



Policy

Public and Product Liability Insurance

Form CPP 05/15

Policy

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Policy

1 Introduction

This policy consists of the Policy Definitions, Extensions, Exclusions and Conditions, the **Schedule**, the coverage Sections stated as operative in the **Schedule** and **Endorsements**, if any, all of which are a single document and are to be read as one contract. In deciding to accept this policy and in setting the terms and premium **We** have relied on the information which **You** have provided to **Us**.

We will, in consideration of the payment of the premium, insure **You**, subject to the terms and conditions of this policy, against the events set out in the operative Sections and occurring in connection with the **Business** during the **Period of Insurance** or any subsequent period for which **We** agree to accept payment of premium.

Please read this policy carefully and make sure that it meets **Your** needs. If any corrections are necessary **You** should contact **Your** broker through whom this policy was arranged.

Please keep this policy in a safe place – **You** may need to refer to it if **You** have to make a **Claim**.

1.1 Accessibility

Upon request **We** can provide Braille, audio or large print versions of the policy and the associated documentation including the Key Facts document. If **You** require an alternative format **You** should contact **Your** broker through whom this policy was arranged.

1.2 Data Protection Act

Any information provided to **Us** regarding **You**, any person insured or any **Employee** will be processed by **Us**, in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling **Claims** or complaints, if any. This may necessitate providing such information to third parties.

1.3 Third Party Rights

A person who is not a party to this contract of insurance has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract of insurance but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

1.4 Law and Jurisdiction

The parties are free to choose the law applicable to this contract of insurance. Unless specifically agreed to the contrary this contract of insurance shall be governed by English law and subject to the exclusive jurisdiction of the courts of England and Wales.

The language of this contract of insurance and all communications relating to it will be in English.

1.5 Cancellation and Cooling Off Period

(a) **Your Right to Cancel during the Cooling-Off Period**

You are entitled to cancel this policy by notifying **Us** in writing within fourteen (14) days of either:

- (i) the date **You** receive this policy; or
- (ii) the start of **Your Period of Insurance**;

whichever is the later.

A full refund of any premium paid will be made unless **You** have made a **Claim** in which case the full annual premium is due.

(b) **Your Right to Cancel after the Cooling-Off Period**

You are entitled to cancel this policy after the cooling-off period by notifying **Us** in writing. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the policy has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

(c) **Our Right to Cancel**

We are entitled to cancel this policy, if there is a valid reason to do so, including for example:

- (i) any failure by **You** to pay the premium; or
- (ii) a change in risk which means **We** can no longer provide **You** with insurance cover; or
- (iii) non-cooperation or failure to supply any information or documentation **We** request, such as details of a **Claim**;

by giving **You** fourteen (14) days' notice in writing. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the policy has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

1.6 Information You Have Given Us

In deciding to accept this policy and in setting the terms including premium **We** have relied on the information which **You** have provided to **Us**. **You** must take care when answering any questions **We** ask by ensuring that any information provided is accurate and complete.

If **We** establish that **You** deliberately or recklessly provided **Us** with untrue or misleading information **We** will have the right to:

- (a) treat this policy as if it never existed;
- (b) decline all **Claims**; and
- (c) retain the premium.

If **We** establish that **You** carelessly provided **Us** with untrue or misleading information **We** will have the right to:

- (i) treat this policy as if it never existed, refuse to pay any **Claim** and return the premium **You** have paid, if **We** would not have provided **You** with cover;
- (ii) treat this policy as if it had been entered into on different terms from those agreed, if **We** would have provided **You** with cover on different terms;
- (iii) reduce the amount **We** pay on any **Claim** in the proportion that the premium **You** have paid bears to the premium **We** would have charged **You**, if **We** would have charged **You** more.

We will notify **You** in writing if (i), (ii) and/or (iii) apply.

If there is no outstanding **Claim** and (ii) and/or (iii) apply, **We** will have the right to:

- (1) give **You** thirty (30) days' notice that **We** are terminating this policy; or

- (2) give **You** notice that **We** will treat this policy and any future **Claim** in accordance with (ii) and/or (iii), in which case **You** may then give **Us** thirty (30) days' notice that **You** are terminating this policy.

If this policy is terminated in accordance with (1) or (2), **We** will refund any premium due to **You** in respect of the balance of the **Period of Insurance**.

1.7 **Changes We Need to Know About**

You must tell **Us** within fourteen (14) days of **You** becoming aware of any changes in the information **You** have provided to **Us** which happen before or during any **Period of Insurance**.

When **We** are notified of a change **We** will tell **You** if this affects **Your** policy. For example **We** may cancel **Your** policy in accordance with the Cancellation and Cooling-Off Provisions, amend the terms of **Your** policy or require **You** to pay more for **Your** insurance. If **You** do not inform **Us** about a change it may affect any **Claim You** make or could result in **Your** insurance being invalid.

1.8 **Fraud**

If **You**, or anyone acting for **You**, makes a **Claim** which is fraudulent and/or intentionally exaggerated and/or supported by a fraudulent statement or other device, **We** will not pay any part of **Your Claim** or any other **Claim You** have made or may make under this policy. In addition, **We** will have the right to:

- (a) treat this policy as if it never existed, or at **Our** option terminate this policy, without returning any premium that **You** have paid;
- (b) recover from **You** any amounts that **We** have paid in respect of any **Claim**, whether such **Claim** was made before or after the fraudulent **Claim**; and
- (c) refuse any other benefit under this policy.

