

TERMS OF BUSINESS AGREEMENT (TOBA / The Agreement)

This agreement regulates the terms of business between **the Company** and **the Agent** for the Authorised Classes set out in the Schedule attached to this TOBA and is to read and interpreted with the Schedule attached to this TOBA as a single document and agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement

- 'Agent' means the Agent or Agents defined on the Schedule to this Agreement.
- 'Appointed Representative' has the meaning set out in section 39 of the FSMA.
- 'Client' means a person or persons or a legal entity who or which is a policyholder or a prospective policyholder.
- 'Commission' means the commission payable to the Agent by the Company in accordance with the terms of this Agreement.
- 'Commencement Date' means 14th January 2005 or the date shown in the Schedule to this Agreement whichever is the later.
- 'Company' means the Company or Companies defined on the Schedule to this Agreement.
- 'Enforcement Action' means any formal action begun by the FSA which involves the issue by the FSA of a warning notice, decision notice or final notice under FSMA.
- 'FSA' means the Financial Services Authority.
- 'FSA Rules' means all rules made pursuant to the FSA including without limitation the rules on insurance selling and administration.
- 'FSMA' means the Financial Services and Markets Act 2000.
- 'General Insurance Business' means insurance business as described within the FSA Handbook Glossary
- 'Insurer' means the risk carrier or their agent on whose behalf the Company is acting or with whom the risk is placed.
- 'IPT' means Insurance Premium Tax at the prevailing rate.

- 1.2 Where expressions are not specifically defined and are capable of having a special meaning according to the usage or custom of the relevant business, such expressions are to be interpreted accordingly. References to a party shall mean either party to this Agreement as the context dictates unless otherwise specified.
- 1.3 The singular includes the plural and vice-versa and any words importing gender include the other gender.
- 1.4 The Company is a general insurance broker and acts on behalf of various Insurers. Any business placed by the agent via the Company with the Insurer is placed following the express authority of the Insurer for the Company to accept business on the Insurer's behalf from the Agent always subject to the terms of this agreement.

2. GENERAL TERMS

- 2.1 This Agreement shall come into force on the Commencement Date and replaces any other Agency Agreement or Terms of Business Agreement issued by the Company.
- 2.2 The Schedule to the TOBA forms part of this Agreement and should be read in conjunction thereto.
- 2.3 The appointment and continuance of the agency is strictly conditional upon the Agent being authorised by the FSA for insurance selling and administration of General Insurance Business.
- 2.4 For the purposes of this Agreement the Agent shall, at all material times, be considered the agent of his client(s) in respect of all insurance advice given, transactions effected and proposal forms completed and has no authority to act on behalf of the Company unless expressly stated.
- 2.5 The parties acknowledge that the clients whose business is referred to the Company by the Agent are clients of the Agent. The Company undertakes not directly and knowingly to solicit the clients of the Agent away from the Agent during the currency of this agreement and during the period of 5 years following termination of this Agreement, subject to clause 10 of the Agreement.
- 2.6 The Company hereby agrees that all insurance business transacted in performance of this Agreement arises out of an agent/client relationship and acknowledges that the policyholders' goodwill rests with the Agent.
- 2.7 The Company reserves the right to contact the client where required to do so by virtue of any policy term or instruction from the Insurer.
- 2.8 The Agent shall not appoint any sub agent or Appointed Representative to deal with the insurance business of the Company unless specifically authorised to do so by the Company.
- 2.9 The parties hereto may, by mutual consent, agree to vary the terms and conditions of this Agreement at any time in writing. In the event of mutual consent not being attained, the Company reserves the right to give 30 days written notice of variation to the conditions of this Agreement.
- 2.10 The Agent shall immediately advise the Company in writing
 - 2.10.1 Of any changes in the structure, location or domicile of the Agency, Directors, Partners or Sole Trader as applicable
 - 2.10.2 Should the FSA initiate an investigation or any enforcement action is taken in respect of the Agent, its employees, agents, Appointed Representatives, representatives or sub-contractors.
 - 2.10.3 If a Terms of Business Agreement it has in place with an insurer is terminated stipulating the reason for the termination.
- 2.11 The Agent shall at all times maintain Professional Indemnity insurance in accordance with the FSA requirements.
- 2.12 The Agent shall indemnify the Company against costs, loss, liability or any expense whatsoever which may be suffered by the Company directly or indirectly as a result of any service performed or action taken by the Agent under the Agreement save to the extent that the same is due to the Company's negligence wilful neglect or fraud.

