

Policy Wording

Excess Public and
Product Liability

Insured by



Excess Public and Product Liability Insurance Policy

Form TULAXAXLC 01/2024

Underwritten and arranged by



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1 Introduction

This policy is a contract between **You** and **Us**. It is arranged through **TUL** on **Our** behalf in accordance with the authority granted under the Contract Number stated in the **Schedule**.

This policy consists of the **Schedule**, Operative Clause, Definitions, Exclusions, Conditions and **Endorsements**, if any, all of which are a single document and are to be read as one contract. In deciding to accept this policy and in setting the terms and premium **We** have relied on the information which **You** have provided to **Us**.

Please read this policy carefully and make sure that it meets **Your** needs. If any corrections are necessary **You** should contact Your broker through whom this policy was arranged.

Please keep this policy in a safe place – **You** may need to refer to it if **You** have to make a **Claim**.

1.1 Accessibility

Upon request **We** can provide Braille, audio or large print versions of the policy and the associated documentation including the Key Facts document. If **You** require an alternative format **You** should contact **Your** broker through whom this policy was arranged.

1.2 Data Protection Act

Any information provided to **Us** regarding **You** or any person insured will be processed by **Us**, in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling **Claims** or complaints, if any. This may necessitate providing such information to third parties.

AXA XL Insurance Company UK Limited

For information about how we process your personal information, please see our full privacy notice at: <https://axaxl.com/privacy-and-cookies>

1.3 Third Party Rights

A person who is not a party to this contract of insurance has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract of insurance but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

1.4 Law and Jurisdiction

The parties are free to choose the law applicable to this contract of insurance. Unless specifically agreed to the contrary this contract of insurance shall be governed by English law and subject to the exclusive jurisdiction of the courts of England and Wales. The language of this contract of insurance and all communications relating to it will be in English.

1.5 Cancellation and Cooling Off Period

(a) Your Right to Cancel during the Cooling-Off Period

You are entitled to cancel this policy by notifying **Us** in writing **by email** within fourteen (14) days of either:

- (i) the date **You** receive this policy; or
- (ii) the start of **Your Period of Insurance**;

whichever is the later.

A full refund of any premium paid will be made unless **You** have made a **Claim** in which case the full annual premium is due.

(b) Your Right to Cancel after the Cooling-Off Period

You are entitled to cancel this policy after the cooling-off period by notifying **Us** in writing, **by email**. Cancellation will be effective from the date of such notice to cancel. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the policy has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

(c) Our Right to Cancel

We are entitled to cancel this policy, if there is a valid reason to do so, including for example:

- (i) any failure by **You** to pay the premium; or
- (ii) a change in risk which means **We** can no longer provide **You** with insurance cover; or
- (iii) non-cooperation or failure to supply any information or documentation **We** request, such as details of a **Claim**;

by giving **You** fourteen (14) days' notice in writing. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the policy has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

1.6 Information You Have Given Us

In deciding to accept this policy and in setting the terms including premium **We** have relied on the information which **You** have provided to **Us**. **You** must take care when answering any questions **We** ask by ensuring that any information provided is accurate and complete.

If **We** establish that **You** deliberately or recklessly provided **Us** with untrue or misleading information **We** will have the right to:

- (a) treat this policy as if it never existed;
- (b) decline all **Claims**; and
- (c) retain the premium.

If **We** establish that **You** carelessly provided **Us** with untrue or misleading information **We** will have the right to:

- (i) treat this policy as if it never existed, refuse to pay any **Claim** and return the premium **You** have paid, if **We** would not have provided **You** with cover;
- (ii) treat this policy as if it had been entered into on different terms from those agreed, if **We** would have provided **You** with cover on different terms;
- (iii) reduce the amount **We** pay on any **Claim** in the proportion that the premium **You** have paid bears to the premium **We** would have charged **You**, if **We** would have charged **You** more.

We will notify **You** in writing if (i), (ii) and/or (iii) apply.

If there is no outstanding **Claim** and (ii) and/or (iii) apply, **We** will have the right to:

- (1) give **You** thirty (30) days' notice that **We** are terminating this policy; or
- (2) give **You** notice that **We** will treat this policy and any future **Claim** in accordance with (ii) and/or (iii), in which case **You** may then give **Us** thirty (30) days' notice that **You** are terminating this policy;

in accordance with the Cancellation and Cooling-Off Period Provisions.

