



POLICY WORDING

CHARTERED SURVEYORS, ESTATE AGENTS AND PROPERTY MANAGERS POLICY



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1. ABOUT YOUR POLICY

This Policy has been produced by Pen Underwriting Limited a Managing General Agent of the Insurer). The Insurer have delegated authority to Pen Underwriting Limited to underwrite Insurance for You on their behalf.

Your Policy is made up of Sections prepared from a proposal form or declaration or statement of fact provided by You or from Your instructions or any information in connection with this insurance provided to Pen Underwriting or the Insurer or Your insurance adviser.

This policy wording explains the insurance provided under this contract.

Each Section may include terms Definitions Conditions and Exclusions unique to the Section which should to be read in conjunction with the Policy Definitions, Conditions and Exclusions.

An Endorsement forms an addition to the Section and varies the insurance provided by the Section.

The Schedule or Appendix and any Endorsement should be read together for precise details of Your insurance protection.

Please take care to review all documentation carefully to ensure that the information provided accurately reflects Your circumstances and that the cover provided suits Your requirements.

You should pay particular attention to any terms conditions limits and exclusions including endorsements which may require You to take action.

Duty of Fair Presentation

This Policy is a contract between You and the Insurer.

Please read the whole document carefully. It is arranged in different sections. It is important that

- **You** are clear which sections You have requested and want to be included;
- **You** understand what each section covers and does not cover;
- **You** understand Your own duties under each section and under the insurance as a whole.

Please contact Your broker immediately if this Document is not correct or if You would like to ask any questions.

Important Notice: The Insured is required to make a fair presentation of the risk to Insurers.

If the Insured breaches its duty to provide a fair presentation and any such breach was deliberate or reckless, Insurers may regard the Policy as void and are not required to return any paid Premium to the Insured.

If the breach was not deliberate or reckless, Insurers' remedy shall depend upon what Insurers would have done if the Insured had complied with the duty of fair presentation:

1. Insurers may regard the Policy as void if Insurers would not have entered into the Policy on any terms in the absence of the breach. In this case, the Insurers must return the premium paid.
2. If the Insurers would have entered into the Policy, but on different terms (other than terms relating to premium) the Policy is to be treated as if those different terms applied from the outset, if the Insurer so requires.
3. If the Insurers would have entered into the Policy but would have charged a higher premium the Insurers may reduce proportionately the amount to be paid on a Claim (and, if applicable, the amount already paid on prior claims).

Where: (i) there has been a failure to comply with a term (express or implied) of this Policy, other than a term which defines the risk as a whole; and (ii) 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, the Insurer cannot rely on the breach of such term to exclude, limit or discharge its liability if You show that the failure to comply with such term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred

If You breach any warranty in this Policy, the Insurer's liability under the Policy shall be suspended from the time of the breach until the time when the breach is remedied (if it is capable of being remedied). The Insurer will have no liability to You for any loss which occurs, or which is attributable to something happening, during the period when the Insurer's liability is suspended.

Authorised Signatory
Jonathan Turner



Complaints

At Pen Underwriting, it is always our intention to provide a first class standard of service. However, it is appreciated that occasionally things go wrong. In a majority of cases the agent who arranged the insurance will be able to resolve any concerns and You should contact them directly in the first instance.

Alternatively You can complain by contacting Pen Underwriting Limited (as per the contact details below) quoting Your Policy and/or Claim number. We will investigate Your concerns and provide a response as soon as possible.

Address:
Pen Underwriting Limited Complaints
7th Floor Spectrum Building
55 Blythswood Street
Glasgow
G2 7AT

Telephone: 0141 285 3539
Email: pencomplaints@penunderwriting.com

You can also contact Your Insurer, contact details can be found in the Schedule.

Should You remain dissatisfied having received a Final Response to Your complaint and You fit the definition of an 'eligible complainant', You may then be able to refer Your complaint to the Financial Ombudsman Service (FOS). Please note that the FOS allow 6 months from the date of the Final Response to escalate Your complaint to them. Further details on eligibility and the referral process can be found on the FOS Website.

Address:
The Financial Ombudsman Service
Exchange Tower
London
E14 9SR

Telephone: 0800 0234567 (for landline users)
Telephone: 0300 1239123 (for mobile users)
Email: complaint.info@financial-ombudsman.org.uk
Website: www.financial-ombudsman.org.uk

Compensation Scheme

The providers of this insurance as defined in this Policy are covered by the Financial Services Compensation Scheme (FSCS). If they cannot meet their obligations You may be entitled to compensation under this scheme depending on the type of insurance and the circumstances of the Claim

You are covered for 90 per cent of the Claim without any upper limit. However, for compulsory classes of insurance You are covered for 100 per cent of the Claim without any upper limit.

