



STAMP DUTY  
PAID

# **PROGRESSIVE INSURANCE BHD (19002-P)**

## **PROFESSIONAL INDEMNITY POLICY**

### **(Architect/Engineers/Surveyors/Construction Professionals)**

#### **PREAMBLE**

In consideration of the Assured having made a Proposal to PROGRESSIVE INSURANCE BHD (hereinafter referred to as the Company) containing particulars and statements which are to be considered as incorporated in this Policy, and having paid the premium stated in the Schedule, Company will indemnify the Assured in accordance with and subject to the limitations, terms and conditions and endorsements of this Policy.

#### **INDEMNITY CLAUSE**

The Company will, subject to the following limitations, terms and conditions and endorsements:

indemnify the Assured against any Claim which may be made against the Assured and notified to the Company during the Period of Insurance for actual or alleged breach of professional duty in the Profession, as defined in this Policy, by reason of any negligent act, error or omission committed or allegedly committed by or on behalf of the Assured after the retroactive date stated in the Schedule.

#### **COSTS AND EXPENSES**

The Company also agree to pay all costs and expenses incurred in the investigation, defence or settlement of any Claim which falls to be dealt with under this Policy.

#### **LIMIT OF COMPANYS' LIABILITY**

Provided always that the Company's total aggregate liability under this Policy shall not exceed the Limit of Indemnity specified in the Schedule in respect of all Claims (which for the purpose of this clause shall be deemed to include all costs and expenses incurred in the investigation, defence or settlement of all Claims) made against the Assured during any one Period of Insurance.

#### **EXCESS CLAUSE**

Provided further that the Company shall only be liable for that part of each and every Claim (which for the purpose of this clause shall be deemed to include all costs and expenses incurred in the investigation, defence or settlement of any Claim) which exceeds the amount of the Excess stated in the Schedule.

For the purpose of this clause "Claim" shall also mean all Claims attributable to or arising out of the same cause or event.

If any expenditure is incurred by the Company which by virtue of this clause is the responsibility of the Assured then such amount shall be reimbursed to the Company by the Assured forthwith.

#### **CLAIMS**

All Claims made against the Assured which are attributable to or arise out of the same cause or event shall be regarded as one aggregated Claim and the Company's total liability under this Policy for the aggregated Claim shall not exceed the Limit of Indemnity.

#### **LEGAL PERSONAL REPRESENTATIVES**

In the event of the death of any Assured the Company will, in respect of the liability incurred by the Assured, indemnify the Assured's legal personal representatives in the terms of this Policy provided that such legal personal representatives shall, as though they were the Assured, observe, fulfil and be subject to the terms, conditions and exclusions of this Policy insofar as they can apply.

#### **EXCLUSIONS**

This Policy will not indemnify the Assured against any Claim:

##### **1. CONTRACTUAL LIABILITY**

in respect of liability imposed upon the Assured pursuant to any contract if such liability would not have been imposed upon the Assured in the absence of any such contract, or

##### **2. LEGAL JURISDICTION**

where action for damages is brought in a court of law outside the territories specified in the Schedule, or where action is brought in a court of law within those territories to enforce a foreign judgement whether by way of Reciprocal Agreement or otherwise, or

##### **3. EMPLOYERS LIABILITY**

arising directly or indirectly from bodily injury, sickness, disease or death sustained by any person arising out of and in the course of his/her employment by the Assured under any contract of service or apprenticeship, or for any breach of any obligation owed by the Assured as an employer to any employee, or

##### **4. PRIOR CIRCUMSTANCES**

made against the Assured prior to the commencement of the Period of Insurance nor in respect of any claim(s) or circumstance(s) notified under any previous policy nor in respect of any claim(s) or circumstance(s) which might give rise to a Claim which was known to the Assured prior to the commencement of the Period of Insurance or which is stated on the proposal form, declaration or company information being the basis of this insurance.

(This exclusion relates to the negligent act, error or omission from which the claim(s) or circumstance(s) known to the Assured arises, irrespective of how, or whether, that claim(s) or circumstance(s) is declared to the Company), or

##### **5. WAR AND TERRORISM**

for loss, damage or liability directly or indirectly occasioned by or, in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

(i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

(ii) any act of terrorism.

For the purpose of this exclusion an act of terrorism means 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) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion includes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) above.

