

Architects &/or Engineers Professional Indemnity Policy

Schedule

Policy Number:

The Assured:

Address:

Assured's Business

Limit of Indemnity: SGD in the aggregate, costs & expenses inclusive

Retention: SGD each and every claim, costs & expenses inclusive

Period of Insurance: From:
To:
(both dates inclusive)

Premium: SGD

Retroactive Date:

Jurisdiction:

Date of Proposal:

Disclaimer

This is an example policy wording and does not represent the cover provided to any particular Assured. For details of the cover applicable to specific entities/individuals please refer to the policy documents issued to them including all endorsements.

Insuring Clauses

1. Legal liability

Underwriters agree, subject to the terms, limitations, exclusions and conditions of this Policy, to indemnify the Assured against all sums which the Assured shall become legally liable to pay as damages and claimant's costs as a result of any Claim first made against the Assured during the Period of Insurance:

- [a] by reason of a breach by the Assured or by any person acting on behalf of the Assured when so acting of a professional duty owed by the Assured to a third party;
- [b] by reason of any dishonest, fraudulent, criminal or malicious act on the part of any Employee of the Assured; or
- [c] for libel, slander or defamation by the Assured

in the conduct of the Assured's Business.

2. Costs and expenses

Underwriters further agree, subject to the terms, limitations, exclusions and conditions of this Policy, to indemnify the Assured against:

- [a] necessary and reasonable legal costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the investigation, defence or settlement of any Claim which falls to be dealt with under Insuring Clause 1 of this Policy;
- [b] necessary and reasonable costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the replacement or reconstruction of any Documents held in the course of the Assured's Business which are discovered during the Period of Insurance to have been physically destroyed or damaged or lost or mislaid and which after diligent search cannot be found.

Costs and expenses do not include:

- (i) damages or costs awarded against the Assured
- (ii) remuneration of whatsoever nature due to the Assured or to any Director, Partner, Member or Employee thereof.

Definitions

(The following words shall have the same meaning throughout this Policy, whether expressed in the singular or the plural. Words in the masculine gender shall include the feminine.)

"Assured" shall mean

- i) the person or entity stated in the Schedule;
- ii) the **Directors, Partners and Members** of such entity;
- iii) in the event of the death, incompetence or bankruptcy of any natural person in [i] or [ii] above, their estate, heirs, legal representatives or assigns for legal liabilities incurred by those within [i] or [ii] above and costs and expenses which are indemnifiable under this Policy.

"Assured's Business" shall mean the professional activities stated in the Schedule.

"Claim" shall mean

- i) any claim form, writ or summons or other application of any description whatsoever or cross-claim or counter claim issued against or served upon the Assured, or
- ii) any communication received by the Assured

alleging a breach of a professional duty by the Assured or by any person acting on behalf of the Assured or a dishonest, fraudulent, criminal or malicious act on the part of any Employee of the Assured or libel, slander or defamation by the Assured.

"Computer" shall mean any computer or other electronic data processing device, equipment or system, any hardware, software, programme, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing.

"Director" shall mean any natural person who is, was or may during the Period of Insurance become a Director or Officer of the Assured and any natural person who is construed to be a Director or Officer within the meaning of any applicable law or regulation governing such matters.

"Document" shall mean

- i) all documents excluding stamps, currency, coins, bank notes and bullion, travellers cheques, cheques, drafts, postal orders, money orders, bills of exchange, promissory notes, securities, negotiable instruments and the like, and
- ii) separable programmes, instructions or data for physical incorporation into any Computer

belonging to the Assured or for which the Assured is legally responsible, whilst in the custody of the Assured, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the Assured in

the ordinary course of the Assured's Business.

"Employee" shall mean any person, other than a Director, Partner or Member of the Assured, who is

- i) under a contract of service or apprenticeship with the Assured, or
- ii) supplied to or hired or borrowed by the Assured, or
- iii) under any work experience or similar scheme with the Assured

whilst employed or engaged by and under the control of the Assured in connection with the Assured's Business.

"Fungi" shall mean any fungus or mycota or any by product or type of infestation produced by such fungus or mycota, including but not limited to, mould, mildew, mycotoxins, spores, or any biogenic aerosols.

"Jurisdiction" shall mean those territories stated in the Schedule.

"Member" shall mean any person holding that position within a limited liability partnership.

"Partner" shall have the meaning given by the Partnership Act 1890 or such equivalent in relevant jurisdiction.

"Period of Insurance" shall mean the period stated in the Schedule.

