



# Professional Indemnity Insurance

VA 05

Insurance terms and conditions 1 January 2019

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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 a claimant and
- appear in court or pay legal expenses if a claim for damages is subjected to legal proceedings.

The insurance covers the policyholder's consultancy business (insured operations) reported by the policyholder to the Insurance Company upon conclusion of the insurance contract and recorded in the insurance policy.

## 2 Territorial scope

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 with the legislation in force therein.

## 3 Coverable losses and related exclusions

### 3.1 Coverable losses

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

- such injury or damage is detected during the insurance period;
- the policyholder is held legally 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, shortcoming or omission in plans, research or measurement results, calculations, drawings, work specifications or descriptions, advice or instructions.

The insurance covers loss or damage to the extent that the policyholder would be liable for it on the basis of the liability provisions contained in the general terms of contract for consultancy (KSE), valid from time to time, even if these terms of contract had not been applied. However, the scope of compensation liability specified herein does not apply when work has been ordered by a private individual or institution considered to be a consumer.

## 3.2 Exclusions

### 3.2.1 Loss incurred by policyholder or partner

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

### 3.2.2 Company under same ownership

The insurance does not cover any loss incurred by

- a company within the same group of companies 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 expenses arising from work performed in order to rectify the result of work based on a commission agreement or work redone, not even in the case the work is performed by a party other than the policyholder.

### 3.2.4 Loss caused by contractual liability

The insurance does not cover any loss insofar as the policyholder has agreed to assume greater liability than that specified in clause 3.1 above.

### 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 errors, shortcomings or omission in bills of weight and quantities or in feasibility studies and cost-benefit analyses.

### 3.2.7 Appearance and faults in quality of the object of design

The insurance does not cover any loss caused by the fact that the object of design is not successful in terms of its shape, material or other aspect of appearance, or does not fulfil the client's quality requirements. However, the policy indemnifies losses resulting from the building not conforming with the relevant building or other official regulations.

### 3.2.8 Loss caused by delay

The insurance does not cover any loss that has been caused by a delay, neglect of a consultancy assignment, or the termination of a consultancy agreement.

### 3.2.9 Consequential or indirect loss

The insurance does not cover consequential or indirect loss such as lost output or profit or other financial consequence. However, this exclusion does not apply when the injured party is a private person who is considered a consumer.

### 3.2.10 Loss related to experiments

The insurance does not cover loss caused by the use of new, as-yet-untested materials, structures or methods.

### 3.2.11 Operating capacity or performance level

The insurance does not compensate for loss that was caused because the object of design had too low an operating capacity or poor performance level. This exclusion is not applied, however, if plans, examination or measurement results, calculations, drawings, specifications, instructions or guidelines clearly contain an error.

### 3.2.12 Loss related to test excavation and blasting

The insurance does not cover any loss occurring in connection with test excavation or blasting.

### 3.2.13 Supervision

The policy does not cover losses which the policyholder has caused when acting as a supervisor. By supervision we mean construction supervision to ensure that construction is carried out according to good practices and following construction regulations and other official regulations in a way that is technically correct and technically in agreement with the construction contract. The technical supervision of building services engineering and excavation are also considered construction supervision.

However, the policy includes control on the implementation of self-made designs included in the design fee, the purpose of which is to ensure that construction follows the building plans.

### 3.2.14 Loss caused by IT faults

The insurance does not cover any loss caused by the policyholder's operations to the hardware, software or data files of the client.

### 3.2.15 Fines and taxes

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

### 3.2.16 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.

### 3.2.17 Loss caused by nuclear accident

The insurance does not cover any loss caused by a nuclear accident referred to in the Nuclear Liability Act or corresponding foreign legislation.

### 3.2.18 Chemical and other substances or products

The insurance does not cover any loss or damaged caused either directly or indirectly by:

- asbestos
- lead or lead paint
- polychlorinated biphenyl (PCB)
- chlorinated hydrocarbons
- ureaformaldehyde
- diethylstilbestrol (DES)
- tobacco, tobacco products or tobacco smoke
- electromagnetic fields (EMF)
- welding fumes
- silica (silicon dioxide) or silica-related dust
- genetically modified organisms (GMO)
- nanotechnology elements in products
- fungi or bacteria on or within a building or other structure.

### 3.2.19 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 party on whom

behalf the policyholder is liable (see clause 7 of the General Terms of Contract, YL).

### 3.2.20 Loss caused by violation of intellectual property rights

The insurance does not cover any loss or costs caused by or in a way resulting from violation of intellectual property rights.

### 3.2.21 Loss caused by known risk of loss

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

### 3.2.22 Injury caused by medication or to patient, occupational accident, work-related exposure or occupational disease

The insurance does not cover

- loss or damage as referred to in the Patient Injury Act
- personal injury caused by medication
- personal injury inasmuch as it is covered by the insured party's policy referred to in the Workers' Compensation Act, or
- loss or injury caused by occupational disease or other work-related exposure.

### 3.2.23 Other liability insurance

The insurance does not cover any loss coverable under some other liability insurance held by the policyholder.

## 4 Safety regulations

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

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

4.2 When using services provided by subcontractor consultants, the policyholder must obligate them to take out a professional indemnity insurance policy.

## 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 shall

- participate in the investigation into the loss at the policyholder's own expense;
- provide the Insurance Company with all information, documents and other material in the policyholder's possession relevant to the claims settlement; and
- obtain or prepare any necessary reports and analyses available to the policyholder at reasonable expenses.

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

### 5.2 Insurance Company's obligations

The Insurance Company must investigate whether the policyholder is liable to pay damages for a reported loss covered under the insurance, for the part exceeding the deductible, and must 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 Indemnities

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 the damages regulations and legal practice.

The provisions of the Value Added Tax Act will be taken into account when calculating the loss amount. Value added tax will not be compensated in case the insured has the right of refund with respect to value added tax.

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 policyholder's 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 will be paid on a per capita basis.

### 6.2 Costs incurred due to preventing risk 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 proceedings also concern other issues, the insurance will cover only the portion of the expenses incurred due to the claim covered by the insurance.

## 7 Sum insured

### 7.1 Maximum indemnity

The aggregate maximum of indemnities paid on the basis of losses discovered during a single insurance period, including any expenses incurred due to loss prevention, investigations, negotiations, interest payments and legal proceedings, is the sum insured stated 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, shortcoming or omission in research or measurement results, calculations, drawings, work specifications or descriptions, reports, advice or instructions will be considered a 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 policyholder's 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.

Pooling our resources.

