

## ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY INSURANCE

### General Terms and Conditions

Valid as of January 1, 2001

VA 15

POHJOLA (hereafter the Underwriters) ARCHITECTS/ENGINEERS PROFESSIONAL LIABILITY CLAIMS MADE AND REPORTED INSURANCE POLICY

### NOTICE

This is a claims made and reported Policy. Unless stated otherwise coverage afforded under this insurance is limited to claims that:

- (a) are first made against the **Assured** during the **policy period** and reported in writing to the Underwriters either during the **policy**

**period**, or within sixty (60) days after the expiration of the **policy period** and;

- (b) arise from **professional services** rendered subsequent to the retroactive date stated in item 6 of the Declarations.

The limit of liability available to pay **damages** shall be reduced and may be completely exhausted by the payment of **claims expenses**. **Damages** and **claims expenses** shall be applied against the Self-Insured Retention.

### INSURING AGREEMENTS

The Underwriters, in consideration of the payment of the premium, and the **Assured** undertaking to promptly pay the Self-Insured Retention as described in Item 4 of the Declarations, and in reliance upon the statements and representations in the application and any supplemental materials submitted therewith, which are made a part hereof, and attached hereto and subject to all the terms and conditions of this Policy, agree with the **Assured** as follows:

#### I. COVERAGE - PROFESSIONAL LIABILITY

To pay on behalf of the **Assured**:

- (a) those sums which the **Assured** shall become legally obligated to pay as "**damages**" by reason of a **claim** first made against the Assured during the **policy period** and reported in writing to the Underwriters either during the **policy period**, or within sixty (60) days after the expiration of the **policy period** arising out of any negligent act, error or omission in rendering or failure to render **professional services** by the **Assured** or by any person for whose negligent act, error or omission the **Assured** is legally responsible; and
- (b) **Claims expenses**:  
provided always that such negligent act, error or omission was committed:
- (i) during the **policy period**; or
- (ii) prior to the commencement of the **policy period** and subsequent to the Retroactive Date specified in Item 6 of the Declarations.

#### II. DEFENCE AND SETTLEMENT

- (a) The Underwriters shall have the right and duty to defend, subject to the limit of liability, a **claim** against the **Assured** seeking **damages** which are payable under the terms of this insurance, even if any of the allegations of the **claim** are groundless, false or fraudulent.

- (b) It is agreed that the limit of liability available to pay **damages** shall be reduced and may be completely exhausted by payment of **claims expenses**. **Damages** and **claims expenses** shall be applied against the Self-Insured Retention.

- (c) The Underwriters shall have the right to make any investigation they deem necessary with respect to coverage, including, without limitation, any investigation with respect to the application, statements made in the application and any supplemental materials submitted therewith. The **Assured** shall submit for examination by a representative of the Underwriters, under oath if requested, in connection with all matters relating to this Policy.

- (d) If the **Named assured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the claimant and elects to contest the **claim**, Underwriters' liability for any **damages** and **claims expenses** shall not exceed the amount for which the **claim** could have been settled including the **claims expenses** incurred up to the time of such refusal, or the applicable limit of liability, whichever is less and the Underwriters shall have the right to withdraw from the further defence thereof by tendering control of said defence to the **named assured**.

- (e) It is further provided that the Underwriters shall not be obligated to pay any **damages** or **claims expenses** or to undertake or continue defence of a **claim** after the applicable limit of liability has been exhausted by payment of **damages** or **claims expenses**, and that upon such payment, the Underwriters shall have the right to withdraw from the further defence thereof by tendering control of said defence to the **named assured**.

- (f) The insurance covers the damages for which the **Assured** is liable. The amount of **damages** shall be calculated according to the regulations concerning **damages** and legal practice.

If several parties are jointly responsible for the same loss, the insurance shall only cover the part of the loss that corresponds to the **Assured's** share of the liability. If no other grounds exist, the indemnity is paid per capita.

