



# Professional indemnity section – tradesmen

AXA Business Insurance

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# Professional indemnity section – tradesmen

Your schedule will show if this section is covered

## Important information about this cover

This cover operates on a claims-made basis. This means that we will only provide cover for claims or claim circumstances made against you and notified to us during the period of insurance. We will not cover any claim or claim circumstances arising from an act, error or omission that occurred before the previous work date.

Conditions apply regarding when you must tell us about claims or claim circumstances and these can be found below. You should read these carefully.

## Meanings of defined terms

These definitions apply to this section and are in addition to the policy definitions that have already been described in the Essential Information document. If a word or phrase has a defined meaning it will be underlined in bold print and will have the same meaning wherever it is used in this section.



### **Bodily injury**

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



### **Claim(s)**

Any verbal or written demand, notice or communication:

- 1) making an assertion for legal remedy or any other form of compensation or remedy
- 2) containing reference to, or serving notice of, intent to start legal proceedings
- 3) invoking any pre-action protocol as set under the Civil Procedure Rules
- 4) referring to arbitration, adjudication or complaint proceedings.



### **Claim circumstances**

Any incident, occurrence, fact, matter or act that you were or are aware of that may give rise to a claim. This includes any criticism of your professional business even if you regard this as unjustifiable.



### **Claim costs**

All costs and expenses incurred by us or by you with our written permission relating to the investigation, defence or settlement of any claim against you, which this policy covers.



### **Collateral warranty**

Any written agreement that creates a duty of care between you and any party that is not your direct client or customer.



### **Criminal defence costs**

Costs and expenses you incur arising from:

- 1) the Property Misdescriptions Act 1991
- 2) the Estate Agents' Act 1979
- 3) the Health and Safety at Work etc Act 1974
- 4) the Health and Safety at Work (Northern Ireland) Order 1978
- 5) the Construction (Design and Management) Regulations 1994, or
- 6) any similar or successor legislation to the legislation described in 1 to 5 above.



### **Documents**

Any documents, information or data, including computer records and electronic data, which are your property or are looked after by or deposited with you in the ordinary course of your professional business which you are responsible. This does not include bearer bonds, coupons, bank or currency notes and negotiable instruments.



### **Employee(s)**

Any person working for you in connection with the professional business:

- 1) under a contract of service with you
  - 2) who is hired or lent to you
  - 3) who is self-employed
  - 4) on a voluntary basis
- and who is under your control or supervision.



### **Environmental audit**

An investigation specifically intended to assess if there is pollution present.



### **Limit of indemnity**

The amount shown in your schedule as the limit of indemnity.

# Meaning of defined terms



## Loss

The amount that you are legally and personally liable to pay due to a claim, including judgements, awards of damages, awards of claimant costs and amounts that are related to settlements.



## Pollutant

Any contaminant, irritant or other substance including, but not limited to asbestos, lead, smoke, vapour, water, oil, oil products, dust, fibres, soot, fumes, acids, alkalis, chemicals, or waste (including materials that have been or are intended to be recycled, reconditioned or reclaimed).



## Pollution

Actual, alleged or threatened discharge, seepage, treatment, removal, disposal, dispersal, emission, release or escape of any pollutant or any regulatory order, direction or request to test for, monitor, remove, contain, treat, detoxify, or neutralise any pollutant.



## Previous work date

The date from when work you performed is covered. This date is shown on your schedule.



## Professional business

Performance by you or on your behalf of the following, provided such activities are undertaken by or under the supervision of a qualified professional

- 1) design of or specification for any building or structure
- 2) supervision of or inspection of construction works
- 3) feasibility study for any construction works
- 4) calculation or provision of technical information
- 5) testing and commissioning
- 6) safety management
- 7) other related consultancy or provision of advice
- 8) materials measurement, testing and certification
- 9) co-ordination and integration of design
- 10) advice or services directly connected to the trade/profession you have declared to us
- 11) training.



## Qualified professional

Properly qualified architect, engineer or surveyor, or any person with a minimum of five years relevant experience of that professional activity. treat, detoxify, or neutralise any pollutant.



## Virus or similar mechanism

Program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, whether involving self replication or not, including but not limited to trojan horses, worms or logic bombs.



