

# **Professional liability insurance Lawyers, consultants, fiduciaries, auditors and other service providers** /

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# Key points at a glance

This overview provides you with information on the material content of the insurance contract, in accordance with Art. 3 of the Federal Insurance Contracts Act (ICA). The contracting parties' rights and obligations arise with the conclusion of the insurance contract, namely according to the application, policy, contract terms and statutory provisions.

## Who is the insurance carrier?

The insurance carrier is AXA Insurance Ltd, General-Guisan-Strasse 40, 8401 Winterthur (hereinafter "AXA"), a joint stock company with registered offices in Winterthur and a subsidiary of the AXA Group.

## What is insured?

The insurance covers claims for damages that are brought against insureds on the basis of liability imposed by law (GIC B1.1).

## What risks are insured?

The insurance covers statutory liability arising from:

- operational and professional risks: risks arising from the insureds' actions and omissions, as well as from operations within and outside of places of business;
- premises risk: risks arising from ownership or possession of real property, buildings and equipment;
- environmental risk: environmental hazards arising from premises, operational and professional risks.

Please consult your policy and these GIC for the precise scope of the insurance coverage.

## What is not insured?

Among other claims, the following are excluded from the insurance coverage:

- claims by insureds (own losses);
- claims arising from services of a technical nature;
- claims arising from contractually assumed liability in excess of the liability imposed by law;
- claims arising from contractual penalties, warranties, fines, bonds and compensation of a punitive nature;
- claims arising from transactions of a speculative nature or dependent on a contingency;
- claims arising from losses whose occurrence was highly probable or which were taken into account in order to reduce costs, speed up work or prevent the loss of assets or earnings;
- claims arising from unpaid direct and indirect levies, taxes and social security contributions;
- claims that are resolved under state or federal law of the USA or Canada, as well as costs incurred in these countries.

Please consult your policy and these GIC for the precise scope of the insurance coverage and the individual exclusions.

## What coverage does AXA provide?

The insurance covers

- the amount of compensation that the insured must pay to the injured party based on the insured's liability in law (GIC D1.1);
- defense against unjustified claims in cases of insured loss events (GIC D1.2).

Your application or policy states whether sublimits or indemnity restrictions apply.

## How much is the premium and when is it due?

The premium and its maturity are stipulated in the policy. The premium is due on the first day of every insurance year.

## What are the policyholder's main obligations?

Among other things, policyholders must

- notify AXA of changes in circumstances that are significant for assessing the risk (GIC A10.1.3);
- notify AXA as quickly as possible if their permit or license to exercise their profession is lost (GIC A10.1.4);
- notify AXA as quickly as possible of any event whose consequences may trigger the insurance (GIC D3);
- refrain from direct negotiations with the injured party and, furthermore, may not acknowledge any claims (GIC D5).

Please consult the GIC and the Special Insurance Conditions (SIC) in the policy for details of any special obligations.

## When does the insurance begin and end?

The insurance begins on the date shown in the policy. AXA can reject the application until it issues the policy or definitely confirms coverage. The insurance is valid for the period shown in the policy.

Unless the insurance contract is terminated per expiry, it shall be renewed tacitly on a year-by-year basis. A contract of less than one year expires on the date shown in the policy.

## Special information for the Principality of Liechtenstein

The applicant is bound by the application for a period of two weeks after submitting or sending it.

If AXA is in breach of the information obligations pursuant to the Insurance Contracts Act or Insurance Supervision Act of the Principality of Liechtenstein, the policyholder has the right to withdraw from the contract within four weeks from the receipt of the policy. The responsible supervisory authority is the Swiss Financial Market Supervisory Authority (FINMA), 3000 Bern.

## What information does AXA use, and how?

Information about the use of data may be found under "Data Protection" in Part F.

**Please note:** Definitions of the most important terms may be found in Part E.

# General Insurance Conditions (GIC)

## Part A Underlying Provisions

### A1 Scope of contract

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The policy stipulates the insurance coverages which have been agreed. The scope of the insurance protection is governed by the policy, these General Insurance Conditions (GIC) and any Special Insurance Conditions (SIC) that may apply.

### A2 Territorial scope

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The insurance covers claims arising from losses occurring anywhere in the world. For claims in connection with the USA or Canada, the exclusions contained in B2.18 apply.

### A3 Trigger

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#### A3.1 Term of the policy

The insurance covers claims made against an insured during the period in which the policy is in force. This period encompasses the contractual term of this policy and of any other contracts with AXA which are replaced by this policy, as well as any retroactive or extended reporting period granted by AXA as per A3.7 and/or A3.8.

#### A3.2 Date of claim

The date on which the claim is made is deemed to be:

- the date on which an insured first becomes aware of circumstances which lead to the assumption that a claim will be brought against an insured. If no such circumstances appear, the date on which the claim is made is deemed to be the date of a verbal or written notification that a claim for indemnification falling under this insurance contract is being asserted;
- the date on which an insured becomes aware of criminal proceedings being opened against insureds which may lead to an insured claim for indemnification.

If the same event meets multiple criteria, the earliest date shall apply.

#### A3.3 Loss prevention costs

Claims for loss prevention costs are deemed to be made on the date on which it is first established that the loss is imminent.

#### A3.4 Serial loss

All claims arising from a serial loss as per E3 are deemed to be made on the date on which the initial claim as defined in A3.2 is made.

#### A3.5 Indemnities and limitations

Indemnities payable by AXA and their limitations are governed by the terms in force and stipulated in the policy on the initial date of claim as per A3.2, including applicable insurance sums and deductibles.

#### A3.6 Extension of indemnities or scope of insurance coverage

If insured indemnities are increased or the scope of insurance is extended, insurance coverage is provided under the new agreements only if the insured was unaware of any actions or omissions that would constitute grounds for liability before the contract change came into effect.

