



# **Professional Indemnity Insurance**

Terms and Conditions

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# Professional Indemnity Cover

## We will indemnify you

If you are legally liable to pay damages as a result of any negligent act, error or omission, misrepresentation, or misstatement committed by you in the provision of your services and the claim for damages was first made against you and notified to us during the period of Insurance.

The maximum we will pay any claimant or any number of claimants, inclusive of legal costs, for any one event or series of events with one original cause or source, or during any one annual period of insurance, will not exceed the sum insured as stated in the policy schedule.

Any one annual period means 12 consecutive months from the inception date of your policy.

## Defence costs

We will indemnify you for:

1. any payments you make, with our prior written approval, in an effort to mitigate the financial impact of a claim or to prevent a claim;
2. any expenses that you incur, with our prior written approval, in the investigation, defence or settlement of any claim made against you;
3. all costs, fees and expenses that we incur in the investigation, defence or settlement of any claim made against you.

## Definitions

For the purposes of this policy:

1. **“You”** or **“Your/s”** includes:
  - a. the company, partnership, close corporation, association or person named in the policy schedule;
  - b. any of your past, present or future directors, partners, members, principals or “In-house” consultants ;
  - c. any of your present or former employees whose activities are conducted within the course and scope of their employment with you;
  - d. any of your predecessors but only if liability attaches to you;
  - e. in the event of the death, incapacity, insolvency or bankruptcy of any person (cited in clauses a, b, c and d above), their estate, legal representatives and/or heirs.
2. **“Services”** – the activities which fall within the normal scope of work performed by a suitably-qualified person in the field of business, stated in your policy schedule.
3. **“Documents”** – any words, numbers, still or moving images or graphics, maintained in or on any medium whether physical, electronic, broadcast or any other form but excluding computer operating and software programmes.
4. **“Excess”** means the amount stated in your policy schedule which you are liable to pay for the first part of any claim. The excess is applicable per claim or series of claims arising from one originating cause or source.
5. **“Employee”**:
  - a. any person you employ under a contract of service or apprenticeship;
  - b. any person engaged by or seconded to you (including volunteer worker) whilst performing any function for or on your behalf;
  - c. any person provided to you by an employment contractor, agency or labour broker to perform employee duties under your supervision;
  - d. any person who you remunerate on a commission basis but only whilst they act on your behalf;
  - e. any work experience student or trainee.

6. **“Environmental Impairment/Pollution”** – the emission, discharge, release, dispersal, disposal, seepage or escape of solid, liquid, gaseous or thermal contaminants or irritants, including vapours, smells, odours, humidity, fumes; smoke, soot or other airborne particulates; acids, alkalis, chemicals and waste; electromagnetic waves, noise, vibrations; other emission of effluent or noxious substances into or upon the soil, the atmosphere or any watercourse or body of water which changes the natural state or condition of the soil, the atmosphere or any watercourse or body of water other than by a sudden, accidental and identifiable event; the depositing or storing of effluent, noxious substances, nuclear material or nuclear waste and the breach of any legislation relating to any of the above.
7. **“Product”** – any tangible property or goods, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by you or on your behalf, excluding food and drink supplied primarily to your employees as a staff benefit.
8. **“Retroactive Date”** – is the date stated on the policy schedule after which claims may occur and be covered under this policy. However, you are still obligated to disclose all material facts, details of claims made or outstanding claims or events likely to give rise to a claim. In the event of an increase of the sum insured, the retroactive date applicable to the increase will be the effective date of the increase.
9. **“Claim”** – each separate act, error or omission contained in a written demand received by you or contained in any legal or arbitration proceedings served on you claiming compensation against you.
10. **“Bodily Injury”** – bodily injury to any person and shall include death, illness and disease, mental injury, anguish or nervous shock sustained by any person as a result of actual or threat of bodily injury, death, illness or disease.

## **Cover automatically included to assist you**

### **Fee recovery**

We will indemnify you up to the maximum limit stated in the policy schedule, for legal expenses you incur for the recovery of professional fees due to you. You must either inform us prior to you instituting any proceedings or your legal advisors need to convince us:

1. that the legal merits of the claim and the prospects of a meaningful recovery are such that the envisaged proceedings would be feasible; and
2. there is reasonable probability that a counterclaim cannot be instituted, in terms of the Insuring Clause of the policy, by the party against whom you are instituting such legal proceedings, arising from work undertaken by you.

### **Breach of trust**

We will indemnify you, as part of the sum insured stated in the policy schedule, for any unintentional breach of confidentiality, trust, authority or privacy committed by you and for which you are legally responsible.

