

ERRORS & OMISSIONS INSURANCE POLICY (INSURANCE BROKERS)



www.magmahdi.com



customercare@magma-hdi.co.in

1. OPERATIVE CLAUSE:

WHEREAS the Insured named in the Schedule hereto and carrying on the business/ profession in the said Schedule has applied to Magma HDI General Insurance Company Limited (hereinafter called the 'Company') for the indemnity hereinafter contained and has made a written proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein and has paid the premium as stated in the Schedule, the Company hereby agrees that subject to the terms, exceptions and conditions contained herein or endorsed hereon the Company will indemnify the Insured against their legal liability for any claim or claims first made against the Insured during the period of this Insurance, including defence costs, fees and expenses arising out of the Insured's activities, to the extent of the Limit of Indemnity stated in the Schedule and subject to the Excess specified therein .

2. INDEMNITY

- A. The Indemnity applies only to any claim or claims first made in writing against the Insured during the Policy period, and the Insured is indemnified in accordance with Operative Clause for any breach of Professional duty arising out of any of the following circumstances during the period of insurance :
- i. Any error or omission or negligence either on his part or on the part of his employees and directors.
 - ii. Any loss of money or other property for which the broker is legally liable in consequences of any financial or fraudulent act or omission.
 - iii. Any loss of documents whilst in the possession of or the responsibility of the Insured in the course of the Insured's activities and costs and expenses incurred in replacing or restoring such documents.
 - iv. Dishonest or fraudulent acts or omission by broker's employees.

PROVIDED ALWAYS THAT

- i. Such Act during the Period of Insurance result in a claim being first made in writing against the Insured during the Policy Period as stated in the schedule.
- ii. There shall be no liability hereunder for any claim made against the Insured for act committed or alleged to have been committed prior to the Retroactive Date specified in the Schedule.

For the purpose of determining the Indemnity granted

- (a) 'Policy period' means the period commencing from the effective date and hour as shown in the Policy Schedule and at midnight on the expiry date shown in the Policy Schedule.
- (b) 'Period of Insurance' means the period commencing from the retroactive date and terminating on the expiry date as shown in the Policy Schedule.
- (c) 'Retroactive date' means the date on which the risk is insured under the insurance policy for the first time with any insurer and renewed thereafter without any break in insurance, any break in renewal alters the retroactive date.

B. DEFENCE COSTS

The Company will also pay all costs, fees and expenses incurred with their prior written consent in the investigation, defence or settlement of any claim made against the Insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be against the Insured, provided such claim or claims are the subject of indemnity by the Policy. Such costs, fees and expenses are called 'Defence Costs' and the Company's total liability for such costs shall not exceed the Limit of Indemnity stated in the Schedule.

C. COMPULSORY EXCESS

It is further agreed that the Excess shall be borne by the Insured at their own risk and uninsured in respect of Each Claim or

Each Loss. The Company shall only be liable to indemnify the Insured in excess thereof. Costs and expenses incurred by the Insured with the Company's written consent in the defence or settlement of any claim or loss shall not be subject to the Excess.

3. EXTENDED CLAIM REPORTING CLAUSE

In the event of non-renewal or cancellation of this Policy either by the Company or by the Insured, the Company will allow a time limit not exceeding 90 days from the date of expiry or cancellation of the Policy, provided no insurance is in force during this extended reporting period for the same interest, for notification of claims arising out of losses and/or damages during the Period of Insurance but which could not be made during the Policy period, provided however, all claims made during the extended reporting period shall be handled as if they were made on the last day of the expiring Policy period and are subject to the limits of indemnity and the terms, conditions and exceptions of the Policy.

4. DEFINITIONS

(a) Insured

The Insured shall mean

- (i) the named Insured stated in the schedule
- (ii) any Employee of above
- (iii) in the event of the death, incapacity or bankruptcy of any Employees, their estate, personal representatives, trustees or assignees

(b) Insured's Activities

The Insured's Activities, shall mean activities as prescribed in the Insurance Regulatory and Development Authority (Insurance Brokers and Insurance Consultants) Regulations 2002, relevant to the license issued.

