

British Institute of Facilities Management Scheme Professional Indemnity Insurance Policy Wording

This is a “claims made” Policy. This insurance only covers Claims reported to Insurers during the Period of Insurance.

1. INSURING CLAUSE

The Insured having made a proposal and declaration and having paid or agreed to pay the Premium, The Insurer will indemnify the Insured to extent stated herein against any Claim for Civil Liability made within the Territorial Limits for which the Insured may become legally liable, first made against the Insured and notified to the Insurer during the Period of Insurance arising out of the professional conduct of the Insured’s Business Activity alleging:

- a. negligence or breach of duty of care;
- b. negligent misstatement or negligent misrepresentation;
- c. unintentional infringement of intellectual property rights including copyright, patent, registered design right or breach or misuse of confidential information;
- d. defamation;
- e. loss of documents;
- f. dishonesty of employees excluding any claim or loss resulting from the dishonest, fraudulent, criminal or malicious acts or omissions committed after the Insured could reasonably have discovered or suspected improper conduct by the employee. No indemnity will be provided to any person committing or condoning any dishonest, fraudulent, malicious or criminal acts or omissions.

2. DEFINITIONS AND INTERPRETATION

In this Policy, unless the context otherwise requires, the following words and expressions shall bear the meaning set out below:

Broker means the broker or insurance intermediary who the Insured has used to arrange the insurance and whose name appears in the schedule

Business Activity means the activity(ies) shown in the Schedule, which the Insured performs in the ordinary course of business as a Facilities Manager for which the Insured is remunerated.

Claim means any one claim or series of claims arising from a circumstance or occurrence or a series of circumstances or occurrences consequent upon or attributable to one source or original cause.

Defence Costs means costs and expenses incurred by or on behalf of the Insured with the Insurer’s consent and agreement to investigate, settle or defend a Claim against the Insured.

Document means agreements, plans, records, deeds, books, letters, certificates, documents or forms of any description whether written, printed or reproduced by any other method or means excluding bearer bonds or coupons, stamps, bank or currency notes or other negotiable instruments.

Excess means the amount stated in the Schedule, which the Insured must bear before the Insurer is liable to make any payment under this Policy.

Inception Date means the date on which the Insured’s insurance cover commences as specified in the Schedule.

Insured means the individual person, partner, company, firm or organisation (and any subsidiary company or other associated organisation) named in the Schedule including all directors, partners and employees engaged in the Insured’s Business Activity.

Insurer means Trafalgar Insurance Company Limited, Normandie House, Rue a Chiens, St. Sampson’s, Guernsey, GY2 4AE.

Limit of Indemnity means the maximum amount recoverable for any one Claim under this Policy as stated in the Schedule. The Limit of Indemnity shall include all costs and expenses incurred with the Insurer’s consent and agreement in the investigation, settlement or defence of any Claim for which the Insurer’s liability under this Policy is engaged.

Period of Insurance means from the Inception Date to the date on which insurance cover ceases as stated in the Schedule.

Policy means this policy of insurance between the Insurer and Insured together with the Schedule and Proposal and any attaching endorsement issued by the Insurer. The parties agree that policies, endorsements, schedules and proposals may be submitted and issued in electronic format.

Premium means the amount payable by the Insured for this Policy together with Insurance Premium Tax (IPT) as stated in the Schedule.

Proposal means the proposal for insurance provided under this Policy including any documentation or information submitted in support by the Insured to the Insurer.

Schedule means the schedule of insurance issued by the Insurer specifying inter alia the Policy number, Premium, the Insured’s name, the Insured’s Business Activity, the Limit of Indemnity and the Period of Insurance.

Territorial Limits means worldwide excluding USA and Canada their Dominions or Protectorates or as varied or excluded in the Schedule.

2.2 This Policy and Schedule and any attaching endorsements shall be read together.

2.3 References to any statute, statutory provision, Order or Rule include a reference to that legislation or those Rules as amended, extended, consolidated or replaced from time to time (whether before, on or after the Inception Date of this Policy) and include any former legislation or Rules which it re-enacts, consolidates or replaces and any order, regulation, instrument or other subordinate legislation made under the relevant legislation or rules.

2.4 Unless the context otherwise requires, words denoting the singular shall include the plural and vice-versa, references to any gender shall include all other genders.

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3. INSURANCE

Observance of Terms

The Insured must observe and comply with the terms and conditions of this Policy. Any term or condition of this Policy insofar as it relates to anything to be done or complied with by the Insured shall be conditions precedent to the Insurer's liability to make any payment under this Policy.