#### III. LIMIT OF LIABILITY

The Limit of Liability of the Underwriters for all **claims** covered under the terms of the Policy, regardless of the number of **claims**, shall not exceed the amount of the Limit of Liability stated in Item 3 of the Declarations. Neither the inclusion herein of more than one **Assured**, nor the making of **claims** by more than one person or entity, shall increase the Limit of Liability.

#### IV. SELF-INSURED RETENTION

The Self-Insured Retention amount stated in Item 4 of the Declarations shall apply separately to each and every **claim** and shall apply to **damages** and **claims expenses**, separately or in combination. Subject to the Limit of Liability stated in Item 3 of the Declarations, the obligation of the Underwriters to pay on behalf of the **Assured** for **damages** and **claims expenses**, separately or in combination, shall only be in excess of the Self-Insured Retention amount.

#### V. TERRITORY

The insurance afforded herein applies worldwide.

## EXCLUSIONS

This Policy shall not apply to **claims** or **claims expenses** arising out of:

- I. Any facts or circumstances in respect of which the **Assured**, prior to the commencement of this policy, has given notice to any insurer on any other policy, whether or not indemnified or collectible in whole or in part under such a policy;
- II. Any facts or circumstances known to the **Assured** prior to commencement of this Policy which a reasonably prudent person, if aware of said facts or circumstances, might expect to give rise to a **claim** against the **Assured**;
- III. Any **Assured** acting in his capacity as a director and/or officer of any entity other than the **named assured**;
- IV. Any fraudulent, criminal, malicious or knowingly or intentionally wrongful or dishonest acts, errors or omissions of any **Assured**. However, nothing contained in the foregoing shall exclude coverage to the **named assured** or to any other **Assured** who neither committed nor had knowledge of such acts, errors or omissions as described above except that this Policy shall then only pay in excess of the full extent of the assets in the **named assured** of any **Assured** who committed such acts, errors or omissions as described above, and any other personal assets of such **Assured** recovered by the **named assured** shall inure, to the extent of the amount paid by this Policy, to the benefit of Underwriters;
- V. Any liability of one or more **Assureds** under this Policy to any other one or more **Assureds** under this Policy;
- VI. Any projects where project specific professional liability insurance has been purchased and is in force, unless specifically endorsed hereon;
- VII. (a) the actual or alleged generation, transportation, storage or disposal of **pollutants** by the **Assured**, or the arranging of transportation, storage or disposal of **pollutants** by the **Assured**; or

- (b) **pollution** arising out of gross negligence or wilful acts; or
- (c) **pollution** occurring in the United States, its territories, possessions or Canada; or
- (d) **pollution** at, onto or from property or facilities which are or were at any time owned or rented by the **Assured**;

This exclusion does not apply to **claims** or **claims expenses** resulting from **professional services** by or on behalf of the **Assured** in connection with waste water treatment systems; potable water systems; storm water systems; electrical systems or heating, ventilating or air conditioning systems;

VIII.

### (a) Actual or alleged:-

- (i) specification or installation of a product, material or process containing asbestos; or
- (ii) generation, transportation, storage or disposal of a product or material containing asbestos; or
- (iii) physical removal or abatement of a product or material containing asbestos;

### (b) Any legal liability of whatsoever nature 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 waste from the combustion of nuclear fuel; or
  - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- IX. The advising or requiring of, or failure to advise or require, or failure to maintain any form of insurance, suretyship or bond, either with respect to the **Assured** or any other person;
- X. Discrimination by the **Assured** on the basis of race, creed, religion, age, handicap,

disability, sex or marital status against a past or present employee or officer of, or applicant for employment with the **Assured**;

- XI. Personal injury, bodily injury, sickness, disease or death to any employee of the **Assured**, or any other person unless it arises directly out of a negligent act, error or omission in rendering or failing to render **professional services** by the **Assured**; or any obligation for which the **Assured** or any carrier as his insurer may be liable under any Worker's Compensation, Unemployment Compensation, Employer's Liability, Disability Benefits Law or under any similar law;

XII. Express warranties, guarantees or hold harmless agreements or any other liability assumed under contract which would not have existed in the absence of such contract;

XIII. The design or manufacture of any goods or products which are sold or supplied by the **Assured** or by others under license from the **Assured**.