(c) Documents

Documents shall mean agreements, maps, plans, computer systems records, models, photographs (and negatives), records, written or printed books, letters, certificates or written or printed documents and/or forms of any nature whatsoever and including microfilm and microfiche (excluding however, any bearer bonds or coupons, bank or currency notes or other negotiable paper) either the property of or entrusted to the Insured in the ordinary course of business or in the custody of any person to or with whom such documents or computer system records have entrusted, lodged or deposited by the Insured.

(d) Each Claim or Each Loss

Each Claim or Each Loss shall mean all claims or losses resulting from one and the same act of error or omission.

(e) Employee

Employee shall mean any past or present partner, director or officer (however designated) or employee of the Insured, whether remunerated by salary or commission or on retainerhip.

(f) Limit of indemnity

Limit of Indemnity shall mean the sum stated in the Schedule which is the total limit of the Insured's liability, inclusive of costs and expenses, for all claims or losses hereunder irrespective of the number of entities or parties comprising the Insured.

(g) Terrorism

Terrorism shall mean any unlawful act(s) of force and/or violence for political, religious or other ends; and/or directed towards the over-throwing or influencing of any government de jure or de facto; and/or for the purpose of putting the public or any part of the public in fear by any person or persons acting alone or on behalf of or in connection with any organization .

(h) War

War shall mean any act(s) of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority.

5. EXCLUSIONS

This Policy shall not indemnify the Insured against any claim made against them in respect of any:

- a) claim or loss, directly or indirectly, arising from the insolvency, receivership, bankruptcy, liquidation or financial inability to pay of any Insurance Company, Reinsurance Company, underwriter, syndicate, agent, broker or intermediary, benefit plan, self-insurance plan, insurance pool or risk retention group, financial institution or other risk bearing entity with whom, coverage has been placed or obtained.
- b) claim or loss, directly or indirectly, arising from the Insured acting as underwriters, underwriting agents, managing general agents, underwriting manages of insurance companies, underwriters of any syndicate or pool of underwriters or insurance companies or where the Insured is an insurance Company. This exclusion shall also apply to any claim or loss which arises from the management and investment of premium funds or claims handling or claims settlement in respect of activities subject to this clause.
- c) claim or claims for libel, slander, defamation and injurious or malicious falsehood committed by the Insured in the course of the Insured's activities.
- d) claim or claims by reason of any inadvertent disclosure of confidential information, or any inadvertent infringement of any patent or copyright, or the inadvertent unauthorized use or inadvertent infringement of the systems or designs of others.
- e) liability assumed by the Insured by agreement and which would not have attached in the absence of such agreement.
- f) claim or loss to which the Insured is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which would have been payable under such insurance had the Policy been affected.
- g) claim or loss or circumstances which might give rise to claim or loss notified under any other Policy of insurance attaching prior to the inception of this insurance.
- h) fraudulent, dishonest, criminal or malicious acts of any employee committed after the date of discovery by the Insured of reasonable cause for suspicion on the part of the person concerned.
- i) liability to indemnify any person committing or condoning any fraudulent, dishonest, criminal or malicious acts or omission.
- j) claim or claims made against an Insured by another Insured except for that part of such claim or claims which emanate from a third party.
- k) claim for fines, penalties or sanctions.
- l) claim for punitive or exemplary damages or damages that area a multiple of compensatory damage.
- m) claim for loss of or damage to property or legal liability arising directly or indirectly as a result of or in connection with War and/or Terrorism (including, without limitation, contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft)
- n) Loss, damage, distortion or erasure of computer system records
 - i) whilst mounted in or on any machine for use or processing unless such loss, damage, distortions or erasure is caused by fire, lightning, aircraft or water damage.
 - ii) resulting from wear, tear, vermin or gradual deterioration.
 - iii) caused by climatic or atmospheric conditions or extremes of temperature unless such loss, damage, distortion or ensure would be recoverable under an ordinary Fire Policy.
 - iv) due to the presence of magnetic flux or due to loss of magnetism unless caused by lighting.