1.9 **Sanctions**

We shall not provide any benefit under this policy to the extent of providing cover, payment of any **Claim** or the provision of any benefit where doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

1.10 **Complaints Procedure**

We are dedicated to providing a high quality service and **We** want to ensure that **We** maintain this at all times.

If **You** have any questions or concerns about the policy or the handling of a claim please contact **Your** broker through whom this policy was arranged.

If **You** wish to make a complaint **You** can do so at any time by referring the matter to:

Complaints Manager
Catlin Insurance Company (UK) Ltd.
20 Gracechurch Street
London
EC3V 0BG

Telephone Number: 020 7743 8487
E-mail: xlcatlinukcomplaints@xlcatlin.com

If **You** remain dissatisfied after the Complaints Manager has considered **Your** complaint, or **You** have not received a final decision within eight (8) weeks, **You** can refer **Your** complaint to the Financial Ombudsman Service at:

Exchange Tower
London
E14 9SR

E-mail: complaint.info@financial-ombudsman.org.uk

From within the United Kingdom

Telephone Number: 0800 0234 567 (free for people phoning from a “fixed line”, for example, a landline at home)

Telephone Number: 0300 1239 123 (free for mobile-phone users who pay a monthly charge for calls to numbers starting 01 or 02)

From outside the United Kingdom

Telephone Number: +44(0)20 7964 1000

Fax Number: +44(0)20 7964 1001

The Financial Ombudsman Service can look into most complaints from consumers and small businesses. For more information contact them on the above number or address, or view their website: www.financial-ombudsman.org.uk

1.11 Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the Scheme if **We** are unable to meet **Our** obligations under this contract of insurance. If **You** were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this contract of insurance. Further information about the Scheme is available from the Financial Services Compensation Scheme (10th Floor, Beaufort House, 15 St Botolph Street, London, EC3A 7QU) and on their website: www.fscs.org.uk.

1.12 Regulatory Information

We are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Firm Reference No. 423308). **Our** registered office is 20 Gracechurch Street, London, EC3V 0BG. Registered in England No. 5328622.

You can check this out on the FCA’s website at www.fca.org.uk which includes a register of all the firms they regulate or by calling the FCA on 0800 111 6768.

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2 Policy Definitions

All the individual policy Sections are subject to the following definitions except where stated below.

2.1 "**Business**" means the business stated in the **Schedule** conducted by the **Insured** at or from premises of the **Insured**, and extends to include:

- (a) the ownership, repair and maintenance of the **Insured's** own property including vehicles and plant owned and used by the **Insured**;
- (b) provision and management of canteen, social, sports, medical and welfare organisations and fire fighting and security services principally for the benefit of **Employees** and for the protection and promotion of the **Business** as stated in the **Schedule**;
- (c) private work undertaken by any **Employee** for any director or partner of the **Insured** with the prior consent of the **Insured**;
- (d) the participation by the **Insured** in exhibitions.

2.2 "**Claim**" means:

- (a) a written demand for damages or other remedy made by a third party in accordance with the laws of a territory specified in the **Schedule** as a Covered Jurisdiction; or
- (b) where applicable, proceedings brought under the jurisdiction of a competent court or tribunal within a territory specified in the **Schedule** as a Covered Jurisdiction; or
- (c) an award made by a competent court or tribunal anywhere in the world to enforce a judgement, award or settlement made in accordance with the laws of or under the jurisdiction of a territory specified in the **Schedule** as a Covered Jurisdiction.

2.3 "**Damage**" means accidental loss of, accidental loss of possession of or physical damage to tangible property.

2.4 "**Defence Costs**" means costs, fees and expenses incurred by or on behalf of the **Insured** with the written consent of the **Insurer** in the investigation, defence or settlement of any **Claim**, suit or proceedings which are or would, if successful, be covered under this policy. **Defence Costs** also includes legal expenses in respect of representation at any inquest or inquiry or in respect of the defence of any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of cover by this policy.

Defence Costs do not include:

- (a) the **Insured's** own costs, fees or expenses or value attributable to the time spent in dealing with a **Claim** or a circumstance; or
- (b) legal costs and expenses incurred in the defence of any criminal proceedings brought against the **Insured** or in an appeal against conviction by the **Insured**.

2.5 "**Employee**" means any:

- (a) person under a contract of service or apprenticeship with the **Insured**;
- (b) labour only sub-contractor and persons supplied by them;
- (c) person employed by labour only sub-contractors;

- (d) self-employed person;
- (e) person hired to or borrowed by the **Insured**; or
- (f) person undertaking study or work experience, voluntary work or a youth training scheme with the **Insured**;

working for and under the control of the **Insured** in connection with the **Business**.

- 2.6 "**Endorsement**" means a change in the terms and conditions of this policy that can extend or restrict cover.
- 2.7 "**Excess**" means the first part of each and every **Claim**, for which the **Insured** is responsible as stated in the **Schedule**.
- 2.8 "**Injury**" means:
- (a) accidental:
 - (i) death, bodily injury, mental anguish, mental injury, illness or disease of or to a person;
 - (ii) trespass, nuisance, invasion of the right of privacy or interference with any right of way, air, light, water or other easement;
 - (b) wrongful arrest, wrongful detention, false imprisonment or malicious prosecution.
- 2.9 "**Insured / You / Your**" means:
- (a) the person, persons or corporate body or other entity named in the **Schedule**;
 - (b) subsidiary companies of the **Insured** notified to and accepted in writing by the **Insurer**.
- 2.10 "**Insurer / We / Us**" means Catlin Insurance Company (UK) Ltd.
- 2.11 "**Occurrence**" means an event or series of events having a common originating cause, including continuous or repeated exposure to substantially the same general harmful conditions.
- 2.12 "**Period of Insurance**" means the period stated in the **Schedule**.
- 2.13 "**Pollution**" means any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including for example smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including for example material to be recycled, reconditioned or reclaimed) or contamination of any kind of the atmosphere or of any water, land, buildings or other tangible property.
- 2.14 "**Product**" means any tangible property after it has left the custody or control of the **Insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, leased, loaned, free issued, altered or repaired by or on behalf of the **Insured**. **Product** does not include food and drink provided mainly for consumption by **Employees**.
- 2.15 "**Schedule**" means the document entitled **Schedule** that relates to and forms part of this policy.
- 2.16 "**Terrorism**" means an act, including for example the use of force or violence and/or the threat thereof, of 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.
- 2.17 "**United Kingdom**" means England, Wales, Scotland, Northern Ireland, the Isle of Man and the Channel Islands.

