

华泰财险附加错误与疏漏条款（B版）

a. 错误与疏漏保险责任

本公司负责赔偿全部因被保险人或其代表存在或被指控存在与被保险人的产品相关的过失行为、过失错误或疏漏为唯一原因所直接导致的**财务损失**而依法应承担的“**赔偿金**”，但必须符合以下条件：

(1) 该过失行为、错误或疏漏的发生必须：

(a) 在此附加条款下**错误与疏漏明细表**中第(2)项所列明的“**错误与疏漏追溯日**”之后；且

(b) 在“**承保区域**”内；且

(c) 与保险合同中列明的被保险人的业务相关；且

(2) 针对被保险人的“**索赔**”的首次提出及通知本公司必须发生在此附加条款**生效日期**之后和本保险合同保险期间终止日之前。

b. 错误与疏漏责任限额

本附加条款下**错误与疏漏明细表**第(3)项所列明的金额为本公司对此附加条款下所有“**索赔**”的最大累计赔偿**责任限额**。

本附加条款的赔偿限额为保险合同中所规定的产品及完工操作责任累计赔偿限额的一部分，而非附加其上。

c. 除外责任

本附加条款不负责承保任何直接或间接由下列原因所造成、引起或相关的责任：

(1) 在本附加条款**生效日期**之前对被保险人提出的或威胁的或恐吓的“**索赔**”。

(2) 在本附加条款**生效日期**之前已经全部或部分通知本公司或其他保险人的事件。

(3) 在本附加条款**生效日期**之前存在的情形所引起的“**索赔**”，且被保险人已经知道或应该有理由知道该情形很可能引起针对被保险人的“**索赔**”。

(4) 任何**财务损失**

(a) 是由被保险人故意造成的；或

(b) 一个理性的人处在被保险人的情况下预期会发生的；

即使实际的**财务损失**的程度或类型与意图造成的或预期发生的不同。

(5) 任何被保险人或第三方由于您的产品无法使用、回收、召回、调查、修理、更换、调整、移除或处置而造成的任何**损害、损失、成本或费用**。

此第(5)项除外条款不适用于第三方因下列无法使用的情形而遭受的**财务损失**：

(a) 您的产品

(b) 含有或包含您产品的财产；或

(c) 与执行您工作有关的财产；

- (d) 与拥有，维护或使用您的产品或工作有关的。
- (6) 延迟交付，或未能交付您的产品或工作。
- (7) 任何企业主体下作为董事、秘书或监事身份的被声称的或实际的失职行为。
- (8) 被保险人发布的任何招股书或任何其他形式的公开发行人。
- (9) 被保险人的破产、倒闭或清算。
- (10) 未能或因疏漏而未投保或续保保险。
- (11) 本附加条款所附保险合同下承保的“人身损害”或“财产损失”。
- (12) 在合同或协议下所承担的任何责任，但即使没有该合同或协议存在，被保险人依法仍应承担的赔偿责任不在此限。
- (13) 由或代表以下主体提出或主张的“索赔”：
 - (a) 任何被保险人或被保险人的母公司；或
 - (b) 任何与被保险人在同一个集团公司下的实体。
- (14) 提供或未能提供有偿的专业服务或建议。
- (15) 任何主张、侵犯或违反知识产权或法律包括版权、专利、商标、商业包装、商品名、商业机密、服务商标或其他产地或真实性的标记。
- (16) 惩戒性或惩罚性赔偿；罚款或其他罚金；或任何需要加倍赔偿的赔偿金额中的加倍部分。

d. 错误与疏漏免赔额

本附加条款适用的免赔额是指在此附加条款内的错误与疏漏明细表中第（4）项所列明的金额，被保险人对该金额负责赔偿。错误与疏漏免赔额适用于每次“索赔”并且被保险人应在本公司要求时给予赔偿。本公司在此附加条款下的赔付责任仅限于在错误与疏漏免赔额之上部分。

e. 定义

以下定义仅适用于本附加条款：

- (1) “**索赔**”是指：
 - (a) 针对被保险人提出“**赔偿金**”的书面要求；或
 - (b) 针对被保险人发出的“**赔偿金**”追偿的法律程序。由同一来源或最初原因导致的所有“**索赔**”被视为一个“**索赔**”。
- (2) “**赔偿金**”是指：