#### A3.7 Retroactive coverage

Claims for losses arising from actions or omissions committed before the initial conclusion of this contract are insured only if the insured did not know of any actions or omissions that would constitute grounds for liability before this contract was initially concluded. The same also applies to serial losses.

#### A3.8 Extended reporting period

##### A3.8.1 During the operation of the policy

After its exit from the group of insureds, the former insured shall continue to have insurance protection at the longest for the period during which the policy is in force, provided that the actions or omissions that constitute grounds for liability occurred before the insured withdrew. This provision applies analogously in case of the discontinuation of insured activities and the discontinuation of mandates as a director or officer of legal entities. Such claims are deemed to have been made on the date of exit or discontinuation.

##### A3.8.2 On expiry of insurance coverage

After expiry of the insurance, coverage also extends to claims made subsequent to the expiry of the insurance within the statutory limitation period, provided that such losses were caused prior to expiry of the insurance. Claims which are made during such extended reporting period and which are not part of a serial loss as per E3 are considered to have been filed on the day on which the contract ended.

##### A3.8.3 Statutory provisions

Mandatory statutory provisions governing extended reporting periods which go beyond A3.8.1 or A3.8.2 shall take precedence over said provisions.

##### A3.8.4 Other insurances

The extended reporting period does not apply if another insurance contract covers part or all of the subsequent claim.

### A4 Contract term

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The contract begins on the date shown in the policy. It is valid for the period shown in the policy, after which it is automatically renewed annually for 1 further year. A contract of less than one year expires on the date shown in the policy. Any provisional insurance coverage that may be in place ends when the policy is issued. AXA may reject the application. Any provisional insurance coverage that may be in place shall end 3 days after the applicant receives notice of such rejection. In this case,

the applicant shall owe the prorated premium for the period of insurance coverage.  
If the policyholder declares bankruptcy, the contract ends with the declaration of bankruptcy. Within 30 days of the declaration of bankruptcy, the bankruptcy administrator can, subject to payment of the premium, demand that the policy be continued as of the date of the declaration of bankruptcy.

## **A5 Termination of the contract**

**A5.1 Termination effective at the end of the insurance year**  
Either contract party may terminate the contract in writing per the end of the insurance year, subject to a notice period of 3 months (annual right of termination).

**A5.2 Termination in the event of a claim**  
After a loss for which AXA provides indemnification, the policyholder may terminate the contract no later than 14 days after knowledge of the indemnity payment. Insurance protection ends 30 days after AXA receives the notice of termination.  
AXA waives its right to terminate the contract in the event of a claim.

**A5.3 Termination in case of risk increase**  
A10.1.5 and A10.1.6 apply.

## **A6 Premiums**

**A6.1 Premium amount and due date**  
The premium stipulated in the policy is due on the first day of every insurance year; the due date for the first premium is stated on the invoice. In the event of payment in installments, the installments due during the insurance year are deemed to be deferred. AXA may add a surcharge to each installment.

**A6.2 Premium calculation**  
The premium calculation method is stipulated in the policy.

## **A7 Deductible**

D2 applies.

## **A8 Duties of care and obligations**

**A8.1 Breach of obligations and notification requirements**  
If insureds culpably violate their obligations (e.g. A8.2, C2.2, C3.2, C11.2, C12.3, D4.2, D5) or duties to notify or inform (e.g. A10.1.4, D1.6, D3), resulting in an increase of indemnities owed by AXA, the insurance protection shall not extend to the scope of such an increase.

**A8.2 Elimination of a hazardous condition**  
The policyholder is obligated to eliminate at its own expense any hazardous condition that could result in bodily injury or property damage. AXA can demand that a hazardous condition be eliminated within a reasonable period.

**A8.3 Duties of care and other obligations in the event of a claim**  
D3, D4.2 and D5 apply.

## **A9 Information obligations**

**A9.1 Communication with AXA**  
The policyholder shall address all communications to the relevant branch office or registered office of AXA.

**A9.2 Risk increase or reduction**  
A10.1.4 and A10.2 apply.

**A9.3 Termination of the contract**  
A5 applies.

## **A10 Risk increase or reduction**

### **A10.1 Risk increase**

#### **A10.1.1 Newly added persons**

If further persons as per E6.2 to E6.4 and E6.6 are joined after conclusion of the contract, they are also insured (contingent insurance).

#### **A10.1.2 Newly added companies**

If an insured founds or acquires a stake of more than 50% in a company, such company is also deemed to be an insured from the date of founding or acquisition, provided that its location is in Switzerland or the Principality of Liechtenstein and that it engages in the insured activity (contingent insurance).

#### **A10.1.3 Change of material circumstances**

If a circumstance changes that is significant for assessing the risk and which was determined by the contracting parties on conclusion of the contract, the insurance cover also covers such change within the scope of the contractual conditions (contingent insurance). The insurance does not include new risks due to new activities.

#### **A10.1.4 Notification obligations**

By the end of the insurance year at the latest, the policyholder must notify AXA in writing of the increase in risk, and must include the following information in the notification:

- number of full-time equivalent positions for newly added persons as per E6.2, E6.3 and E6.6;
- name, domicile, legal form, business purpose, amount of participation and number of full-time equivalent positions as per E6.2, E6.3 and E6.6 with respect to the newly added companies;
- change of circumstances that are significant for assessing the risk.

If the license or permit to exercise the profession is lost, the policyholder must notify AXA of this in writing as quickly as possible.

#### **A10.1.5 Rights of AXA**

AXA reserves the following rights in respect of the newly added companies or change in risk:

- to redefine the premium and conditions retroactively;
- to reject the inclusion;
- to terminate the contract within 14 days after receipt of notification.

For newly added persons, AXA has the right to retroactively apply a premium based on the applicable rate from the date on which they joined.

If AXA refuses to accept the new company or the changed risk, or if it terminates the contract, the contingent insurance or the contract will end 30 days after the written rejection or notice of termination is received by the policyholder.

AXA is entitled to the premium corresponding to the risk from the date when coverage started until the date when the contingent insurance or the contract ends.