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3 Policy Extensions

All the individual policy Sections are subject to the following extensions except where stated below.

3.1 Automatic Acquisitions

The policy shall apply automatically to any entity acquired, established or created during the **Period of Insurance**.

Provided always that:

- (a) the turnover of such entity is no more than 10% of the total turnover of the **Insured**;
- (b) the **Insured** shall notify the **Insurer** in writing as soon as practicably possible but no later than ninety (90) days of such acquisition, establishment or creation;
- (c) the **Insurer** shall have the right to accept or refuse cover at the time of notification and to alter the terms and conditions of this policy accordingly including the charging of an additional premium;
- (d) the **Insurer** shall not be liable:
 - (i) where the business of such entity differs from the **Business**; and
 - (ii) where cover is provided under any other insurance. This policy shall only apply in excess of such other insurance to the extent of such part of the Limit of Liability as exceeds the limit under the other insurance.

3.2 Court Attendance Costs

The **Insurer** will reimburse the **Insured's** loss by paying a daily amount as stated below for each day on which attendance is required in the event of any director, partner or **Employee** attending court as a witness at the request of the **Insurer** in connection with a **Claim** which is covered under this policy:

- (a) GBP 250 per day for each day attendance is required for any director or partner of the **Insured**; and
- (b) GBP 100 per day for each day attendance is required for any **Employee** who is not a director or partner.

3.3 Cover for Others

The cover granted under this policy extends to:

- (a) managerial or supervisory **Employees** in their **Business** capacity for legal liabilities arising out of the performance of the **Business** and any director or partner of the **Insured** in respect of private work undertaken by any **Employee** for such director or partner with the prior consent of the **Insured**;
- (b) the officers, committees and members of the **Insured's** canteen, social, sports, medical, fire fighting, security services and welfare organisations for legal liabilities incurred in their respective capacity as such;
- (c) any person or firm for legal liabilities arising out of the performance of a contract with the **Insured** constituting the provision of labour only;

- (d) any principal for legal liabilities arising out of work carried out by the **Insured** under a contract or agreement in respect of which the **Insured** would have been entitled to cover under this policy if the **Claim** had been made against the **Insured**;
- (e) the personal representatives of any person insured by reason of this Cover for Others clause in respect of legal liability incurred by such person;

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms of this policy as though they were the **Insured**.

3.4 **Criminal Proceedings Legal Defence Costs**

The **Insurer** will cover the **Insured** and, at the request of the **Insured**, any director or partner or **Employee** in respect of legal costs and expenses incurred with the **Insurer's** prior written consent in the defence of any criminal proceedings brought or in an appeal against conviction arising from such proceedings in respect of

- (a) a breach of the Health and Safety at Work etc. Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978, or any similar **United Kingdom** Health and Safety legislation and regulation; or
- (b) an alleged offence under the Corporate Manslaughter and Corporate Homicide Act 2007 or any subsequent amending legislation.

Provided that:

- (i) the proceedings relate to an offence alleged to have been committed during the **Period of Insurance** and in the course of the **Business**.
- (ii) the cover will not apply:
 - (1) to fines or penalties of any kind;
 - (2) to liability assumed under a contract or agreement which would not have attached in the absence of such contract or agreement;
 - (3) to proceedings consequent upon any deliberate act or omission.

The **Insurer's** liability under this extension shall be limited to GBP 1,000,000 in the aggregate in any one **Period of Insurance**. This limit will form part of and not be in addition to the relevant Limit of Liability stated in the **Schedule**.

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4 Policy Exclusions

All the individual policy Sections are subject to the following exclusions except where stated below.

This policy does not apply to or include cover for or arising out of or relating to:

4.1 Asbestos

the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss or in respect of that part of any property insured by this policy which consists of asbestos.

4.2 Known Prior Circumstances

circumstances which the **Insured** or person insured knew or ought to have known was likely to give rise to a **Claim** prior to the inception date of this policy.

4.3 Liquidated Damages

liquidated damages clauses, penalty clauses, performance warranties or similar provision in a contract unless it is proven that liability would have attached in the absence of such clauses, warranties or similar provisions.

4.4 Punitive Damages

any award of punitive or exemplary damages including fines, penalties, multiplication of compensatory awards or damages or in any other form whatsoever.

4.5 Radioactive Contamination

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

4.6 Terrorism

any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This exclusion also applies to any action taken in controlling, preventing, suppressing or in any way relating to any act of **Terrorism**.