1.7 Changes We Need to Know About

You must tell **Us** as soon as practicably possible of any change in the information **You** have provided to **Us** which happen before or during any **Period of Insurance**.

When **We** are notified of a change **We** will tell **You** if this affects **Your** policy. For example **We** may cancel **Your** policy in accordance with the Cancellation and Cooling-Off Provisions, amend the terms of **Your** policy or require **You** to pay more for **Your** insurance. If **You** do not inform **Us** about a change it may affect any **Claim** **You** make or could result in **Your** insurance being invalid.

1.8 Fraud

If **You**, or anyone acting for **You**, makes a **Claim** which is fraudulent and/or intentionally exaggerated and/or supported by a fraudulent statement or other device, **We** will not pay any part of **Your** **Claim** or any other **Claim** **You** have made or may make under this policy. In addition, **We** will have the right to:

- (a) treat this policy as if it never existed, or at **Our** option terminate this policy, without returning any premium that **You** have paid;
- (b) recover from **You** any amounts that **We** have paid in respect of any **Claim**, whether such **Claim** was made before or after the fraudulent **Claim**; and
- (c) refuse any other benefit under this policy.

1.9 Sanctions

We shall not provide any benefit under this policy to the extent of providing cover, payment of any **Claim** or the provision of any benefit where doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

1.10 Contact Service

If **You** have any question, **You** may contact **TUL** through whom this policy was placed.

Operations Director
Touchstone Underwriting Limited
Meridien House
71 Clarendon Road
Watford
WD17 1DS

Telephone Number: 01923 298 440
E-mail: servicedelivery@t-u-l.co.uk

1.11 Complaints Procedure

We are dedicated to providing a high quality service and **We** want to ensure that **We** maintain this at all times.

If **You** wish to make a complaint **You** can do so at any time by referring the matter to:

Complaints Department
XL Catlin Services SE, UK Branch
20 Gracechurch Street

London
EC3V 0BG
United Kingdom

Telephone Number: +44 (0)20 7743 8487
E-mail: axaxlukcomplaints@axaxl.com

XL Catlin Services SE acts on **Our** behalf in the administration of complaints.

If **You** remain dissatisfied after the Complaints Department has considered **Your** complaint, or **You** have not received a final decision within eight (8) weeks, **You** can refer **Your** complaint to the Financial Ombudsman Service at:

Financial Ombudsman Service
Exchange Tower
London
E14 9SR
E-mail: complaint.info@financial-ombudsman.org.uk

From within the United Kingdom

Telephone Number: 0800 0234 567
(calls to this number are free on mobiles and landlines)
Telephone Number: 0300 1239 123
(calls to this number costs no more than calls to 01 and 02 numbers)

From outside the United Kingdom

Telephone Number: +44(0)20 7964 0500
Fax Number: +44(0)20 7964 1001
Text Number: 07860 027 586 Call Back Service

The Financial Ombudsman Service can look into most complaints from consumers and small businesses. For more information contact them on the above number or address, or view their website: www.financial-ombudsman.org.uk

1.12 Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the Scheme if **We** are unable to meet **Our** obligations under this policy. If **You** are entitled to compensation under the Scheme, the level and extent of the compensation will depend on the nature of this policy. Further information about the Scheme is available from the Financial Services Compensation Scheme (PO Box 300, Mitcheldean, GL17 1DY) and on their website: www.fscs.org.uk.

We are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Firm Reference No. 423308).

Our registered office is 20 Gracechurch Street, London, EC3V 0BG, United Kingdom.

Registered in England No. 5328622.

TUL are authorised and regulated by the Financial conduct Authority (Firm Reference No. 476414). Registered office is Meridien House, 71 Clarendon Road, Watford, Hertfordshire, WD17 1DS. Registered in England No. 02264985.

You can check this out on the FCA's website at www.fca.org.uk which includes a register of all the firms they regulate or by calling the FCA on 0800 111 6768.

1.13 Regulatory Information

2 Operative Clause

In consideration of the payment of the premium stated in the **Schedule**, the **Insurer** will cover the **Insured** against their legal liability to pay damages or compensation for or arising out of any **Insured Event** covered by the **Underlying Insurance** and in the manner and to the extent stated herein.

When a loss is notified under the **Underlying Insurance** such that the loss falls within the period of the **Underlying Insurance**, that date is determinative of whether the loss falls within the **Period of Insurance**.