"Pollution" shall mean the discharge, disposal, dispersal, release or escape of any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, viruses, bacteria, fumes, acids, alkalis, chemicals and waste (including, but not limited to material to be recycled, reconditioned or reclaimed).

"Premium" shall mean the amount stated in the Schedule plus all applicable taxes at the rates from time to time in force.

"Proposal" shall mean the written proposal bearing the date stated in the Schedule and containing particulars and statements together with any other information supplied to Underwriters.

"Terrorism" shall mean the use of force or violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

"Unlawful Association" shall mean any organisation which is engaged in Terrorism and includes any organisation which at any relevant time is a proscribed organisation within the meaning of the Terrorism Act 2000 (UK) or such equivalent in relevant jurisdiction.

“**War**” shall mean war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.

Limit Of Indemnity

Underwriters’ total aggregate liability under this Policy including any endorsements hereto (inclusive of all costs and expenses) shall not exceed the Limit of Indemnity stated in the Schedule, irrespective of the number of Claims made and the number of parties against whom such Claims may be made.

Excess

Underwriters shall only be liable in excess of the Retention stated in the Schedule, which retention shall apply to each and every Claim and shall be inclusive of costs and expenses.

Exclusions

(The heading of each exclusion is for ease of identification only)

Underwriters shall not be liable to indemnify the Assured against any Claim or costs and expenses

a) **Circumstances Known At Inception**

which results, directly or indirectly, from any Claim or circumstances existing prior to or at the inception of this Policy and which the Assured knew or ought reasonably to have known to might give rise to a Claim or to the incurring of costs and expenses.

b) **Other Insurance**

in respect of which the Assured is entitled to indemnity under any other insurance.

c) **Dishonest And Malicious Acts**

- i) which results, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act or omission of the Assured, other than as provided by Insuring Clause 1(b)
- ii) under Insuring Clause 1(b), which results, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act or omission committed by any person after the discovery of reasonable cause for suspicion of any dishonest, fraudulent, criminal or malicious act or omission in relation to that person.

Furthermore,

- (i) no person committing or condoning a dishonest, fraudulent, criminal or malicious act or omission shall

be entitled to indemnity under this Policy.

(ii) the following shall be deducted from any amount payable by Underwriters:

- a) any monies which but for such act or omission would be due from the Assured to the person committing or condoning such act
- b) any monies held by the Assured and belonging to such person
- c) any monies recovered following action in accordance with Condition 4 of this Policy.

d) Fines/Penalties

in respect of any fine or penalty, punitive, exemplary, restitutionary or non-compensatory damages (other than exemplary damages in respect of libel, slander or defamation).

e) Bodily Injury/Property Damage

which results, directly or indirectly from any bodily injury, mental injury, mental anguish, shock, sickness, disease or death sustained by any person (other than emotional distress arising from any libel, slander or defamation), or for any loss, damage or destruction of property, including loss of use thereof.

f) Employers Liability

for any breach of any obligation owed by the Assured as an employer or potential employer to any Employee or prospective Employee.

g) Property

which results, directly or indirectly, from the ownership, possession or use by or on behalf of the Assured of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

h) Products

which results, directly or indirectly, from goods or products sold, supplied, repaired, altered, manufactured, constructed, installed or maintained by the Assured or by any person, acting for or on behalf of the Assured.

i) Contracting

which results, directly or indirectly, from any contract where the Assured acts as a Contractor whether in conjunction with the professional activities stated in the Schedule (as the Assured's Business) or not.

j) Contractual Liability

which results, directly or indirectly, from any liability assumed by the Assured under any express warranty (except warranty of authority), agreement or guarantee unless such liability would have attached to the Assured notwithstanding such express warranty, agreement or guarantee.

k) Trading Loss

which results, directly or indirectly, from any trading losses or liabilities or debts incurred by any business managed by or carried on by the Assured.

l) Consortia And Joint Ventures

which results, directly or indirectly, from the operation or existence of any joint venture or consortia in which the Assured has an interest unless Underwriters' written agreement to the Assured's participation in such venture or consortia has been first obtained and an endorsement added to this Policy.

m) Financial Interest

made against the Assured by

- i) any other person falling within the definition of the Assured, or
- ii) any parent or subsidiary company of the Assured, or
- iii) any person or entity having a financial, executive or controlling interest in the Assured, or
- iv) any company or entity in which the Assured or any Director, Partner or Member of the Assured has a financial, executive or controlling interest

unless such Claim is for indemnity or contribution in respect of a claim made by an independent third party against such company, person or entity and directly results from breach of a professional duty owed by the Assured to that third party.

