



# Professional Liability Insurance for IT Company Consultants

VA 18

General insurance terms and conditions Valid as January 1 2014

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## 1 PURPOSE OF INSURANCE

On the basis of these terms and conditions and the General Terms of Contract (YL), Pohjola Insurance Ltd or A-Insurance Ltd (hereinafter the Insurance Company) undertakes to

- cover the losses referred to in clause 3.1 below and other expenses specified separately in these terms and conditions;
- investigate the grounds for and amount of indemnity;
- negotiate with the claimant; and
- appear in court or pay the legal expenses if the claim leads to legal proceedings.

The insurance covers the business activities practised by the policyholder which were notified to the insurance company when the insurance was taken out and which are recorded in the insurance policy (insured activity).

The insurance indemnifies against damages resulting from consultation on IT products (such as hardware and software).

## 2 GEOGRAPHICAL SCOPE OF INSURANCE

The insurance is valid in the European Union, Norway, Iceland and Switzerland unless otherwise agreed and accordingly recorded in the policy. The insurance covers insured operations within this territory and any claims handled in accordance the legislation in force therein.

## 3 COVERABLE LOSSES AND RELATED EXCLUSIONS

### 3.1 Coverable loss events

The insurance covers bodily injury, material damage and financial loss caused to a third party in connection with the insured activity, provided that

- is discovered during the policy's validity
- the policyholder is held legally or contractually liable for it
- it derives from an error, deficiency or omission that has occurred no more than ten years before the claim was presented; and
- liability for damages is based on an error, deficiency or omission in plans, calculations, reports, counsel, instructions or equivalent professional service.

### 3.2 Restrictions

#### 3.2.1 Loss incurred by policyholder or partner

The insurance does not cover any loss incurred by the policyholder or policyholders partner.

#### 3.2.2 Company under same ownership

The insurance does not cover any loss incurred by

- a company belonging to the same Group as the policyholder, or
- a company under the same control as the policyholder on the basis of majority interest or otherwise.

#### 3.2.3 Loss related to work performed under contract

The insurance does not cover any work performed in order to repair the results of work done on the basis of a commission agreement, nor does it cover any work redone, even if the work is performed by a party other than the policyholder.

#### 3.2.4 Contractual liability

The insurance does not cover any loss insofar as the liability is based on a provision of a commission agreement under which the policyholder has assumed greater responsibility than would apply to the policyholder under current legislation in the same contractual relationship in the absence of such contractual provision.

#### 3.2.5 Loss caused by termination of a contract

The insurance does not cover any loss caused by termination of a contract between the policyholder and a client.

#### 3.2.6 Feasibility studies, cost/benefit analyses and other calculations

The insurance does not cover any loss caused by an error, deficiency or omission in studies or calculations conducted as a basis for economic evaluations.

#### 3.2.7 Loss caused by delay

The insurance does not cover any loss caused by a delay in the policyholders work performance.

#### 3.2.8 Consequential or indirect loss

The insurance does not cover consequential or indirect loss such as lost output or profit or other financial loss cause to other than the policyholder's contractual party.

#### 3.2.9 Patent or other immaterial right

The insurance does not cover any loss related to a patent, other immaterial right or disclosure of trade secret.

#### 3.2.10 Malicious software

The insurance does not cover any loss caused by malicious software. By malicious software we mean, for example, virus, worm, backdoor, Trojan or a combination of these.

#### 3.2.11 Loss covered by statutory insurance or other insurance cover or system

The insurance does not cover

- insofar as it is covered by the policyholders statutory workers compensation insurance

- injury covered under the Patient Injury Act
- loss caused by use of a motor vehicle in traffic under the provisions of the Motor Liability Insurance Act or corresponding foreign legislation
- loss that is compensated for by a pharmaceutical insurance
- loss caused by the use of a vessel or boat to be registered unless it is used by the policyholder for work performed for himself
- loss caused by the use of aircraft for aviation if the policyholder is liable to pay indemnity as the aircraft's keeper, owner or user, performing a function on the aircraft, or as the employer of any of the above
- loss caused by a nuclear accident referred to in the Nuclear Liability Act or corresponding foreign legislation.