If the Company allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

6. **NUCLEAR ASSEMBLIES**  
for loss, damage or liability directly or indirectly occasioned by or caused by or arising from or in consequence of or contributed to by nuclear weapons materials, or arising from or in consequence of or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission; or
7. **ASSURED DUTIES**  
made against them which relates to any duty or obligation assumed by the Assured which is not assumed in the normal conduct of the Assured's profession as stated in the Schedule, or
8. **DISHONESTY**  
arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission of the Assured, or
9. **DEFAMATION**  
alleging libel or slander, or
10. **INFRINGEMENT**  
alleging Infringement of Copyright, Patents, Registered Designs, Trade Marks or Passing-off, or
11. **PRODUCTS**  
arising out of or relating to goods or products, sold, supplied, repaired, altered, manufactured, installed or maintained by the Assured or any related Company or by sub-contractors of the Assured, or
12. **INSOLVENCY/BANKRUPTCY**  
arising out of or relating directly or indirectly from the insolvency or bankruptcy of the Assured or any contractor or consultant, or
13. **SEEPAGE AND POLLUTION**  
based upon, arising out of or relating directly or indirectly from or in consequence of or in any way involving, seepage, pollution or contamination of any kind, or
14. **MOULD AND ASBESTOS**  
arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:
  - (i) asbestos, or any materials containing asbestos in whatever form or quantity, or
  - (ii) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind, or
  - (iii) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins, or
  - (iv) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins, or
15. **WARRANTIES AND GUARANTEES**  
arising out of or relating to performance warranties and/or guarantees, liquidated damages or penalty clauses except to the extent that liability would have attached in the absence of such warranties, guarantees or clauses, or
16. **RETROACTIVE DATE**  
first made against the Assured by reason of any negligent act, error or omission committed or alleged to have been committed prior to the retroactive date stated in the Schedule, or
17. **PROPERTY/PLANT**  
arising out of or relating to the ownership, use, occupation or leasing of property mobile and/or immobile by, to, or on behalf of the Assured, or
18. **INSURANCE ADVICE**  
arising out of or relating to the Assured effecting or maintaining insurance or advice on insurance to third parties, or
19. **FINANCE ADVICE**  
arising from or relating to the provision of finance or advice on financial matters, or
20. **ESTIMATES**  
arising from or relating to the estimate of the costs of construction except where such estimates are compiled by an appropriate professional/qualified quantity surveyor, or
21. **PROJECT INSURANCE**  
arising from or relating to a project for which project specific professional indemnity insurance has been purchased and is in force, unless when specifically endorsed in this Policy, or
22. **FINES/PENALTIES**  
for fines, penalties, punitive, multiple or exemplary damages.

#### **DEFENCE AND SETTLEMENT**

1. The Company will be entitled to take over and conduct, in the name of the Assured, the defence or settlement of any Claim.
2. The Assured will, when instructed by the Company pay promptly (or within the terms of any proposed settlement) any Excess amount payable by them under this Policy. Any failure or refusal by the Assured to make such payment will entitle the Company to deduct such amount from any amount(s) required to settle any Claim, judgement, order or any other payment to be made by the Company under this Policy.
3. The Assured will not be required to contest any legal proceedings unless a Queen's Counsel or Senior Counsel (to be mutually agreed upon by the Assured and the Company) advises that such proceedings should be contested.
4. In the event that the Company elect to settle any Claim, the Company may discharge its total liability under this Policy by paying the then available Limit of Indemnity to the Assured.
5. In the event that the Assured wishes to continue to contest any Claim which, in the opinion of the Company should be settled, then, with the consent of the Company the Assured may so elect, provided that Company's liability in respect of any such Claim shall not exceed the amount for which, but for such election, the Claim could have been settled, together with costs and expenses payable in accordance with this Policy and incurred up to the date of such election.
6. The Company may, if it believes that any Claim will not exceed the Excess, instruct the Assured to conduct the defence of the Claim, keeping the Company advised of developments as they occur. In these circumstances the Company will reimburse the Assured for all reasonable defence costs in the event that any payment made to dispose of the Claim by way of damages exceeds the Excess.

## SPECIAL EXTENSIONS

Subject otherwise to the terms, limitations and conditions of this Policy:-

1. The Company will indemnify the Assured against costs and expenses necessarily incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a Claim under this Policy. The onus of proving a Claim under this Extension shall be upon the Assured who will be obliged to give prior written notice to the Company during the Period of Insurance of the intention to take action that will incur such loss.
2. It is understood and agreed that coverage hereunder is extended to include the Assured's liability arising out of work undertaken by Specialist Designers, Consultants, Sub-Consultants or other professionals appointed by the Assured or the Principal and the Assured's liability arising out of their modifications to design work undertaken by others. However the Assured shall maintain its rights of recourse whenever in the Assured's opinion it is possible or practical to do so.