**A10.1.6 Policyholder's right of termination**

The policyholder can terminate the contract within 14 days if no agreement is reached on the new premium or the new provisions.

AXA is entitled to the premium corresponding to the risk from the date when coverage started until the date when the contingent insurance or the contract ends.

**A10.1.7 Coverage of difference in limits**

In amendment of D1.5, if a liability insurer covering the same loss or serial loss is also liable for the new risk, AXA's indemnity is limited to the amount of insurance or sublimit that exceeds the amount covered by the other liability insurer (difference in limits coverage).

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**A10.2 Risk reduction**

If the risk decreases, AXA shall reduce the premium as from receipt of the policyholder's written notification.

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**A11 Principality of Liechtenstein**

If an insured's registered office is located in the Principality of Liechtenstein, references to provisions of Swiss law in the insurance contract documents shall relate to the corresponding provisions of Liechtenstein law.

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**A12 Applicable law and place of jurisdiction**

**A12.1 Applicable law**

This insurance contract shall be governed by material Swiss law; if the policyholder has its registered offices in the Principality of Liechtenstein, it shall be governed by the material law of Liechtenstein.

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**A12.2 Place of jurisdiction**

Disputes arising from this insurance contract shall be subject to the jurisdiction of ordinary Swiss courts; in the case of policyholders having their registered offices in the Principality of Liechtenstein, they shall be subject to the jurisdiction of the ordinary courts of Liechtenstein.

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**A13 Sanctions**

AXA's insurance protection shall not apply insofar and as long as applicable legal economic, trade or financial sanctions inhibit indemnification under this contract.

## Part B

### Scope of Insurance – General Provisions

#### B1 Insured risk and insured liability

##### B1.1 Insured liability

AXA provides insurance protection for the insured risk stipulated in the policy, against claims for damages arising from bodily injury, property damage and financial loss that are brought against an insured on the basis of statutory liability provisions.

The insurance does not cover recourse and compensation claims brought by third parties against employees and auxiliaries, or against persons loaned or hired from third parties, in respect of services provided by them for the injured party.

##### B1.2 Independent contractors, staff on loan

The insurance also covers claims brought against an insured due to loss/damage:

- caused by companies and independent contractors (such as subcontractors) engaged by the insureds as auxiliaries. The insurance does not cover these companies' and contractors' own liability.
- caused by persons in the course of their activities for a third party, if such persons were loaned or hired out by insureds to the third party (contracting for labor or services).

##### B1.3 Insured sites

The insurance covers all sites in Switzerland and the Principality of Liechtenstein.

##### B1.4 Violation of privacy rights and data protection provisions

The insurance covers losses arising from the unlawful use of confidential information and trademarks, and from breaches of copyrights, rights to models and samples, privacy rights or data protection provisions.

##### B1.5 Consortia and associations

The insurance covers claims arising from losses incurred due to an insured's own activities in connection with consortia and associations. Liability arising from membership of consortia and associations is insured only on the basis of special agreements (joint and several liability).

#### B2 General exclusions

##### B2.1 Own losses

The insurance does not cover claims by insureds, except for bodily injury and property damage sustained by employees and other auxiliaries on the basis of Swiss liability law provisions.

##### B2.2 Persons in the same household

The insurance does not cover claims by persons who are members of the liable insured's household.

##### B2.3 Family members

The insurance does not cover claims by family members of an insured. Family members are deemed to be spouses, registered domestic partners and relatives in ascending and descending order, as well as siblings and stepchildren.

##### B2.4 Shareholders

The insurance does not cover claims by natural persons and legal entities, trusteeships and trusts which have a financial participation in an insured's company. Likewise, the insurance does not cover claims by companies sharing the same management as an insured company (e.g. companies controlled by the same natural person). This provision does not apply if a direct or indirect participation constitutes less than 50% of voting rights.

##### B2.5 Lack of qualifications or authorization to exercise a profession

The insurance does not cover claims arising from losses caused by an insured in the course of activities undertaken without the special qualifications or authorizations required by law.

##### B2.6 Assumptions or speculations

The insurance does not cover claims arising from losses due to asset evaluations, analyses and expert opinions based principally on assumptions and speculations, for which no method recognized by the relevant profession was applied.

##### B2.7 Services of a technical nature

The insurance does not cover claims arising from services of a technical nature (e.g. technical planning and advice, and implementation thereof).

##### B2.8 Contractual liability, contractual penalties, warranties, penalty payments

The insurance does not cover claims arising from a contractually assumed liability that goes beyond liability in law. Likewise, the insurance does not cover claims in connection with contractual penalties, warranties, penalty payments, bonds, and compensation payments that go beyond indemnifying a loss quantifiable in monetary terms. In particular, these include payments of a punitive nature such as punitive/exemplary damages.

##### B2.9 Insurance

The insurance does not cover claims arising from a failure to take out, amend or continue insurance coverage.

##### B2.10 Speculative business transactions

The insurance does not cover claims arising from speculative business transactions or those dependent on chance which take place without the customer's written consent.

##### B2.11 Cash, securities and valuables

The insurance does not cover claims arising from cash management deficits. Likewise, the insurance does not cover claims due to the destruction or loss of cash, cash equivalents, securities or valuables.

##### B2.12 Highly probable and anticipated losses

The insurance does not cover claims arising from losses whose occurrence was to be expected as highly probable or were taken into account by the insured in order to reduce costs, speed up work or prevent the loss of assets or earnings.



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**B2.13 Felonies and major offenses**

The insurance does not cover claims against an insured related to intentional felonies and major criminal offenses committed by such insured.

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**B2.14 Intent and recklessness**

The insurance does not cover claims arising from losses brought about by an insured with actual intent or with recklessness.

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**B2.15 Client data**

The insurance does not cover claims arising from losses related to the misappropriation of client data.