### 3.2.12 Loss related to fines and taxes

The insurance does not cover any fines, punitive damages, taxes, additional taxes, tax increases, or similar sanctions.

### 3.2.13 Loss related to public procurement

The insurance does not cover loss or damage or compensatory fees resulting from tender procedures referred to in the Public Procurement Act.

### 3.2.14 Loss caused wilfully or through gross negligence

The insurance does not cover any loss caused wilfully or through gross negligence by the policyholder or a third person for whom the policyholder is liable (see General Terms of Contract (YL), section 7).

A loss can be considered to have been caused wilfully or through gross negligence if, for example, the act, operating method or neglect has involved a considerable risk for the loss to take place.

However, the insurance does cover loss caused wilfully or through gross negligence if the policyholder in the role of an employer is responsible for loss caused by an employee and the policyholder can prove that neither he nor the supervisors knew or were even supposed to know about the employee's action.

### 3.2.15 Loss caused by known risk of loss

The insurance does not cover any loss caused by an error, deficiency or omission or other grounds for liability, of which the policyholder was or should have been aware when insurance cover began.

### 3.2.16 Receiving cash

The insurance does not cover any loss caused by miscalculations in accepting cash or making payments in cash.

### 3.2.17 Loss caused by defamation of character or invasion of privacy

The insurance does not cover any loss caused by attacks on the policyholders' honour or invasion of their privacy.

### 3.2.18 Other liability insurance policies

The insurance does not cover any loss to the extent that the loss is covered by another liability insurance policy taken out by the policyholder.

## 4 SAFETY REGULATIONS

The policyholder shall comply with the safety regulations given below, recorded in the insurance policy or otherwise issued in writing (see General Terms of Contract (YL), section 6.1).

4.1 The policyholder must provide sufficient staff with appropriate qualifications to perform the work.

4.2 When employing subcontracted consultants, the policyholder must obligate them to take out a professional liability insurance and to keep it in force.

## 5 CLAIMS SETTLEMENT

### 5.1 Policyholder's obligations

The policyholder must seek to allow the Insurance Company the opportunity to assess the amount of loss and contribute to reaching an amicable settlement.

The policyholder must

- participate in the investigation into the loss at his own expense
- provide the insurance company with all information, documents and other material in his possession relevant to the claims settlement, and
- obtain any necessary reports and carry out any essential enquiries available to him at a reasonable expense.

If a loss event gives rise to legal proceedings, the policyholder must promptly notify the Insurance Company thereof.

### 5.2 Obligations of insurance company

The insurance company shall investigate whether the policyholder is liable to pay damages for the reported loss covered under the insurance and shall negotiate with the claimant.

If the policyholder makes good the loss, agrees thereon or accepts the claim, this will not be binding on the Insurance Company unless the amount of and grounds for the damages are manifestly correct.

If the Insurance Company has notified the policyholder that it is prepared to settle with the party who has suffered a loss in order to indemnify, within the limits of the sum insured, for any loss coverable under the insurance but the policyholder is not agreeable to this, the Insurance Company will not be held liable to indemnify for any subsequent expenses or conduct further investigations into the matter.

## 6 COMPENSATION

The insurance covers the expenses referred to in clauses 6.1-6.3, within the limits permitted by the sums insured and deductibles specified in the insurance policy.

### 6.1 Damages

The insurance covers the damages for which the policyholder is liable.

The amount of damages is calculated according to damages regulations and legal practice.

Legal provisions on value added tax will be taken into account when calculating the loss amount. The portion accounted for by the tax will not be paid if it is deductible in the insured party's or beneficiary's taxation.