XIV. Any entity which:

- (a) is operated, managed or controlled by the **Assured** or in which the **Assured** has an ownership interest in excess of 50%; or in which the **Assured** is an officer or director; or
- (b) wholly or partly owns, operates, controls or manages the **Assured**.

This exclusion does not apply to legal liability that arises out of a negligent act, error or omission in the performance of the **Assured's professional services** in a joint venture.

XV. Any penalty, fine or other similar consequence, including punitive and exemplary damages.

XVI Any consequential loss such as a decrease or an interruption in production or turnover or other loss of income due to a contract with a third party having become void or not being fulfilled.

## DEFINITIONS

As used throughout this Policy, whether expressed in singular or plural:

I. **Assured** shall mean:

- (a) the **named assured** designated in Item 1 of the Declarations;
- (b) a present principal, partner, director or officer of the **named assured** but only while acting in his capacity as such on behalf of the **named assured**;
- (c) a present employee of the **named assured** but only while acting in his capacity as such on behalf of the **named assured**;
- (d) a former principal, partner, director, officer or employee (and estate of any such former principal, partner, director, officer or employee) of the **named assured**, but only while acting in his capacity as such on behalf of the **named**

**assured** during the period of such service with the **named assured**; provided always that any such **Assured** must have been performing those **professional services** as defined in IX hereunder;

(e) the legal heir, executor, administrator or legal representative of the **Assured** in the event of the **Assured's** death, incapacity or bankruptcy, but only with respect to the performance of **professional services**;

II. **claim** shall mean: (a) the **Assured's** receipt of a written demand for money or services or a request for arbitration; or, (b) the **Assured's** receipt of a suit seeking relief against it, which is covered under the terms of the policy. Two or more **claims** arising from a single or related series of negligent acts, errors or omissions shall be considered as a single **claim** for the purposes of this policy, irrespective of the number of claimants

and all such multiple **claims** shall be deemed to have been made at the time of the first **claim**.

III. **claims expenses** shall mean those fees, costs and expenses incurred by an attorney consented to by the Underwriters to represent the **Assured** and all other costs, charges and expenses incurred for the investigation, adjustment, settlement, arbitration, defence or appeal of a **claim** which is covered under the terms of the policy.

**claims expenses** do not include salaries of Underwriters' employees, representatives or officials, or fees and expenses of independent adjusters or supervisory counsel.

IV. **damages** shall mean a judgement, award or settlement, including any interest thereon. The term **damages** shall not include sanctions, fines, penalties, taxes, return of fees, multiple

- damages, exemplary damages, punitive damages and any matters uninsurable under the law under which this policy shall be construed.
- V. **named assured** shall mean only those persons, partnerships, corporations or entities specified in Item 1 of the Declarations. The term **named assured** shall not include any partnerships, corporations or entities formed or acquired by the **named assured** subsequent to the inception date of this policy unless specifically endorsed hereon.
- VI. **policy period** shall mean that period between the inception and expiration dates specified in Item 2 of the Declarations subject to any earlier termination date.

- VII. **pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. **Pollutants** does not mean heat, smoke, vapour, soot or fumes from a **hostile fire** or explosion.
- VIII. **pollution** means the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**.
- IX. **professional services** shall mean only those services provided by the **Assured** acting in the capacity of an architect, engineer, construction manager, landscape architect, land surveyor, planner or as specifically endorsed hereon.

- X. **customary short rate** will apply in case this policy comes to an end for reasons other than through termination by the Underwriters. The premium for the validity period already elapsed of this policy will be calculated as follows:

Period of the premium validity in months period	Premium % of for the policy
0 to 3	35
3 to 6	60
6 to 9	80
9 to 12	100

## CONDITIONS

### I. NOTICE OF CLAIMS

If any **claim** is made against the **Assured**, whether or not the alleged **damages** fall within or in excess of the Self-Insured Retention, the **Assured** shall have the duty to as soon as practicable give written notice to the Underwriters.