How To Make A Claim

At Pen Underwriting, we understand that claims form a critical component of our offering the moment the Policy becomes tangible and we are relied upon to deliver upon our commitment to You.

Pen Underwriting have assembled an experienced team who embody our three key principles of:

- 1) **Partnership** – working together to achieve the optimum outcome to the Claim
- 2) **Expertise** – we employ staff and engage service providers who are experts in their field
- 3) **No-nonsense** – we apply a flexible and proactive approach to the claims process

For details on how to notify Your Claim, please refer to Your Schedule.

The Law That Governs This Policy

Unless the parties have agreed otherwise in writing any dispute concerning the interpretation of this Policy shall be governed and construed in accordance with English law and shall be resolved within the exclusive jurisdiction of the courts of England and Wales.

Data Protection

Pen Underwriting Limited are the data controller of any personal information you provide to us or personal information that has been provided to us by a third party. We collect and process information about you in order to arrange insurance policies and to process claims. Your information is also used for business purposes such as fraud prevention and detection and financial management. This may involve sharing your information with third parties such as insurers, brokers, reinsurers, claims handlers, loss adjusters, credit reference agencies, service providers, professional advisors, our regulators, police and government agencies or fraud prevention agencies.

We may record telephone calls to help us monitor and improve the service we provide. For further information on how your information is used and your rights in relation to your information please see our Privacy Policy - <https://www.penunderwriting.co.uk/Privacy-and-Cookies>. If you are providing personal data of another individual to us, you must tell them you are providing their information to us and show them a copy of this notice.

2. DEFINITIONS

Certain words in this policy have special meanings. These meanings are given below and apply where the words appear in bold.

Asbestos Surveys

A management survey or a 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 comparable survey or inspection whether of commercial or residential land or property.

Business

- a) Services including the giving of advice which are undertaken by a member of the Royal Institution of Chartered Surveyors or have otherwise been declared to **us** and which are performed by any **insured** or on **your** behalf
- b) services including the giving of advice performed by any current or former **business partner**, director, **member**, principal or **employee** while holding an individual appointment in respect of work connected with **you** where those services are undertaken by a **member** of the Royal Institution of Chartered Surveyors or have otherwise been declared to **us**.

Business partner

Any person in **business** with **you** under the terms of a partnership agreement whether express or implied under legislation.

Circumstance

Incident, occurrence, fact, matter, act or omission that may give rise to a **claim**.

Claim

- a) A demand for or an assertion of a right to civil compensation or civil damages or an intimation of an intention to seek such compensation or damages
- b) any notice of intention to commence legal proceedings against **you**
- c) any communication with **you** invoking any Pre-Action Protocol.

Consultant

Any person who undertakes **business** on **your** behalf including any person whose name and designation appear on **your** business stationary or in business communications or material issued on **your** behalf or who is employed by **you** in offering surveying services.

Defence costs

Reasonable costs and expenses necessarily incurred with **our** written consent in the investigation, defence or settlement

of any **claim** or investigation into any **circumstance** which may be the subject of indemnity under this policy.

Employee

Any natural person who is:

- a) under a contract of service or apprenticeship with **you**
- b) self-employed
- c) under a work experience or similar scheme
- d) hired or borrowed by **you** from another employer

and working for **you** in connection with the **business** while under **your** direct control or supervision.

Environmental Audit

Any investigation specifically intended to assess whether there is actual **pollution or contamination** present.

Excess

The amount stated in this policy, schedule or endorsement in respect of each and every **claim** for which **you** are responsible.

Insured

Firm, partnership, unincorporated organisation or the company stated in the schedule as the insured and **your** predecessors including:

- a) any current or former **business partner**, director, **member** or principal of yours and any other person who may at any time during the period of insurance become a **business partner**, director, **member** or principal of yours
- b) any current or former consultant of **yours** and any other person who becomes a consultant during the period of insurance
- c) any current or former **employee** of **yours** and any other person who becomes an **employee** during the period of insurance
- d) the estates and or legal representatives of any person noted under a), b) or c) above in the event of their death, incapacity, insolvency or bankruptcy.

Member

A member of **your** limited liability partnership as defined in the Limited Liability Partnerships Act 2000.

Nuclear Installation

Any installation of such class or description as may be prescribed by regulations made by the relevant Secretary of State from time to time by statutory instrument being an installation designed or adapted for:

- a) the production or use of atomic energy
- b) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation
- c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter being matter which has been produced or irradiated in the production or use of nuclear fuel.

Nuclear Reactor

Any plant including any machinery, equipment or appliance whether affixed to land or not designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

Pollution or Contamination

Pollution or contamination of buildings or other structures or of water or land or the atmosphere.