## CONDITIONS

1. The Assured will not admit liability for or settle any Claim or incur any costs or expenses in connection with any Claim without the written consent of the Company.
2. The Assured will, as a condition precedent to their right to be indemnified under this Policy, give to the Company immediate notice in writing of any Claim whether oral or in writing and will, on request, give to the Company any information they may reasonably require to investigate the matter notified.  
Such notice having been given as required above, any subsequent Claim against the Assured shall be deemed to have been made during the Period of Insurance.
3. The Company will be entitled to claim indemnity or contribution at any time in the name of the Assured from any party against whom the Assured may have such rights.
4. The construction, interpretation and meaning of this Policy shall be determined according to the law(s) of Hong Kong and in accordance with the English text as it appears in this Policy.
5. If there are any material changes to the Proposal during the Period of Insurance then the Assured shall promptly inform the Company.
6. This Policy shall terminate thirty days after receipt by the Assured of notice in writing from the Company of their decision to terminate this Policy. Such notice shall be deemed to be duly received in the course of post if sent by prepaid registered post properly addressed to the Head Office of the Assured.

## DEFINITIONS

1. **"Claim" or "Claims"** means:
  - (a) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third or similar party notice issued against or served on the Assured; or
  - (b) the receipt by the Assured of any written or verbal notice of demand for compensation made against the Assured; or
  - (c) circumstances which are or should, after enquiry, be known to the Assured, and which might give rise to a Claim.
2. **"Limit of Indemnity"** means the sum stated as the limit of indemnity in the Schedule.
3. **"Assured"** means:
  - (a) the company, corporation, statutory authority, association, legal entity, members of the partnership, or person(s) specified in the proposal form, declaration or underwriting information being the basis of this contract; and
  - (b) any person who is, becomes, or ceases to be a principal, partner, director, controlling officer or employee of any entity specified above, but in each case solely in respect of work carried out for and on behalf of that entity; and
  - (c) any predecessor of any entity specified above, but in each case solely in respect of work carried out for and on behalf of that entity.
4. **"Period of Insurance"** means the period stated in the Schedule.
5. **"Excess"** means the excess applicable stated in the Schedule.
6. **"Proposal"** means all information, whether oral or in writing, supplied by the Assured or on the Assured's behalf.
7. **"Profession"** means the performance by the Assured of any professional  
design or specification  
supervision of construction  
feasibility study  
technical information or calculation  
surveying  
undertaken only by or under the direction and direct control of a properly qualified Architect or Engineer or Surveyor.

## THE FOLLOWING CLAUSES/ENDORSEMENTS/WARRANTIES ARE APPLICABLE TO THE POLICY

### ELECTRONIC DATE RECOGNITION EXCLUSION CLAUSE

It is noted and agreed this Policy is hereby amended as follows:

- A. The Company will not pay for any loss or damage including loss of use with or without physical damage, injury (including bodily injury), expenses incurred or any consequential loss directly or indirectly caused by, consisting of, or arising from, the failure or inability of any computer, data processing equipment, media microchip, operating systems, microprocessors (computer chip), integrated circuit or similar device, or any computer software, whether the property of the Insured or not, and whether occurring before, during or after the year 2000 that results from the failure or inability of such device and/or software as listed above to:
  1. correctly recognize any date as its true calendar date;
  2. capture, save, or retain, and/or correctly manipulate, interpret or process any data or information or command or instruction as a result of treating any date other than as its true calendar date; and/or
  3. capture, save, retain or correctly process any date as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save retain or correctly process such data on or after any date.
- B. It is further understood that the Company will not pay for the repair or modification of any part of any electronic data processing system or any part of any device and/or software as listed above in A.
- C. It is further understood that the Company will not pay for any loss or damage including loss of use with or without physical damage, injury (including bodily injury) expenses incurred or any consequential loss directly or indirectly arising from any advice, consultation, design, evaluation, inspection, installation, maintenance, repair or supervision done by the Insured or for the Insured or by or for other to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in A above.
- D. It is further understood that the Company will not pay for any consequential loss resulting from any continuing inability of the computer and equipment described in A above to correctly recognize any date as its true calendar date after the lost or damaged property has been replaced or repaired.

Such loss or damage, injury (including bodily injury), expenses incurred or any consequential loss referred to in A, B, C or D above, is excluded regardless of any other cause that contributed concurrently or in any other sequence in the same.

### JURISDICTION CLAUSE

The indemnity provided herein shall not apply to :

1. Compensation for damages in respect of judgement delivered or obtained in the first instance otherwise than by a Court of Competent Jurisdiction within Malaysia
2. Costs and expenses of litigation recovered by any claimant from the Assured which are not incurred in and recoverable in Malaysia.

### PREMIUM WARRANTY

It is a fundamental and absolute Special Condition of this contract of insurance that the premium due must be paid and received by the Company within sixty (60) days from the inception date of this policy/endorsement/renewal certificate.

If this condition is not complied with then the contract is automatically cancelled and the Company shall be entitled to the pro-rata premium for the period they have been on risk.