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

4.7 **Tobacco**

raw, dried or cured tobacco or tobacco which has been otherwise processed in any way, cigars, cigar wrappers, pipe tobacco, cigarette filter or filter materials, snuff, chewing tobacco, "smokeless" tobacco products, cigarettes and cigarette paper, tobacco smoke, gaseous or solid residues or by-products of tobacco, tips or filters, any chemical, mineral or other product sprayed on, applied to or found within or used in conjunction with any tobacco, smoking pipes, cigarette holders and any ingredients found within or used in conjunction with tobacco or any of its constituent parts (collectively "tobacco").

This exclusion shall not apply to liability arising from **Injury** or **Damage** by fire caused by lit tobacco;

4.8 **War**

war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

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5 Policy Conditions

All the individual policy Sections are subject to the following conditions except where stated below.

5.1 Assistance and Co-operation

The **Insured** and any person insured must provide the **Insurer** with such information, assistance and co-operation as the **Insurer** and/or its representative may request. The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if the **Insured** or any person insured fails to do so.

5.2 Cancellation

This policy will immediately and automatically be cancelled in the event of any of the following:

- (a) the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over the **Insured** or the making of any court order to that effect;
- (b) the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver or administrator over any of the **Insured's** assets;
- (c) the suspension by the **Insured** of payment of its debts or any threat by the **Insured** to do so or the entering into of a voluntary arrangement or other scheme of composition with its creditors by the **Insured**;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which the **Insured** may be domiciled or any territory within the specified territory or territories.

For the purpose of this condition, the **Insured** shall mean only the firm or company named in the **Schedule**.

In such cases, the **Insured** shall be entitled to the return of a proportionate part of the premium in respect of the unexpired **Period of Insurance**.

5.3 Claim Notification

The **Insured** must give to the **Insurer** as soon as practicably possible notice in writing of:

- (a) any **Claim** made against any **Insured** or any person insured which is likely to fall within the scope of this policy;
- (b) any circumstances of which the **Insured** or any person insured shall become aware which are likely to give rise to such a **Claim** being made against the **Insured**.

Where the Section Trigger is shown as Claims Made or Claims Made and Notified in the **Schedule** if a circumstance occurring subsequent to the Section Retroactive Date and before the expiry date of the policy is notified to the **Insurer** during the **Period of Insurance** and in accordance with this Policy Condition, the **Insurer** will not deny any subsequent **Claim** arising out of that circumstance solely because the **Claim** was made after the expiry date of the policy.

The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if such notice is not received.

5.4 Documents Relevant to a Claim

The **Insured** or any person insured must ensure that all documents relevant to any **Claim** and any circumstance which is likely to give rise to a **Claim** are not destroyed or otherwise disposed of. The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if the **Insured** or any person insured fails to do so.

5.5 Entitlement to Defend

The **Insurer** is entitled, but not obliged, to take over and conduct in the name of the **Insured** or any person insured the defence or settlement of any **Claim** or to prosecute in the name of the **Insured** or any person insured for its own benefit any **Claim** for reimbursement or damages or otherwise. The **Insurer** shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.

5.6 Limit of Liability

(a) Occurrence

The **Insurer's** total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the **Schedule** in respect of any one **Occurrence**.

(b) Occurrence Limit

The Occurrence Limit applicable to each Section is stated in the **Schedule**.

Where an Occurrence Limit is shown as being combined then for any **Occurrence** which involves liability under both Sections, the **Insurer's** total liability in respect of that **Occurrence**

- (i) shall not exceed the largest single Limit of Liability available under those combined Sections; and
- (ii) shall not exceed, in respect of each Section involved, the Limit of Liability available under that Section.

Where an Occurrence Limit is shown as being protected then for any **Occurrence** which involves liability under both Sections, each Section shall not be affected or eroded by loss under the other Section.

(c) Aggregate

Where an aggregate Limit of Liability is stated in the **Schedule** to apply, the **Insurer's** total liability to pay damages (including claimants' costs, fees and expenses) in respect of the entire **Period of Insurance** shall not exceed the stated aggregate Limit of Liability regardless of the number or severity of **Occurrences** or **Claims**.

Where the Limits of Liability for both Sections are shown as Occurrence Limit - Combined in accordance with Policy Condition 5.6(b), the aggregate Limit of Liability of each Section shall continue to apply, provided that the **Insurer's** total liability under those combined Sections in respect of the entire **Period of Insurance** shall not exceed the largest single Limit of Liability available under those combined Sections.

(d) Excess

No cover shall be granted under any liability Section for the amount of the **Excess** stated in the **Schedule** in respect of the first amount of each **Occurrence**. The Limits of Liability stated in the **Schedule** are in excess of and not reduced by the amount of any **Excess**.

Where the Limits of Liability for both Sections are shown as Occurrence Limit – Combined in accordance with Condition 5.6(b), only the largest **Excess** of the relevant Sections shall apply in the event of a loss under more than one Section.

(e) **Contribution**

If at the time of a **Claim** there is any other insurance effected by or on behalf of the **Insured** covering the same risk or part thereof, the **Insurer** shall not be liable for more than their rateable proportion thereof.

If any such other insurance is subject to any provision whereby it is excluded from ranking concurrently with this policy, either in whole or in part or from contributing rateably, the liability of the **Insurer** under this policy shall be limited to such proportion of **Claim** as the cover under this policy bears to the total cover available to the **Insured**.

5.7 **Non-Admission of Liability**

No admission, offer, promise or payment is to be made or given by or on behalf of the **Insured** or any person insured without the written consent of the **Insurer**. The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if any such admission, offer, promise or payment is made.