Such written notice must contain complete details of the **claim**, the exact date the claim was first made, the location, the circumstances giving rise to such **claim**, the identity of all claimants and a full description of the nature and scope of the alleged **damages**. The **Assured** must as soon as practicable forward every demand, notice, summons or other process received by it or its representative.

### B. NOTICE OF CIRCUMSTANCES

If the **Assured** becomes aware of any specific negligent act, error or omission which may reasonably be expected to give rise to a **claim**, the **Assured** shall, during the **policy period**, give written notice to Underwriters of:

- (i) the specific act, error or omission;
- (ii) the injury or damage which has or may result from such act, error or omission; and
- (iii) the circumstance by which the **Assured** first became aware of such act, error or omission.

Then if the **Assured** complies with the foregoing notice requirements (i), (ii) and (iii), any **claim** subsequently made against the **Assured** arising out of such act, error or omission shall be treated as a **claim** first made on the date on which such written notice was received by Underwriters.

### II. PURCHASE OF EXTENDED REPORTING PERIOD

If the Underwriters cancel or refuse to renew this Policy, the **Assured** shall then have the right, in consideration of an additional premium equal to one hundred percent (100%) of the full annual Premium charged hereunder, to an extension of the cover granted by this Policy, subject to its terms, conditions, exclusions, definitions and limitations, in respect of any **claim** first made against the **Assured** and reported in writing to the Underwriters during the period of twelve (12) months after the cancellation or expiry date of this Policy but only when such **claim** arises as a result of **professional services** rendered subsequent to the retroactive date and prior to the cancellation

date of this Policy, or the Expiration date stated in Item 2 of the Declarations.

To exercise this right, the **Assured** must give notice in writing within thirty (30) days of the cancellation or expiry date of this policy, to the Underwriters and remit full payment of the premium for this Extended Reporting Period to Underwriters within thirty (30) days of the cancellation or expiry date of this Policy. In the event of failure by the **Assured** to give such notice and remit such premium prior to such date, it shall not at a later date be able to invoke this extension.

In the event of the purchase of the Extended Reporting Period, the entire premium therefor shall be deemed earned at its commencement and in the event the **Assured** terminates the Extended Reporting Period before its term for any reason, Underwriters shall not be liable to return any portion of the premium paid for the Extended Reporting Period.

The quotation by Underwriters of a different premium or Self-Insured Retention or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.

This Condition II does not apply if the **Assured** has failed to pay the full premium for this Policy or if the Underwriters have given notice of cancellation for a lack of such full payment of Premium.

The purchase of the Extended Reporting Period shall not reinstate or increase the Limit of Liability as stated in item 3 of the Declarations.

### III. COOPERATION AND ASSISTANCE OF THE ASSURED

The **Assured** shall have the duty to cooperate fully with and assist the Underwriters and their representatives with respect to the investigation, settlement or defence of any **claim** or potential **claim**.

It is expressly understood however that in no event shall the **Assured** be reimbursed for loss of earnings or fees, or for internal expenses or costs incurred in cooperating with or assisting the Underwriters in investigating or settling any **claim** at the direction of the Underwriters or in the **Assured's** defence of any **claim**, nor shall any such loss of earnings or fees or costs or expenses apply to the **Assured's** responsibility to pay the Self-Insured Retention.

However, the above condition does not apply to reasonable costs incurred in securing the

co-operation of former principals, officers or employees in the defence of a **claim** otherwise covered herein.

### IV. ADMISSION OF LIABILITY

The **Assured** shall not, without the prior written consent of the Underwriters, incur any expenses, including but not limited to forgoing or reducing any compensation due or alleged to be due, or make any other payment, assume any obligation, make any settlement, attempt any remedial measure or in any way admit or acknowledge liability in connection with any **claim** or potential **claim**.

If the **Assured** makes good the loss, agrees there on or accepts the claim, this shall in no way be binding upon the Underwriters, unless the amount and basis of the indemnity are clearly legitimate.