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**B2.16 Directorships and similar functions**

The insurance does not cover claims related to an insured's role as an organ, namely as a:

- member of the administration or management, general manager or director of a legal entity, or in a comparable function;
- trustee/protector of a trust;
- de facto officer;
- liquidator of a legal entity (outside of bankruptcy proceedings).

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**B2.17 Taxes, levies and social security contributions**

The insurance does not cover claims arising from unpaid direct and indirect levies, taxes (withholding tax, value added tax, etc.) and social security contributions (AHV, IV, EO, ALV, BVG, etc.). This exclusion relates to direct claims made against an insured by public authorities or private law entities empowered in their stead. This exclusion does not include the insured's liability toward clients, namely arising from consultancy services.

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**B2.18 USA or Canada**

The insurance does not cover claims that are judged under US or Canadian state, provincial or federal law, nor costs incurred in those countries (costs of civil and criminal defense, etc.), enforceable rulings (judgments, arbitral decisions, etc.) and settlements.

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**B2.19 Fees, retrocessions or commissions**

The insurance does not cover claims in connection with insureds' fees. Likewise, the insurance does not cover claims related to retrocessions and commissions. Moreover, no insurance coverage is granted to the extent that a reduction or repayment of fees owed by the insured without an indemnity would lapse due to the payment of insurance benefits.

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**B2.20 Bodily injury and property damage arising from contract performance**

The insurance does not cover claims arising from bodily injury and property damage in connection with the performance of contracts. Likewise, the insurance does not cover claims in lieu thereof due to non-performance or incorrect performance (business risk).

Specifically, the insurance does not cover claims:

- arising from damage and defects in goods and services that were manufactured or delivered by or on behalf of an insured, where such damage and defects

arose as the result of a cause in the manufacture, delivery, or work carried out;

- for costs incurred in connection with investigating and remedying such damage or defects;
- for loss of earnings or assets as a result of such damage or defects.

The insurance also does not cover concurrent extra-contractual claims on the basis of the same facts, asserted against an insured with or in lieu of any claim otherwise excluded under this provision.

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**B2.21 Care, custody and control**

The insurance does not cover claims arising from damage to property that has been accepted, hired, rented or leased for use, processing, safekeeping, transport or for other purposes (e.g. on consignment, for exhibition).

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**B2.22 Product liability, ionizing radiation, nuclear damage, asbestos, genetic engineering**

The insurance does not cover claims in connection with

- product liability losses;
- the action of electromagnetic fields (EMF) and ionizing radiation;
- nuclear losses as defined in the Swiss legislation on nuclear energy liability, and the costs associated with such losses;
- asbestos;
- genetically modified organisms or products that are deemed to be equivalent to them, and pathogenic organisms.

This exclusion does not apply to financial loss arising from consultancy services and the representation of parties involved in related cases.

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**B2.23 Patents, licenses, research results, software**

The insurance does not cover claims arising from the provision of patents, licenses, research findings, formulas, recipes, software as well as construction, manufacturing and building plans to third parties.

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**B2.24 Keeper or use of motor vehicles, air- or watercraft**

The insurance does not cover claims arising from liability as keeper of or from the use of motor vehicles, aircraft, and watercraft.

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**B2.25 Acts of daring**

The insurance does not cover claims in connection with acts of daring as defined in the Federal Act on Accident Insurance.

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**B2.26 War**

The insurance does not cover claims in connection with war and civil war.

## Part C

# Scope of Insurance – Special Provisions

### C1 Waiver of defense of gross negligence

AXA waives its right under Art. 14 para. 2 of the Federal Insurance Contracts Act (ICA) to reduce its indemnities if the event was caused by the insured through gross negligence.

### C2 Loss of documents and electronic data

#### C2.1 Scope of coverage

The insurance covers liability arising from the destruction, damage or loss of documents which were in the possession of the insured or of a person to whom the insured had entrusted such documents. The foregoing is in amendment of B2.21.

Documents are also deemed to include entrusted electronic data with the exception of source code. It is a prerequisite for indemnity that the lost electronic data must not originally have been entered or modified by an insured. Insurance coverage is limited to the costs and outlay incurred for restoration or replacement. If the insured itself undertakes the replacement of documents, AXA shall only pay the prime costs.

B2.11 and B2.15 remain reserved.

#### C2.2 Duties

Insured parties must back up electronic data at least once per week and must demonstrate that standard and up-to-date protective systems such as antivirus software or firewalls are in use.

### C3 Liability for cyber risks

#### C3.1 Scope of coverage

The insurance covers claims arising from damage caused through malware such as viruses or trojans, if such malware was introduced by an insured into computer systems of third parties. The foregoing is in amendment of B2.21.

#### C3.2 Duties

The insured must demonstrate the implementation of standard and up-to-date protective systems such as anti-virus software or firewalls.

### C4 Loss-of-reputation costs

If the public standing or good reputation of an insured is demonstrably compromised because of an insured claim, AXA assumes the costs for restoring the standing and good reputation of the insured.

The costs of restoring standing and good reputation include all necessary and reasonable expenditure by an independent PR expert approved in advance by AXA in writing.

### C5 Liability during business trips

The insurance covers the insureds' liability for bodily injury and property damage during trips and stays for business purposes, both in the course of professional activities as well as private individuals in their daily life.

However, this shall apply only if no other liability coverage is in force.

The insurance also covers claims arising from damage to premises such as hotel rooms or apartments used by insureds. The foregoing is in amendment of B2.21.

The insurance covers claims arising from losses that occur anywhere in the world, including the USA and Canada. B2.18 is not applicable.

### C6 Ancillary risks

The insurance covers claims arising from bodily injury and property damage in connection with the following ancillary risks of business operations:

- participation in trade fairs;
- staging of company, sports or leisure events;
- use by an insured of bicycles and motor vehicles with weak motorization or low speeds as defined by the Swiss Motor Insurance Ordinance (pedal electric bicycles with motor assistance up to a maximum of 25 km/h, motor-assisted hand carts, etc.). The coverage excludes journeys to and from work;
- operation of staff restaurants;
- company club activities.