Related entity

Any individual or entity or its subcontractors or assignees:

- a) which wholly or partially own, operate or manage **you**
- b) which is controlled, operated or managed by **you**.

Territorial limits

Worldwide excluding:

- a) the United States of America
- b) Canada

and any territories under their jurisdiction.

We, Us, Our or Ours

The participating insurance company shown in the schedule.

You, Your, Yours or Yourselves

The person, people (either acting in partnership or on behalf of an unincorporated organisation) or the company stated in the schedule as the **insured** including **your** predecessors.

3. THE COVER

We will indemnify any **insured** in respect of any **claim** first made against any **insured** and notified to **us** during the period of insurance in respect of any civil liability including liability for claimants' costs and expenses arising out of the conduct of the **business** within the **territorial limits**.

In addition to the limit of indemnity **we** will pay **defence costs**.

Defence costs and any payment under clauses 3.4, 3.5, 3.6, 3.8, 3.9 and 3.10 will not be subject to any **excess**.

Where **you** become liable to pay a sum in **excess** of the amount of indemnity available under this policy **we** will pay only the proportion of any **defence costs** that the amount of indemnity available under this policy bears to **your** total liability.

3.1 Adjudication

We will also indemnify any **insured** in respect of:

- a) any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or an adjudication clause or rules contained in a contract
- b) any award by an arbitrator or tribunal of arbitrators whether under The Royal Institution of Chartered Surveyors Dispute Resolution Service or otherwise.

Provided always that any adjudication provisions in the contract:

- i) provide that the adjudicator must be independent of the parties to the dispute; and
- ii) does not allow for the adjudicator's decision to finally determine the dispute; and
- iii) does not place any conditions upon the timing of commencement of legal or arbitration proceedings excluding adjudication proceedings; and
- iv) does not contain timetable provisions for adjudication which 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.

It is a condition precedent to **our** liability under this clause that **you**:

- i) notify **us** within 2 working days and during the period of insurance of:
 - 1) receipt of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract; and

- 2) any matters of which **you** become aware which might reasonably be expected to give rise to a **claim** against **you** being referred to an adjudicator; and

- ii) must not serve any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice under contract without **our** prior written consent unless in **your** opinion service of those notices will not give rise to a **claim**; and

- iii) must not agree to accept the decision of the adjudicator as finally determining the dispute without **our** prior written consent.

Subject to **our** reasonable request **you** will permit **us** to pursue legal proceedings, arbitration or other proceedings in **your** name and on **your** behalf to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the adjudicator or to stay the enforcement of any such decision, direction, award or exercise of power. **You** will give all such assistance as **we** may reasonably require in relation to such legal proceedings or arbitration.

3.2 Appointed Representative

If **you** are for the purposes of the Financial Services and Markets Act 2000 (as amended) an Appointed Representative of any principal stated in the schedule for the purposes stated in the schedule notwithstanding exclusion 9 **we** will indemnify **you** in respect of any negligent act, error or omission in connection with such appointment provided always that there will be no cover for any liability assumed by **you** under any express warranty, agreement or guarantee unless such liability would have attached in the absence of such express warranty, agreement or guarantee.

3.3 Criminal or Fraudulent Acts

We will also indemnify **you** for **your** own losses which during the period of insurance **you** first discover **you** have sustained by reason of any criminal or fraudulent act or omission of any **employee**.

This clause does not cover any loss where **you** are unable to demonstrate that **you** were operating **your** normal system of check and controls as declared to **us**.

Our liability will not exceed £250,000 in the aggregate during the period of insurance and this limit will be in addition to the limit of indemnity stated in the schedule.

3.4 Court Attendance Costs

We will also pay **you** the daily rates stated below if any of these people are required to attend court or any arbitration or adjudication hearing as a witness at **our** request:

- a) any **business partner**, director, **member** or principal £500

- b) any **employee** or consultant £250
- c) any other relevant party excluding any expert witness £250

Our liability will not exceed £25,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.5 First Party Copyright Infringement

We will also pay any reasonable costs and expenses necessarily incurred in the issue of any proceedings notified to **us** during the period of insurance for any injunction or for damages for infringement of any copyright vested in **you** provided always that **we** will not be required to incur any obligation to meet such costs where **your** cause of action is not one that is reasonable to pursue. In the event of any dispute arising between **you** and **us** as to the reasonableness of pursuing any such cause of action the opinion of a Queen’s Counsel the appointment of whom will be mutually agreed between **you** and **us** will be obtained and their decision will be binding.

If **you** and **us** cannot agree on the appointment of a Queen’s Counsel the chairman of the Bar Council will appoint one.

