

HCC INTERNATIONAL INSURANCE COMPANY PLC.

PROFESSIONAL INDEMNITY DIVISION



Insurance Documents

INSURANCE EFFECTED WITH HCC INTERNATIONAL INSURANCE COMPANY
PLC.

A SUBSIDIARY OF HCC INSURANCE HOLDINGS, INC.®
IS AUTHORISED AND REGULATED BY THE FINANCIAL SERVICES AUTHORITY
WALSINGHAM HOUSE, 35 SEETHING LANE, LONDON EC3N 4AH
TELEPHONE: 020 7702 4700 FACSIMILE: 020 7626 4820 WEB: WWW.HCCINT.COM/PI

REGISTERED No. 01575839

PROFESSIONAL INDEMNITY NOTICE TO INSURED

HERE is your Policy/Certificate of Insurance. Please check it very carefully and ensure that it is accurate and precisely meets your requirements. If there is any error, or anything that you do not understand, please contact your broker straightaway.

ALL insurances contain conditions, exclusions, and some contain warranties (which if they are breached may well void the insurance completely). It is vital that you are familiar with the obligations imposed upon you by the terms of this cover and the limitations of its scope.

IF you become aware of any claims or circumstances which could lead to a claim being made, you must notify your insurers immediately and in writing. Failure to do so could prejudice your position. Notifiable circumstances cannot easily be categorised. Many situations can be recognised as potential claims before they actually become formal legal actions. You should look carefully at the notification provisions of your cover and be sure to follow them.

Danger signs include:

1. A verbal complaint from a dissatisfied customer or a threat of “taking the matter further”.
2. A letter of complaint alleging neglect, error or omission.
3. A customer refusing to settle or delaying settlement of an account for an unreasonable length of time.

THESE are indications of the type of circumstances that might arise but are not fully exhaustive. If you are in any doubt as to whether a particular situation constitutes something that should be notified to your insurers, it is probably best to notify it in order to keep your interests protected.

APART from notifying us immediately when you become aware of a “circumstance” you should be careful not to prejudice you or your Insurers’ position. This means that, ideally, you should do nothing. If you must, say that you are “looking into the problem” or some such holding remark or letter. Sometimes, what you can see as a very sensible step to take might, with hindsight, appear to have made the situation worse. This might leave you without insurance if the move was not sanctioned by your Insurers.

YOU should inform your broker immediately if there are changes to your business. Arrangements can then be made to amend your cover, if necessary. Failure to do this could lead to an uninsured loss. Only you know everything about your business, so the responsibility for full disclosure of information, both before and after cover commences, is yours. You should therefore check the accuracy of the information that you have provided.

COMPLAINTS

WE recognise the importance of service and set ourselves high standards. But things can go wrong in any business. If, for any reason, we have not met your expectations then we would like to know. This helps us to improve and enables us to look into your problem. Should this happen then:

1. In the first instance, speak to the person who arranged the policy for you.
2. If you remain unhappy, then our Compliance Officer will be pleased to investigate your complaint. Please write, telephone or fax:

Walsingham House, 35 Seething Lane, London EC3N 4AH Tel: 020 7702 4700 Fax: 020
7626 4820 Web: www.hccint.com/pi

THANK YOU FOR PLACING YOUR BUSINESS WITH
HCC International Insurance Company Plc.

HCC INTERNATIONAL INSURANCE COMPANY PLC



Walsingham House, 35 Seething Lane, London EC3N 4AH Tel: 020 7702 4700 Fax: 020 7626 4820 Website www.hccint.com

SCHEDULE

Policy Number: PI08R571877

Form: PI DC Agg 0607 **Date** 07/04/2008

Date of Proposal Form: 04/04/2008

Insured: Cool Technic Ltd

Starting Date: 07/04/2008

Indemnity Limit: GBP 1,000,000 any one claim and in total including defence costs

Additional Conditions: Other Activities: None
Geographical Limits: Worldwide excluding USA / Canada
Retroactive Date: 07/04/2008
Jurisdiction: Worldwide excluding USA / Canada

HCC 017 Higher Limits Warranty
HCC 083 Rolling Policy Endorsement

PROFESSIONAL INDEMNITY INSURANCE

DEFINITIONS

For the purposes of this Policy the words or terms that appear in **bold** will be interpreted as follows:

Circumstance

Shall mean any circumstance or state of affairs or event which might reasonably be expected to give rise to a claim against the **Insured** or a claim by the **Insured** under the Policy.

