

Burns & Wilcox

Excess Layer

Professional Indemnity Insurance

Policy Wording

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Introduction

to your Professional Indemnity Policy

This document and its attachments form your Policy and between them set out what is and isn't covered by your Policy. It is important that you read it all carefully, to make sure that the insurance covers you've bought actually provide the level of protection you need. You should bear in mind that your needs can change over time as your Business develops. If they do, it's important that you let your broker, intermediary or agent know so that we can update your Policy.

If you require advice on any aspect of your policy please speak to your usual insurance adviser.

How to make a claim

Notice to the Company under Clauses 2.1.1 and 2.1.2 shall be deemed to have been properly made if received in writing.

Please refer to your Policy Schedule for claim contact details

Who we are

Burns & Wilcox Limited is authorised and regulated by the Financial Conduct Authority under reference number 467933, and is registered in England No. 6185834 at Upper Ground Floor, 1 Minster Court, Mincing Lane, London. EC3R 7AA.

Complaints Procedure

We of course aim to provide first class service. However if the Insured feels that the Company's service has fallen short of their expectation the Insured may contact the Company at any time with their complaint.

Complaints will be handled in the following way:

- » if you make a complaint we will acknowledge it within 2 working days of having received it
- » our objective will be to resolve your complaint within 5 working days.

If you have any questions or concerns about your Policy or the handling of a claim or if you wish to make a complaint, you can do so at any time by referring the matter to:

Stuart Kilpatrick,
Burns & Wilcox Limited
1 Minster Court, Mincing Lane
London, EC3R 7AA
T: +44 (0)20 7398 0440
E-mail: Complaints@burnsandwilcox.co.uk

In the event that you remain dissatisfied, it may be possible in certain circumstances for you to refer the matter to the Complaints team at Lloyd's.

The address of the Complaints team at Lloyd's is:

Complaints

Lloyd's

One Lime Street
London, EC3M 7HA
Tel No: +44 (0)20 7327 5693
Fax No: +44 (0)20 7327 5225
E-mail: complaints@lloyds.com
Website: www.lloyds.com/complaints

Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint - How We Can Help" available at www.lloyds.com/complaints and are also available from the above address.

If you remain dissatisfied after Lloyd's has considered your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service (FOS).

The contact details for the FOS are: The Financial Ombudsman Service, Exchange Tower, London E14 9SR. Telephone 0800 023 4567 (calls to this number are free from "fixed lines" in the UK) or 0300 123 9123 (calls to this number are charged at the same rate as 01 and 02 numbers on mobile phone tariffs in the UK). Email complaint.info@financial-ombudsman.org.uk.

The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. You can find more information on the FOS at www.financial-ombudsman.org.uk.

Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme (FSCS) which means that you may be entitled to compensation from the Scheme in the unlikely event that we cannot meet our obligations to you. This depends upon the type of insurance, size of the business and circumstances of the claim. You can find out more at www.fscs.org.uk.

Data Protection Notice

Your personal data may be processed and held by us in our capacity as data controllers in order for us to write and administer your policy and to assist in the claims handling process in accordance with applicable data protection laws.

The main purposes for processing your personal data are for the performance of an insurance contract or to allow us to comply with our legal obligations.

This may involve:

- » Gathering and holding your personal data where it is necessary for the provision of the services referenced in this policy documentation;
- » Disclosing your personal data or details of your insurance cover to companies within the H.W. Kaufman Group London, service providers or third parties for issuance and maintenance of your insurance policy, for the prevention of fraud or if legally required to do so;
- » Obtaining and storing any relevant data to substantiate a claim.

For the reasons set out above, we may share your personal data with our associated companies, insurers or service providers in countries outside of the European Economic Area (“EEA”) where data protection laws may not offer the same level of protection as within the EEA. In these circumstances, we have strict contractual terms in place to ensure that your information remains safe and secure.