## You / your / yourself

- 1) For professional indemnity insurance covers
  - a) The person, firm, company or organisation shown in the schedule as the insured.
  - b) Any person, firm, company or organisation shown in the schedule as an additional insured.
  - c) Any predecessor in business to any firm, company or organisation that is shown in the schedule.
  - d) Any person who is or has been or who becomes a director, partner, member, principal, employee or self employed person, but only for work undertaken for or on behalf of any person or organisation referred to in a, b, or c above.
  - e) Any consultant or former consultant appointed by the person, firm, company or organisation shown in the schedule as the insured, but only for work undertaken for or on behalf of any person or body referred to in a, b, c or d above.
  - f) Any retired partner, retired director or retired member of the firm, company or organisation shown in the schedule as the insured who remains as a consultant to any person, firm, company or organisation shown in the schedule as the insured.
  - g) The estate, heirs, executors, legal or personal representatives of any person referred to in a, b, c, d, e or f above in the event of their death or amounts that are related to settlements.

## What is covered

### What is covered

### What is not covered

#### Breach of professional duty

We will cover you for any claim and claim costs that arise from the conduct of your professional business. Provided that the claim is first made against you and notified to us during the period of insurance. And as long as the claim and claim costs relate to a civil liability, including liability for claimant's costs and expenses, arising out of a breach of your professional duty.

We will cover you for any claim and claim costs that arise from the conduct of your professional business, where the claim is first made against you and notified to us during the period of insurance for:

- 1) a civil liability, including liability for claimant's costs and expenses, that arises out of a breach of your professional duty
- 2) any liability you incur as a result of a decision by an adjudicator appointed to resolve a dispute in line with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996, or an adjudication clause contained in a contract

The most we will pay for loss resulting from each claim is the limit of indemnity. We will pay claim costs in addition to the loss, but the most we will pay for claim costs is an amount equal to the limit of indemnity

#### Compensation for court attendance cover

We will compensate you at a rate of

- 1) £500 per day for any director or partner
- 2) £250 per day for any employed person

for each day that we request attendance at court as a witness in connection with a claim, for which an award of damages is paid or may be payable under this section.

#### Criminal defence costs

We will pay on your behalf 80% of criminal defence costs, that you incur with our prior written consent, to defend any proceeding first made against you and notified to us during the period of insurance, but only where, in our reasonable opinion, defending that proceeding could protect you against a claim or potential claim arising from your professional business.

The most we will pay for all criminal defence costs in any one period of insurance is £50,000.

## What is covered

## What is not covered

### Pollution

For any claim that arises directly or indirectly from pollution, we will only pay the costs of re-designing, re-specifying, remedying or rectifying a structure and will only pay where that pollution:

- 1) arises from your negligent design, negligent specification or failure to report a structural defect and
- 2) does not result directly or indirectly from any environmental audit carried out by you.

We will not pay for any claim or claim circumstances arising directly or indirectly from pollution except as described above. The most we will pay for all claims and claim costs arising directly or indirectly from pollution in any one period of insurance is £50,000.

### Settlement and defence of claims

All claims that come from the same act, error or omission or series of acts, errors or omissions, as a result of, or arising directly or indirectly from, the same source or original cause, will be regarded as one claim.

If we cover more than one person, firm, company or organisation, our liability to all, as a result of one claim, will not be more than the limit of indemnity.

We may at any time pay the limit of indemnity or relevant sub-limit described above. We will then have no further liability for that claim or claim costs except those already incurred at the date of payment of the limit of indemnity or sub-limit.

We have the right, but not the obligation, to take control of your claim and conduct the investigation, settlement or defence in your name.

If we think it is necessary we will appoint our adjuster, solicitor or other appropriate person to deal with the claim. If you ask us, we may agree to appoint your solicitor, but only on a similar fee basis as our solicitor and only for work done with our prior written approval.

After taking into account the commercial considerations of the costs of defence we may choose to settle a claim instead of defending it if we do not think there is a reasonable prospect of success. costs arising directly or indirectly from pollution in any one period of insurance is £50,000.

## What is not covered



### Asbestos exclusion

We will not cover legal liability in any way arising from or contributed to by

- 1) inhalation or ingestion of asbestos
- 2) exposure to or fear of the consequences of exposure to asbestos
- 3) the presence of asbestos in any property or on land investigating, managing, removing, controlling or remediation of asbestos



### Adjudication exclusion

We will not cover:

- 4) any decision made against you by an adjudicator who was not independent of the parties to the dispute
- 5) any claim arising out of or related to any adjudication arising from an adjudication clause in a contract that contains timetable provisions for adjudication that are more onerous to you than those contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996.