Where the premium payable pursuant to this warranty is received by an Authorised Agent of the Company, the payment shall be deemed to be received by the Company for the purposes of this warranty and the onus of proving that the premium payable was received by a person including an Insurance Agent who was not authorised to receive such premium shall lie on the Company.

Subject otherwise to the terms and conditions of this policy.

**THE FOLLOWING CLAUSES/ENDORSEMENTS/WARRANTIES ARE NOT APPLICABLE UNLESS SPECIFICALLY MENTIONED IN THE SCHEDULE OR ENDORSED THERETO  
DISHONESTY OF EMPLOYEES EXTENSION ENDORSEMENT**

The Company agree to indemnify the Assured against all sums which the Assured shall become legally liable to pay as a result of any claims/circumstances made against the Assured during the Period of Insurance brought about or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of any employees of the Assured.

Such coverage shall not apply to loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

(The term Employee shall not be deemed to include any Director of the Assured)

Subject otherwise to the Policy terms and conditions.

**LOSS OF DOCUMENTS EXTENSION**

It is hereby understood and agreed that if during the Period of Insurance the Assured shall discover that any Documents (as hereinafter defined), the property of or entrusted to the Assured, which may now or hereafter be, or be supposed or believed to be, in the custody of the Assured or in the custody of any other person to or with whom such Documents have been entrusted, lodged or deposited by the Assured in the ordinary course of business, have been destroyed or damaged or lost or mislaid and after diligent search cannot be found, the Company will indemnify the Assured against

- (a) legal liability which the Assured may incur to any other person in consequence of such Documents being destroyed, damaged, lost or mislaid,
- (b) costs and expenses incurred with the written consent of the Company in the defence or settlement of any Claim to establish liability as described in (a) above.

**DEFINITION**

In this Extension "Documents" means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, computer programmes or information stored, written or punched into card or tape or magnetic discs or taped or any other data media, and documents of any nature whatsoever, whether written, printed or reproduced by any other method (other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments).

**EXCLUSIONS**

This Extension shall not indemnify the Assured against any liability, costs or expenses

- (a) for which the Assured are entitled to an indemnity under this Policy apart from this Extension,
- (b) for which the Assured are entitled to an indemnity under any other policy or certificate of insurance,
- (c) brought about or contributed to by any dishonest, fraudulent or criminal act or omission of the Assured, or of any person at any time employed by the Assured,
- (d) directly or indirectly occasioned by, happening through or in consequence of 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 destruction of or damage to property by or under the order of any government or public or local authority,
- (e) directly or indirectly caused by or contributed to by or arising from
  - (i) ionising 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,
- (f) (i) which arises directly or indirectly by reason of or in connection with fire or explosion occasioned by or happening through or in consequence directly or indirectly of terrorism,
  - (ii) loss or destruction of or damage to any property in Northern Ireland or loss resulting therefrom caused by or happening through or in consequence of
    - (a) civil commotion
    - (b) any unlawful, wanton or malicious act committed maliciously by a person or persons acting on behalf of or in connection with any unlawful association.

**CONDITIONS**

1. The Assured shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without the written consent of the Company, who shall be entitled at any time to take over and conduct in the name of the Assured the defence or settlement of any Claim.
2. The Assured shall, as a condition precedent to their right to be indemnified under this Extension, give to the Company immediate notice in writing of any circumstance which is likely to give rise to a Claim hereunder.
3. Any Claim for costs and expenses incurred by the Assured in replacing or restoring Documents shall be supported by bills or accounts which shall be subject to approval by a competent person to be nominated by the Company with the approval of the Assured.
4. The Company's total liability under this Policy shall not be increased by reason of this Extension.
5. The Assured shall, as a condition precedent to their right to be indemnified under this Extension, keep all Documents in a suitable secure fire proof safe or cabinet outside of normal business hours and shall maintain duplicates of all computer related records off site.

Subject otherwise to the Policy terms and conditions.

**LIBEL AND SLANDER EXTENSION ENDORSEMENT**

The Company agree to indemnify the Assured against all sums which the Assured shall become legally liable to pay as damages and claimants' costs and expenses as a result of any claim or claims made against the Assured during the Period of Insurance for Libel or Slander by reason of words written or spoken by:-

- (a) the Assured, or
- (b) any employee of the Assured, or
- (c) any director of the Assured

in or about the conduct of the Assured's business as specified in the Schedule.

Subject otherwise to the Policy terms and conditions.

**IMPORTANT - We would remind you that you must disclose to us, fully and faithfully, the facts you know or ought to know, otherwise you may not receive any benefit from your Policy. The Insured is requested to read this Policy. If any error or misdescription be found, the Policy should be returned to the issuing office for correction.**