Except as otherwise provided in this policy, the terms, conditions and exclusions of the **Underlying Insurance** which applied at the time of the **Insured Event** for which cover is sought under this policy shall also be applicable unless they conflict with any of the terms of this policy, including the **Schedule**, in which case the terms of this policy shall prevail.

The **Insurer** will cover the **Insured** either:

- (a) up to the Limit of Liability stated in the **Schedule** for all damages or compensation including costs, fees and expenses where the **Underlying Insurance** provides for costs and expenses to be inclusive of the **Underlying Insurance**; or
- (b) up to the Limit of Liability stated in the **Schedule** for all damages or compensation with costs, fees (b)and expenses payable in addition where the **Underlying Insurance** provides for costs and expenses to be in addition to the **Underlying Insurance**. The liability of the **Insurer** for such costs, fees and expenses shall be limited to that proportion which the amount payable under this policy, excluding such costs, fees and expenses, bears to the total sum payable under all contributing policies, excluding such costs, fees and expenses.

Provided always that:

- (i) liability under this policy shall not attach unless and until the **Underlying Insurers** have paid or have admitted liability or have been held liable to pay the **Underlying Insurance** and the **Insured** has been adjudged liable to pay a sum which exceeds the **Underlying Insurance**.
- (ii) if the **Underlying Insurers** exercise a right under their policies to pay the **Underlying Insurance** and are liable only for costs, fees and expenses incurred up to the time of such payment then the **Insurer** will only pay that proportion of the costs, fees and expenses for which it would have been liable had the **Underlying Insurers** not exercised that right.
- (iii) in the event of exhaustion of any aggregate **Underlying**

Insurance whether partial or total by reason of claims paid, or which they have been held liable to pay, the **Insurer** shall:

- (1) in the event of partial exhaustion provide cover in excess of the reduced **Underlying Insurance**; or
- (2) in the event of total exhaustion continue this policy in force as the **Underlying Insurance** subject to the terms and conditions of this policy.
- (iv) where the **Underlying Insurance** is not concurrent with this policy and the aggregate limit of the **Underlying Insurance**, if any, has been eroded before this policy incepted, the **Insurer** will accept the erosion only where it has been previously advised to the **Insurer**. In any case, the aggregate limit of this policy, if any, will continue to apply.
- (v) any decision of the **Underlying Insurers** to accept a claim ex-gratia or without the prior written acceptance of the **Insurer**:
 - (1) shall not be binding on the **Insurer**;
 - (2) shall not operate to erode any aggregate **Underlying Insurance**.
- (vi) any action or decision of the **Underlying Insurers** which prejudices the **Insurer** in the conduct or settlement of any claim under this policy shall not be binding on the **Insurer**.

This policy shall not apply to any coverage provided by the **Underlying Insurance** for which a separate sub-limit applies for an amount less than the Underlying Limit of Liability stated in the **Schedule**. A "separate sub-limit" for the purposes of this clause means a cover, for referred to in the Limit of Liability stated in the **Schedule**, in respect of which a loss payment will not contribute to the erosion of any aggregate limit specified as the **Underlying Insurance**.

This policy shall not apply to any coverage provided by the **Underlying Insurance** for which a sub-limit applies for an amount less than the Underlying Limit of Liability stated in the **Schedule**.

This policy shall not apply to any coverage provided by the **Underlying Insurance** for which an unlimited amount of cover or any unlimited insurance period applies, nor shall any payment in respect to such coverage operate to reduce the attachment point of this policy through an erosion of any aggregate limit of liability of the **Underlying Insurance**.

Where the **Underlying Insurance** is subject to an aggregate Limit of Liability that is greater than its each and every **Claim** limit, no provision of the **Underlying Insurance** shall operate to

make the **Insurer** liable before the full amount of the **Underlying Insurance's** aggregate limit has been exhausted except where and to the extent a single loss has exceeded the each and every **Claim** Underlying Limit of Liability.

3 Definitions

3.1 "Claim" shall have the same meaning as defined in the **Underlying Insurance** or, if not defined in the **Underlying Insurance**, shall mean:

- (a) a written demand for damages or other remedy made by a third party in accordance with the laws of the **United Kingdom**; or
- (b) where applicable, proceedings brought under the jurisdiction of a competent court or tribunal within the **United Kingdom**; or
- (c) an award made by a competent court or tribunal anywhere in the world to enforce a judgement, award or settlement made in accordance with the laws of or under the jurisdiction of the **United Kingdom**.