### **Infringement of intellectual property**

We will indemnify you, as part of the sum insured stated in the policy schedule, for any unintentional infringement of intellectual rights, names, titles, marks, secrets, patents, ideas or possession of a third party’s confidential information, committed by you and for which you are legally responsible.

### **Sub-contracted duties**

We will indemnify you, as part of the sum insured stated in the policy schedule in respect of the services, activities and duties necessary to carry out the business stated on the schedule or which you sub-contract and/or sub-let, provided that:

- a. such activities and duties are only sub-contracted and/or sub-let to suitably-qualified firms, persons or parties;
- b. at all times, you retain all rights of recourse against such firms, persons or parties and assist us in upholding such rights.

### **Liability resulting from employee dishonesty**

We will indemnify you, as part of the sum insured stated on the policy schedule, for any dishonest, fraudulent, malicious or criminal act or omission committed by an employee, as defined, provided that no indemnity is afforded to anyone committing or condoning such dishonest, fraudulent, malicious or criminal act or omission.

**Loss of documents**

We will indemnify you, as part of the sum insured stated on the policy schedule, for any accidental destruction, loss, mislaying or damage to, theft of or unintentional failure by you to prevent unauthorised access to third party documents or property in your care, custody and control.

**Defamation**

We will indemnify you, as part of the sum insured stated on the policy schedule, for any unintentional defamation committed by you.

**Joint venture and/or consortium agreements**

We will indemnify you, as part of the sum insured stated on the policy schedule, for any and all liability arising out of any Joint Venture Agreements and/or Consortium Agreements you may enter into with any other party/s or any entity formed as a result of such Joint Venture Agreements and/or Consortium Agreements, provided that no separate indemnity, other than that provided for under this policy, has been arranged for your benefit under the Joint Venture Agreements and/or Consortium Agreements and provided that such indemnity is in respect of your liability only.

**Automatic extended reporting period**

If either party to the contract cancels or chooses not to renew your policy, you have the right, following the effective date of the cancellation or non-renewal, to a period of sixty (60) days (herein referred to "automatic extended reporting period") in which to give us written notice of claims first made against you during the automatic extended reporting period, for any wrongful acts that occurred prior to the end of the policy period and otherwise covered by this policy.

The automatic extended reporting period does not apply to claims that are covered under any subsequent insurance you purchase.

**Dispute resolution**

If any contract which you have entered into with your clients contains a provision for Arbitration and/or Alternative Dispute Resolution (ADR), and this provision is also in the contract with the party lodging a claim against you, then we will indemnify you, as part of the sum insured stated on the policy schedule, for any expenses that you incur, with our prior written approval, in the Arbitration and/or ADR proceedings.

**Claims preparation costs**

You may incur expenses while preparing the details we require in order to process your claim. We will indemnify you for these costs up to the maximum amount stated on the policy schedule.

# Professional Indemnity Terms & Conditions

## What makes up your policy of insurance

Your schedule, terms and conditions, together with any correspondence sent to you, as well as any verbal agreements we make, form the policy of insurance between you and us. Please ensure that you are familiar with the contents of all the documents and that all the details noted on your schedule are correct in every respect.

## How we indemnify you

Subject to the terms of your policy, we have the option to pay out, or defend you through a service provider of our choice.

## Policy changes and cancellation

We may change or cancel your policy by giving you 31 days' notice. We may give notice verbally, by fax, e-mail, SMS or post to your last-known address. Any change or cancellation that you make will be effective from the time and date agreed to. Please note that if you cancel your policy during the course of an insured month, the premium paid for the rest of that month will not be refunded to you.

If you cancel your policy because you also have cover for the same risk with another insurer, then your premium refund will be limited to premiums actually paid in the 12 months prior to cancellation.

## Payments

Your policy is an annual policy and you must make the annual payment in advance on the agreed deduction date stated in the policy schedule.

## Payments not received

If we do not receive the payment for a policy on the deduction date(s) as stated on the schedule, we will allow a 15-day grace period for payment.

If your premium is still not received, your policy will lapse.

## Reinstatement of interrupted cover

When cover is interrupted because we did not receive your payment, we have the right to debit your account to reinstate your cover. We will then charge a reinstatement fee and debit your account as soon as possible. In addition to the reinstatement fee, you must also make a normal monthly payment for the cover to recommence.

## Your obligations

If you do not fulfil any of the following obligations, cover may be cancelled.