n) Insolvency / Bankruptcy of Assured

which results, directly or indirectly, from the insolvency or bankruptcy of the Assured.

o) Infringement

alleging infringement of copyright, patent, registered design, trade mark or any other intellectual property rights or passing off.

p) Loss Of Data

under Insuring Clause 2(b), which results, directly or indirectly, from the failure or inefficacy of any programme, instruction or data for use in any Computer occasioned other than through its physical destruction or damage.

q) Computer Date Recognition

which results, directly or indirectly, from any failure of any Computer (by whomsoever owned or operated) to recognise or respond, correctly and effectively, to any particular date or period of time (continuous or otherwise).

r) Computer Viruses And Unauthorised Use

which results, directly or indirectly, from, in consequence of or in any way involving computer viruses or the failure to prevent unauthorised use of or access to any Computer.

s) Retroactive Date

which results, directly or indirectly, from any act, error, event or omission occurring or alleged to have occurred prior to the Retroactive Date (if any) stated in the Schedule.

t) Legal Action

in a court or before an arbitration tribunal outside the Jurisdiction, made under laws of countries outside the Jurisdiction or where action is brought in a court within the

Jurisdiction to enforce a foreign judgment whether by way of reciprocal agreement or otherwise.

u) War And Terrorism

which results, directly or indirectly, from, in consequence of or in any way involving:

- i) War
- ii) Terrorism
- iii) Any unlawful, wanton or malicious act committed by a person or persons acting on behalf of or in connection with any Unlawful Association

regardless of any other cause or event contributing concurrently or in any other sequence to the Claim or loss.

Also excluded is loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing suppressing or in any way relating to (i) and/or (ii) and/or (iii) above.

If Underwriters allege by reason of this exclusion that any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Assured.

In the event that any part of this exclusion is found to be invalid or unenforceable, the remainder shall still be of full force and effect.

v) Radioactive Contamination Or Explosive Nuclear Assemblies

brought about by or contributed to by or consequent upon

- i) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- ii) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

w) Pollution

which results, directly or indirectly, from, in consequence of or in any way involving any Pollution.

x) Asbestos

directly or indirectly based upon, arising out of, resulting from, in consequence of or in any way connected with asbestos in whatever form or quantity.

y) Toxic Mould

directly or indirectly based upon, arising out of, resulting from, in consequence of or in any way connected with any Fungi in whatever form or quantity.

z) Surveys

which results, directly or indirectly from a survey/ valuation/inspection unless:

- i) a written report has been prepared and signed by a chartered member of the Royal Institution of Chartered Surveyors, a chartered member of the Royal Institute of British Architects, a person registered with the Architects Registration Board or a fully qualified professional, registered with a professional governing body, in the field of surveying, valuing , architecture or engineering with 5 years' experience undertaking surveys/ valuations / inspections , such experience being related to the subject matter of the report and to the nature of the survey/ valuation /inspection, and
- ii) the said report was preceded by a detailed inspection of the property by the person referred to in [i] above, and
- iii) the said report includes the following clause:

we have not inspected woodwork or other parts of the structure which are covered, unexposed or inaccessible and we are therefore unable to report that any such part of the property is free from defect

Conditions

(The heading of each condition is for ease of identification only)

1. Claims Notification

- [a] The Assured, as a condition precedent to their right to indemnity under this Policy, shall give to Underwriters immediate notice in writing during the Period of Insurance of
- (i) any Claim, or
 - (ii) the receipt of any notice of an intention to make a Claim, or
 - (iii) any circumstances of which the Assured shall become aware which might reasonably be expected to give rise to a Claim, giving detailed reasons for the anticipation of such Claim, together with full particulars as to dates and persons involved, or
 - (iv) the destruction, damage or loss of any Documents.

Such notice having been given as required by (ii) or (iii) above, any subsequent Claim made shall be deemed to have been made during the Period of Insurance.

- [b] The Assured, as a condition precedent to their right to indemnity under this Policy, shall give Underwriters such information and co-operation as Underwriters may reasonably require including all reasonable assistance in identifying locations and securing the co-operation of any appropriate individual to sign a Statement of Truth or any other document necessary to comply with the Civil Procedure Rules current at the material time.