Computer system

Shall mean any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communications system, world-wide web site, internet site, intranet site, extranet site or web address(es).

Defence costs and expenses

All costs and expenses incurred, with the prior consent of the **Insurer**, in the investigation, defence and settlement of any claim first made against the **Insured** or of any **Circumstance** first notified during the **Period of insurance**.

Documents

Are deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature whatsoever (excluding any bearer bonds or coupons, bank or currency notes, share certificates, stamps or other negotiable paper) and items of recorded information in a format for use with a computer.

Employee

Is

- a) any person employed by the **Insured** under a contract of service, training or apprenticeship, and
- b) any voluntary worker, and
- c) any locum, seasonal or temporary personnel, and
- d) any self employed person, who is not an independent contractor, (For the purposes of this definition "independent contractor" shall not include Self Employed Independent Contractors), and
- e) any person supplied or remunerated through a contract hire company or agency, who is not an independent contractor but is employed by the contract hire company on a supply only basis, working as a member of the **Insured's** staff,

but only if such person is working under the **Insured's** direction, control and supervision.

Excess

Is the first amount paid in respect of each claim inclusive of **Defence costs and expenses** and shall be (save where stated otherwise) the amount stated in the schedule.

Financially associated person or entity

Shall mean:

- a) any business controlled or managed by the **Insured** or in which the **Insured** has an executive interest;
- b) any company in which the **Insured** directly or indirectly owns or controls more than 15% of the issued share capital;
- c) any person having an executive or managerial role in the **Insured** or who would be considered to be a shadow director (as defined in s.251 of the Insolvency Act 1986) of the **Insured**;
- d) any company that directly or indirectly owns or controls any of the issued share capital of the **Insured** or any of whose issued share capital is directly or indirectly owned or controlled by any other company or person who directly or indirectly owns or controls any of the issued share capital of the **Insured**.

Indemnity limit

Shall mean the **Insurer's** total liability to pay damages, claimant's costs, fees and expenses, **Defence costs and expenses** and shall not exceed the sum(s) stated in the schedule in respect of any one claim or series of claims arising out of one originating cause and in total for all claims first made during the **Period of insurance**. If more than one person is entitled to an indemnity under the terms of this Policy then the **Insurer's** total liability to all such persons shall not exceed the **Indemnity limit**.

Insured

Is any person or firm stated in the schedule and includes any current or previous partner, director, principal, member or **Employee** of any firm or company stated in the schedule and any other person who becomes a partner, director, principal, member or **Employee** of the firm.

Insurer

Means HCC International Insurance Company PLC.

Period of insurance

Is that as stated in the schedule.

Professional business

Is the performance by the **Insured** of any

- a) design of or specification for any building or structure
- b) supervision of construction works
- c) feasibility study for any construction works
- d) calculation or provision of technical information
- e) surveying
- f) other activity stated in the Schedule

provided that it is undertaken only by or under the direction and direct control of a properly qualified Architect, Engineer or Surveyor. For the purpose of this Policy any person with not less than five years' practical experience is deemed to be properly qualified.

Proposal

Shall mean the written proposal and any renewal declaration signed by the **Insured** together with any other information supplied by the **Insured** to the **Insurer** before inception or renewal of this Policy.

Virus

Shall mean any unauthorised executable code that replicates itself through a **Computer system** or network whether termed a virus, logic bomb, worm, Trojan Horse or known by any other name.

BASIS OF THE CONTRACT

The **Proposal** shall be the basis of and incorporated in this contract.