- 2.13 The provisions of this Agreement shall apply to any Appointed Representative of the Agent and the Agent shall be responsible as principal for its Appointed Representatives' compliance with all regulatory requirements. The Agent will procure its Appointed Representatives compliance with this Agreement.
- 2.14 Any complaints made or intimated by any party to the Insurance contract must be notified to the Company within 48 hours of receipt of such complaint. The Company and the Insurers have established complaints procedures which are clearly presented in the relevant policy documentation. The agent agrees to co-operate fully with the Company and/or the Insurer to facilitate the fair and efficient resolution of complaints.

3 DOCUMENTATION AND PROPOSALS

- 3.1 The Agent is responsible for the proper and accurate preparation (where appropriate) and the prompt despatch of such documentation on behalf of the Company. The Company expressly reserves the right to refuse any business introduced.
- 3.2 The Agent shall not issue or bind cover on behalf of the Company. The Agent shall not confirm cover on behalf of the Company unless expressly authorised to do so in writing by the Company. When so authorised in writing the Agent shall abide by the specific instructions issued by the Company.
- 3.3 The business must be renewed on or before the renewal date. If business is not renewed documentation must be returned to the Company no later than 10 days after the renewal date.
- 3.4 The Agent will comply with the requirements of the Motor Insurance Information Centre and submit relevant information to the Company promptly and in line with any industry standard or required timescales so that the Company is also able to comply.

4 COMMISSION

- 4.1 Commission on each specific policy is payable at the rates notified to the Agent by the Company.
- 4.2 The Company may alter its commission terms and/or the credit period allowed by giving 30 days notice in writing to the Agent.
- 4.3 Commission shall only be payable if
- 4.3.1 The Agent can (if requested) produce written evidence that the policyholder recognises the Agent as his agent.
 - 4.3.2 The gross premium has been paid to and retained by the Company.
 - 4.3.3 The Agent is authorised to deduct the commission due to the Agent in respect of a specific case from the gross premium collected for that case only upon payment to the Company of the remaining net premium due to the Company
 - 4.3.4 This Agreement has not terminated.
- 4.4 If the Company allows any refund of premium the Agent shall repay to the Company or the Client the commission due thereon.
- 4.5 The Company reserves the right to off-set and deduct from any commission due to the Agent from time to time any monies due to the Company from the Agent on any account whatsoever.

5 PREMIUMS AND ACCOUNTING

- 5.1 The Company acts as agent of the Insurer for the purposes of receiving and holding premiums from Insureds and for receiving and holding premium refunds prior to transmission to Insureds. For the purposes of this Agreement the Agent also acts as agent of the Insurer.
- 5.2 The Agent is not authorised to act as an agent of the Insurer where the Agent Identification Type in the Schedule attached to this TOBA is noted as Broker Partner.
- 5.3 The Agent is not authorised to act as agent of the Insurer or the Company for the purposes of receiving or holding claims money.
- 5.4 Where the Agent is not authorised to act as agent of the Insurer under the terms of this Agreement the Agent agrees to comply in all respects with the regulatory requirements of the FSA including but not limited to those for client money.
- 5.5 Where the Agent acts as agent of the Insurer all premiums collected or received by the Agent in respect of insurance business transacted under this Agreement shall be the property of the Insurer carrying the risk in question and must be held by the Agent in trust for the Insurer in a separate bank account with one of the major UK clearing banks and designated for this purpose (an 'Authorised Insurance Bank Account').
- 5.6 The Agent shall procure that the bank will have no rights by way of charge (whether fixed or floating) encumbrance lien or right of set-off compensation or retention against monies standing to the credit of the account at any time.
- 5.7 The Agent must not apply any money paid or payable into the Trust Account for any purpose except as permitted in this Agreement. The Agent shall however be entitled to interest on any sum standing to the credit of the Trust Account which relates to business transacted with the Company up to the due date for payment of such sum to the Company.
- 5.8 The Agent shall not be entitled to deduct any commission or other sum due to the Agent from the sums held in the Trust Account until the Agent has paid all sums due to the Company in respect of the transaction or transactions concerned in accordance with clause 6
- 5.9 The Agent is responsible to the Company for the payment of all premiums (including Insurance Premium Tax) and any time on risk charge whether or not the Agent has collected the payment from the client.
- 5.10 Any sums held in the Trust Account relating to business transacted with the Company which are due to clients (including any overpayments of premiums or refunds due following cancellation of the relevant policy) must be paid to the client concerned promptly.