- o) claim, loss, liability or expense, directly or indirectly, arising from the transmitting or receiving of any virus, program or code that causes corruption, erasure, theft, alteration, loss or lack of access or interference with any electronic data, or prevents or impairs any computer system from performing or functioning accurately or properly.
- p) claim or loss, directly or indirectly, arising from the insolvency, receivership, bankruptcy or liquidation of the Insured.
- q) activities for which the Insured have not obtained valid license from Insurance Regulatory and Development Authority as per proviso of Insurance Regulatory and Development Authority (Insurance Brokers and Insurance Consultants) Regulations 2002.
- r) negligent act, error or omission in fulfillment of Section 64 VB of Insurance Act 1938.
- s) failure to recover loss from securities not approved by Insurance Regulatory and Development Authority (applicable to Reinsurances brokers).
- t) damage to property or financial loss and/or consequential loss unless arising out of wrongful, faulty or inadequate advice.
- u) losses directly or indirectly caused by or contributed by
 - i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
 - ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- v) earthquake, earth tremor, volcanic eruption, flood, storm, tempest, typhoon, hurricane, tornado, cyclone or other similar convulsion of nature and atmospheric disturbance.
- w) claim arising out of Insured's premises liability, employers' liability, product liability and/or any other liability except as covered in this Policy.
- x) claim arising out of false arrest, wrongful eviction, wrongful detention, due to the Insured's activities.
- y) Deliberate/ willful/ intentional non-compliance of any statutory provisions.
- z) loss due to delay.

In any claim and in any action, suit or other proceeding to enforce a claim under this Insurance the burden of proving that such claim does not fall within this exclusion shall be upon the Insured.

6. GENERAL CONDITIONS

The Policy and Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning only wherever it may so appear.

- 1) When the Insured is acting as reinsurance broker they should place the business or deal with the lead reinsurer and supporting market reinsurers in accordance with the Insurance Regulatory and Development Authority Regulations in force.
- 2) The Insured shall as condition precedent to their right to be indemnified under this insurance, not admit liability for or settle any claim or incur any costs or expenses in connection therewith without written consent of the Company.
- 3) The Company will have the right but in no case the obligation, to take over and conduct in the name of the Insured the defence of any claims and will have full discretion in the conduct of any proceedings and in settlement of any claim and having taken over the defence of any claim may relinquish the same. All amounts expended by the Company in the defence, settlement or payment of any claim will reduce the limits of indemnity specified in the Schedule of the Policy.

In the event that the Company, in its sole discretion choose to exercise its right pursuant to this condition, no action taken by the Company in the exercise of such right will serve to modify or expand in any manner, the Company's liability or obligations

under this Policy beyond what the Company's liability or obligations would have been had it not exercised its right under this condition.