By purchasing this insurance policy and using our services, you agree to our use of your personal data, including your sensitive data. If your insurance cover involves other individuals and you have provided us with their personal data, then you agree to make them aware of our use of their personal data as per this document and our extended data privacy policy on our website (link provided below).

We will need to keep and process your personal information while you are a customer of ours and afterwards in order to meet our corporate requirements and legal and regulatory obligations.

We will only share your personal data with a third party for marketing purposes if we have obtained your explicit consent to do so. You also have the right to withdraw your consent to marketing at any time. For any data access requests, if you have any queries or concerns regarding privacy or how we use your personal data, or believe any of the information that we hold on you may be inaccurate, please contact us using the details below:

Contact: Ben Williams
Phone: 0207 481 1683
Address: One Minster Court, Mincing Lane, London. EC3R 7AA
Email: compliance@burnsandwilcox.co.uk

To read our data privacy policy in full and for more information about your data protection rights, please visit our website at: <https://www.burnsandwilcox.co.uk/cookies-privacy-policy/>.

Policy Contract

In consideration of the Insured having paid or agreed to pay the premium stated in the Schedule the Company agrees to indemnify the Insured or otherwise to pay the benefits and compensations stated to the extent and in the manner specified in this Policy.

Provided that:

1. the Policyholder shall be subject to all the terms, conditions limitations and/or exclusions contained in this Policy or by additional endorsements
2. the Company's liability shall not exceed the sums insured or the limits of liability or any other limits expressed herein
3. the Schedule, general definitions, general claims conditions, general conditions, general exclusions and active covers shall be read together as part of one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning throughout this Policy
4. the information supplied by or on behalf of the Insured is relied upon as to its completeness, correctness and accuracy by the Company. This means that if the information the Insured gives is incomplete, incorrect or inaccurate then the Insured may not be covered for any claim.

If this Policy is in the joint names of more than one Insured, each Insured shall be covered as if it had made its own application for cover and no statement or knowledge of any one Insured shall be considered to be on behalf of any other Insured.

Several Liability

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract. In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

Interpretation

In this Policy:

1. reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception, or subsequent renewal or alteration, of this Policy;
2. if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
3. the headings herein are for reference only and shall not be considered when determining the meaning of this Policy;
4. the singular includes the plural and vice versa;
5. the male gender includes the female and neutral genders.

Insuring Clauses

In consideration of the payment or the promise of payment to the Company of the premium specified in the Schedule the Company agrees:

- 1.1. To indemnify the Insured in the terms of the Primary Policy (except as stated herein to the contrary) in respect of Claims made against the Insured and notified to the Company during the Period of Insurance, which arises out of the conduct of Professional Business by the Insured, and/or by others acting on behalf of the Insured, in excess of the Underlying Insurance Limit.

Claims Conditions

The following claims conditions apply to this insurance:

2.1. Notification

2.1.2 The Insured shall give notice to the Company as soon as practicable:

- a. notifying the Company promptly and in accordance with the provisions of clause 4.4
- b. not admitting liability or settling a Claim without having first received the Company's written consent; and
- c. providing the Company with all information that the Company may reasonably require regarding a Claim; and
- d. keeping the Company fully informed regarding all matters regarding the investigation, defence or settlement of any Claim including the supply of copies of all relevant documents

if it appears that such Claim or Circumstance is likely to exceed 50% of the Underlying Insurance Limit.

In the event that the Company is notified during the Period of Insurance of any Circumstance then any subsequent Claim which arises directly out of the Circumstance, shall be deemed to have first been made against the Insured during the Period of Insurance.

For the avoidance of doubt, notice under this Policy is not valid if given by any third party (other than the Insured's insurance agent acting on the Insured's instructions). Notice to the Company under this Condition or any other provision of this Policy is effective only when received in writing by the entity listed in Clause 2.1.2.

Any notice under this clause must identify:

- a. all potential claimants;
- b. the potential act error or omission;
- c. the date of the potential act error or omission.

2.1.2 Notice to the Company under Clauses 2.1.1 shall be deemed to have been properly made if received in writing.

Please refer to your Policy Schedule for claim contact details.