Our liability will not exceed £35,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.6 Loss of Documents

We will also pay reasonable costs necessarily incurred by **you** with **our** prior consent for the restoration or replacement of records associated with the **business** including computer systems records which have been accidentally lost or damaged. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **us** and such backed up records are held at a separate location. This clause does not apply to negotiable instruments of whatsoever nature.

Our liability will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.7 Ombudsman Awards

We will also indemnify **you** in respect of:

- a) any amount paid or payable
- b) the cost of taking any steps which you are directed to take

in accordance with any final and binding award or determination of any ombudsman appointed in respect of any case accepted by the ombudsman for review under any recognised scheme applicable

to **your business** and which may otherwise be the subject of indemnity under this policy. Provided always that **you** give written notice to **us** as soon as reasonably possible after becoming aware that a case directly affecting **you** is being reviewed by an ombudsman.

Any subsequent or concurrent civil action arising out of any complaint made to the ombudsman hereunder will be deemed to be notified in accordance with condition 2.

Our liability will not exceed £350,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.8 Representation Costs

We will also pay reasonable costs and expenses necessarily incurred by **you** with **our** written consent for representation at any official examination, inquiry, investigation or other proceedings ordered or commissioned by a body legally empowered to investigate **your** affairs that is first instigated against **you** and notified to **us** during the period of insurance and which may give rise to a **claim** under this policy.

Our liability will not exceed £35,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.9 Reputation Rebuild Protection

We will also cover any reasonable costs and expenses incurred with **our** written consent to employ a public relations consultancy to avert or mitigate any damage to **your** reputation. This cover will only apply where damage to **your** reputation arises out of an act, error or omission which results in a **circumstance** or **claim** which is notified to **us** during the period of insurance and for which cover is provided under this policy.

Our liability will not exceed £10,000 in the aggregate during the period of insurance.

3.10 Statutory Liabilities

We will also indemnify **you** and at **your** request any **business partner**, director, **member**, principal, **employee** or consultant against 80% of the reasonable legal costs and expenses necessarily incurred with **our** prior consent in the defence of any criminal proceedings first brought against **you** and notified to **us** during the period of insurance brought under:

- i) the Bribery Act 2010
- ii) the Business Protection from Misleading Marketing Regulations 2008
- iii) the Construction (Design and Management) Regulations 2015
- iv) the Consumer Protection from Unfair Trading Regulations 2008

- v) the Corporate Manslaughter and Corporate Homicide Act 2007
- vi) the Estate Agents Act 1979
- vii) the Health and Safety at Work etc. Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978
- viii) the Property Misdescriptions Act 1991
- ix) any statutory or secondary legislation implementing the Council Directive 92/57/EEC or similar legislation enacted elsewhere in the world.

Provided always that:

- i) the alleged breach arises out of the conduct of the **business** provided by **you**; and
- ii) the circumstances giving rise to such criminal proceedings may otherwise give rise to an indemnity under this policy; and
- iii) in **our** reasonable belief the defence of such criminal proceedings would assist in the defence of any **claim** against **you**.

Any subsequent or concurrent civil action arising out of criminal proceedings notified hereunder will be deemed to be notified in accordance with condition 2.

Our liability will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

4. EXCLUSIONS

This policy does not cover:

1. Arbitration

liability arising from any arbitration award whether made under The Royal Institution of Chartered Surveyors Dispute Resolution Service or otherwise in respect of any **claim** or counter**claim** where the seat of the arbitration is located outside England, Wales, Scotland or Northern Ireland unless that seat is agreed by **us**

2. Asbestos

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of any asbestos, asbestos fibres or any derivatives of asbestos including any product containing any asbestos fibres or derivatives unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed in the conduct of the **business**.

Provided always that:

- a) this policy will not cover liability for:
 - i) **asbestos surveys**
 - ii) death, bodily injury, mental injury, sickness, disease, mental anguish, shock or the fear of suffering thereof sustained by any person
- b) **our** liability including **defence costs** will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule

3. Claims by Related Entities

any **claim** brought by any **insured** or any **related entity** unless such **claim** emanates from an independent third party

4. Contractual Liability

liability arising from any contractual liability incurred by **you** in the conduct of the **business** carried on by **you** as a result of:

- a) the acceptance by **you** of an obligation or the guarantee by **you** of fitness for purpose where this appears as an express term
- b) any express guarantee given by **you** including any relating to the period of a project
- c) any express penalty contained in a contract between **you** and a third party

- d) any express acceptance by **you** of liability for liquidated damages
- e) any collateral warranty or duty of care agreement to more than one party except in the case of one and or the other given to a financier or funding party but not a purchaser or tenant where a total of two assignments is permissible. This only applies to contractual liabilities entered into on or after 1 October 2001.