### C7 Real estate

#### C7.1 Premises liability

The insurance covers liability for bodily injury and property damage that is attributable to the policyholder's real property, buildings, premises and installations in Switzerland and the Principality of Liechtenstein, regardless of whether or not they serve the purposes of the insured operation.

#### C7.2 Co-owned property (incl. condominiums)

In addition, the following applies to real property, buildings, and premises as defined in C7.1 that are co-owned or owned as a condominium: The insurance also covers claims arising from damage the cause of which lies in building parts (including related installations and equipment) and real property to which an insured has an exclusive right of use.

The insurance does not cover claims

- brought by the community of owners as a result of damage to jointly used parts of the building (including associated installations and facilities) and real property, for the part of the damage corresponding to the insured's share of the property.
- of another co-owner arising from losses the cause of which lies in jointly used parts of the building (incl. associated facilities and installations) and real property, for the part of the damage corresponding to the other co-owners' share of the property.

#### C7.3 Common ownership

If real property, buildings and premises as defined in C7.1 are owned in common, claims brought against an insured in its capacity as owner-in-common are also insured.

The insurance does not cover claims arising from losses of the owners-in-common.

## **C8 Construction work (owners' liability)**

### **C8.1 Scope of coverage**

The following applies if buildings or parts thereof are constructed, extended or remodeled: The insurance covers claims arising from bodily injury and property damage incurred from demolition, earthmoving and construction work that are brought against an insured as the person who commissioned the work (construction owner) or against the owner of the real property as defined in E6.4.

### **C8.2 Exclusions**

The insurance does not cover claims in connection with a construction project:

- whose total cost as defined in the estimate exceeds CHF 1,000,000.00;
- that involves an excavation pit with a depth of more than one story;
- on a slope with a gradient exceeding 25%;
- that involves underpinning or undercrossing a neighboring structure;
- that involves abutting a structure belonging to a third party;
- that involves lowering the water table;
- for which work causing strong vibrations (e.g. blasting or pile-driving) is performed;
- that involves vibratory sheet piling or extraction;
- that requires drilling into the ground (e.g. for heat probes, pile foundations);
- which affect the construction project itself or the involved site;
- in connection with the reduced flow or drying-up of sources.

## **C9 Land, buildings and premises that are rented, leased or held under a usufructuary lease**

### **C9.1 Insured premises**

The insurance covers claims arising from property damage affecting:

- real estate, buildings and premises that are rented, leased or held under a usufructuary lease;
- parts of buildings and premises (such as lobbies, staircases or parking areas) that are shared with other tenants, lessees, leaseholders, or with the owner;
- heating and hot water supply systems, passenger and freight elevators, escalators, as well as air conditioning, ventilation and plumbing facilities exclusively serving the listed buildings and premises.

The foregoing is in amendment of B2.21.

### **C9.2 Lost keys**

If keys issued to the buildings and premises listed in C9.1 are lost, the cost of the necessary changing or replacement of locks and corresponding keys is insured (cost of changing locks). Electronic lock systems and their associated badges are treated in the same way as locks and keys.

### **C9.3 Exclusions**

The insurance does not cover claims arising from:

- damage to sports facilities, stadiums, theaters, concert halls, fair and exhibition halls;
- damage to premises that are used for storing poisonous or corrosive materials or substances, if the damage can be attributed to the action of such materials or substances;
- damage to buildings and premises that are rented, leased, or held under a usufructuary lease for less than 6 months;
- damage to living accommodation rented for employees and auxiliaries, e.g. expatriates;
- damage arising from the gradual effect of moisture;
- damage that occurs over time – e.g. from wear and tear, deterioration of wallpaper and paintwork;
- expenses for restoring real property, buildings or premises to their original condition after they were deliberately modified either by or on the instructions of an insured;
- losses involving furniture, machines and apparatuses, even if they are permanently attached to the real property, buildings or premises. C9.1 3rd bullet remains reserved.

### **C9.4 Deductible**

The deductible shall be applied only once for all claims together that are made on termination of the rental agreement, lease or usufructuary lease. The time of handover of buildings and premises to the landlord, lessor or other party leasing the property shall be relevant.

## **C10 Rented telecommunication systems**

The insurance covers claims arising from property damage to rented or leased telecommunication systems such as telephones, fax machines, videotext devices, videophones, videoconferencing systems, answering machines, voice-mail servers, and cables belonging directly to these devices, as well as internal switchboards. The foregoing is in amendment of B2.21. The insurance does not cover claims arising from damage to mobile telephones, pagers, radio systems, PCs (mobile and stationary units), network and mainframe computer systems, cable networks, software and data.

## **C11 Keys entrusted for safekeeping**

### **C11.1 Scope of coverage**

The insurance also covers claims by third parties for changing or replacing locks and the corresponding keys (cost of changing locks) as necessary in case of the loss of keys that have been entrusted for real property, buildings, premises or facilities in or on which an insured must carry out work, or which are managed by an insured. Such costs are deemed to be property damage. The foregoing is in amendment of B2.21. Electronic lock systems and their associated badges are treated in the same way as locks and keys.

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**C11.2 Duty**

The insured must notify the client immediately if keys or badges are lost. Failure to do so releases AXA from its obligation to pay indemnities under the terms of A8.1.

**C12 Environmental impairment**

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Environmental impairment is any sustained disturbance of air, water (including groundwater), soil, flora or fauna caused by any influence; as well as any situation defined by the applicable law as environmental impairment. The following applies to claims in connection with environmental impairment:

**C12.1 Scope of coverage**

The insurance covers claims arising from bodily injury and property damage in connection with environmental impairment,

- if such impairment results from a single, sudden and unforeseen event requiring immediate action, such as notifying the responsible authorities, alerting the public, or implementing loss prevention or mitigation measures, etc;
- if, as a result of corrosion or leaks in an installation permanently connected to the site, the release of substances such as liquid fuels, acids, bases, and other chemicals (but not sewage and other waste products from the operation) that represent a hazard to the ground or water, result in environmental impairment, provided that the situation requires immediate measures as described in the previous paragraph. In such case, coverage is provided only if the policyholder can prove that the installation in question was built, maintained, or shut down properly and in accordance with applicable regulations.