### Your obligations are to:

1. notify us telephonically and / or in writing of any claims, potential claims, losses, incidents, investigations, letters of demand, legal proceedings or any other circumstance which could give rise to a claim under this policy, as soon as you become aware of such circumstance;
2. give us true and complete information;
3. comply with all our reasonable requests;
4. assist us in any way possible in recovering indemnification from any other person who caused the loss for which you claim;
5. use all reasonable care and take all reasonable precautions to prevent or minimise loss, damage, death, injury or liability;
6. not admit any fault, nor make any offer to settle or make settlement, without our written agreement;
7. inform us if any of the policy details or declarations are incorrect or if any of these details or declarations change;
8. tell us about anything you have not yet disclosed, but that may be important for us to know in order to accept the policy, or about anything that changes that may be important for us to continue accepting the policy;
9. allow us to enter your premises and carry out an audit of your records; and

10. allow us to use your name in any legal action against any other person to recover any amounts settled, or that we agree to settle, in respect of a claim under this policy.
11. Not alter, demolish, dispose, disassemble, repair or replace any damage prior to our written approval

## **Important time limits**

We will only indemnify you for a claim if you:

1. inform us and give us full details of anything that has happened that you may claim for, within 60 days from the date of the incident giving rise to the claim;
2. give us any documents that you receive in connection with any claim, within 30 days; and
3. give us all the information and documentation that we may ask for, within 30 days.
4. give us any letters or legal documents which have been sent, served or delivered to you (such as a summons), immediately and no later than 72 hours after receipt.

## **General clauses**

### **Other parties' rights**

No other party except for you, the policyholder, may register a claim against this policy.

### **Non-adherence to the policy**

If you do not adhere to the terms and conditions of this policy, we have the right to not indemnify you for any claim.

### **Disputed claims**

After we inform you of our decision on a claim, we will allow you 90 days to make representations to us about our decision. If you do not comply with this time limit, we will not reconsider the disputed claim. If we do receive representations, the decision will then be reviewed and the outcome communicated to you.

If, after review, we do not indemnify you for a claim or any part of it and you wish to challenge our decision, you must serve legal process on us within six months calculated from the expiry of the 90-day period referred to above. If you do not comply with this time limit, you will be prevented from proceeding with legal process.

### **Contribution**

If a claim is also covered by another policy, we will only indemnify you for our portion.

### **The right to offset**

We have the right to deduct and offset any and all amounts owed by you under this policy, from any payment under a payable claim. In the event of a claim or series of claims having reached the maximum sum insured stated in the policy schedule, we will deduct the remaining unpaid premium for the entire period of insurance, even if such payment was not yet due, from any amount payable to you.

### **Other provisions affecting cover**

1. We will not defend you if you refuse to consent to a settlement that we recommend and the claimant will accept. In this case, you must then defend the claim at your own expense. As a consequence of your refusal, our liability shall not exceed the amount for which we could have settled such a claim (had you consented) plus claim expenses incurred prior to the date of such refusal.
2. We will not try to recover any amounts we have paid, from any person, unless the claim was brought about or contributed to by a dishonest, fraudulent, criminal or malicious act or omission of such person, and in such event any amounts recovered from this person or from their estate or legal representatives, shall be applied in the first instance in reduction of what we paid you.
3. If the limit of indemnity is increased during the period of insurance, our liability in respect of claims made against you or for circumstances of which we were notified, or should have been notified, prior to the increase, shall not exceed the limit of indemnity applicable prior to such increase.

4. The date of any claim first made in writing against you as a result of a defined event shall be treated as the date of loss under this policy.

*If we say that a claim is not covered because of any of the above, then you must prove the contrary.*