Provided always that this exclusion will not apply where:

- i) **you** would have been liable even if there had not been any such express warranty, guarantee, contractual promise, indemnity, waiver or express agreement
- ii) **we** have expressly approved the contractual terms giving rise to the liability
- iii) in respect of a collateral warranty or duty of care agreement the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording is used

5. Courts Jurisdiction

any **claim** made or brought:

- a) in the United States of America or Canada or territories under their jurisdiction whether for the enforcement of a judgment or finding of a court or tribunal of another jurisdiction or otherwise
- b) under or in consequence of any judgment or order in or under the laws of the United States of America or Canada or territories under their jurisdiction

6. Criminal or Malicious Acts

liability arising out of any criminal, dishonest, fraudulent or malicious act, error or omission after discovery of or reasonable cause for suspicion in relation to any person committing such criminal, dishonest, fraudulent or malicious act, error or omission committed by any **insured** or on the direction of any **business partner**, director, **member** or principal unless:

- a) committed solely and directly by any current or former **business partner**, director, **member**, principal, **employee** or **consultant**
- b) it has caused **your** client to suffer loss. Provided always that:
 - i) any criminal, dishonest, fraudulent or malicious act, error or omission committed by a person or persons acting in concert will be treated as one **claim**

- ii) **your** annual accounts have been prepared or certified by an independent and properly qualified accountant or auditor in accordance with the RICS Rules of Conduct and **your** client accounts have been kept in accordance with those Rules

7. Directors' and Officers' Trustee Liability

liability while any **insured** is carrying out the duties of:

- a) a director or officer of **you** or any other body corporate
- b) a trustee of any pension fund or any other employee benefit scheme

8. Employment

liability arising out of:

- a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock of any **business partner**, director, **member**, principal or **employee** while in the course of their employment with **you**
- b) any obligation owed by **you** as an employer or potential employer to any director or **employee** or applicant for employment
- c) any express or implied terms of a partnership agreement or membership agreement

9. Financial Services

liability arising out of any Regulated Activities as defined in the Financial Services and Markets Act 2000 (as amended). This exclusion will not apply to mortgage mediation activity and insurance mediation activity relating to general insurance contracts only for which **you** have permission under Part IV of the Financial Services and Markets Act 2000 (as amended)

10. Goods and Services

liability arising from any contract or arrangement for the supply to or use by **you** of goods or services

11. Insolvency

liability arising out of **your** insolvency or bankruptcy. This exclusion will not apply to any **circumstance**

or **claim**:

- a) in respect of monies held on behalf of third parties
- b) that may be covered under this policy but for **your** insolvency or bankruptcy

12. Market Fluctuation

liability arising out of the financial return of any investment or the depreciation or loss of investments when such financial return, depreciation or loss is as a result of fluctuations in any financial, stock, commodity

or other markets which are outside **your** influence or control. This exclusion will not apply to any survey or valuation of any tangible property

13. Nuclear and War Risks, Government or Public Authority Order and Sonic Bangs

- a) death, injury, disablement or loss or damage to any property or any loss or expense resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
- b) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, nuclear reactor or other nuclear assembly or nuclear component thereof
- c) any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter but this exclusion d) will not apply to radioactive isotopes other than nuclear fuel when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other peaceful purposes
- e)
 - i) war, invasion, act of foreign enemy, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power
 - ii) nationalisation, confiscation, requisition, seizure or destruction by any government or public authority f) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds

14. Pollution or Contamination

liability arising directly or indirectly out of:

- a) **pollution or contamination** unless arising out of any negligent act, error or omission in the conduct of the **business**
- b) any **environmental audit**.

Our liability will not exceed the limit of indemnity in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule other than where a **claim** arises from **your** negligent structural design or specification or failure to report a structural defect in a property and relates solely to the cost of re-designing, re-specifying, remedying or rectifying the defective structure where the limit of indemnity will be any one **claim**

15. Prior Circumstances and Claims

liability arising from:

- a) any **circumstance** that:
 - i) **you** knew or that in **our** reasonable opinion **you** ought to have known prior to inception of this policy which may give rise to a **claim** against any **Insured**
 - ii) was notified by **you** under any other insurance policy prior to inception of this policy
 - iii) was disclosed or in **our** reasonable opinion ought to have been disclosed on **your** latest proposal to **us**
- b) any **claim** made against any **insured** prior to inception of this policy

16. Products and Buildings

liability arising out of any supply, repair, alteration, manufacture, installation, construction, treatment, sale or distribution of goods, materials or products by **you**.