- 3.1 The Insurer shall only be liable to bear VAT to the extent that VAT is irrecoverable by the Insured. For the avoidance of doubt, any element of VAT, which the Insurer is obliged to pay shall be encompassed within the Limit of Indemnity.
- 3.2 If the Insured is adjudged bankrupt or deemed insolvent during the Period of Insurance, the Insurer reserves the right to withdraw cover under the Policy in which case the Insurer shall have no liability to make any payment in respect of any Claim and/or Defence Costs notified after the date of Insured is adjudged bankrupt or deemed insolvent.

4. EXCLUSIONS

This Policy shall not cover and the Insurers will not provide indemnity and or Defence Costs and will not make any payment for any of the following.

- 4.1 Any Claim or loss involving death or bodily injury to any person or physical loss or damage to property (except in so far as indemnified by the Loss of Documents extension).
- 4.2 Any Claim, potential Claim or circumstance known to the Insured prior to inception of this Policy and which the Insured knew or ought reasonably to have known might result in a Claim against the Insured.
- 4.3 Any Claim made against the Insured from an entity in which the Insured exercises a financial or managerial interest.
- 4.4 Any Claim arising from the Insured's insolvency or impecuniosity or lack of financial resources.
- 4.5 Any Claim arising from services undertaken prior to the Insured's incorporation.
- 4.6 Any Claim, potential Claim or circumstance which has or ought to have been notified under any other policy of insurance prior to the Inception Date.
- 4.7 Any Claim made against any Insured by any other Insured.
- 4.8 Any fines, penalties, punitive or exemplary damages or other non-compensatory damages the Insured is ordered to pay by a Court.
- 4.9 Any Claim, potential Claim or circumstance in respect of which the Insured is, or would be but for the existence of this Policy, entitled to indemnity under any other policy of insurance.
- 4.10 Any fees claimed back or withheld by a customer of the Insured arising from non-performance of the Insured's contractual obligations unless such fees form part of a compromise settlement of a Claim.
- 4.11 Any Claim arising out of the Insured's contractual liability unless such liability would have existed and/or attached in the absence of such contract or agreement.
- 4.12 Any Claim arising from the provision of advice on financial matters.
- 4.13 Any Claim arising from the manufacture, installation, maintenance or servicing of any product sold, supplied or distributed by the Insured.
- 4.14 Any Claim, potential Claim or circumstance emanating from within the United States of America or Canada or any territories which are within the jurisdiction of the United States of America or Canada.
- 4.15 Any Claim arising from the acquisition or sale of land, buildings, commercial premises or facilities.
- 4.16 Any Claim arising from the negotiation, amendment, drafting or preparation of a lease.
- 4.17 Any Claim arising from date recognition failure.
- 4.18 Any Claim arising from the Insured's loss or distortion of electronically held data.
- 4.19 Any Claim arising from the sale and/or supply of hardware other than advice provided in connection therewith.
- 4.20 Any Claim arising from the recommendation of any goods or products where their use is not in accordance with the manufacturer's specification.
- 4.21 Any Claim arising from the manufacture, installation, maintenance or servicing of any product sold, supplied or distributed by the Insured.
- 4.22 Any Claim arising from obscenity, blasphemy or pornographic material.
- 4.23 Any Claim involving asbestos.
- 4.24 Nuclear risks:
 - 4.24.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - 4.24.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 4.25 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government, or public or local authority, any act or acts of terrorism, force of violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation. The burden of proving that a Claim does not fall within this exclusion shall be upon the Insured.

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- 4.26 Transmission of a computer virus arising out of the exercise and conduct of the Business Activity.
- 4.27 Any inherent or latent defect in any software, hardware, firmware, cabling or electronic equipment supplied by the Insured directly or via a third party.
- 4.28 Any contract where the Insured has failed to take reasonable steps, either before or during the contract, to ensure they could meet the requirements of the contract having regard to the resources and skills available to them.
- 4.29 Any Claim arising from any contract where the Insured does not either exclude or limit their liability in respect of loss of data, software, profits, turnover, revenue, sales or any other consequential loss, where it was reasonable for them to do so.

5. CLAIMS CONDITIONS

- 5.1 It is a condition precedent to the Insurer's liability to indemnify the Insured that the Insurer is notified in writing within 30 days of any claim being made against you, any circumstance you feel may give rise to a claim in the future, act, alleged act, omission or any other event giving rise to or may give rise to a Claim as soon as such is known by the Insured. In any event, such notification must be made during the Period of Insurance.
- 5.2 The Insured shall not admit liability or attempt to compromise, settle or defend a Claim without the Insurer's prior written consent.
- 5.3 The Insurer reserves the right, but not the obligation, to take control of and conduct the investigation, settlement or defence of any Claim in the Insured's name.
- 5.4 Legal proceedings against the Insured will only be defended if in the opinion of the Insurer there is a reasonable prospect of success after taking account of the commercial considerations and economics of defending such Proceedings.
- 5.5. It is a condition precedent to the Insurer's liability to indemnify the Insured that the Insured shall at all times assist and cooperate with the Insurer at the Insured's cost in defense on any and all claims and the provision of information.
- 5.6. If the Insured receives or has knowledge of a 'Letter of Claim' or a threat of legal action or notification of legal action or the intent to take legal action then they must advise the Insurer within seven days.