**C12.2 Exclusions**

In addition to the General Exclusions as per B2, the insurance coverage does not apply in the following cases:

- if only several events with a like effect (e.g. repeated dripping of hazardous substances into the ground, repeated spillage of liquids from mobile containers) jointly trigger measures as defined above that would not have been necessary for single events of this kind;
- in connection with restoring protected species or habitats;
- damage to the air and to water, soil, flora and fauna not subject to rights of ownership under civil law;
- claims related to waste deposits and existing ground or water contamination when the contract was concluded, on real property owned by or in the possession of an insured, or on real property of a third party, caused in whole or part by an insured;
- claims arising in connection with the ownership, possession or operation of facilities used for storing, preparing, routing, or eliminating waste, waste products, sewage, or recycled materials. This exclusion does not apply to the operation's own facilities used for the composting or short-term storage of waste and other waste products, or to those used for treating or preparing sewage.

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**C12.3 Duties**

The insured must ensure that:

- the production, processing, collection, storage, cleaning and removal of environmentally hazardous substances complies with statutory rules and governmental regulations;
- the facilities used for the above activities, including safety, security and alarm installations, are professionally maintained and kept operational in accordance with technical norms, statutory rules and governmental regulations;
- remediation and similar orders issued by public authorities are complied with within the set deadlines.

**C13 Loss prevention**

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**C13.1 Loss event**

Loss prevention costs are insured if the occurrence of an insured bodily injury or damage to property is imminent due to a sudden and unforeseeable single event. Loss prevention costs are deemed to be the costs of reasonable immediate measures taken to avoid the occurrence of an insured event.

The insurance does not cover measures taken after the hazard was averted – e.g. disposal of faulty products. If an instance of environmental impairment due to an event or situation as defined in C12.1 has occurred or is imminent, the following applies: The insurance also covers costs borne by the insured parties which are incurred due to measures ordered by the public authorities to avert the imminent sustained impairment of the condition of a third party's soil or water.

**C13.2 Exclusions**

The insurance coverage does not include, in addition to B2:

- loss prevention measures serving the purpose of the proper performance of a contract, such as remedying defects and damage to items that have been produced or delivered, or to work that has been completed;
- the cost of eliminating a hazardous condition as defined in A8.2;
- costs incurred in connection with recalling or taking back items, preparatory work necessary in this regard, or other costs incurred or measures taken in place of recalling or taking back property;
- costs of identifying leaks, malfunctions and causes of damage, including the necessary emptying of systems, containers and pipes, as well as the costs of repairs and modifications to such (e.g. refurbishment costs);
- the cost of loss prevention measures taken on account of snowfall or the accumulation of ice;
- the cost of loss prevention measures in case of financial loss.

## **C14 Loading and unloading of vehicles**

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The insurance covers claims arising from property damage to land vehicles and watercraft (including superstructures and trailers), as well as to aircraft, through loading or unloading them with general cargo. General cargo is deemed to be items that are loaded or unloaded separately: machinery, equipment, construction components (such as doors, windows, girders), pallets, and containers of all types (such as boxes, crates, barrels, and canisters).

The insurance does not cover claims arising from damage to land vehicles, watercraft and aircraft that an insured has borrowed, rented or leased.

## **C15 Releases from liability**

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If the insured has entered into a liability agreement that is more favorable than liability rules in law, AXA will waive the enforcement of such an agreement:

- if it cannot be implemented by the insured;
- if the insured is unwilling to implement the agreement, e.g. due to aspects of business policy.

# Part D

## Claims

### D1 Indemnification

#### D1.1 Compensation for justified claims

Within the scope of coverage and statutory liability provisions, AXA shall indemnify the amount that the insured is liable to pay the injured party. AXA may pay compensation directly to the injured party.

#### D1.2 Defense against unjustified claims

AXA assumes the cost of defense against unjustified or excessive claims for damages, provided that they relate to an insured event.

#### D1.3 Limitation of indemnities

##### D1.3.1 Amount of indemnification

AXA's indemnities for all claims and all additional payments is limited to the insured sum stipulated in the policy. This includes interest on damages, loss reduction costs, attorney fees, court costs, costs of expert opinions, arbitration and mediation, loss prevention costs and other costs, such as indemnification of the opposing party's legal expenses. Some risks included in the insurance may be subject to a sublimit stipulated in the policy (lower amount within the insured sum). If such claims and costs – including those in connection with risks to which sublimits apply – per event or serial loss exceed the sum insured stipulated in the policy, AXA's maximum indemnity shall be limited by the sum insured (maximum compensation). The amount of insurance or sublimit is reduced by the agreed deductible in each case.

##### D1.3.2 Single limit

The amount of insurance or the sublimit constitutes a single limit per insurance year. It is paid out as a maximum once for losses and costs of claims made during the same insurance year. D1.4 is reserved.

#### D1.4 Right to reinstatement

The policyholder shall have the right to purchase an additional sum of insurance from AXA, equal to the original insured sum for the remaining period of the current insurance year, for a premium to be agreed. Sublimits cannot be purchased separately.

The right to reinstatement is subject to the following conditions:

- the insured has reported a loss event covered by this contract or circumstances as defined in A3.2, and
- the policyholder requests an additional amount of insurance from AXA in writing by the end of the insurance year at the latest.

The additional insured sum purchased does not apply to claims arising from losses where an insured was aware of an action or omission that constituted grounds for its liability at the time the additional insured sum was purchased. The additional insured sum cannot be cumulated with other sums insured for previously reported loss events. Only one additional sum insured can be purchased for each loss event.