## **We do not indemnify you for claims:**

1. arising out of the death, or bodily injury of, or illness or disease suffered by any Employee or person under a contract of employment or apprenticeship with you where such death, injury, illness or disease arises out of the execution of such contract;
2. arising out of actual or alleged wrongful employment practices, harassment or discrimination;
3. arising from a breach of contract unless it is a breach or alleged breach of services provided by you;
4. arising out of any Product as defined;
5. arising out of any deliberate, willful, dishonest, fraudulent, criminal or malicious act or omission committed by you or on your behalf;
6. made against you by any associated, parent or subsidiary company or by any person or entity having a financial interest in you unless emanating directly from an independent third party;
7. where you are entitled to indemnity under any other contract of insurance or indemnity;
  - a. arising from circumstances which were known or should have been known to you at the inception or renewal date of this policy,
  - b. arising from any circumstances under any other policy prior the inception date of this policy even if you had disclosed them to us;
8. arising out of taxes, fines, penalties, punitive, vindictive or exemplary damages;
9. arising out of your insolvency;
10. arising out of any act, error or omission, or such cause of any other risk indemnified under this policy, committed or occurring prior to the retroactive date stated in the policy schedule;
11. as a result of or failure to effect or maintain insurance;
12. arising out of:
  - a. any actual or alleged threatened presence, discharge, release, migration or escape of pollutants;
  - b. any direction, request or effort to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants;
  - c. respond to or assess the effects of pollutants;
  - d. delays in projects requiring official regulatory environmental approval.
13. in respect of any third party claim arising from or contributed to by depreciation (or failure to appreciate) in value of any investments, including securities, commodities, currencies, options and futures transactions, or as a result of any actual or alleged representation, guarantee or warranty provided by you or on your behalf as to the performance of any such investments;
14. arising out of you giving any express warranty or guarantee which increases your measure of liability;
15. arising out of the insolvency, liquidation or judicial management of any party who enters into any agreement with you;
16. liability assumed by agreement, unless liability would have attached to you in the absence of such an agreement;
17. arising out of business activities conducted outside the borders of South Africa, Mozambique, Namibia, Botswana, Lesotho, Swaziland, Zambia, Zimbabwe and Malawi;
18. any claim not held in South African courts under the legal system of South Africa;
19. arising from bodily injury, sickness, disease or death sustained by any person or any loss, damage or destruction of property unless such claim emanates from negligent advice, design, specification or formula owed in a professional capacity by you.
20. made against you arising out of your duties as a director or officer.
21. any claim for loss, damage, death, injury or liability that is caused by or results from:



- a. any riot, strike or public disorder (including civil commotion, labour disturbances or lock-out) or any act or activity resulting in or calculated to bring about riot, strike or such disorder;
  - b. war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war;
  - c. mutiny, military uprising, military or usurped power, martial law, state of siege or any other event or cause that determines the proclamation or maintenance of martial law or state of siege, insurrection, rebellion or revolution;
  - d. any act or threat of any act (whether on behalf of any organisation, body, person or group of persons) calculated or directed to overthrow or influence any state or government or any provincial, local or tribal authority with force or by means of fear, terrorism or violence;
  - e. any act that is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause or to bring about any social or economic change or in protest against any state, government or any provincial, local or tribal authority or for the purpose of inspiring fear in the public or any section thereof;
  - f. any attempt to perform any act referred to in clause (d) or (e) above; or
  - g. the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in any of clauses (a) to (f) above.
22. Any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act 1976 (Act No. 85 of 1976) of the Republic of South Africa or any similar act operative in any of the territories to which your policy applies.
23. Nuclear material, fission, fusion, weapons, explosives, waste, ionising, radiations or contamination by radioactivity from any nuclear fuel, or from any nuclear waste, or from the combustion of nuclear fuel that includes any self-sustaining process of nuclear fission.
24. Nationalisation, confiscation, commandeering or requisition by any lawfully constituted authority.
25. The improper or faulty functioning of any computer or computer-related equipment; for example, the inability or prevention of any computer, data processing equipment, microchip, circuits, software, tools, operating systems, hardware or any other related item using any data recognising, manipulating, interpreting, processing, storing, receiving, responding, saving, retaining or using any command or instruction. We will not indemnify you should any computer equipment suffer a virus, Trojan horse, time or logic bomb or worm, or other destructive or disruptive code, media or program or interference.
26. In connection with any **Cyber Loss**, notwithstanding anything to the contrary contained in this wording.
- a. **Cyber Loss** means any loss, damage, liability claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, rising out of or in connection with a **Cyber Act** or **Cyber Incident** including but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**.
    - **Cyber Act** means an unauthorized, malicious or criminal act or series of related unauthorized, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.
    - **Cyber Incident** means:
      - Any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
      - Any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
    - **Computer System** means any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, **Data** storage device, networking equipment or back up facility.
    - **Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.
27. Death, injury, illness, costs, or expenses of whatsoever type related to asbestos.
28. Notwithstanding anything to contrary contained in this wording this policy excludes all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount incurred by or accruing to "You", directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating

from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

- a. Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
- The substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - The method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - The disease, substance or agent can cause or threaten bodily injury, illness, emotional distress or damage to human health, human welfare or property damage.

## **Undertaking in respect of the Ombudsman**

We subscribe to the principles and rules of the company of the Ombudsman for Short-term Insurance (incorporated under Section 21 of the Companies Act) and we will always abide by his/her rulings in respect of any matter referred to him/her by a client.

The Ombudsman for Short-term Insurance can be contacted on [www.osti.co.za](http://www.osti.co.za).



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