因本附加条款所适用的过失行为、过失错误或疏漏，根据判决或和解所支付或待支付的金额以及任何被保险人应承担的法律费用部分。
- (3) “**错误与疏漏追溯日**”是指：

本附加条款中的**错误与疏漏明细表**中第(2)项所列明的日期。
- (4) “**财务损失**”是指

(a) 个人或组织遭受的因其有形财产

(i) 不能使用；或

(ii) 功能受损，且

(b) 因已被接受的您的产品或工作，或您的产品或工作的部分或阶段引起

任何非基于“人身伤害”、“财产损失”和“个人权利侵害和广告侵害”的纯经济上的和非间接的损失。

您的产品或工作，或您产品或工作的部分或阶段仅在该等产品或工作（或其部分或阶段）在验收时根据有效的验收标准被接受时视为已被接受。

但是：

(a) 除非对产品的占有已被放弃以实现其功能或达到其预期目的，否则产品不视为已被接受；

(b) 除非工作已经开始，否则工作不视为已被接受。

有形财产不包括软件、数据或其他电子形式的信息。

f. 承保条件

本附加条款所附之保险合同下适用于“**意外事故**”的承保条件，同样适用于本附加条款下所定义的“**索赔**”。

g. 重要提示

索赔发生制保险

本附加条款提供的保障是以索赔发生制为基础的。这意味着此条款仅承保在**保险期间**内向被保险人提出并且以书面方式通知本公司的索赔。

在所有其他方面，本保险合同维持不变。

Errors and Omissions (“Claim”s Made and Notified) Endorsement (Version B)

a. Errors and Omissions Insuring Agreement

We shall indemnify the Insured against all sums which the Insured shall become legally liable to pay as “compensation” in respect of **Financial Loss** solely and directly attributable to any negligent act, negligent error or omission committed or alleged to have been committed by or on behalf of the Insured in connection with the Insured’s products and provided that:

(1) such act, error or omission occurs:

(a) after the “**E&O Retroactive Date**” specified in Item (2) of the **Errors & Omissions Schedule** forming part of this Endorsement; and

(b) within the “coverage territory”; and

(c) in connection with Insured’s Business stated in the Policy; and

- (2) the “Claim” is first made against the Insured and notified to us after the **Effective Date** of this Endorsement and prior to the expiry of the Policy Period.

b. Errors and Omissions Limit of Liability

The maximum aggregate liability of us for all “claim”s under this Endorsement is the amount specified in Item (3) of the **Errors & Omissions Schedule** forming part of this Endorsement

The limit of this Endorsement is part of, and not in addition to the Products-Completed Operations Aggregate Limit set out in Policy.

c. Exclusions

This Endorsement does not cover any liability directly or indirectly caused by, arising out of or in any way connected with:

- (1) any “claim” made or threatened or in any way intimated against the Insured prior to the **Effective Date** of this Endorsement.
- (2) any matter notified in whole or in part to us or any other insurer before the **Effective Date** of this Endorsement.
- (3) any “claim” arising from circumstances existing prior to the **Effective Date** of this Endorsement and which the Insured knew or ought reasonably to have known were likely to give rise to a “claim” against the Insured.
- (4) any **Financial Loss**
 - (a) intended by the Insured; or
 - (b) would be expected from the standpoint of a reasonable person in the circumstances of the Insured,
even if the actual **Financial Loss** is of a different degree or type than intended or expected.
- (5) any damages, loss, cost or expense incurred by any insured or others for any loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your product.
This exclusion (5) does not apply to **Financial Loss**, sustained by others, resulting from the loss of use of:
 - (a) your product;
 - (b) property containing or incorporating your product; or
 - (c) property on which your work was performed;
 - (d) in connection with the ownership, maintenance or use of your product or your work.
- (6) delay in delivery of, or failure to deliver your product or your work.
- (7) any alleged or actual breach of a duty owed in the capacity of a director, secretary or officer of a body corporate.
- (8) the issuance by an Insured of any prospectus or any other form of public offering.
- (9) the insolvency, bankruptcy or liquidation of an Insured.
- (10) any failure or omission to effect or maintain insurance.