#### D1.5 Other insurance

If another insurer is obligated to indemnify the same loss or serial loss, AXA's indemnity is limited to that part of the compensation:

- which exceeds the sum insured or sublimits of the other insurance (difference in limits coverage);
- which exceeds the scope of coverage of the other insurance (difference in conditions coverage).

Indemnities paid under another policy are deducted from the amount of insurance or sublimits under this contract.

#### D1.6 Emergency costs

If, in an emergency, it is proven that AXA's prior written authorization for coverage of the cost of defending against a claim could not reasonably be obtained, AXA shall approve the payment of such costs retroactively. The insured, however, must inform AXA immediately and delegate all further handling of the claim to AXA.

#### D1.7 Threat of claim

If the insured is faced with the serious threat of a claim that is insured under this contract, AXA also covers preparations to defend against the claim, provided that such measures make sense and are reasonable.

#### D1.8 Internal claim handling costs

AXA's internal claim settlement costs are not deducted from the sum insured, nor are they included when defining the deductible.

### D2 Deductible

#### D2.1 Per event

The policyholder shall pay the deductible stipulated in the policy for each claim. For some risks, a special deductible shown in the policy may apply.

The deductible also applies to costs (e.g. for defending against unjustified claims).

#### D2.2 Multiple coverages

If multiple coverages with identical deductibles are triggered for the same loss event, the policyholder shall only pay the deductible once.

If deductibles with different amounts were agreed for individual coverages, the policyholder shall pay as a maximum the highest of the agreed deductibles.

#### D2.3 Reimbursement

The deductible is primarily charged to the policyholder. If AXA indemnifies the injured party without previously applying the deductible, the policyholder shall waive any objections and reimburse the amount of the deductible to AXA.

#### D2.4 Statutory requirements

If the law prescribes a lower deductible for an insured activity than the deductible stated in the policy, the statutory deductible applies for losses arising from this activity vis-à-vis the injured party.



### **D3 Claims notification and duty to provide information**

The policyholder shall notify AXA as quickly as possible of any event that could affect the insurance.

The policyholder shall inform AXA as quickly as possible if police, criminal, supervisory or administrative proceedings, or proceedings before a professional or trade organization, are instituted against an insured because of an event that can trigger the insurance.

The policyholder shall at all times and at its own expense provide AXA with, or make it aware of, all relevant information on the loss event such as correspondence, data, documents, and evidence, as well as any official and court documents such as summonses, rulings, notifications, judgments, etc. as quickly as possible. In addition, the policyholder must forward to AXA, of its own accord, any additional information on the claim and any steps taken by the injured party.

### **D4 Claims handling**

#### **D4.1 Responsibility for claims handling**

AXA will handle claims insofar as they exceed the deductible and are less than the insured sum. It shall conduct negotiations with the injured party at its own expense. In this capacity, it acts as the insured's representative, and its settlement of the injured party's claims is binding on the insured.

AXA has the right to refrain from handling claims itself. In such case, AXA shall inform the policyholder in writing that the insured may appoint an attorney by agreement with AXA. The other obligations and duties in the event of a claim continue to apply without change.

#### **D4.2 Insureds' duties**

The insureds must assist AXA in handling the claim.

#### **D4.3 Legal action**

If no agreement with the injured party is reached and the injured party files suit, AXA will, after consulting with the insureds, retain the trial attorney and manage the trial strategy, conclusion (acknowledgment, settlement or judgment), and all other steps relating to the proceedings. In this capacity, it is the insured's representative. AXA shall bear the court and attorneys' fees incurred by the insured, whereby it has the right to enter into an agreement with the defense attorney regarding the fees. AXA is entitled to any compensation for proceedings awarded to the insured. The insured is entitled to retain any personally awarded compensation for its exertions.

#### **D4.4 Settlement of claims by arbitration**

The settling of insured claims by arbitration has no impact on the insurance coverage, provided that the proceedings are conducted in accordance with the rules of the Swiss Code of Civil Procedure or the Federal Act on Private International Law.

#### **D4.5 Satisfaction of claims by settlement**

If AXA negotiates a settlement with the claimant but the insured does not agree to such an arrangement, AXA's obligation to indemnify applies only to the amount for which the claim could have been settled, taking account of the deductible. As soon as the amount of the settlement is paid to the insured, AXA will have paid all indemnities arising from the claim.

### **D5 Contractual fidelity**

The insured is obligated to maintain contractual fidelity. The insured may not enter into direct negotiations regarding compensation claims with the injured party or that party's representatives, may not acknowledge any liability or claim, may not conclude any settlement and may not pay any compensation unless AXA gives its consent. The insured shall not assign coverage claims without AXA's consent and shall not release third parties from liability.

### **D6 Recourse against insureds**

If AXA has compensated the injured directly even though coverage is restricted or suspended under the provisions of the insurance contract or the ICA, AXA has a right of recourse against the insured to the extent that AXA could have reduced or refused to pay indemnity.

### **D7 Assignment of claims**

An insured does not have the right to assign claims from this insurance without AXA's authorization.

### **D8 Limitation period under this insurance contract**

Claims under this insurance contract are time-barred five years after the event on which AXA's obligation to indemnify is based.

## Part E

### Definitions

#### E1 Bodily injury

Bodily injury is deemed to be death, physical injury or other damage to the health of individuals, including any resulting loss of assets or earnings and claims for compensation.

#### E2 Property damage

Property damage is deemed to be the destruction, damage or loss of movable and immovable property, including any subsequent loss of assets or earnings. Death, injury, loss or other damage to the health of animals are deemed to be property damage.

The impairment of the property's functions without any impairment of the property's physical substance does not constitute property damage.

Damage to and defects in software or data processed by computers, as well as any consequential loss, are deemed to be financial loss.

#### E3 Serial loss

All claims in connection with losses and loss prevention costs arising from the same cause shall be deemed to be a single event (serial loss). The number of injured parties, claimants or parties entitled to compensation is irrelevant.