2.2 Recoveries

All recoveries or payments recovered or received subsequent to a loss settlement under this insurance will be applied as if recovered prior to such settlement and all necessary adjustments will then be made between the Insured and the Company, provided always that nothing in this insurance will be construed to mean that loss settlements under this insurance are not payable until the Insured's ultimate net loss has been finally ascertained.

2.3 No settlement without the Company's consent

Should the Insured at any time admit or negotiate or settle or promise to pay any Claim made against it without having first obtained the Company's written consent then the Company will be under no liability to indemnify the Insured in relation to that claim.

2.4 Duty to co-operate

The Insured undertakes to promptly provide to the Company full details concerning any Claim and any Circumstance and provide such co-operation and assistance as the Company and its representatives, legal advisers or agents may require. The Insured further undertakes that the Insured and all Employees (and all persons, Practices and companies acting for or on behalf of the Insured) shall ensure that all documents that may be relevant to all Claims and all Circumstances that may give rise to a Claim shall not be intentionally destroyed or otherwise intentionally disposed of.

Should the Insured fail to abide by these undertakings with the result that the Company suffers prejudice then the amount that is paid in settlement of a claim will be reduced by an amount which reflects the loss or cost or the additional loss or cost to the Company occasioned by such prejudice.

2.5 Discharge of liability

If the Insured declines to enter into any compromise or settlement recommended by the Company then the Company's liability under this Policy shall be limited to the amount for which the Claim could have been settled or compromised at the date at which the Company reasonably considers the Claim should have been settled or compromised, subject always to the Limit of Indemnity.

General Conditions

The following general conditions apply to this insurance:

3.1 Premium Payment Conditions

3.1.1 Premiums payable in full:

In consequence of the Insured having agreed to pay the Premiums due under this Policy in full, it is hereby agreed and declared that:

- a. The Premium for this insurance is to be paid to Burns & Wilcox Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Burns & Wilcox Limited shall be deemed to be the Company's agent.
- b. In the event of the Premium, in full or in part, remaining outstanding for more than 30 days after the due date (whether demanded or not) Burns & Wilcox Limited may at their sole discretion, without being liable to the Insured or to the Company for any loss arising out of the exercise of that discretion, give notice to the Insured, or their insurance adviser if applicable, of cancellation and all cover under this Policy shall automatically lapse from the date of cancellation. Thereafter the Policy shall not provide any indemnity in respect of any Claim or Circumstance notified after the Policy has automatically lapsed.
- c. Upon the lapsing of the Policy under paragraph (b) above, the Insured shall forthwith deliver up to Burns & Wilcox Limited any certificate of insurance, cover note, Policy document or any other such document or evidence concerning the existence of this Policy for amendment and shall forthwith communicate the lapsing of the Policy to any person who had been notified of its existence.
- d. The late acceptance of Premium after the 30 days specified in paragraph (b) above shall not reinstate the Policy unless expressly agreed by Burns & Wilcox Limited in writing and then only on such terms as shall be determined by the Company.

3.1.2 Premiums payable by instalments:

In consequence of the Insured having applied for the facility to pay the Premiums due under this Policy by instalments, it is hereby agreed and declared that:

- a. The Premium for this insurance is to be paid to Burns & Wilcox Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Burns & Wilcox Limited shall be deemed to be the Company's agent.
- b. Each instalment or Premium will be paid under this Policy in full and the Insured shall not be entitled to deduct therefrom any sums which may be or may be alleged to be owing to the Insured by the Company and/or Burns & Wilcox Limited, whether in respect of this insurance or otherwise.
- c. In the event of an instalment remaining outstanding for more than 30 days after the due date (whether demanded or not) Burns & Wilcox Limited may at their sole discretion, without being liable to the Insured or to the Company for any loss arising out of the exercise of that discretion, give notice to the Insured, or their insurance adviser if applicable, of cancellation and all cover under this Policy shall automatically lapse from the date of cancellation. Thereafter the Policy shall not provide any indemnity in respect of any Claim or Circumstance notified after the Policy has automatically lapsed.
- d. Upon the lapsing of the Policy under paragraph (c) above, the Insured shall forthwith deliver up to Burns & Wilcox Limited

For the purposes of this endorsement it shall be deemed that credit facilities may be provided to the Insured by Burns & Wilcox Limited or a finance company or a bank.