### V. ACTION AGAINST UNDERWRITERS

No action shall lie against the Underwriters or their representatives unless, as a condition precedent thereto, the **Assured** shall have fully complied with all the terms and conditions of this Policy, or until the amount of any **damages** has been finally determined either by operation of law or by written agreement of the **Assured**, the claimant and the Underwriters.

Nothing contained in this Policy shall give any person or organisation any right to join the Underwriters as a defendant or co-defendant or other party in any action against the **Assured** to determine the **Assured's** liability.

### VI. OTHER INSURANCE

The coverage afforded by this Policy shall be excess of all other applicable professional liability insurance, whether or not valid or collectible, including any Self-Insured Retention portion thereof.

### VII. CHANGES

None of the Insuring Agreements, Exclusions, Definitions or Conditions or other terms of this Policy shall be amended, waived or otherwise changed except by endorsement hereto signed by the Underwriters.

### VIII. NAMED ASSURED AS AGENT

The **named assured** specified in Item 1 of the Declarations shall be considered the agent of all **Assureds** with respect to the giving of or receipt of all notices pertaining to this Policy

and shall be responsible for the payment to the Underwriters of all premiums and for payment of the Self-Insured Retention.

#### IX. PREMIUM

The premium for this Policy shall be the amount specified in Item 5 of the Declarations.

#### X. SUBROGATION

In the event of any **claim** under this Policy, the Underwriters shall be subrogated to all of the **Assured's** rights of recovery against any person or entity, and the **Assured** shall execute and deliver to the Underwriters any and all necessary documentation, instruments and records and do whatever else is necessary to secure and enforce such rights. The **Assured** shall take no action after such **claim** is made against it which prejudices such rights of the Underwriters.

#### XI. ASSIGNMENT

No assignment or transfer of any **Assured's** rights under this Policy shall bind the Underwriters.

#### XII. APPLICATION

By acceptance of this Policy, all **Assureds** agree that the statements contained in the application and any supplemental materials submitted therewith are their agreements and representations, that this Policy is issued in reliance upon the truth thereof, and that this Policy embodies all agreements existing between themselves and the Underwriters. The

application and any supplemental materials submitted therewith or a copy thereof is attached to and is specifically made a part of this Policy and is the basis upon which this Policy is issued.

#### XIII. CANCELLATION

The **named assured** may cancel this Policy by mailing, registered mail, to the Underwriters written notice stating when thereafter such cancellation shall be effective however not less than ten (10) days thereafter the notice is received by the Underwriters.

The Underwriters may cancel this Policy by mailing to the **named assured**, at the mailing address specified in Item 1 of the Declarations, written notice stating when not less than thirty (30) days thereafter such cancellation shall be effective except that for nonpayment of premium, not less than ten (10) days advance notice of cancellation shall be given.

The mailing of notice as aforesaid shall be sufficient proof of the intent to cancel. The date and hour of cancellation specified in such notice shall represent the time of termination of this Policy. Delivery of such notice shall be equivalent to mailing.

If the **named assured** cancels, the earned premium shall be computed in accordance with the **customary short rate**. If the Underwriters cancel, the earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effective or as

soon as practicable thereafter, but payment or tender of unearned premium or the return of this Policy shall not be a condition of cancellation.

If the Limit of Liability stated in Item 3 of the Declarations has been exhausted by payment of **claims**, the policy shall be deemed earned and Underwriters shall not be liable for return of any premium paid.

#### XIV. FORFEITURE

- (a) Any action or failure to act by the **Assured** with the intent to defraud the Underwriters shall render this Policy null and void, and all coverage hereunder shall be forfeited; or
- (b) any material misrepresentation or non-disclosure of any material fact by the **Assured** in the application or in any supplemental materials submitted therewith shall **damages** and **claims** expences be either reduced or withheld completely.

#### XV. DISPUTES REGARDING THIS POLICY

Disputes concerning a **claim** settlement decision, contents of this policy and other matters pertaining to this policy are subject to Finnish law, and any related legal action can be brought only in the Helsinki District Court.