

# Consultants' Professional Indemnity/ General Commercial Liability Insurance

## Policy Conditions no. 65-4

This is a translation of the Danish terms and conditions. In case of any discrepancy between the Danish text and the English translation, the Danish text shall prevail.

The provisions of the Danish Insurance Contracts Act from time to time in force apply to this insurance to the extent that nothing to the contrary is contained in the general and special policy conditions.

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## 1. Scope of cover

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- (1)  
The insurance provides cover for the liability for damages, including the general commercial liability, which the insured may incur due to behaviour giving rise to liability on the part of the insured in connection with the work in the business.
- (2)  
For the purpose of these policy conditions, the insured means the policyholder as provider of consultancy services and the staff members of the business undertaking.

- (3)  
General commercial liability means the insured's liability for damages for bodily injury or damage to property during the performance of the operations set out in the policy, and which does not relate to consultancy services, as well as the liability for damages imposed on the insured as owner or user of buildings or land used for the operations of the business undertaking.

## 2. Period of insurance

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- (1)  
The insurance covers claims for damages made against the insured during the period of insurance.
- (2)  
A claim for damages is considered to have been made against the insured at the earlier of the following times:
- The time when the insured is first approached in writing about a claim for damages.
  - The time when the insured first becomes aware of the damage or loss, or of the immediate danger of damage or loss occurring, which may be caused by the insured's acts or omissions.

- (3)  
Claims for damages made against the insured in the period of insurance, but notified to the company later than three months after cessation of the insurance, are not covered.
- Even if a claim for damages according to sub-clause 2(b) above is considered to have been made against the insured in the period of insurance and the claim was notified to the company in due time, such claim is covered only if the insured has received a written claim for damages no later than two years after cessation of the insurance.
- (4)  
The insurance does not cover claims for damages made against the insured before inception of the insurance.

## 3. Geographical territory covered

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- (1)  
Unless otherwise provided in the policy, the insurance covers only liability for damages arising from damage or loss occurring in Denmark as well as Greenland, the Faroe Islands and other countries in Europe as follows:
- Austria
  - Belgium
  - Bulgaria
  - Czech Republic
  - Estonia
  - Finland
  - France
  - Germany
  - Great Britain
  - Greece
  - Hungary
  - Iceland
  - Ireland
  - Italy
  - Latvia
  - Lithuania
  - Luxembourg
  - Malta
  - Netherlands
  - Norway
  - Poland
  - Portugal
  - Romania
  - Slovakia
  - Spain
  - Sweden
  - Switzerland
  - Turkey

as well as the territories of Andorra, Gibraltar, Liechtenstein, Monaco, San Marino and the Vatican State.

- (2)  
The following applies to any damage or loss occurring outside Denmark:
- The design and inspection of power stations, dams, nuclear reactors, shipyards, docks, offshore activities, mining and other underground works are covered only if specifically agreed with Tryg.
  - It is a condition precedent to Tryg's cover for any liability for damages arising as a result of inspections that the policyholder can substantiate that such inspections were performed to a proper and customary extent.
  - Cover under this insurance has been extended to include the policyholder's liability for damages relating to any project sold by the insured to a third party in Denmark or the above-mentioned countries in Europe, but where such project is used outside Europe.  
However, such cover is subject to the condition that the policyholder was not or should not have been aware that the project would be used outside the Danish or European territory as defined in sub-clause 1 above.
  - Notwithstanding the provisions of section 92 of the Danish Insurance Contracts Act, costs and interest on the amount of damages awarded are only covered outside Europe in so far as the sums insured are not thereby exceeded.

## 4. Exclusions

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Excluded from Tryg's risk are:

- a. Guarantees/warranties.  
Claims based solely on obligations undertaken by the insured that are more extensive than those imposed on a consulting business under the general law of damages. The same applies to any undertaking given to pay damages in excess of the sum payable had such undertaking not been given.
- b. Promises of price and time.  
Claims based solely on the fact that undertakings given with regard to the costs of implementing construction works/projects or the time required for carrying out the works/projects prove incorrect.
- c. Redesign.  
Any loss suffered by the policyholder as a result of the time spent by the business undertaking on clarifying and rectifying any damage or loss having occurred, including any redesign and inspections associated therewith.
- d. Custody.  
Damage to or loss of property and losses resulting from damage to property which the insureds have on loan, on hire, for storage, use or transportation, or which is in their care or possession for any other reason.
- e. Wilful or gross negligence.  
Any damage or loss caused by wilful or gross negligence on the part of the insured.
- f. Special liability.  
Any damage or loss caused by the insured's use of motorised vehicles, watercraft or aircraft.
- g. Other activities.  
Any damage or loss caused exclusively by contracting, supply or other manufacturing activities.
- h. Management of real property.  
Any damage or loss arising exclusively from the management of real property that is not associated with construction work.
- i. Own property.  
Any damage to property and any loss resulting from damage to property belonging to the policyholder.
- j. Conflict of interest.  
Claims originating from the insured or from businesses in which the insured has direct or indirect financial interests, or from businesses which have direct or indirect financial interests in the insured, and where the insured or the business is constituting the claimant in the capacity of participant in a construction work or project, the nature of participation being as developer, seller, lessor, contractor, producer or the like.
- k. Fines, penalties and the like.  
Fines, penalties and the like, including punitive damages, whether payable to public authorities or private individuals/corporations.
- l. Costs.  
Costs associated with determining questions of liability, unless such costs are incurred with Tryg's approval.
- m. Intellectual property rights.  
Claims for damages arising exclusively out of the infringement of intellectual property rights.
- n. Commercial/house and landowner's liability.  
Capital loss which is not a result of bodily injury or damage to property covered by the insurance.

## 5. Sums insured

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| <b>(1)</b><br>The insurance provides cover up to the sums insured set out in the policy. | <b>(2)</b><br>General commercial liability is covered up to the sum insured for bodily injury, property damage and/or loss, as the case may be. |
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## 6. Excess

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| <b>(1)</b><br>In respect of each claim arising from property damage and/or loss, including any interest subsequently accrued in litigation, the insured pays the excess indicated in the policy. | <b>(3)</b><br>Expenses payable by the policyholder for its own technical expert advice and legal advice are of no concern to Tryg, regardless of whether the total of such expenses and the amount of damages exceeds the excess. |
| <b>(2)</b><br>In the event that a claim for damages is less than the excess, any interest in litigation and costs subsequently accrued will be of no concern to the insurance.                   |   |

**(4)**

The excess indicated in the policy is based on the assumption that an agreement has been concluded which limits the period of liability to five years and excludes liability for losses as set out in the provisions contained in the General Conditions for Consulting Services (ABR 89), items 6.2.3.1 and 6.2.4.

The above-mentioned requirement for a limitation of the period of liability to five years does not apply to work performed for consumers. For work performed for consumers, the excess indicated in the policy is subject to the consultant's liability not being extended beyond the 10 years laid down in the Danish Limitation Act.

For inspection surveys, the excess indicated in the policy applies; however, provided that the consultant's liability does not extend beyond the period of liability laid down in Danish act no. 391 of 14 June 1995 on consumer protection when purchasing property etc.

**(5)**

Where no such agreement has been made, the policyholder must pay the excess indicated in the policy plus 25% of such part of the damages as would not have been payable, had the above-mentioned limitation of liability been agreed upon. Such extra amount is limited to the amount of excess selected and cannot exceed 3% of the sum insured selected, regardless of the amount of the excess.

**(6)**

In the event that property damage and/or loss exceeds the sum insured plus the excess, the sum insured will be paid without any deduction. Tryg pays all expenses for its own technical expert advice and legal advice, see clause 16(1), even if the amount of damages exceeds the sum insured; however, see clause 3(2)(d).

**(7)**

The provisions on payment of excess do not apply to bodily injury or losses that are a consequence of bodily injury, or to general commercial liability claims.

## 7. Value-added tax

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The value-added tax (VAT) payable under current legislation must be borne by the policyholder in so far as the policyholder may deduct such amount in the VAT return to be filed with the Danish tax authorities.

## 8. Change of corporate structure

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If an insured business undertaking effects changes to its corporate structure, an agreement must be made with Tryg in each individual case regarding the terms and conditions for continued insurance cover.

## 9. Inception of insurance

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When a proposal has been accepted by Tryg, the insurance will commence from the date on which the proposal is received at Tryg's head office, unless otherwise agreed.

## 10. Cancellation of insurance

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**(1)**

Either party may cancel the insurance subject to at least 90 days' notice to expire on a principal due date. If the policy is not cancelled, it is renewed for 12 months at a time.

**(2)**

Upon receiving notice of a claim, Tryg may cancel the insurance policy subject to 30 days' notice. In case of such cancellation, Tryg must repay the unearned balance of the premium.