INSURING CLAUSES

In consideration of the premium having been paid to the **Insurer**, the **Insured** is indemnified, up to the **Indemnity limit**, as follows:

1 Indemnity

For claims first made against the **Insured** during the **Period of insurance** for which the **Insured** is legally liable to pay damages (including claimant's costs, fees and expenses) together with **Defence costs and expenses** and arising out of the ordinary course of the **Professional business**, in consequence of:-

- a) any negligent act error or omission of the **Insured**;
- b) any negligent act error or omission of any specialist designers, consultants or sub-contractors of the **Insured** in the ordinary course of the **Professional business** provided that the rights of recourse against such specialist designers, consultants or sub-contractors have not been waived or otherwise impaired;
- c) any dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**) provided that no indemnity shall be given under this Policy in the event that any principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission;
- d) libel or slander;
- e) unintentional breach of confidentiality;
- f) unintentional infringement of intellectual property rights;
- g) the loss of or damage to **Documents**.

2 Costs for infringement of copyright

Up to a maximum of GBP 25,000 in the aggregate in the **Period of insurance**, for claims first made by the **Insured** during the Period of Insurance for reasonable and necessary costs and expenses incurred with the **Insurer's** prior consent in prosecuting any claim for infringement of intellectual property rights first discovered during the **Period of insurance** where the ownership of such rights is vested in the **Insured**.

For the purposes of this Insuring Clause **Insurers** will only give prior consent where the **Insured** has provided, at their own expense, an opinion from a solicitor, barrister or suitably qualified intellectual property agent evidencing the existence of the **Insured's** intellectual property rights, the infringement of those rights, a measurable loss and a reasonable prospect of success.

3 Costs of Criminal Proceedings

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance**, in respect of legal costs and expenses incurred with the **Insurer's** prior consent in the defence of any proceedings brought under the prevailing listed building, building regulation or health and safety legislation and any applicable orders or regulations made pursuant to that legislation or any applicable codes of practice or procedures issued by any governing body concerned with health and safety provided always that:

- a) The act, error or omission giving rise to the proceedings shall have been committed by the **Insured** in the ordinary course of the **Professional business**;
- b) The **Insurer** shall be entitled to appoint solicitors and counsel to act on behalf of the **Insured**;
- c) The **Insurer** shall have no liability to pay costs incurred subsequent to a plea or finding of guilt on the part of the **Insured**, or in the event that Counsel should advise that there are no reasonable prospects of successfully defending the proceedings, except for costs incurred solely for the purpose of making a plea in mitigation before sentencing or costs incurred in making an appeal if Counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable;
- d) For the purposes of this Insuring Clause only the amount of the **Excess** shall be GBP 1,000.

4 **Costs of representation**

Up to a maximum of GBP 10,000 in the aggregate in the **Period of insurance** all legal costs incurred with the **Insurer's** prior consent for representation at any inquiry or other proceeding which has, in the **Insurer's** sole opinion, a direct relevance to any claim, **Circumstance** or event which could form the subject of indemnity under this Policy.

5 **Collateral warranties**

For claims first made against the **Insured** during the **Period of insurance** for which the **Insured** is legally liable to pay damages (including claimant's costs, fees and expenses) together with **Defence costs and expenses** and arising out of the ordinary course of the **Professional business** in consequence of or arising from entering into any collateral warranty, duty of care agreement or any similar agreement provided that, in so doing, the **Insured** does not make itself liable

- a) to provide a level of service or produce a result beyond the scope of any duty that would otherwise be implied by common law or statute; or
- b) to any greater extent or for any longer a period than is the case under the agreement with the person or party with whom the **Insured** originally contracted to perform the same work; or
- c) under any financial guarantee, for any contractual penalty or for liquidated damages.

6 **Mitigation of loss**

For costs and expenses incurred with the **Insurer's** prior consent in respect of any action taken to mitigate or avoid a loss or potential loss that otherwise would be the subject of a claim under this Policy.

EXCLUSIONS

The **Insurer** shall not be liable to indemnify the **Insured** against any claim:

1 Employers Liability

Arising directly or indirectly from bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any **Employee** arising out of or in the course of their employment by the **Insured**, or for any breach of any obligation owed by the **Insured** as an employer to any partner, principal, director, member or **Employee** or applicant for employment;

2 Bodily Injury/Property Damage

For bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property unless such claim emanates from negligent advice, design, specification, formula or other breach of professional duty by the **Insured**;

3 Land Buildings etc

Arising directly or indirectly from the ownership, possession or use by or on behalf of the **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

4 Dishonesty

Arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission of the **Insured** or any **Employee**, except as covered by Insuring Clause 1 c);