This exclusion will not apply to project models or displays

17. Property and Transport

liability arising out of the ownership, possession or use by **you** or on **your** behalf of any land, building, aircraft, watercraft, mechanically propelled vehicle or trailer

18. Punitive Damages or Fines

any amount in respect of

- a) penalties or fines
- b) punitive or exemplary damages unless arising out of libel or slander committed or uttered in good faith

19. Retroactive Date

liability for any **claim** arising from the conduct of the **business** prior to the retroactive date stated in the schedule

20. Survey and Valuation

liability arising out of:

- a) any survey or valuation unless it was undertaken by:
 - 1) a Fellow or Professional Member or Technical Member or an Associate Member of the Royal Institution of Chartered Surveyors

- 2) a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers
- 3) a Fellow or Associate of the Architects and Surveyors Institute
- 4) a Fellow or Associate of the Faculty of Architects and Surveyors
- 5) a Fellow or Associate of the Royal Institute of British Architects
- 6) a Fellow or Associate of the Royal Incorporation of Architects in Scotland
- ii) someone who has not less than 5 years experience of such work
- iii) any other person delegated by **you** to execute such work provided always that:
 - 1) supervision of such work is by a person qualified in accordance with i) or ii)
 - 2) **we** have given **our** prior written consent

- b) any survey undertaken in connection with the production of a Home Condition report unless it was undertaken by anyone who has a Diploma in Home Inspection from the Award Body of the Built Environment

21. Terrorism

loss, damage, consequential loss, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act or preparation in respect of action or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto and which:
 - i) involves violence against one or more persons
 - ii) involves damage to property
 - iii) endangers life other than that of the person committing the action
 - iv) creates a risk to health or safety of the public or a section of the public
 - v) is designed to interfere with or to disrupt an electronic system
- b) any action in controlling, preventing, suppressing, retaliating against or responding

to any act or preparation in respect of action or threat of action described in a) above.

In any action or suit or other proceedings where **we** allege that by reason of this exclusion cover is not provided under this policy the burden of proving that cover is provided under this policy will be upon **you**

22. Trading Losses

liability arising out of **your** trading loss or liability incurred by **you** including loss of any **business** or custom

23. Hacking or Denial of Service Attack

liability arising out of:

- a) unauthorised access to any computer or other equipment or component or system or item which processes, stores, transmits, retrieves or receives data
- b) any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network services, network connectivity or information systems including but not limited to the generation of excess network traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

5. PROVISIONS

1. Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this policy is not enforceable by any third party.

2. Discharge of Liability

We may at any time pay in connection with any **claim** the maximum amount payable under this policy after deduction of any sum already paid in respect of such **claim** or any lower amount for which the **claim** can be settled and then relinquish the conduct and control and be under no further liability in respect of the **claim** except for the payment of **defence costs** incurred with **our** written consent prior to the date of such payment.

3. Joint Liabilities

If the **insured** comprises more than one party we will indemnify each party as though a separate policy had been issued to each of them provided always that the total amount of indemnity to all such parties will not exceed the amount payable if the **insured** comprised only one party and in any event will not exceed the limit of indemnity stated in the schedule.

4. Limit of Indemnity

The limit of indemnity stated in the schedule is **our** monetary limit and applies to any one **claim**.

All claims against any one or more of the **insured** arising from:

- a) one act or omission
- b) one series of related acts or omissions
- c) the same act or omission in a series of related matters or transactions
- d) similar acts or omissions in a series of related matters or transactions
- e) one matter or transaction

will be regarded as one **claim**. All such claims will be considered first made on the date upon which the earliest **claim** is first made.

5. Queen's Counsel

If **you** and **us** cannot agree a common course of action with regard to contesting any legal proceedings the dispute will be resolved by reference to a Queen's Counsel or similar authority to be agreed upon by **you** and **us** whose decision will be binding on both parties.

If **you** and **us** cannot agree on the appointment of a Queen's Counsel one will be appointed by the Chairman for the time being of the Bar Council. The costs of such an exercise will be allocated by the agreed or appointed party on a fair and equitable basis.

6. Sanctions

Pen Underwriting Limited (Pen) is committed to complying with financial and trade sanctions legislation and export controls (Sanctions) in the United Kingdom, the European Union, United Nations and United States of America as well as the applicable Sanctions laws and regulations in the jurisdictions in which we operate. This requirement is also extended to any brokers and coverholders who undertake any insurance intermediation activity in relation to this policy.

To comply with Sanctions, Pen cannot place, provide insurance cover or make any payment in circumstances where it would be considered a breach of Sanctions. We may be required to take actions such as freezing the funds of parties subject to Sanctions, not performing claims handling activities, and making licence applications or notifications to relevant regulators.