The cause is deemed to be the same if the several losses can be attributed to the same action or omission (e.g. violations of a duty of care or mistakes).

A "same cause" within the meaning of this provision is given if several related circumstances can be only considered to be integrated, and thus a unit, in the light of their relationship.

#### E4 USA or Canada

USA and Canada include all states, federal territories, and provinces belonging to the United States of America or Canada, as well as all other territories that fall under the jurisdiction of these countries.

#### E5 Financial loss

Financial loss is deemed to be a loss quantifiable in monetary terms and is not attributable to any bodily injury or property damage.

#### E6 Insureds

##### E6.1 Policyholder

The insured is deemed to be the natural person or legal entity, partnership, corporation or institution designated as the "policyholder" in the policy.

If the policyholder is a partnership or jointly liable community, the partners or jointly liable members are treated in the same way as the policyholder with regard to rights and obligations.

##### E6.2 Policyholder's representatives

Representatives of the policyholder and the persons entrusted with the management or supervision of the business are deemed to be insureds in respect of their activities for the insured business.

##### E6.3 Employees and auxiliaries

The employees and other auxiliaries of the policyholder (except sub-contractors, etc. as defined in B1.2) are deemed to be insureds in connection with their activities for the insured operation.

##### E6.4 Owners of real property

Owners of real property are deemed to be insureds if the policyholder owns the building but not the land (building lease).

##### E6.5 Third parties

Third parties listed in the policy, including persons as per E6.2 to E6.4, are deemed to be insureds. They have the same rights and obligations as the policyholder.

##### E6.6 Loaned or hired persons

Persons loaned or hired from third parties (lease of labor or services) by insureds are deemed to be insureds within the scope of their activities for the insured business.

Persons loaned or hired out by insureds to a third party are not insured parties (lease of labor or services) within the scope of their activities for the third party.

##### E6.7 Continuation of mandate in place of an insured

Insureds are deemed to include persons and their employees who act in the place of the insureds in case of the death or incapacity to act of the authorized representative, on the basis of Art. 405, para. 2 of the Swiss Code of Obligations (CO). The insurance does not cover natural persons and legal entities or partnerships which engage in business similar to that of the original authorized representative on an independent and commercial basis.

##### E6.8 Spouses, heirs and legal representatives

Insureds are deemed to include spouses, registered partners, heirs and legal representatives of insureds, to the extent that claims are asserted against them instead of against the insured parties in respect of the insured activities of the latter.

##### E6.9 New companies and persons

Insureds are deemed to include new companies and persons added during the insurance year, under the contingent coverage as per A10.1.1 and A10.1.2. Newly added companies have the same rights and obligations as the policyholder.

#### E7 Insurance year

The insurance year is deemed to be the period for which the annual premium is calculated, i.e. from the beginning of the day on which the annual premium is due until the end of the day before the day on which the premium for the next insurance year is due.



## Part F

### Data Protection

While preparing and performing the contract, AXA obtains the following information:

- customer data (name, address, date of birth, gender, nationality, bank account details, etc.), stored in electronic customer files;
- application information (on the risk to be insured, answers to the questions in the application, reports by experts, information on claims experience from the previous insurer, etc.), stored in the policy files;
- contract information (contract term, insured risks and indemnities, etc.), stored in contract administration systems such as physical policy files and electronic risk databases;
- payment information (dates of premium payments, amounts owed, reminders, credit balances, etc.), stored in debt collection databases;
- data on any claims (notifications of loss, investigation reports, invoices, etc.), stored in physical claims files and electronic claims application systems.

This information is needed in order to estimate and assess the risk, manage the contract, collect the premiums on time and handle the matter correctly in the event of claim. The information must be stored for at least 10 years after the contract has ended; claims data must be stored for at least 10 years after the claim has been settled. AXA undertakes to treat the obtained information confidentially.

AXA is authorized to obtain and process the data necessary for managing the contract and handling claims. If necessary, the data may be exchanged with third parties involved in the contract, such as reinsurers and other participating insurers, as well as with pledge holders, authorities, lawyers and external experts. Information may also be passed on to other liable third parties and their liability insurers for the purpose of enforcing recourse claims. AXA is authorized to inform third parties (e.g. the relevant authorities) to whom insurance coverage has been confirmed if the insurance is suspended, amended or terminated.

Information may also be passed on for the purpose of uncovering or preventing insurance fraud.

AXA has the right to request relevant data from external providers in order to assess the creditworthiness of the client.

In connection with an insured event, medical staff providing treatment must be released from their non-disclosure obligations toward AXA.

In connection with a claim, AXA is also authorized to obtain relevant information from and inspect the files of other insurers, authorities (the police or investigating authorities, motor vehicle inspection offices, or similar offices), as well as motor vehicle manufacturers and other third parties. If necessary, the eligible claimant must authorize the offices mentioned above to disclose the relevant information as needed. Reference is made in this regard to Art. 39 of the Federal Act on Insurance Contracts.

To simplify administrative procedures, AXA Group companies operating in Switzerland and the Principality of Liechtenstein grant each other access to the following data:

- master data
- basic contract data
- claims summaries
- client profiles produced.

This data is also used for marketing purposes; advertising may be sent to the policyholder. Policyholders who do not wish to receive advertisements can give notice of this by telephoning 0800 809 809 (AXA 24-hour telephone).

Mutual access to health data is excluded.

## Need to file a claim? /

It's easy and fast – notify us of your claim online at:

**[www.axa.ch/report-claim](http://www.axa.ch/report-claim)**

AXA Winterthur  
General-Guisan-Strasse 40  
P.O. Box 357  
8401 Winterthur  
24-hour phone:  
0800 809 809  
AXA Insurance Ltd

[www.axa.ch](http://www.axa.ch)  
[www.myaxa.ch](http://www.myaxa.ch) (customer portal)



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