3.2 Contracts (Rights of Third Parties) Act of 1999

A person who is not a party to this Policy has no rights under the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof to enforce any term of this Policy. This condition does not affect any right or remedy of a third party which exists or is available other than by virtue of the Contracts (Rights of Third Parties) Act 1999.

3.3 Limit of Indemnity

The limit of indemnity stated in the Schedule is the Company's monetary limit and applies to any one Claim.

All Claims against any one or more of the Insured arising from any of the following:

- 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.

3.4 Policy Disputes and Governing Law

3.4.1 This Policy shall be governed by and construed in accordance with the laws of England and Wales.

3.4.2 The Courts of England and Wales shall have exclusive jurisdiction to hear and determine any suits, actions, proceedings and to settle any disputes that may arise out of or in connection with this Policy.

3.4.3 Any dispute or difference between the Insured and the Company arising from this Policy shall be referred to Queen's Counsel to be mutually agreed between the Company and the Insured or any other party as may be mutually agreed. In the event of disagreement regarding the appointment, the Chairman of the Bar Council shall appoint a suitable party.

The findings of the agreed or appointed party shall be binding on the Company and the Insured, and the costs of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.

3.5 Underlying Policy

3.5.1 Liability under this insurance shall not attach unless and until the insurers of the Primary Policy and/or Underlying Excess Policy(ies) shall have paid and/or have admitted liability and/or have been held liable to pay, the full amount of their Limit of Indemnity.

3.5.2 It is a condition of this insurance that the Primary Policy and/or Underlying Excess Policy(ies) shall be maintained in full force and effect during the currency of this insurance.

3.5.3 Except as otherwise provided in this insurance, this insurance is subject to the same terms, exclusions, conditions and definitions as the Primary Policy and/or Underlying Excess Policy(ies). No amendment to the Primary Policy and/or Underlying Excess Policy(ies) during the Period of Insurance, in respect of which the insurers of the Primary Policy and/or Underlying Excess Policy(ies) require an additional premium or

an excess, will be effective in extending the scope of this insurance, until the Insured has obtained the prior written agreement of the Company.

3.6 Fraudulent Claims

If the Insured makes any claim knowing same to be false or fraudulent, as regards amount or otherwise, this insurance will become void and all claims made after the date of the false or fraudulent action will be forfeited.

3.7 Step Down

If by reason of payment of any Claim by the insurers of the Primary Policy and/or Underlying Excess Policy(ies), during the Period of Insurance, the Underlying Insurance Limit is:

- a. partially reduced, then this insurance will apply in excess of the reduced amount of the Underlying Insurance Limit for the remainder of the Period of Insurance; or
- b. totally exhausted, then this insurance will continue in force as the Primary Policy, until expiry of the Period of Insurance.

Exclusions

The Company shall not have any liability under this Policy for, or directly or indirectly arising out of, or in any way involving:

4.1. Previous Claims and Circumstances

any Claim or Circumstance which has been notified under any other policy or certificate of insurance attaching prior to the inception of this insurance.

4.2 Retroactive Date

as a consequence of the conduct of Professional Business prior to the retroactive date specified the Schedule.

4.3 Terrorism

any Terrorism (regardless of any other cause or event contributing to the liability) or any action taken in controlling, preventing or suppressing Terrorism. If the Company alleges that by reason of this exclusion any liability is excluded the burden of proving to the contrary shall be on the Insured.

4.4 USA/Canada

any Claim which is brought in the United States of America or Canada or which arises from the conduct of Professional Business carried out from any office or other premises situated in the United States of America or Canada.

