such cancellation will be confirmed in writing by Us to Your last known address.

- (4) We may also cancel this policy at any time by sending not less than 30 days' notice in writing to Your last known address.

We will refund a proportionate part of the premium for the unexpired period provided that there have been no:

- (a) claim(s) made under the policy for which We have made a payment
- (b) claim(s) made under the policy which are still under consideration
- (c) circumstances which might give rise to a Claim reported to Us or, if You are aware of any circumstances which might give rise to a Claim, have yet to be reported to Us during the current Period of Insurance.

### **Contesting Proceedings**

You shall not be required to contest any legal proceedings unless a senior barrister (to be mutually agreed upon between You and Us) shall advise that such action has a reasonable prospect of success.

### **Contract of Insurance**

This policy, its endorsements and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the policy, endorsements or the Schedule shall bear the same meaning wherever it may appear unless the contrary is indicated.

In the event that there is any conflict between the terms of this policy and the Schedule, the terms of the Schedule shall prevail.

### **Discharge of Liability**

In connection with any Claim, We may at any time pay You the amount of the Limit of Indemnity (after deduction of any sums already paid as damages or claimant's costs and expenses in respect of such Claim) or any lesser amount for which We believe that such Claim can be settled and thereupon We shall relinquish the control of such Claim and be under no further liability in connection therewith except for costs and expenses incurred prior to the date of such payment and for which We may be responsible under this policy.

### **Fraud**

If any claim for indemnity made by You or anyone acting on Your behalf is fraudulent or fraudulently exaggerated or supported by a false statement or fraudulent means or fraudulent evidence is provided to support the claim, We may

- (1) refuse to pay any connected Claim for which You would be entitled to indemnity under this policy
- (2) recover from You any sums paid by Us to You in respect of such Claim
- (3) by notice to You cancel the policy with effect from the date of the fraudulent act without any return of premium

If We cancel the policy under (3) above, then We may refuse to provide cover after the time of the fraudulent act. This will not affect any liability We may have in respect of the provision of cover before the time of the fraudulent act.

If this policy provides cover to any person other than You and a claim made by such person or anyone acting on their behalf is fraudulent or fraudulently exaggerated or supported by a false statement or fraudulent means or fraudulent evidence is provided to support the claim, We may

- (1) refuse to pay any connected Claim for which You would be entitled to indemnity under this policy
- (2) recover any sums paid by Us in respect of such Claim (from You or such person, depending on who received the sums or who benefited from the cover provided)
- (3) by notice to You and such person cancel the cover provided for such person with effect from the date of the fraudulent act without any return of premium in respect of such cover

If We cancel a person's cover under (3) above, then We may refuse to provide cover after the time of the fraudulent act. This will not affect any liability We may have under such cover occurring before the time of the fraudulent act.

### **How much we will pay**

The Limit of Indemnity and the Excess apply to all of You jointly. If more than one Insured is named in the Schedule, the total amount We will pay will not exceed the amount We would be liable to pay to any one of You.

## Payment of the Premium

You must pay the premium and any relevant taxes when due. Failure to do so will entitle Us to cancel the policy in accordance with the Cancellation Condition. If the premium has not been paid on the due date, whether or not We elect to cancel the policy, We will not cover You in respect of any Claims made or pay any losses occurring prior to the date on which the premium is received.

## Reimbursement

Where a Claim or loss involves the dishonest or fraudulent act or omission of any former or present partner, director, member, consultant or Employee of Yours

- (1) You shall at Our request and expense take all reasonable steps to obtain reimbursement from such person or from their estates or legal or personal representatives
- (2) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from You or any monies of such persons held by You shall be deducted from any amount payable under this policy
- (3) no indemnity in respect of such Claim or loss shall be afforded to any person committing or condoning such dishonest or fraudulent act or omission
- (4) nothing herein shall preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission.

## Rights of Recovery

If any payment is made by Us to You under the terms of this policy, You grant to Us all rights of recovery that You would have had against any parties from whom a recovery may be made and You will take all reasonable steps to preserve and not to prejudice such rights.

We shall not seek recovery from any partner, member, principal or Employee of Yours unless the payment was as the result, in whole or part, of a dishonest, fraudulent, criminal or malicious act or omission of such person.

## Rights of Third parties

A person or company who is not a party to this policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## Sanctions

We shall not provide cover nor be liable to pay any claim or provide any benefit under this policy if to do so would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions laws or regulations of the European Union, United Kingdom or United States of America or any of its states.

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# Special Conditions

## Duty of Fair Presentation

The Insurance Act 2015 ("the Act") has introduced a duty on You that before You enter into a contract of insurance You must make to Us a fair presentation of the risk. These Special Conditions vary the terms of the Act in relation to Our remedy for a breach of the duty of fair presentation.

- (1) Where there has been a failure by You to comply with Your duty to make a fair presentation of the risk to Us and such failure would entitle Us to avoid this policy, We agree only to exercise Our right to avoid this policy if You have admitted, or We have established by way of a final adjudication in arbitration proceedings between You and Us commenced in accordance with (3) below (including any appeal therefrom), that You failed to make a fair presentation of the risk with the intention of misleading or deceiving Us. Until such adjudication (including any appeal therefrom) has been concluded, We shall continue to honour Our obligations, and make payment, under the policy.  
Where We exercise Our right to avoid the policy under this clause we may refuse all Claims and need not return any of the premium paid.
- (2) In any case where there has been a failure by You to comply with Your duty to make a fair presentation of the risk to Us where (1) above does not apply:

- (a) in the case of a Claim first made against You during the Period of Insurance where
    - (i) You had previous knowledge of the circumstance(s) relating to such Claim and
    - (ii) You should have notified the same under any preceding policy but did not do so then, where the cover under this policy is greater or wider in scope than that to which You would have been entitled under such preceding policy (whether with other insurers or not), We shall only be liable to afford indemnity to such amount and extent as would have been afforded to You by such preceding policy; and
  - (b) regardless of whether or not 2 (a) applies, where We can demonstrate that, by reason of Your failure to comply with Your duty to make a fair presentation of the risk, We would not have written the policy, or would have written the policy but on different terms and conditions, then We shall be entitled to charge a just and equitable additional premium in light of the prejudice caused to Our interests by such failure to comply with the duty to make a fair presentation of the risk.
  - (c) otherwise, save as set out in 2 (a) and (b) above, We shall not be entitled to any remedy by reason of Your failure to comply with Your duty to make a fair presentation of the risk where such failure was neither deliberate or reckless.
- (3) Where Your breach of or non-compliance with any condition of this policy has resulted in prejudice to the handling or settlement of any Claim or loss, We shall be entitled to reduce the indemnity afforded by this policy in respect of such Claim or loss (including Other Costs) to such sum as is just and equitable having regard to the prejudice caused to Our interests by the breach or non-compliance.

Aviva Insurance Limited.

Registered in Scotland, No. 2116. Registered Office: Pitheavlis, Perth, PH2 0NH.

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

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