5 Contractual Liability

Arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party and which is more onerous than any duty that would otherwise be implied by common law or statute, except as covered by Insuring Clause 5;

6 Products

Arising out of or relating to:

- a) goods or products sold, supplied, repaired, altered, manufactured, installed or maintained; or
- b) buildings, building works or physical structures constructed, repaired, installed, erected, removed or demolished

by the **Insured** or any **Financially associated person or entity** or sub-contractor of the **Insured** unless such claim is the direct consequence of any negligent act, error or omission arising out of the ordinary course of the **Professional business**;

7 Insolvency/Bankruptcy of Insured

Arising out of or relating directly or indirectly to the insolvency or bankruptcy of the **Insured**;

8 Seepage and Pollution

Based upon, arising out of or relating directly or indirectly to, in consequence of or in any way involving seepage, pollution or contamination of any kind;

9 Circumstances known at inception

Arising out of any **Circumstance** of which the **Insured** was, or ought reasonably to have been, aware at inception of this Policy, whether notified under any other insurance or not;

10 Other Insurance

In respect of which the **Insured** is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance;

11 Geographical Limits

In respect of work carried out outside the Geographical Limits stated in the schedule;

12 Legal action

In respect of an action for damages

- a) brought outside the Jurisdiction stated in the Schedule (the "Jurisdiction")(including the enforcement within the Jurisdiction of a judgment or finding of another court or tribunal that is not within the Jurisdiction),
- b) in which it is contended that the governing law is outside the Jurisdiction,

- c) brought outside the Jurisdiction to enforce a judgment or finding of a court or other tribunal in any other jurisdiction.

Where no Jurisdiction is specified in the Schedule then the Jurisdiction shall be Worldwide but excluding

- 1. the United States of America, its territories and/or possessions or
- 2. Canada.

13 Fines and Penalties

For penalties, fines, multiple, exemplary, liquidated or other non-compensatory damages awarded other than in actions brought for defamation as far as they are covered by the Policy;

14 Claims by Financially associated persons or entities

Made upon the **Insured** by any **Financially associated person or entity** whether alone or jointly with any other person or entity. However, this exclusion shall not apply to any claim brought against such **Financially associated person or entity** by an independent third party and which would, but for this exclusion, be covered by this Policy;

15 Retroactive date

Made by or against the **Insured** arising from any act or omission that occurred prior to the Retroactive Date stated in the schedule;

16 Radioactive contamination or explosive nuclear assemblies

Directly or indirectly caused by or contributed to by or arising from

- a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

17 The Excess

For an amount less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under the Policy.

18 War

Arising directly or indirectly out of, happening through or in consequence of, war, invasion, 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 requisition or destruction of or damage to property by or under the order of any government or public or local authority.

19 Terrorism

Arising directly or indirectly out of, happening through or in consequence of any act or acts of force or violence for political, religious or other ends directed towards the overthrowing or influencing of any government, or for the purpose of putting the public in fear by any person or persons acting alone or on behalf of or in connection with any organisation.

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply.

20 Asbestos & Toxic Mould

Arising directly or indirectly out of or resulting from or in consequence of or in any way involving:

- a) Asbestos or any materials containing asbestos in whatever form or quantity; or
- b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- c) any action taken by any party in relation to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of (to include the investigation of, testing for, detection, monitoring, treating, remediating or removal of) any fungi, moulds, spores or mycotoxins of any kind whether in response to any governmental or regulatory order, requirement, directive, mandate, decree or otherwise.

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply.

21 Other appointments

Made against any **Insured** in the capacity of

- a) director or officer of the **Insured** or any other company or arising out of the management of the **Insured** or any other company; or
- b) trustee of any trust, officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or employees of the **Insured** or otherwise.

22 Trading losses

Arising out of:

- a) any trading loss or trading liability incurred by any business managed or carried on by the **Insured** (including the loss of any client account or business);
- b) the actual or alleged over-charging or improper receipt of fees by the **Insured**.

23 Virus

Arising directly or indirectly from any **Virus**.

24 Patents

Notwithstanding Insuring Clause 1 f), arising directly or indirectly from the infringement of any patent.