### Asbestos exclusion

We will not cover any claim directly or indirectly involving asbestos or allegations or concerns relating to asbestos.



### Bodily injury exclusion

We will not cover any claim arising out of bodily injury.



### Breach of patent exclusion

We will not cover any claim arising out of any breach of patent.



### Breach of confidentiality exclusion

We will not cover any claim arising out of any breach of confidentiality committed by you.



### Construction or installation exclusion

We will not cover any claim that you incur in the performance of the professional business as a result of:

- 1) your acceptance of an obligation, or a guarantee you provide, of fitness for purpose where this appears as an express term
- 2) any express guarantee you give including any relating to the period of a project
- 3) any express penalty contained in a contract between you and another party
- 4) any express acceptance you give of liability for liquidated damages.

We will not cover any liability that arises in consequence of any assignment of a collateral warranty or duty of care agreement to more than one party, except in the case of a collateral warranty or duty of care agreement given to a financier or funding party, but not a purchaser or tenant, where a total of two assignments is permissible. This is only applicable to contracts entered into, on or after 1 October 2001.

This exclusion will not apply if you would have been liable in the absence of any express agreement, or if:

- 1) we have expressly approved the contractual terms giving rise to the liability, or
- 2) in which any of your partners, directors or principals have a controlling interest unless such claim is brought against you by a source independent of that firm, company or organisation.



### Controlling interest exclusion

We will not cover:

- 1) any claim arising from or brought by a firm, company or organisation
- 2) in which any of your partners, directors or principals have a controlling interest



### Collateral warranty exclusion

We will not cover any liability that arises in consequence of any assignment of a collateral warranty or duty of care agreement to more than one party, except in the case of a collateral warranty or duty of care agreement given to a financier or funding party, but not a purchaser or tenant, where a total of two assignments is permissible. This is only applicable to contracts entered into, on or after 1 October 2001.

This exclusion will not apply if you would have been liable in the absence of any express agreement, or if:



# What is not covered



## Defamation exclusion

We will not cover any claim arising out of defamation.



## Defective workmanship or materials exclusion

We will not cover any claim arising directly or indirectly from defective workmanship or defective materials or the failure by you to supervise or inspect any work. This exclusion will not apply if the failure to supervise or inspect was the responsibility of a qualified professional.



## Deliberate acts and omissions exclusion

We will not cover any act, error or omission that you deliberately, spitefully or recklessly commit, condone or ignore.



## Directors liabilities exclusion

We will not cover any claim made against you or your directors, officers or trustees for breach of their duties.



## Dishonesty exclusion

We will not cover any claim arising out of any dishonest or fraudulent act or omission.



## Documents exclusion

We will not cover any claim for loss of or damage to documents or court attendance costs.



## Employment exclusion

We will not cover any claim arising out of any kind of employment related dispute or any kind of defamation, discrimination, harassment or unfair treatment relating to any current, former or prospective employees.



## Excess exclusion

We will not pay the excess shown in your schedule. The excess does not apply to claim costs or to the optional cover for lost or damaged documents.



## Financial services exclusion

We will not cover any claim arising out of any Regulated Activities as defined in the Financial Services and Markets Act 2000 as amended from time to time.



## Fines and penalties exclusion

We will not cover any fines, penalties, punitive, multiple, aggravated or exemplary damages where these can be identified separately within any award of a Court or tribunal.



## Foreign work exclusion

We will not cover legal liability arising outside the policy territories, except in respect of temporary visits elsewhere, by persons ordinarily resident within the policy territories, where no manual work is involved.



## Goods supplied exclusion

We will not cover any claim arising out of any goods or materials you have supplied or used, or made arrangements to supply or use or the manufacture, repair, sale, installation or maintenance of any product by you or on your behalf.



## Infringement of copyright exclusion

We will not cover any claim arising out of any infringement of copyright or registered trademark.



## Insolvency exclusion

We will not cover any claim arising out of or in connection with your insolvency or bankruptcy (including any claim made by your liquidator, provisional liquidator or administrator).



## Internet activity exclusion

We will not cover any claim arising out of:

- 1) the management of financial transactions
- 2) obscene, blasphemous or pornographic material on the internet



## Joint venture exclusion

We will not cover any claim arising from a partnership, venture or joint venture of which you are a member.