5.8 **Payment in Full**

The **Insurer** may at any time pay to the **Insured** in connection with any **Claim** or series of **Claims** under this policy to which a Limit of Liability applies the amount of such Limit after deduction of any sums already paid or any lesser amount for which such **Claims** can be settled. Upon such payment being made the **Insurer** shall relinquish the conduct and control of and be under no further liability in connection with such **Claims** except for the payment of **Defence Costs** incurred prior to the date of such payment where such **Defence Costs** are stated as being payable in addition to the Limit of Liability.

5.9 **Premium Adjustment**

Where the premium is provisionally based on the **Insured's** estimates, the **Insured** shall keep accurate records and within ninety (90) days of expiry of the **Period of Insurance** declare such details as the **Insurer** requires. The premium shall then be adjusted and any difference paid or allowed to the **Insured** as the case may be. Failure to declare such details to the **Insurer** will entitle the **Insurer** to make its own estimate and adjust the premium accordingly.

5.10 **Subrogation**

In the event of any payment by the **Insurer** under this policy, the **Insurer** shall be subrogated up to the amount of such payment to all the rights of recovery of the **Insured** or any person insured against any third party, provided always that they shall not exercise any such rights against any **Employee** or former **Employee** unless the loss was caused or contributed to by a fraudulent, dishonest or malicious act or omission by said person.

The **Insured** and any person insured shall, without charge, provide such assistance as the **Insurer** may require in any subrogation and shall at all times protect and preserve any rights of recovery to which they would become subrogated under this policy. The **Insurer**, at its option, may have the conduct of any proceedings to recover monies paid or payable by them, whether or not the **Insured** or person insured has an interest in such proceedings by reason of any uninsured losses.

5.11 United States of America and Canada Jurisdiction

Where the Covered Jurisdiction applicable to any Section is shown in the **Schedule** as Worldwide then in respect of any judgment, award or settlement made within countries which operate under the laws of the United States of America or Canada or to any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part:

- (a) the Section does not cover any liability:
 - (i) for and/or arising out of **Pollution**;
 - (ii) for the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.
- (b) the Limits of Liability stated in the **Schedule** are inclusive of **Defence Costs**.
- (c) any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained herein is subject to the law and exclusive jurisdiction of England and Wales.
- (d) the **Insurer** shall not be liable for the amount shown as the applicable **Excess** in the **Schedule**, being the first amount of each and every **Claim**. For the purpose of this condition "**Claim**" shall include compensatory awards or damages, claimants' costs, fees and expenses and associated **Defence Costs**.

The Section shall not apply to nor insure against the loss of any **Insured** domiciled or registered in the United States of America or Canada or any country which operates under the laws of the United States of America or Canada, other than in respect of sales offices of the **Insured** where prior agreement has been sought from the **Insurer**.

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6 Public Liability Section

6.1 Operative Clause

The **Insurer** will cover the **Insured** against loss arising from **Claims** made against them in the Covered Jurisdictions stated in the **Schedule** in respect of their legal liability to pay damages (including claimants' costs, fees and expenses) for and/or arising out of **Injury** and/or **Damage** in the conduct of the **Business**, subject to all the terms and conditions of this policy.

6.2 Defence Costs

The **Insurer** will also pay **Defence Costs**, provided that the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of any **Claim**, suit or proceedings. **Defence Costs** will be payable in addition to or inclusive of the Limit of Liability as stated in the **Schedule**. Where Defence Costs are payable in addition to the Limit of Liability, if the amount required in settlement of the third party **Claim** is greater than the Limit of Liability available in respect of such **Claim**, then the **Insurer** will not pay more than its corresponding proportional share of the associated **Defence Costs**.

6.3 Trigger

The **Schedule** indicates which Trigger applies to this Section.

6.3.1 Incidents Occurring During

This Section applies where **Injury** or **Damage** occur during the **Period of Insurance**.

6.3.2 Claims Made

This Section applies where a **Claim** is first made against the **Insured** during the **Period of Insurance** and in accordance with Policy Condition 5.3 – Claim Notification arising from any **Injury** and/or **Damage** occurring on or after the Retroactive Date specified in the **Schedule** and before the expiry date of the policy.

6.3.3 Claims Made and Notified

This Section applies where a **Claim** is first made against the **Insured** and is notified to the **Insurer** during the **Period of Insurance** or within the number of days of the expiry date of the policy stated in the **Schedule** and in accordance with Policy Condition 5.3 - Claim Notification arising from any **Injury** and/or **Damage** occurring on or after the Retroactive Date specified in the **Schedule** and before the expiry date of the policy.

However, this Section does not apply to any **Claim** that is covered under any subsequent insurance the **Insured** acquires, or would be covered but for the exhaustion of the Limit of Liability applicable to such **Claim**.

6.4 Extensions

These extensions are subject otherwise to the terms, exclusions and conditions of the policy.

6.4.1 Contingent Motor Liability

Exclusion 6.5.6 – Motor Vehicles shall not apply to legal liability arising out of the ownership, possession or use by or on behalf of the **Insured** or any person entitled to insurance of any motor vehicle or trailer:

- (a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- (b) arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any motor vehicle or trailer; or
- (c) arising out of any motor vehicle or trailer temporarily in the **Insured's** custody or control for the purpose of parking.

Provided always that no cover is granted against liability for which compulsory insurance or security is required by legislation or for which the government or other authority has accepted responsibility;

6.4.2 Cross Liabilities

Each person or party specified as the **Insured** in the **Schedule** is separately covered in respect of **Claims** made against any of them by any other such person or party subject to the **Insurer's** total liability not exceeding the stated Limits of Liability.