25 Project partnering

Arising out of or in respect of work carried out by any project partnership of which all or any of the **Insured** form part unless the claim or loss emanates from the acts or omissions of the **Insured**.

26 Joint ventures

Arising out of or in respect of work carried out by or in the name of a consortium of professional people or firms or other association formed of which all or any of the **Insured** form part for the purpose of undertaking any joint venture or any other profit-sharing arrangement unless the claim or loss emanates from the acts or omissions of the **Insured**.

27 Valuation reports

Arising from any valuation report prepared by or on behalf of the **Insured** except for the purpose of certifying payments due to contractors or measuring quantities.

28 Supervision, finance and costs

Arising directly or indirectly out of

- a) the supervision by the **Insured** of its own work, the work of any **Financially associated person or entity** or the work of its building or engineering sub-contractors where such supervision is undertaken in its capacity as building or engineering contractor;
- b) the arranging or maintenance of insurance or in any way connected with the provision of finance or advice on financial matters;
- c) estimates of construction costs except where such estimates are prepared and provided by professionally qualified Quantity Surveyors.

SPECIAL NOTIFICATION CONDITIONS

The Insured shall, as a condition precedent to their right to indemnity under this Policy, comply with the Special Notification Conditions below, the Insurer only being liable to indemnify the Insured in respect of any notification(s) made to the Insurer during the Period of insurance.

For the purposes of these Special Notification Conditions **Adjudication notice** shall mean any adjudication notice pursuant to contract (including a "Notice of Adjudication" and/or "referral notice" pursuant to the Scheme For Construction Contracts (England & Wales) Regulations 1998 and/or The Scheme for Construction Contracts (Scotland) Regulations 1998) and "adjudication" and "adjudicator" shall be construed in that context:-

1. The **Insured** shall give the **Insurer** written notice within 2 working days of:
 - a) the receipt of any such **Adjudication notice**;
 - b) the receipt of any indication, whether in writing or otherwise, of an intention on the part of any party to serve the Insured with an **Adjudication notice**;
 - c) becoming aware of circumstances in which the commencement of an adjudication involving the Insured is likely.

This notification must be given during the **Period of insurance** and must be addressed to: HCC International Insurance Company PLC at Walsingham House, 35 Seething Lane, London EC3N 4AH.

2. The **Insured** must promptly supply the **Insurer** with all details relating to any references to adjudication, including copies of all documentation made available to the **Insured**.
3. The **Insured** must
 - a) allow the **Insurer** to appoint advisors and to have conduct of the adjudication as they deem appropriate;
 - b) co-operate with the **Insurer** and their advisors in the conduct of the adjudication
 - c) meet any request, direction or timetable of the adjudicator.
 - d) not agree to accept the decision of the adjudicator as finally determining the dispute without the prior written consent of the **Insurer**.
4. The adjudication provisions in the Contract (if any) or otherwise applying to the Contract must:
 - a) provide that the adjudicator must be independent of the parties to the dispute;
 - b) not allow for the adjudicator's decision to finally determine the dispute;
 - c) not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial or other considerations;
 - d) not place restrictions upon the timing of the commencement of legal or arbitration proceedings (for the sake of clarity this does not apply to adjudication proceedings).

Further condition

The **Insurer** shall be entitled to pursue legal proceedings, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the adjudicator or to stay the enforcement of any such decision, direction, award or exercise of power. The **Insured** shall give all such assistance as the **Insurer** may reasonably require in relation to such proceedings or arbitration.

NOTIFICATION AND CLAIMS CONDITIONS

1. Claim/Circumstance Notification

As conditions precedent to their right to be indemnified under this Policy the **Insured**

1.1 shall inform the **Insurer** as soon as possible, and in any event within 10 working days (provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**) of the receipt, awareness or discovery of:-

- a) any claim made against them
- b) any notice of intention to make a claim against them
- c) any **Circumstance**
- d) the discovery of reasonable cause for suspicion of dishonesty or fraud.

Such notice having been given as required in b), c) or d) above, any subsequent claim made shall be deemed to have been made during the **Period of insurance**;

1.2 shall not, in the event of a claim, or the discovery of information which may give rise to a claim, admit liability for or settle any claim, or incur any costs or expenses in connection therewith, without the written consent of the **Insurer**; and

1.3 shall, as soon as practicable given the circumstances, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such claim.