3.2 "Insured / You / Your" means the person, persons or corporate body or other entity named in the Schedule and as covered by the **Underlying Insurance** but excluding any entity registered under the laws of the United States of America or Canada or domiciled or operating in those countries.

3.3 "Insured Event" means

- (a) bodily injury to or death, disease or illness of any person;
- (b) loss of or damage to property;
- (c) any other event in respect of which the **Insurer** has agreed to provide cover;

all as more specifically defined in the **Underlying Insurance**.

3.4 "Insurer / We / Us" means AXA XL Insurance Company UK Limited.

3.5 "Period of Insurance" means the period stated in the Schedule.

3.6 "Pollution" shall have the same meaning as defined in the **Underlying Insurance**, or if not defined in the **Underlying Insurance**, shall mean:

- (a) any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including for example smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including for example material to be recycled, reconditioned or reclaimed) or contamination of any kind of the atmosphere or of any water, land, buildings or other tangible property, and
- (b) any loss, damage or bodily injury directly or indirectly caused by or arising from the above.

3.7 "Schedule" means the document entitled Schedule that relates to and forms part of this policy.

3.8 "Terrorism" means an act, including for example the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

3.9 "TUL" means Touchstone Underwriting Limited.

3.10 "Underlying Insurance" means the primary policy and all policies providing cover in excess of the primary policy up to the Underlying Limit of Liability stated in the **Schedule**.

3.11 "Underlying Insurers" means the primary policy insurer and all insurers providing cover in excess of the primary policy insurer up to the Underlying Limit of Liability stated in the **Schedule**.

3.12 "United Kingdom" means England, Wales, Scotland, Northern Ireland, the Isle of Man and the Channel Islands.

4 Policy Exclusions

This policy does not apply to or include cover for or arising out of or relating to:

4.1 Abuse

any act that results in the maltreatment of a person and which may be of physical, sexual, verbal, psychological or emotional or financial nature.

4.2 Asbestos

the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss or in respect of that part of any property insured by this policy which consists of asbestos.

4.3 Liquidated Damages

liquidated damages clauses, penalty clauses, performance warranties or similar provision in a contract unless it is proven that liability would have attached in the absence of such clauses, warranties or similar provisions.

4.4 Pollution

Pollution other than caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the **Period of Insurance**.

Provided that:

- (a) all **Pollution** which arises out of such incident shall be understood to have occurred at the time such incident takes place.
- (b) the liability of the **Insurer** for all compensation payable in respect of all **Pollution** which is understood to have occurred during any one **Period of Insurance** shall not exceed in the aggregate the amount stated in the **Schedule** as the Limit of Liability for Public and Product Liability.

4.5 Radioactive Contamination

- (a) ionising radiations 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.

4.6 Terrorism

any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss. This exclusion also applies to any action taken in controlling, preventing, suppressing or in any way relating to any act of **Terrorism**.

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

4.7 Mould or Fungus

- (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind;
- (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- (c) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

4.8 War

war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

5 Policy Conditions

5.1 Assistance and Co-operation

In the event of **Claim**, the **Insured** and any person insured must provide the **Insurer** with such information, assistance and co-operation as the **Insurer** and/or its representative may request. The **Insurer** shall be entitled to refuse to pay, or reduce the amount they pay, for any **Claim** under this policy, if **Insured** does not comply with this condition.

5.2 Claim Notification

The **Insured** must give to the **Insurer** notice in writing to the Notification Address set out below as soon as practicably possible, and at the latest within thirty (30) days, after becoming aware of the happening of any **Insured Event** or a **Claim** being made against the **Insured**, or any circumstance which may give rise to a **Claim**, which is likely to involve an amount in excess of 25% of the **Underlying Insurance**.

The **Insurer** shall be entitled to and shall, upon request of the **Insured**, be given the right to full co-operation with the **Underlying Insurers** in their conduct in the defence or settlement of any **Claim** in excess of 25% of the **Underlying Insurance**.