6.4.3 Data Protection Act

The **Insurer** will cover the **Insured** against loss under this Section in respect of the **Insured's** liability to pay compensation in respect of any claim under Section 13 – Compensation of the Data Protection Act 1998. Such liability shall be considered as **Injury** for the purposes of this Section and the **Injury** will be treated as having occurred when the claimant first knew or alleges that they knew that the subject information was inaccurate or the date or alleged date the information had been disclosed without authorisation, as the case may be.

This extension applies where **Claims** are made against the **Insured** during the **Period of Insurance** arising from **Injury** occurring on or after the Retroactive Date specified in the **Schedule** and before the expiry date of the policy. If a circumstance occurring subsequent to the Retroactive Date and before the expiry date of the policy is notified to the **Insurer** in accordance with Policy Condition 5.3 – Claim Notification, the **Insurer** will not deny any subsequent **Claim** arising out of that circumstance solely because the **Claim** was made after the expiry date of the policy.

The **Insurer's** liability under this extension shall be limited to GBP 250,000 any one **Occurrence** and in the aggregate which shall be a part of and not in addition to the Limit of Liability stated in the **Schedule**.

The **Excess** under this extension shall be 10% of each **Claim** subject to a minimum of GBP 1,000.

Exclusions

The **Insurer** shall not provide cover:

- (a) against liability caused by or arising from a deliberate act by or omission of any person entitled to insurance under this Section if the result could have been expected having regard to the nature and circumstances of such act or omission;

- (b) for the costs of replacing, reinstating, rectifying or erasing any Personal Data, as defined in the Data Protection Act 1998;
- (c) against liability caused by or arising from the recording, processing or provision of data for reward or the determining of the financial status of a person;
- (d) against liability which attaches by virtue of a contract or agreement but which would not have attached in the absence of such contract or agreement.

Condition

The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if the **Insured** has not registered in accordance with the terms of the said Act or having applied for such registration it has been refused or withdrawn.

6.4.4 **Overseas Personal Liability**

This Section shall extend to include the liability of any director, officer or **Employee** in their personal capacity whilst temporarily outside the **United Kingdom** for the purposes of the **Business**.

Provided that the **Insurer** shall not cover such person in respect of:

- (a) liability caused by or arising from the ownership or occupation of land or buildings;
- (b) liability caused by or arising from the use of any motor vehicle.

6.4.5 **Sudden Pollution**

Exclusion 6.5.8 – Pollution shall not apply to **Pollution** which is the direct result of a sudden, identifiable, unintended and unexpected event occurring in its entirety at a specific time and place during the **Period of Insurance**.

The **Insurer** shall be entitled to refuse to pay any **Claim** under this extension:

- (a) if the **Insured** has not taken all practical precautions to prevent **Pollution**; or
- (b) if **Injury** or **Damage** or the entire event giving rise to the **Injury** or **Damage** did not occur during the **Period of Insurance**.

This extension does not apply to any judgment, award or settlement made within countries which operate under the laws of the United States of America or Canada or to any order made anywhere in the world to enforce such judgment, award settlement either in whole or in part.

This extension does not apply to or include legal liability for **Damage** to premises presently or at any time previously owned or tenanted by the **Insured** or **Damage** to land or water within the boundaries of or below any land or premises presently or at any time previously owned or leased by the **Insured**.

The **Insurer's** liability under this extension for all **Occurrences** combined throughout the **Period of Insurance** shall not exceed the sub-limit for Pollution Liability stated in the **Schedule**, which shall be a part of and not in addition to the Limit of Liability stated in the **Schedule**.

6.4.6 Work Overseas

The **Insurer** will cover the **Insured** against loss under this Section in respect of the **Insured's** liability for **Injury** and/or **Damage** in the conduct of the **Business** outside the **United Kingdom** where:

- (a) any person is temporarily engaged by the **Insured**; and
- (b) any person is on a temporary visit;

for the purpose of non-manual work anywhere else in the world.

Provided that:

- (i) such person is ordinarily resident within the **United Kingdom**;
- (ii) such temporary engagement or visit does not exceed six (6) consecutive months in duration.

6.5 Exclusions

This policy does not apply to or include cover for or arising out of or relating to:

6.5.1 Aircraft, Watercraft or Offshore Installations

the ownership, possession or use by or on behalf of the **Insured** of any aircraft, spacecraft, hovercraft, offshore installation, rig, platform or watercraft (other than watercraft not exceeding 10 metres in length whilst on inland waterways).

6.5.2 Airside

any work undertaken in, on or within any aircraft, airport runway, taxiway, dispersal area, apron, hanger, cargo, transit or flight handling area, including open spaces between and/or other operational or manoeuvring area and including any flight control facilities, wherever situated unless notified and agreed by the **Insurer** prior to the work being undertaken.

6.5.3 Care, Custody or Control

any **Damage** to property owned, leased to, hired by, under hire purchase to, on loan to, held in trust by or otherwise in the **Insured's** care, custody or control other than:

- (a) clothing and personal effects of **Employees** and visitors;
- (b) premises (including contents therein) temporarily occupied by the **Insured** for work therein or thereon but no cover shall be granted for **Damage** to that part of the property on which the **Insured** is or has been working and which arises out of such work; or
- (c) premises tenanted by the **Insured** but always excluding liability for **Damage**:
 - (i) arising out of any perils which the tenancy agreement requires the **Insured** to insure against;
 - (ii) to any property which the tenancy agreement requires the **Insured** to insure; or
 - (iii) to any property which the tenancy agreement requires the **Insured** to be responsible for;

except if such **Damage** is the proven consequence of the **Insured's** own negligence.