6. SUBROGATION

- 6.1 The Insurer shall be subrogated to the Insured's rights of recovery in relation to any claim or loss paid or payable under this Policy. The Insured shall co-operate fully with the Insurer in connection with any action which may be necessary to enforce any rights, remedies, relief or indemnity from other parties arising from the Insurer's rights of subrogation.

7. NON-DISCLOSURES AND MISREPRESENTATION

- 7.1 For the avoidance of doubt The Insurer shall be entitled to void the Policy ab initio where there has been any non-disclosure of material facts or untrue statements made by the Insured prior to or at inception or at any time during the Period of Insurance.

8. ASSIGNMENT

- 8.1 The Insured shall not be entitled to assign the benefit of this Policy without the Insurer's prior written consent.
- 8.2 This Policy shall be for the exclusive benefit of the Insured and that in no event shall anyone other than the Insured have any right of action under this Policy.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 9.1 Unless expressly stated nothing in this Policy will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Policy.

10. CANCELLATION

- 10.1 This Policy may be cancelled by the Insurer or on its behalf on 30 days written notice of cancellation to the Insured with an adjustment of Premium such that the Insurer receives or retains pro-rata Premium.
- 10.2 This Policy may be cancelled by the Insured on giving written notice to the Insurer. The Insurer will then pay the insured a return premium based on the gross premium less any commission or fees payable or paid by the insurer to the broker, and than based on a pro-rata return of the remaining net premium. The cancellation date will be the date the written communication was received by Insurers and the return of policy documentation will not be required.
- 10.3 No return of Premium will be made to the Insured where a Claim or potential claim has been notified during that Period of Insurance.

11. COMMUNICATIONS

- 11.1 All communications and notices to the Insurer shall be deemed duly given if sent by first class post or email. All communications and notices to the Insured, shall be deemed to have been duly given if sent by first class post to the Insured at his last known address or the email address provided on their application for insurance.

12. GOVERNING LAW

- 12.1 Whilst this insurance contract has been entered into and formed under the law of Guernsey the parties agree that as regards interpretation and any dispute this Policy shall be subject to and construed in accordance with the laws of England and Wales and the Parties agree to be subject to the jurisdiction of the English and Welsh courts.

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IMPORTANT INFORMATION

13. CLAIMS NOTIFICATION

13.1 Initial notification of a Claim or potential Claim and request for a claim form must be made by the Insured in writing to the Insurer at:

Trafalgar Insurance Company Limited, Normandie House, Rue a Chiens, St. Sampson's, Guernsey, GY2 4AE

Tel: 01481 254954 Fax: 01481 257852 e-mail: claims@trafalgarinsurance.gg

14. COMPLAINTS PROCEDURE

We aim to provide a first class service at all times. If you have a complaint concerning the service you have received, then you are free to make a complaint and we will try to deal with that complaint fairly with the aim of achieving an early resolution if that is appropriate. Whatever is the outcome we will provide you with our final response within 8 weeks or a full reason why we cannot respond at that time.

To avoid undue delay as an Insured you should try to make your complaint against the appropriate party. If your complaint is about how the Policy was arranged, how the policy was sold to you or any services provided by the Broker then it is more likely that your complaint should be addressed to the broker.

If you feel that your complaint refers to the policy wording, the policy summary or how claims were handled then it is more likely that your complaint should be addressed to the Insurer.

If you are in doubt you are free to address your complaint to both Insurer and Broker at the same time.

If your wish to address your complaint to the Insurer then please address correspondence to;

The Complaints Director
Trafalgar Insurance Company Limited
Normandie House
Rue a Chiens
St Sampson's
Guernsey
GY2 4AE

Upon receipt we will provide you with an acknowledgement, a complaint reference, the name of the person who will be handling your complaint and the next steps that we will be taking.

Trafalgar Insurance Company Limited is not covered by the Financial Ombudsman Service Jurisdiction.

15. TRAFALGAR INSURANCE COMPANY LIMITED.

Trafalgar Insurance Company Limited is a company limited and registered in Guernsey under number 54460 and our registered office is Normandie House, Rue a Chiens, St Sampson's, Guernsey, GY2 4E. As an Insurer we are licensed and regulated by the Guernsey Financial Services Commission under the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended, to write and insure international general insurance business. Our license reference is 2021810.

Trafalgar Insurance Company Limited is not covered by the Financial Services Compensation Service.

You can check this out by visiting the GFSC web site www.gfsc.gg web site and then going to Regulated Entities.