Upon the **Insured** or **Insurer** becoming aware of the happening of any **Insured Event** or a **Claim** being made against the **Insured**, or any circumstance which may give rise to a **Claim**, which is likely to involve an amount in excess of 25% of the **Underlying Insurance**, the **Insurer** shall be entitled, but not obligated, to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** or to prosecute in the name of the **Insured** for its own benefit any claim for compensation or damages or otherwise and shall have full discretion in the conduct of any proceedings. The **Insurer**, however, shall not defend a **Claim** against the wishes of the **Insured** unless a Queen's Counsel to be mutually decided upon by the **Insurer** and the **Insured** and whose expenses shall be assumed by the **Insurer** shall advise that such proceedings can be contested with a likely prospect of success.

Notification Address

Claims Department
AXA XL Insurance Company UK Limited.
20 Gracechurch Street
London
EC3V 0BG

The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if such notice is not received.

5.3 Documents Relevant to a Claim

The **Insured** or any person insured must ensure that all documents relevant to any **Claim** and any circumstance which is likely to give rise to a **Claim** are not destroyed or otherwise disposed of. The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if the **Insured** or any person insured fails to do so.

5.4 Following Form

This policy is subject to the same terms and conditions (except as regards to the premium, settlements, limits of liability and as otherwise provided herein to the contrary) as the **Underlying Insurance** at the inception of this policy. No amendment to the **Underlying Insurance** for which an additional premium or rate is charged during the **Period of Insurance** shall be effective in extending the scope of this policy without the written acceptance of the **Insurer**.

The **Insurer** shall not be bound by any provision of the **Underlying Insurance** in relation to any:

- (a) renewal agreement or extension of period;
- (b) long term agreement;
- (c) extended reporting period option exercisable by either party;
- (d) no or low claims or good experience bonus;
- (e) arbitration agreement or choice of law or jurisdiction clause; or
- (f) duty to defend provision;

unless the explicit prior consent of the **Insurer** is obtained in writing.

5.5 Incurring of Costs

In the event of a **Claim** arising to which the **Insurer** may be liable to contribute, no costs, fees or expenses shall be incurred on its behalf without its written consent being first obtained and if it so consents it shall contribute to the said costs, fees or expenses on the basis stated in the Operative Clause. If, however, a settlement of the **Claim** is practicable prior to taking the case into court, whether by compromise or otherwise, for a sum not exceeding the **Underlying Insurance**, no costs, fees or expenses shall be payable by the **Insurer**. No settlement of any **Claim** by agreement shall be effected by the **Insured** for a sum in excess of the **Underlying Insurance** without the written consent of the **Insurer**.

5.6 Insolvency

The insolvency, bankruptcy, receivership or any refusal or inability to pay of the **Insured** and/or any insurer shall not operate to:

- (a) reduce or exhaust the **Underlying Insurance**; or
- (b) increase the **Insurer's** liability under this policy.

5.7 Maintenance of Underlying Insurance

The **Underlying Insurance** shall be maintained in full effect during the **Period of Insurance** except for any reduction of any aggregate **Underlying Insurance** solely by payment of **Claims** by the **Underlying Insurers**.

5.8 Non-Admission of Liability

No admission, offer, promise or payment is to be made or given by or on behalf of the **Insured** or any person insured without the written consent of the **Insurer**. The **Insurer** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if any such admission, offer, promise or payment is made.

5.9 Premium Adjustment

Where the premium is provisionally based on the **Insured's** estimates, the **Insured** shall keep accurate records and within ninety (90) days of expiry of the **Period of Insurance** declare such details as the **Insurer** requires. The premium shall then be adjusted and any difference paid or allowed to the **Insured** as the case may be. Failure to declare such details to the **Insurer** will entitle the **Insurer** to make its own estimate and adjust the premium accordingly.

5.10 Recoveries

All recoveries or payments recovered or received subsequent to payment of a loss under this policy shall be applied as if recovered or received prior to such payment and all necessary adjustments shall then be made between the **Insurer**, the **Underlying Insurers** and the **Insured**. The **Insurer** will contribute its share and no more of the costs of any recovery in the proportion of the benefit it has received from the recovery.

Underwritten and arranged by



5th Floor
Meridian House
71 Clarendon Road
Watford WD17 1DS

Touchstone Underwriting is a trading name of Touchstone Underwriting Limited Authorised and regulated by the Financial Conduct Authority.
Registered in England No.02264985
Part of the Seventeen Group Limited of Companies

TUL XSPL03/21 (TSXCL 11/23)

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