6.5.4 **Defective Premises Act**

any condition in the **Insured's** premises subsequent to the disposal of such premises by the **Insured**, including liability which is established by application of Section 3 of the Defective Premises Act 1972 or Section 5 of the Defective Premises (Northern Ireland) Order 1975.

6.5.5 **Deliberate Failure to Prevent Injury or Damage**

the deliberate, conscious or intentional disregard by any of the **Insured's** directors or managerial or supervisory **Employees** of the need to take all practical steps to prevent **Injury** or **Damage**.

6.5.6 **Injury to Employees**

any **Injury** to an **Employee** where such **Injury** arises out of and in the course of employment by the **Insured** or any liability arising out of any workers' compensation or any similar legislation anywhere in the world.

6.5.7 **Motor Vehicles**

the ownership, possession or use by or on behalf of the **Insured** or any person or party insured by this policy of any motor vehicle or trailer for which compulsory insurance or security is required by legislation or for which the government or other authority has accepted responsibility.

6.5.8 **Pollution**

Pollution.

6.5.9 **Products**

any **Product**.

6.5.10 **Professional Liability**

any breach of professional duty or wrongful or inadequate advice given separately for a fee.

6.6 **Condition**

6.6.1 **Housing Grants, Construction and Regeneration Act 1996**

The **Insurer** shall not be bound by any adjudication made under the Housing Grants, Construction and Regeneration Act 1996 following a request for adjudication made by or to the **Insured**.

Policy

7 Product Liability Section

7.1 Operative Clause

The **Insurer** will cover the **Insured** against loss arising from **Claims** made against them in the Covered Jurisdictions stated in the **Schedule** in respect of their legal liability to pay damages (including claimants' costs, fees and expenses) arising out of **Injury** and/or **Damage** in connection with any **Product**, subject to all the terms and conditions of this policy.

7.2 Defence Costs

The **Insurer** will also pay **Defence Costs**, provided that the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of any **Claim**, suit or proceedings. **Defence Costs** will be payable in addition to or inclusive of the Limit of Liability as stated in the **Schedule**. Where Defence Costs are payable in addition to the Limit of Liability, if the amount required in settlement of the third party **Claim** is greater than the Limit of Liability available in respect of such **Claim**, then the **Insurer** will not pay more than its corresponding proportional share of the associated **Defence Costs**.

7.3 Trigger

The **Schedule** indicates which Trigger applies to this Section.

7.3.1 Incidents Occurring During

This Section applies where **Injury** or **Damage** occur during the **Period of Insurance**.

7.3.2 Claims Made

This Section applies where a **Claim** is first made against the **Insured** during the **Period of Insurance** and in accordance with Policy Condition 5.3 – Claim Notification arising from any **Injury** and/or **Damage** occurring on or after the Retroactive Date specified in the **Schedule** and before the expiry date of the policy.

7.3.3 Claims Made and Notified

This Section applies where a **Claim** is first made against the **Insured** and is notified to the **Insurer** during the **Period of Insurance** or within the number of days of the expiry date of the policy stated in the **Schedule** and in accordance with Policy Condition 5.3 – Claim Notification arising from any **Injury** and/or **Damage** occurring on or after the Retroactive Date specified in the **Schedule** and before the expiry date of the policy.

However, this Section does not apply to any **Claim** that is covered under any subsequent insurance the **Insured** acquires, or would be covered but for the exhaustion of the Limit of Liability applicable to such **Claim**.

In respect of Extension 7.4.1 – Advertising Injury, if the date of the **Occurrence** is not self-evident, it shall be treated as having occurred on the date of the first publication of material that is or is alleged to be injurious.

7.4 Extensions

These extensions are subject otherwise to the terms, exclusions and conditions of the policy.

7.4.1 Advertising Injury

The **Insurer** will cover the **Insured** against loss in respect of their legal liability to pay damages (including claimants' costs, fees and expenses) arising out of accidental:

- (a) publication (oral or written) of material that slanders or libels a person or organisation or disparages a person's or organisation's products or services; or
- (b) publication (oral or written) of material that violates a person's right of privacy; or
- (c) wrongful use of another's advertising idea or infringement of another's trading style; or
- (d) infringement of copyright, title or slogan;

arising out of the distribution of promotional material to the public at large.

The **Insurer's** liability under this extension shall be limited to GBP 1,000,000 any one **Occurrence** and in the aggregate which shall be a part of and not in addition to the Limit of Liability stated in the **Schedule**.

Exclusions

This policy does not apply to or include cover for or arising out of or relating to:

- (i) any publication or utterance made with the **Insured's** knowledge of its falsity;
- (ii) any material that was first published prior to the Retroactive Date, if any, specified in the **Schedule**;
- (iii) wilful commission of a crime by or with the consent of the **Insured**;
- (iv) a contract, where the liability would not have arisen apart from that contract;
- (v) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (vi) failure to conform with advertised quality or performance;
- (vii) incorrect pricing;
- (viii) internet advertising.

7.4.2 Consumer Protection Act

The **Insurer** will cover the **Insured** against loss in respect of legal costs and expenses incurred in the defence of any criminal proceedings for a breach of Part II of the Consumer Protection Act 1987 including such legal costs and expenses incurred in an appeal against conviction arising from such proceedings and prosecution costs awarded in connection therewith.

This extension applies where proceedings are first brought during the **Period of Insurance** in respect of a breach or alleged breach occurring on or after the Retroactive Date specified in the **Schedule** and before the expiry date of the policy.

Cover shall extend to the **Insured** and, at the request of the **Insured**, any director, partner or **Employee** of the **Insured**.