2. Conduct of Claims

2.1 Following notification under condition 1. above the **Insurer** shall be entitled at its own expense to take over and within its sole discretion to conduct in the name of the **Insured** the defence and settlement of any such claim.

Nevertheless neither the **Insured** nor the **Insurer** shall be required to contest any legal proceedings unless a Queens Counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested.

2.2 The **Insurer** may at any time in connection with any claim made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the claim can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the claim.

GENERAL CONDITIONS

1 Policy Construction and Disputes

English Law governs this Policy. In the event of any dispute arising between the **Insured** and the **Insurer** concerning this Policy the parties submit to the courts of England and Wales who shall have exclusive jurisdiction to determine any such dispute.

2 Waiver of subrogation against employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment brought about or contributed to by any act or omission of the **Employee** or former **Employee** which was dishonest, fraudulent or malicious or the **Employee** or former **Employee** conspired to commit or condoned any such dishonest, fraudulent or malicious act.

3 Dishonest or Fraudulent Act or Omission

In the event of a loss or claim which involves the dishonest, fraudulent or malicious act or omission of any former or present **Employee** the **Insured** shall take all reasonable action (including legal proceedings) to obtain reimbursement from the **Employee** concerned (and from any **Employee** who may have conspired to commit or have condoned such act) or from the estate or legal representatives of such **Employee**. Any monies which but for such dishonest, fraudulent or malicious act or omission would be due to such **Employee** from the **Insured** or any monies held by the **Insured** for such **Employee** shall be deducted from any amount payable under this Policy.

4 Fraudulent Claims

If the **Insured** shall submit any claim knowing the same to be false or fraudulent as regards amount or otherwise this Policy shall become void and all claims hereunder shall be forfeited.

5 Contracts (Rights Of Third Parties) Act 1999

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights under the Contracts (Rights Of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

6 Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by fourteen days notice given in writing to the **Insured** on the basis of the **Insurer** receiving or retaining payment of premium pro rata to the period that the **Insurer** will have been on risk.

7 Invalidity

If any provision of this Policy is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable this will not affect the other provisions of this Policy which will remain in full force and effect.

8 Notices

Notice shall be deemed to be duly received in the course of post if sent by pre-paid letter post properly addressed to:

- a) in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker.
- b) in the case of the **Insurer**, to HCC International Insurance Company PLC at Walsingham House, 35 Seething Lane, London EC3N 4AH

HIGHER LIMITS WARRANTY

It is warranted that the **Insured** shall carry no insurance cover in excess of that provided hereunder.

ROLLING POLICY ENDORSEMENT

In consideration of the agreement of the **Insured** to pay the payment of the premium for a minimum of 12 calendar months from the date of this endorsement, **Insurers** agree to vary the terms of this Policy as follows:

DEFINITIONS

For the purposes of this Endorsement:

Period of insurance

Shall mean the calendar month beginning on the date stated in the Schedule (the "**starting date**") and each succeeding calendar month in respect of which the **Insured** has made payment of the amount of premium due. In the event that the **starting date**:

- is later than the 28th day of a month then, in relation to any **Period of insurance** ending in the month of February that **Period of insurance** will end on the last day of the month;
- is on the 31st day of a month then, in relation to any **Period of insurance** ending in the months of April, June, September or November that **Period of insurance** will end on the last day of the month.

Indemnity limit

Shall have the same meaning as it has in the Policy save that, where any **Indemnity limit** is said to apply "in total for all claims first made during the **Period of insurance**", the expression "**Period of insurance**" shall be deleted and shall be replaced by the following:

- the period of 12 calendar months beginning on the **starting date** and
- each successive 12 month period beginning upon any anniversary of the **starting date**.

Proposal

Shall mean the written proposal and any declaration signed by the **Insured** together with any other information supplied by the **Insured** to the **Insurers** before inception or at any time during the validity of this Policy.