If several parties are jointly and severally liable for the same loss, the insurance will cover only the portion of the loss that corresponds to the policyholders share of the liability and to any advantage he/she may have gained from the event causing the loss. If no other grounds exist, the indemnity is paid per capita.

### 6.2 Costs incurred from eliminating the danger of an impending loss

The insurance also covers costs incurred due to preventing the immediate risk of a loss coverable under the insurance, caused by necessary measures without which loss would be inevitable.

### 6.3 Investigation and legal expenses

The insurance covers reasonable and necessary expenses incurred in investigating the loss, but not the investigation expenses for which the policyholder is liable under the insurance terms and

conditions or on which have not been specifically agreed with the Insurance Company.

If a claim matter is submitted to the court and is based on grounds which obviously constitute a loss coverable under the insurance, the Insurance Company will appear in court on behalf of the policyholder and pay the resulting legal expenses.

If the legal process also concerns other issues, the insurance shall only cover the part of the expenses incurred from the claim for damages covered by the insurance.

## 7 SUM INSURED

### 7.1 Maximum indemnity

The aggregate maximum amount of all indemnities paid for losses discovered during one insurance period, including any expenses incurred due to loss prevention, investigations, negotiations, interest payments and legal proceedings, is the sum insured indicated in the insurance policy.

### 7.2 Serial loss

Losses caused by the same error, shortcoming or omission will be considered a single loss (serial loss) regardless of when they are discovered.

If such losses are discovered during different insurance periods, they will be attributed to the insurance period in which the first loss was discovered.

## 8 DEDUCTIBLE

For each and every loss, the policyholder has a deductible specified in the insurance policy.

Each error, deficiency or omission in research or measurement results, calculations, drawings, work descriptions, clarifications, counsel or instructions will be considered one single loss.

The deductible will be subtracted from the total amount of indemnity including any expenses incurred due to loss prevention, investigations, negotiations, interest payments and legal proceedings, all calculated in accordance with the insurance terms and conditions.

## 9 CALCULATING THE INSURANCE PREMIUM

If, due to the nature of the policyholders business, the insurance premium can only be estimated in advance, the final premium will be determined after the expiry of the insurance period, when the difference between the final premium and the advance premium must be paid immediately by or to the policyholder.

If the policyholder does not, within one month, provide the Insurance Company with the information it has requested for the purpose of calculating the final insurance premium, the Company will be entitled to setting the final premium at an amount it considers reasonable.

## 10 DEFINITIONS

### 10.1 Policyholder and the insured party

Policyholder is a party who has concluded an insurance contract with the insurance company.

The insured is the party for whose benefit the insurance is valid. The insured parties are the companies listed in the insurance policy.

The policyholder may in some cases also be the insured.

### 10.2 Insurer

The insurer is either Pohjola Insurance Ltd or A-Insurance Ltd.

### 10.3 Personal injury

Personal injury refers within Finland to personal injury, or bodily injury, as specified in the Finnish Tort Liability Act and outside Finland to physical and mental injury, illness/disease and death.

### 10.4 Material damage

Material damage refers to such material damage, or damage to property, as defined in the Finnish Tort Liability Act, and outside Finland loss or destruction of physical property, or to the fact that such property has become unusable.

### 10.5 Financial loss

Financial loss refers to loss that is not related to personal injury or material damage,

and the destruction, disappearance or non-functioning of computer software and files and other data records.

### 10.6 Consultation

With consultation we refer to ordered work performed against payment by the policyholder concerning programming, design, investigation, research, surveying, measurement, inspection, development, supervision or equivalent.

### 10.7 Computer hardware and software

By computer hardware we refer to CPUs and its accessories, memory and peripheral devices such as displays, keyboards or other input devices, output devices and any piece on equipment on which data has been stored.

By program we refer to system programs, office programs and application programs. By software we refer to a combination of more than one program.

Pooling our resources.