The **Insurer's** liability under this extension shall be limited to GBP 250,000 any one **Occurrence** and in the aggregate which shall be a part of and not in addition to the Limit of Liability stated in the **Schedule**.

Exclusions

This policy does not apply to or include cover for or arising out of or relating to:

- (a) proceedings consequent upon a deliberate act by or omission of any person insured under this Section if the result could have been expected having regard to the nature and circumstances of such act or omission; or
- (b) proceedings which arise out of any activity or risk excluded from this Section.

Condition

The director, partner or **Employee** shall as though they were the **Insured** be subject to all the terms and conditions of this policy insofar as they can apply.

7.4.3 **Cross Liabilities**

Each person or party specified as the **Insured** in the **Schedule** is separately covered under this Section in respect of **Claims** made against any of them by any other such person or party subject to the **Insurer's** total liability not exceeding the stated Limit of Liability.

7.4.4 **Defective Premises Act**

The **Insurer** will cover the **Insured** against loss in respect of their liability arising out of any condition in the **Insured's** premises subsequent to the disposal of such premises by the **Insured**, including liability which is established by application of Section 3 of the Defective Premises Act 1972 or Section 5 of the Defective Premises (Northern Ireland) Order 1975. Such loss shall be treated as arising out of a **Product** for the purposes of this Section.

7.4.5 **Sudden Pollution**

Exclusion 7.5.7 – Pollution shall not apply to **Pollution** which is the direct result of a sudden, identifiable, unintended and unexpected event occurring in its entirety at a specific time and place during the **Period of Insurance**.

The **Insurer** shall be entitled to refuse to pay any **Claim** under this extension:

- (a) if the **Insured** has not taken all practical precautions to prevent **Pollution**; or
- (b) if **Injury** or **Damage** or the entire event giving rise to the **Injury** or **Damage** did not occur during the **Period of Insurance**.

This extension does not apply to any judgment, award or settlement made within countries which operate under the laws of the United States of America or Canada or to any order made anywhere in the world to enforce such judgment, award settlement either in whole or in part.

This extension does not apply to or include legal liability for **Damage** to premises presently or at any time previously owned or tenanted by the **Insured** or **Damage** to land or water within the boundaries of or below any land or premises presently or at any time previously owned or leased by the **Insured**.

The **Insurer's** liability under this extension for all **Occurrences** combined throughout the **Period of Insurance** shall not exceed the sub-limit for Pollution Liability stated in the **Schedule**, which shall be a part of and not in addition to the Limit of Liability stated in the **Schedule**.

7.5 Exclusions

This policy does not apply to or include cover for or arising out of or relating to:

7.5.1 Aircraft or Watercraft

any **Product** which with the **Insured's** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft, other aerial device, hovercraft or waterborne craft.

7.5.2 Care, Custody or Control

any **Damage** to property owned, leased to, hired by, under hire purchase to, on loan to, held in trust by or otherwise in the **Insured's** care, custody or control other than:

- (a) clothing and personal effects of **Employees** and visitors;
- (b) premises (including contents therein) temporarily occupied by the **Insured** for work therein or thereon but no cover shall be granted for **Damage** to that part of the property on which the **Insured** is or has been working and which arises out of such work; or
- (c) premises tenanted by the **Insured** but always excluding liability for **Damage**:
 - (i) arising out of any perils which the tenancy agreement requires the **Insured** to insure against;
 - (ii) to any property which the tenancy agreement requires the **Insured** to insure; or
 - (iii) to any property which the tenancy agreement requires the **Insured** to be responsible for;

except if such **Damage** is the proven consequence of the **Insured's** own negligence.

7.5.3 Contracts or Agreements

any contract or agreement other than a warranty of fitness or quality of the **Product** established or implied by virtue of the Sale of Goods Act 1979 or equivalent legislation or a warranty that work done will be performed in a workmanlike manner.

This exclusion shall not apply to any contract or agreement:

- (a) where the liability of the **Insured** would have existed to the same extent in the absence of such contract or agreement; or
- (b) where the **Insurer** has given its prior written approval to the extension of the **Insured's** liability, as defined by this Section, under the contract or agreement beyond the extent which would have existed in the absence of such contract or agreement.

7.5.4 Deliberate Failure to Prevent Injury or Damage

the deliberate, conscious or intentional disregard by the **Insured's** technical or administrative management or the **Insured's** directors or managerial or supervisory **Employee** of the need to take all practical steps to prevent **Injury** or **Damage**.

7.5.5 Injury to Employees

any **Injury** to an **Employee** where such **Injury** arises out of and in the course of employment by the **Insured** or any liability arising out of any workers' compensation or any similar legislation anywhere in the world.

7.5.6 **Motor Vehicles**

the ownership, possession or use by or on behalf of the **Insured** or any person or party insured by this policy of any motor vehicle or trailer for which compulsory insurance or security is required by legislation or for which the government or other authority has accepted responsibility.

7.5.7 **Pollution**

Pollution.

7.5.8 **Products Supplied Before Retroactive Date**

any **Product** which has left the custody or control of the **Insured** prior to the Retroactive Date, if any, stated in the **Schedule**.

7.5.9 **Professional Liability**

any breach of professional duty or wrongful or inadequate advice given separately for a fee.

7.5.10 **Recall**

- (a) the recall of any **Product** or part thereof; or
- (b) the recall of any product manufactured, distributed or handled by a customer of the **Insured** of which the **Product** becomes an ingredient or a component part.

7.5.11 **Repair or Replacement**

any costs and/or expenses incurred by or on behalf of the **Insured** in the repair, reconditioning or replacement of any **Product** or part thereof which is or is alleged to be defective.