Other third parties Pen deals with, such as financial institutions, may also apply their own policies or restrictions. Pen reserves the right to take steps to comply with Sanctions and we will not be liable to you for this or for similar steps taken by third parties.

7. Run - off Cover

If **you** cease during or on expiry of this policy and have not obtained succeeding insurance which complies with the Royal Institution of Chartered Surveyors approved minimum professional indemnity policy wording and Professional Indemnity Requirements Version 4 with effect from 01 April 2019, **we** will indemnify the **insured** for any **claim** made against the **insured** by any natural person acting for purposes outside their trade, business or profession and arising from any act, error or omission of the **insured** prior to the date of cessation for a period of six years (run-off period) from the day immediately following the expiry date as stated in the schedule.

Provided always that **our** liability will not exceed £1,000,000 in the aggregate for the run-off period stated above

6. CONDITIONS

1. Arbitration

Any dispute between **you** and **us** arising out of or in connection with this policy will be referred by either party for arbitration in accordance with the law and procedure of England and Wales to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors whose decision will be binding on both parties.

2. Claims Procedures

a) Your Responsibilities

It is agreed that:

- i) **you** will as soon as reasonably possible give written notice to **us** and in any event prior to the expiry of the period of insurance of:
 - 1) the happening of a **circumstance**
 - 2) any reasonable cause for suspicion of any criminal, dishonest, fraudulent or malicious act, error or omission
 - 3) any occurrence that may require representation at a properly constituted hearing, tribunal or proceeding
 - 4) becoming aware that a case directly affecting **you** is being reviewed by an ombudsman
- ii) on receiving verbal or written notice of any **claim** **you** will as soon as reasonably possible give notice to **us** and in any event within 10 working days after the expiry of the period of insurance provided always that any **claim** relating to **asbestos** or **pollution or contamination** must be notified within the period of insurance.

Provided always that:

- a) **you** will as soon as reasonably possible forward to **us** any **claim**, writ or summons issued against any **insured** and any notice of prosecution, inquest or fatal inquiry; and
- b) **you** will at **your** own expense and as soon as reasonably possible supply full details of the **claim** in writing to **us** together with any evidence and information that may be reasonably required by **us** for the purpose of investigating or verifying the **claim** and keep **us** up to date with any future evidence and information received by **you** or reasonably required by **us**; and
- c) **you** will supply full particulars including all material facts, dates and persons involved and in the case of notification of a **circumstance** the reasons for anticipating that the **circumstance** is by definition a **circumstance**; and

no settlement, admission of liability, payment or promise of payment will be made to a third party without **our** written consent.

b) Our Rights

We will:

- i) be entitled to conduct the defence or settlement of any **claim** made against any **insured** and they will give all assistance as may be reasonably required by **us**; and
 - ii) be entitled to appoint legal counsel; and
 - iii) be entitled to take the benefit of any rights of any **insured** against any other party before or after any **insured** has received indemnification under this policy and they will give all assistance as may be reasonably required by **us**; and
 - iv) treat any **circumstance** notified during the period of insurance which subsequently gives rise to a **claim** after the period of insurance as a **claim** first made during the period of insurance.
- c) Prejudice

Where in **our** opinion any **insured** has prejudiced the handling of or the settlement of any **claim** the amount payable in respect of such **claim** including **defence costs** will be reduced to such an amount as in **our** opinion would have been payable in the absence of such prejudice.

3. Contractual Right of Renewal (Tacit)

If **you** pay the premium using **our** direct debit instalment scheme **we** will have the right which **we** may choose not to exercise to renew this policy each year and continue to collect premiums using this method. **We** may vary the terms and conditions of this policy including the premium at renewal. If **you** do not wish to renew this policy **you** or **your** insurance intermediary must notify **us** prior to the next renewal date.

4. Difference in Conditions

This policy is designed to provide the minimum insurance requirements of the Royal Institution of Chartered Surveyors in accordance with the approved policy wording which for the purposes of this clause will mean the Royal Institution of Chartered Surveyors' approved minimum professional indemnity insurance wording for members in force at the commencement or renewal date of this policy.

5. Fraudulent Claims

If **you** or anyone acting on **your** behalf:

- a) Makes a fraudulent or exaggerated claim under this policy; or

- b) Uses fraudulent means or devices including the submission of false or forged documents in support of a claim whether or not the claim itself is genuine; or
- c) Makes a false statement in support of a claim whether or not the claim is itself genuine; or
- d) Submits a claim under this policy for loss or damage which **you** or anyone acting on **your** behalf or in connivance with **you** deliberately caused; or
- e) Realises after submitting what **you** reasonably believed was a genuine claim under this policy and then fails to tell **us** that **you** have not suffered any loss or damage; or
- f) Suppresses information which **you** know would otherwise enable **us** to refuse to pay a claim under this policy

We will be entitled to refuse to pay the whole of the claim and recover any sums that **we** have already paid in respect of the claim.