2. Claims Handling

- [a] The Assured, as a condition precedent to their right to indemnity under this Policy, shall not admit liability for or settle or attempt to settle any Claim or incur any costs and expenses in connection with any Claim without Underwriters' prior written consent (such consent not to be unreasonably withheld).
- [b] Underwriters shall be entitled, but not obliged, at any time to take over and conduct in the name of the Assured the defence or settlement of any Claim or to prosecute in the name of the Assured for their own benefit any claim for payment, indemnity or damages or otherwise against any third party.
- [c] The Assured shall not be required to contest any Claim unless Leading Counsel (to be mutually agreed upon by the Assured and Underwriters or, in default of agreement, to be appointed by the President for the time being of the Law Society) shall advise that such Claim should be contested.
- [d] Underwriters shall not settle any Claim without the consent of the Assured. If however the Assured shall refuse to consent to any settlement recommended by Underwriters and shall elect to contest a Claim, then Underwriters' liability for such Claim (including costs and expenses) shall not exceed the amount for which the Claim could have been settled inclusive of costs and expenses incurred with their consent up to the date of such refusal, and then only up to the Limit of Indemnity stated in the Schedule.
- [e] The Assured, as a condition precedent to their right to indemnity under this Policy, shall not, except insofar as may be required by law, disclose to anyone the existence of this Policy without Underwriters' prior written consent. For the avoidance of doubt, a requirement to disclose the existence of this Policy is not a requirement to disclose its terms and conditions.

3. Employee Indemnification

If the Assured so requires, Underwriters will indemnify any Employee of the Assured against his liability to pay any Claim made against that Employee personally, and necessary and reasonable legal costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the investigation, defence or settlement of any such Claim to the same extent as if the Claim were made against the Assured and subject to the terms, limitations, exclusions and conditions of this Policy, provided always that such Employee shall observe, fulfil and be subject to all the terms, conditions and exclusions of this Policy as if he were the Assured, and provided also that this Condition shall not increase the Limit of Indemnity under this Policy, and provided also that the Employee does not have any direct or indirect financial interest in the proceeds of the claim and has not made any profit or gain out of the transaction giving rise to the Claim.

4. Subrogation

Underwriters shall be subrogated to all the Assured's rights of recovery against any person before or after any payment or indemnity under this Policy and the Assured, as a condition precedent to their right to indemnity under this Policy, shall take all steps necessary to preserve Underwriters' rights of subrogation and shall give all such assistance in the exercise of rights of recovery as Underwriters may require.

Underwriters agree not to exercise any such rights against any Director, Member or Employee of the Assured unless the Claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of that Director, Member or Employee.

5. Fraudulent Claims

If the Assured shall make any request for payment or indemnity knowing the same to be false or fraudulent as regards amount, or otherwise, this Policy shall be void and all payment and indemnity hereunder shall be forfeited.

6. Premium Payment

The Assured undertakes that Premium will be paid in full to Underwriters within sixty days of inception of this Policy (or, in respect of instalment premiums, when due).

If the Premium due under this Policy has not been so paid to Underwriters by the sixtieth day from the inception of this Policy (and, in respect of instalment premiums, by the date they are due) Underwriters shall have the right to cancel this policy by notifying the Assured via the broker in writing. In the event of cancellation, Premium is due to Underwriters on a pro rata basis for the period that Underwriters are on risk but the full policy Premium shall be payable to Underwriters in the event of notification of a Claim, loss or of any circumstances before the effective date of termination.

It is agreed that Underwriters shall give not less than 15 days prior notice of cancellation to the Assured via the broker. If Premium due is paid in full to Underwriters before the notice period expires, notice of cancellation shall automatically be revoked. If not, the Policy shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the Leading Underwriter (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all Underwriters participating in this contract.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

Where the premium is to be paid through a London Market Bureau, payment to Underwriters will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

7. Third Party Rights

The parties to this Policy are Underwriters and the person or entity named as the Assured in the Schedule. A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available other than by virtue of the Act.

8. Cancellation

This Policy may be cancelled by or on behalf of Underwriters by thirty days' notice given in writing to the Assured or the broker and the premium hereon shall be adjusted on the basis of Underwriters receiving or retaining pro rata premium.

9. Proposal Form

The Proposal is the basis of this Policy and is incorporated herein.

10. Law Of Contract

This Policy shall be governed by the laws of Singapore and any dispute in connection herewith shall be submitted to the exclusive jurisdiction of the Singapore Courts.

NOTICE

If at any time you have any questions or concerns regarding this contract or the handling of a claim, you should in the first instance refer to your insurance broker or intermediary, if any. If your problem cannot be resolved in this way, please write to the Claims Manager, 8 Marina View # 15-01, Asia Square Tower 1, Singapore 018960. We will advise you of Markel's internal complaints handling procedure.

These complaints procedures do not affect your right to have recourse to legal action or to any other remedy available to you.