- 4) The Company shall not settle any claim without the consent of the Insured. If, however, the Insured refuse to consent to any settlement recommended by the insurers and instead elects to contest or continue any legal proceedings in connection with such claim, then the insurer's liability for the claim shall not exceed the amount for which the claim could have been settled together with the costs and expenses incurred up to the time of such refusal, and then only up to the amount stated in the Policy schedule.
- 5) The Insured shall, as a condition precedent to their right to be indemnified under the insurance, give to the Company immediate notice, certainly not later than 15 days, in writing in the matter of –
 - i) any claim made against the Insured ; or
 - ii) the receipt of notice from any person of an intention to claim on the Insured; or
 - iii) any circumstances of which may subsequently become a claim against the Insured.
- 6) The Insured shall, as a condition precedent to the right to be indemnified under this insurance, give to the Company immediate notice, certainly not later than 15 days, in writing of any subsequent claims arising from an earlier occurrence/ event already informed to the insurer.
- 7) The Insured shall as a condition precedent to the right to be indemnified under this insurance, give his full support to insurer when investigating both the cause and circumstances accompanying the loss or damage, to support the necessary inquiries into the loss or damage and not to make any alteration to the damaged items which might hinder or make impossible the investigation of the cause of loss or damage. The Insured should provide the insurer with full information together with all documents needed in order to assess the extent of damage. On request, the Insured shall provide to the insurer all such information as the insurer may deem reasonably necessary.
- 8) The Company shall have free access to inspect any premises, books or records and take evidence from persons with the Insured.
- 9) If any payment is made under this insurance in respect of a claim, the insurer shall be subrogated to all the Insured's rights of recovery in relation thereto. The Insurer shall not however exercise any such rights against any employee of the Insured unless the claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the employee.
- 10) This insurance shall not be called into contribution with any other Policy or Policies effected by or on behalf of the Insured but shall operate only in excess of amount payable thereunder including the amount of any excess or deductible to be borne by the Insured under such other Policy or Policies.
- 11) If the Insured shall make any claim knowing the same to be false or fraudulently as regards the amount or otherwise, this insurance shall become void and all claim here under shall be forfeited.
- 12) In the event of liability arising under the Policy or the payment of a claim under this Policy, the Limit of Indemnity per any one year under the Policy shall get reduced to the extent of quantum of liability to be paid or actual payment of such claim. Under no circumstances it shall be permissible to reinstate the aggregate Limit of Indemnity to the original level even on payment of extra premium.
- 13) It is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within 12 calendar months from the date of such disclaimer have been made the subject matter of suit in a court of law then the claim shall for all purpose be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
- 14) The Insured shall take all reasonable care and steps to safeguard themselves against any loss or damage. The Insured shall exercise reasonable care that only competent employees are employed and shall take all reasonable steps to prevent all errors and omission and shall comply with all statutory or other regulations as applicable to them generally or specifically.
- 15) The insurers will retain their right to deny liability or void this insurance where there has been non-disclosure, misrepresentation or untrue statements by such specified person or person unless the Insured can prove to the insurer's

satisfaction that such non-disclosures, misrepresentation or untrue statements were free of any intent to deceive.

- 16) By acceptance of this insurance the Insured agrees that the statements in the Proposal Form specified in the Schedule (together with any other written information which may have been supplied in conjunction therewith) are their representations, that the Proposal Form shall be the basis of this contract and is considered as being incorporated herein, and that underwriters have relied upon the truth of such representations. The Insured further agrees that they have a continuing duty throughout the Period of Insurance to disclose immediately to the insurer any material change to the Insured, the Insured's Activities or any another information of facts which could be reasonably expected to be material to this insurance.
- 17) A person who is not a party to this contract has no right under the Indian Contracts Act to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from the Act.
- 18) The Policy may be cancelled at any time by giving 15 days notice by means of registered letter from the Company to the Insured's last known address and in such event the Company will refund pro-rata premium for the un-expired period of the Policy. The Policy may also be cancelled by the Insured by giving 15 days notice in writing to the Company and in that event the Company shall cancel the Policy and agree refund of the premium at Short Period scale subject to there being 'No Claim' under the Policy during the Period of Insurance.

Short period scale:

Period of risk	Premium to be retained
Up to One month	25% of annual premium
Up to three months	50% of annual premium
Up to six months	75% of annual premium
Exceeding six months	100%

- 19) Policy Disputes Clause
Any dispute concerning the interpretation of the terms, condition, limitations and/ or exclusions contained herein is understood and agreed to by both the Insured and Company to be subject to Indian law. Each party agree to submit to the jurisdiction of any Court of competent jurisdiction within India and to comply with all requirements necessary to give to such court of jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.
- 20) The Policy will only indemnify the Insured for his activities in the territorial scope mentioned in the Policy Schedule.
- 21) Jurisdiction – India.
- 22) If any dispute or difference shall arise as to the quantum to be paid under the policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of the sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration the same shall be referred to a panel of 3 arbitrators, comprising of 2 arbitrators, 1 to be appointed by each of the parties to the dispute/difference and the 3rd arbitrator to be appointed by 2 such arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the company has disputed or not accepted liability under or in respect of this policy. It is understood, however, that the Insured shall have the right at all times during currency of the Policy to communicate only, with the leading or issuing office in all matters pertaining to this insurance. Subject otherwise to the terms, exceptions, conditions and limitations of this policy.