We may also notify **you** that **we** will be treating this policy as having terminated with effect from the date of any of the acts or omissions

If **we** terminate this policy under this condition **you** will have no cover under this policy from the date of the termination and not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of an **insured** and not on behalf of **you** this condition should be read as if it applies only to that **insured's** claim and references to this policy should be read as if they were references to the cover effected for that person alone and not to the policy as a whole.

6. Other Insurances

If at the time of any occurrence giving rise to a **circumstance** or **claim** there is any other insurance effected by or on **your** behalf providing an indemnity in respect of such **circumstance** or **claim our** liability will be limited to its rateable proportion. If any other insurance is subject to any provision whereby it is excluded from ranking concurrently with this policy in whole or in part or from contributing proportionally **our** liability under this policy will be limited to any **excess** beyond the amount which would be payable under such other insurance had this policy not been effected.

7. Payment by Instalments

Reference to the payment of premium includes payment by monthly instalments. If **you** pay by this method this policy remains an annual contract and the date of the payment and the amount of instalments are governed by the terms of the credit agreement. If an instalment is not received by the due date then subject to the Consumer Credit Act 1974 if applicable the credit agreement and this policy will be cancelled immediately.

8. Sole Agent

It is agreed that:

- a) if the **insured** comprises more than one party the person, company or entity set out as **you** in the schedule will act for itself and be deemed to act as the sole agent for the **insured**.
- b) All parties comprising the **insured** are deemed to have consented and agreed that rights of action under this policy are not assignable except with **our** prior written consent
- c) **you** have the sole right to file notice or proof of loss or make a **claim**
- d) **you** have the sole right to bring legal proceedings arising under or in connection with this policy
- e) knowledge possessed or discovery made by any person, company or entity forming part of **you** or by any **business partner**, director, **member**, principal or officer, departmental head or other senior manager or the equivalent thereof will be deemed to constitute knowledge possessed or discovery made by all other persons, companies or other entities forming part of **you**.

7. HELPLINE SERVICES

To provide ongoing assistance to **your business** we have arranged five specialist helplines with DAS Legal Expenses Insurance Company Limited (DAS).

These DAS helplines provide confidential professional advice to **your business** 24 hours a day*.

Health and Medical Information Service – 0344 893 0858

DAS will provide information on general health issues and advice on a wide variety of medical matters such as lifestyle changes, medication and travel health.

Between the hours of 7pm and 9am DAS will take a recorded message and a health and medical adviser will contact any **business partner**, director, **member**, principal or **employee** the next day or at an agreed time.

Unfortunately no explanations about diagnosis or prescription can be offered.

Legal Advice – 0344 893 0858

The DAS legal advice team give clear, practical and helpful advice on any legal matter affecting **your business** under the laws of the **members** of the EU, the Isle of Man, the Channel Islands, Switzerland and Norway. Advice typically includes **your** legal rights and the course of action available to **you**.

While **unusual** or particularly complex issues can be researched equally the team will advise if it is necessary for **you** to instruct a lawyer.

If DAS deems further legal advice necessary or advises that **you** should instruct a lawyer these costs will be **your** responsibility.

Tax Advice – 0344 893 0858

Confidential advice on any tax matters affecting **your business** under the laws of the England and Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands.

If DAS deems further advice necessary outside of that provided by this advice line any costs incurred will be **your** responsibility.

Counselling Service – 0344 893 9028

Confidential counselling for any **business partner**, director, **member**, principal or **employee** and **members** of their immediate families who permanently reside with them including where appropriate onward referral to relevant voluntary or professional services. DAS counsellors will help clarify the problem, explore available options and offer support.

All calls to this helpline are treated in the strictest confidence and are not recorded.

Business Assistance – 0344 893 0858

In the event of any unexpected damage or emergency that affects **your business** premises, this national helpline gives **you** access to a list of vetted repairers and contractors.

All costs of assistance provided by the repairers and contractors will be **your** responsibility.

These helplines are provided by DAS. If **you** have a complaint about the service or about the way **you** have been treated, please write to: DAS Customer Relations Department at: DAS House, Quay Side, Temple Back, Bristol BS1 6NH.

Alternatively **you** can contact DAS by telephone on: 0117 934 0066, or email: customerrelations@das.co.uk.

To help check and improve service standards calls are recorded other than calls to the Counselling Service.

*Helplines will be available during the period of insurance. We accept no responsibility for the availability of the helplines or any advice given in relation to the helplines. By using these services you and others using the services are agreeing to calls being recorded other than calls to the Counselling Service



Pen
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