## Market fluctuation exclusion

We will not cover any claim relating to the financial return of any investment or the depreciation or loss of investments when that financial return, depreciation or loss is caused by normal or abnormal fluctuations in any financial, stock, commodity or other markets that are outside your influence or control.

# What is not covered



## Previous claims exclusion

We will not cover any claim or any claim circumstances:

- 1) that has been notified under any other policy before the start of this policy
- 2) that you were aware of or should have been aware of before the start of this policy.



## Previous work exclusion

We will not cover any claim or claim circumstances arising from the performance of your professional business that occurred before the previous work date.



## Property damage exclusion

We will not cover any claim for loss of or damage to property unless directly arising from a breach of duty through a negligent act, error or omission by you in the course of your professional business.



## Property ownership exclusion

We will not cover any claim arising from the ownership, possession, leasing or use of any land or building structure or any other property or goods whether mobile or immobile.



## North American jurisdiction exclusion

We will not cover any claim instituted or pursued:

- 1) within the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada or in which it is contended that the laws of the United States of America or Canada should apply.
- 2) to enforce a judgment obtained in any Court of the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada.



## Radioactive contamination exclusion

We will not cover you for loss of or damage or consequential loss resulting or arising from

- 1) ionising radiation or contamination by radioactivity from any irradiated 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 its nuclear component.



## Terrorist act exclusion

We will not cover you for any damage cost or expense directly or indirectly caused by resulting from or in connection with a terrorist act.



## Trading losses exclusion

We will not cover any claim or claim circumstances arising out of trading losses or trading liabilities incurred by you or any of your businesses.



## Virus exclusion

We will not cover any claim arising out of the transmission or receipt of a virus or similar mechanism.



## War risk exclusion

We will not cover

- 1) any claims caused by or happening through war, invasion, act of foreign enemy hostilities (whether war is declared or not) civil war, rebellion, revolution, insurrection or military or usurped power or Canada should apply.
- 2) confiscation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

## Section conditions

These conditions of cover apply only to this section

You must comply with the following conditions to have the full protection of your policy.

Conditions may specify circumstances whereby non-compliance will mean that you will not receive payment for a claim. However you will be covered and we will pay your claim if you are able to prove that the non-compliance with these conditions could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

If you are unsure about any of these conditions, please contact us



### Adjudication condition

If you receive any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice relating to a contract, you must tell us within 2 working days of receipt of that notice.



### Admission of liability condition

In the event of a claim or discovery of claim circumstances, you must not:

- 1) admit liability
- 2) incur any claim costs
- 3) make any offers of settlement
- 4) otherwise prejudice the conduct of defence or settlement of that claim or claim circumstances without first obtaining our written approval. This applies regardless of any complaints handling procedure or if the amount in dispute is less than your excess.



### Claims notification condition

You must tell us as soon as possible within the period of insurance about any claim against you irrespective of your views as to the validity of that claim.

We will not pay your claim where you have not complied with this condition.



### Claim circumstances condition

You must tell us as soon as possible within the period of insurance of claim circumstances.

If claim circumstances that relate to work you performed after the previous work date lead to a claim after the period of insurance has ended, that claim will be deemed to have been made against you during the period of insurance, provided that you told us about those claim circumstances within the period of insurance.



### Claim control and co-operation condition

You must give us all information and assistance that we reasonably require and that is in your power to provide. You must co-operate with us and anyone appointed on our behalf by:

- 1) providing any information, assistance, signed statements or depositions as we may require to comply with any Civil Procedure Rules, Practice directions and Pre-Action Protocols as may be issued
- 2) assisting to present the best possible defence to a claim
- 3) ensuring access to any information that we or our representatives may require in the defence of a claim or the investigation of any claim circumstances, whether or no that information may be privileged
- 4) making payment on demand of your excess in order to comply with the terms of any settlement we have agreed
- 5) providing any information, assistance, signed statements or depositions as we may require to exercise our rights of subrogation
- 6) ensuring that all documents of any description relevant to any claim or claim circumstances are preserved and complete.



### Expiry of period of insurance condition

If you become aware of a claim or claim circumstances in the seven days immediately before the end of the period of insurance and you are unable to tell us, but you then tell us within seven days immediately after the end of the period of insurance, we will accept that you have told us during the period of insurance.