- (11) “bodily injury” or “property damage” which is covered by the Policy to which this Endorsement applies.
- (12) any liability assumed under a contract or agreement unless such liability would otherwise exist at law in the absence of the contract or agreement.
- (13) any “claim” brought or maintained by or on behalf of:
 - (a) any Insured or parent company of any Insured; or
 - (b) any entity within the same group of companies as the Insured.
- (14) the rendering of or failure to render professional advice or service given for a fee.
- (15) any assertion, infringement or violation of intellectual property rights or laws including copyright, patent, trademark, trade dress, trade name, trade secret, service mark or other designation of origin or authenticity.
- (16) exemplary or punitive damages; fines or other penalty; or multiple portion of any multiplied damages award.

d. Errors and Omissions Deductible

The **Deductible** applicable for this Endorsement is the amount specified in Item (4) of the **Errors and Omissions Schedule** forming part of this Endorsement payable by the Insured. The **E&O Deductible** applies to each “claim” and is payable by the Insured at such time required by the Insurer. Our liability to indemnify the Insured under this Endorsement is over and above the **E&O Deductible**.

e. Additional/Amended Definitions

For the purposes of this Endorsement only, the following definitions apply:

(1) “Claim” means

- (a) written demand against the Insured for “compensation”; or
- (b) originating process for recovery of “compensation” issued against the Insured.

All “claim”s that arise from one source or original cause are deemed to constitute one “claim”.

(2) “Compensation” means

Monies paid or payable by judgment or settlement together with any liability on the Insured’s part to pay legal costs and expenses for any negligent act, negligent error or omission in respect of which this Endorsement applies.

(3) “E&O Retroactive Date” means

The date specified in Item (2) of the **Errors and Omissions Schedule** forming part of this Endorsement.

(4) “Financial Loss” means

any loss which is economic in nature and not consequent upon “Bodily injury”, “property damage” and “Personal and advertising injury”

- (a) sustained by a person or organisation because their tangible property:
 - (i) cannot be used; or

- (ii) is less useful, and
- (b) which results from your product or your work, or a part or phase of your product or your work, that has been accepted.

Your product or your work, or a part or phase of your product or your work, will be deemed accepted only when and only to the extent that such product or work (or such part or phase) has been accepted pursuant to the acceptance criteria in effect at the time of acceptance.

But, in no event will such:

- (a) product be deemed accepted unless and until possession of the product has been relinquished to perform the function or serve the purpose intended.
- (b) work be deemed accepted unless and until the work has begun.

Tangible property does not include software, data or other information that is in electronic form.

f. Conditions

Where conditions of the Policy to which this Endorsement attaches refer to an “occurrence”, the same policy conditions are applicable in respect of a “claim” as defined in this Endorsement.

g. Important Notice

Claims Made Insurance

The cover provided by this Endorsement is provided on a Claims made basis. This means that it only covers “Claim”s made against you and notified in writing to us during the Policy Period.

h. Errors and Omissions Schedule

- (1) **Effective Date** : «date »
- (2) **E&O Retroactive Date**: «date »
- (3) **E&O Limit of Liability**: «currency »: «limits »
- (4) **E&O Deductible** : «currency »: «deduction » each and every claim

In all other respects, this Policy remains unaltered.