NOTIFICATION AND CLAIMS CONDITIONS

Notification and Claims Condition 1 shall not apply but shall be replaced by the following:

1. Claim/Circumstance Notification

As conditions precedent to their right to be indemnified under this Policy the **Insured**

- 1.1 shall inform **Insurers** as soon as possible, and in any event within 10 working days of the receipt, awareness or discovery of:-

- a) any claim made against them
- b) any notice of intention to make a claim against them
- c) any **Circumstance**
- d) the discovery of reasonable cause for suspicion of dishonesty or fraud.

provided always that such notification is received by **Insurers** before the expiry of the **Period of insurance** in which the claim or notice of intention to make a claim was received or the **Insured** first became aware or discovered the **Circumstance** or had reasonable cause for suspicion of dishonesty or fraud.

Such notice having been given as required in b), c) or d) above, any subsequent claim made shall be deemed to have been made during the **Period of insurance**; and

- 1.2 shall not, in the event of a claim, or the discovery of information which may give rise to a claim, admit liability for or settle any claim, or incur any costs or expenses in connection therewith, without the written consent of **Insurers**.

GENERAL CONDITIONS

It is hereby understood and agreed that the following shall replace the general condition headed "Cancellation".

1 Cancellation

- 1.1 This Policy may be cancelled by or on behalf of **Insurers** by 1 calendar month's notice given to the **Insured** ending on the final day of a **Period of insurance**.
- 1.2 In the event that the **Insured** fails to make payment of the whole or any part of the premium payable on or before the day that it is due to be paid (as advised by **Insurers**) this Policy will be cancelled automatically with immediate effect.

It is further understood and agreed that the following additional general conditions shall apply to this Policy.

2. Warranties

The **Insured**, having warranted the accuracy and completeness of the **Proposal**, must notify the **Insurers** promptly, and in any event before the end of the **Period of insurance** immediately after that in which the relevant change occurred, of any material change to the information contained within the **Proposal**. Without prejudice to the generality of that obligation the **Insured** must notify the **Insurers** in the event that:

- 2.1 the annual turnover of the **Insured** exceeds the amount specified by the **Insurers** from time to time;
- 2.2 there is any change in the principal activity or activities of the **Insured**;
- 2.3 there is any change in the management of the **Insured**;

- 2.4 there is any change in the persons constituting the partners, members or directors of the **Insured**;
- 2.5 there is any change in ownership of the **Insured**;
- 2.6 the business of the **Insured** is merged with that of another business or
- 2.7 the **Insured** acquires a new business as a subsidiary business (whether wholly or only partly owned by the **Insured**) to the **Insured**.

3. **Late notification**

In the event that the **Insured** fails to notify **Insurers** of the receipt of any claim, notice of intention to make a claim, awareness or discovery of any **Circumstance** or reasonable cause for suspicion of dishonesty or fraud, within the particular **Period of insurance** during which the claim or notice was received or the **Circumstance** or cause for suspicion was discovered or brought to the knowledge of the **Insured** then **Insurers** will not exercise their right to decline indemnity in respect of any claim arising provided that:

- 3.1. the **Insured** can establish, to **Insurers'** satisfaction, that:
 - 3.1.1. the failure to notify within the **Period of insurance** was free of any fraudulent conduct or intent to deceive; and
 - 3.1.2. there have been no untrue statements made or has been no non-disclosure or misrepresentation of facts in the **Proposal**; and
- 3.2. no prejudice has been caused to the ability of **Insurers** to conduct the defence or settlement of the claim under this Policy; and
- 3.3. this Policy had not been cancelled in accordance with general condition 1 or otherwise, before the notification was received by **Insurers**.

4. **Effect of cancellation**

In the event that this Policy is cancelled by **Insurers** in accordance with clause 1.2 above then the indemnity provided by this Policy shall continue to be provided in respect of any claims notified to **Insurers** prior to the date of cancellation provided the **Insured** has paid all the premium due to that date.

5. **Variation of terms**

Insurers may regard it as necessary to change the premium, **Excess** or other terms and conditions of this Policy. The **Insurers** may, at their absolute discretion, vary the premium, **Excess** or other terms and conditions of this Policy at any time but only upon giving the **Insured** one calendar month's written notice. Unless the **Insured** serves a counter-notice to terminate it the terms and conditions of this Policy will be deemed to have been varied with effect from the expiry of that notice period.

All other terms and conditions of this Policy remain unaltered.