4.5 War

any war, invasions, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

4.6 Sanctions Limitations

the Company shall not be deemed to provide cover and the Company shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America

General Definitions

The following General Definitions shall apply to this Policy and that wherever these words appear within the wording starting with a capital letter shall bear the same meaning throughout the Policy other than where specifically stated.

5.1 “Circumstance(s)”

shall mean a situation which may give rise to a Claim.

5.2 “Claim(s)”

shall mean(s) demand(s) (including Claimants’ costs) by a Claimant for compensation or damages from, or the assertion(s) of a civil right or rights against, any Insured and shall be deemed to include any complaint(s) or reference(s) to any ombudsman which arises out of the conduct of Professional Business carried on by, or on behalf of, the Insured.

5.3 “Company”

shall mean the insurance company or insurance companies and/or Lloyd’s syndicates subscribing to this Policy and named in the Schedule for their indicated proportion.

5.4 “Defence Costs”

shall mean legal costs and expenses incurred by or on behalf of the Insured only with the prior written and continuing consent of the Company. It does not include the Insured’s own costs and expenses.

5.5 “Employee(s)”

shall mean person(s), other than a partner, Member, principal or director of the Insured who is under a contract of service or apprenticeship, supplied to, hired or borrowed by the Insured, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the Insured in connection with the conduct of Professional Business by the Insured.

5.6 “Insured”

shall mean each and all of the following persons, each of whom shall be severally insured hereunder:

- a. Those persons named in the Proposal as partners or directors or Members of the Practice (or named as the principal where the Practice is a sole practitioner) and any other person who may at any time during the Period of Insurance become a partner or director or Member in the Practice;
- b. Any former partner or director or Member of the Practice including any such former partner or director or Member whilst acting as a consultant to the Practice;
- c. Any person who is or has been under a contract of service with the Practice;
- d. Any person who is or has been under a contract of service with a Member save that such person shall only be an Insured for the purpose of this Policy if and insofar as any Claim arises out of Professional Business carried on by such person for or on behalf of the Practice named in the Schedule;
- e. The estates and/or legal representatives of any Insured Person noted under (a), (b), (c) or (d) hereof in the event of death, incapacity, insolvency or bankruptcy;
- f. Any company or limited liability partnership named as the Insured in the Schedule.

5.7 “Member(s)”

shall mean any member of a limited liability partnership, including, without limitation, a designated member, save that such a Member shall only be an Insured for the purposes of this Policy if and insofar as any Claim arises out the conduct of Professional Business carried on by the Member for or on behalf of the Practice named in the Schedule.

- 5.8 “Period of Insurance”**
shall mean period stated in the Schedule (and for such other period as may be mutually agreed).
- 5.9 “Practice”**
shall mean the practice or practices named as the insured in the schedule and their predecessors and any other practices which are disclosed to the Company in the Proposal.
- 5.10 “Premium”**
shall mean total amount stated in the Schedule plus Insurance Premium Tax (or other appropriate tax) at the rate from time to time in force.
- 5.11 “Primary Policy ”**
shall mean the first professional indemnity insurance policy effected by the Insured or any policy in substitution or renewal thereof for the same limit of indemnity.
- 5.12 “Professional Business ”**
shall mean the business activities which are listed in the Schedule.
- 5.13 “Proposal”**
shall mean all the information supplied to the Company (whether by written, electronic or any other means) which it is hereby agreed is relied upon by the Company.
- 5.14 “Schedule”**
shall mean document entitled “Schedule” that relates to this Policy.
- 5.15 “Terrorism”**
shall mean an act, including but not limited to 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) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or business and/or to put the public, or any section of the public, in fear.
- 5.16 “Underlying Insurance Limit”**
shall mean the total of the limits of indemnity provided by the Primary Policy and the Underlying Excess Policy(ies).
- 5.17 “United States of America and Canada”**
shall mean the United States of America and Canada and in each case its territories and possessions and any state or political sub-division thereof.