**(3)**

The right to cancellation lapses 30 days after Tryg has settled or rejected a claim, as the case may be.

## 11. Liquidation

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In case of liquidation, see section 28 of the Danish Insurance Contracts Act, Tryg may cancel the insurance subject to 14 days' notice to expire at any time.

## 12. Calculation of premium

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The premium is calculated on the basis of the fee income posted by the business in the financial year immediately preceding the insurance year.

## 13. Adjustment of premium

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**(1)**  
The insurance has been taken out with an adjustable premium, and the premium indicated in the policy is considered an advance premium, subject to adjustment on each principal due date.

**(2)**  
For the purpose of adjusting the premium, Tryg sends out a premium adjustment form once a year, and the policyholder is obliged to complete and return the form within

the time limit indicated in the form. Further, the policyholder is obliged to provide documentation substantiating the correctness of the information given in the form, if so requested by Tryg.

**(3)**  
In the event that Tryg does not receive the information requested, the premium will be fixed at the discretion of Tryg.

## 14. Payment of premium

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Tryg collects the premium by sending a giro transfer form to the policyholder. The demand for payment is sent to or delivered at the payment address provided by the policyholder.

The first premium falls due for payment on receipt of the giro transfer form, and any subsequent premiums are payable on the due dates stated. If the premium is not paid after the first demand for payment, Tryg sends a reminder to the policyholder at the payment address.

The reminder outlines the legal effects of non-payment, if the premium is not paid before expiry of the time limit indicated in the reminder.

The reminder is sent 14 days, at the earliest, after the first demand for payment, and if payment is not effected within 14 days of the reminder being sent out, Tryg's obligation to cover lapses and is not reinstated until the premium has been paid in full, such reinstatement taking effect from the date of payment.

## 15. Definition of insurance event

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More than one instance of damage or loss arising out of the same actionable error will be considered as constituting one single insurance event when arising out of one single assignment

performed for a single client under a single contract. In the event that the insured, during its inspection, overlooks the error, this is, however, not considered a separate insurance event.

## 16. Claims procedure

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**(1)**  
As soon as the policyholder becomes aware or has reason to assume that a claim for damages will be made against the business undertaking, the policyholder must immediately notify Tryg in writing, see clause 2.  
Tryg then decides how best to safeguard the policyholder's interests, unless the claim for damages is of no concern to Tryg on account of the provisions on payment of excess.

**(2)**  
The policyholder is obliged to provide any assistance to Tryg needed to investigate and settle the matter.

**(3)**  
The policyholder is not entitled to pay any damages or admit any liability for damages with binding effect for Tryg, unless the policyholder merely does so to fulfil its legal duty.

- (4)**  
The policyholder is under a duty to assist Tryg in making good any damage or loss for which the business undertaking is responsible, by
- a. performing the requisite calculations and/or design work, and
  - b. taking charge of and arranging for any practical measures to be made that are required to make good the damage or loss, including the customary inspection of repairs and loss reduction activities.
- (5)**  
The date on which a claim for damages is made determines which sum insured and which excess apply to the insurance event in question, see sub-clause 1.
- (6)**  
To the extent that Tryg has paid a claim for damages, Tryg is subrogated to the policyholder's claims against the third party.

## 17. Other insurance against same risk

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Where insurance has been taken out elsewhere for an interest which is also covered by this insurance, cover will lapse for this interest.

**(2)**  
Where it has been agreed in another insurance contract, covering the same interest, that liability will lapse or be limited when insurance has been or is taken out elsewhere, the same reservation will apply to this insurance also.

## 18. Change of tariff rates

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If Tryg's tariff rates for liability insurance increase by 10% or more in relation to the tariff rates applicable upon the issuance of the policy, and if the policyholder does not agree to pay the increased tariff-based premium, Tryg is entitled to cancel the insurance subject to the period of notice indicated in the policy, such notice to expire at the end of the insurance year.

If, on the other hand, Tryg's tariff rates for liability insurance are reduced by 10% or more of the tariff rates applicable upon the issuance of the policy, and if Tryg refuses to reduce the premium in accordance with the new tariff rates, the policyholder is entitled to cancel the insurance subject to the period of notice indicated in the policy, such notice to expire at the end of an insurance year.

## 19. Governing law and venue

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Any disputes arising out of or in connection with the insurance contract will be settled according to Danish law before a Danish court of law.