- 5.11 Should a premium dispute arise, the Company require payment of the amount the Agent considers due within the agreed credit period and any balance adjusted once the account has been clarified. Where accounts are not settled on this basis, the Company may, without any notice period, reduce the Agents commission and/or suspend the facility until the account is brought up to date.
- 5.12 The Company may cancel the insurance cover immediately if premiums are not paid to the Company by the agreed date.
- 5.13 In respect of Agents where the Agent Identification Type in the Schedule attached to this TOBA is noted as Broker Partner any commission due to or from the agent will be accounted for to the Agent within 28 days of the end of each calendar month in respect of the latest completed month.
- 5.14 In respect of Agents where the Agent Identification Type in the Schedule attached to this TOBA is noted as Immediate Payment Agent or Invoice Agent any commission due to or from the agent as a result of business written using the Company's premium collection arrangements (by direct debit or otherwise) will be accounted for to the Agent within 28 days of the end of each calendar month in respect of the latest completed month.
- 5.15 In respect of Agents where the Agent Identification Type in the Schedule attached to this TOBA is noted as Immediate Payment Agent or Invoice Agent the Company expects all payments / refunds which do not use the Company's premium collection arrangements (by direct debit or otherwise) to be made on a net of commission basis. The Agent accepts that any unclaimed commission which remains in the Company's accounts one year and one day after the end of the Company's financial year in which the commission was originally due shall from that date no longer be due to the Agent.

6 PAYMENTS DUE TO/FROM THE COMPANY

- 6.1 In respect of Agents where the Agent Identification Type in the Schedule attached to this TOBA is noted as Broker Partner, any payments due will be collected by the Company before cover is granted. Upon the issue of cover copy documentation will be rendered to the Agent for information only. The Agent is not authorised to accept premium or payments of any type on behalf of the Insurer or on behalf of the Company.
- 6.2 In respect of Agents where the Agent Identification Type in the Schedule attached to this TOBA is noted as Immediate Payment Agent, acceptable payment must be received by the Company before cover is granted. Upon the issue of cover then Invoices will be rendered to the Agent with each cover confirmation.
- 6.3 In respect of Agents where the Agent Identification Type in the Schedule attached to this TOBA is noted as Invoice Agent, Invoices will be rendered to the Agent with each cover confirmation. Each invoice must be reconciled and returned to the Company together with the necessary remittance in settlement, to be received by the Company no later than 10th day following the date of the invoice.
- 6.4 In respect of Agents where the Agent Identification Type in the Schedule attached to this TOBA is noted as Credit Agent then Statements of Account will be rendered to the Agent monthly. The statement must be reconciled and returned to the Company together with the necessary remittance in settlement no later than the 25th day of the month in which the statement is rendered.
- 6.5 All cheques must be made payable to the correct company as shown on the Invoice.
- 6.6 The Company reserves the right to charge the Agent interest from the date payment is due until the date of the actual payment at a rate 3% above the prevailing Bank of England base rate.

7 INSTALMENT PREMIUMS

- 7.1 The Company shall not be responsible for, nor party to, any arrangements made by the Agent to collect premiums from the clients/policyholders by way of extended period(s) of credit or instalments. Any such arrangements including the acceptance of payments whether guaranteed or otherwise, shall be made entirely at the Agent's own risk, and shall not affect the Agent's obligations to account to the Company for premiums hereunder, unless otherwise agreed by the Company in writing.
- 7.2 This restriction shall not apply where any agreement covering the collection and/or payment of premiums is between the Insured and the Company or Insurer directly.

8 LEGISLATION

- 8.1 The Agent shall comply at all times with legislation, regulations and directives applicable to its business including without limitation the FSMA, the Data Protection Act 1998, the Consumer Protection Act 1987 and the Consumer Credit Act 1974 as amended.

9 RECORDS

- 9.1 The Agent shall create and maintain a full record of business transacted with the Company.
- 9.2 Where the Agent is responsible for the issue of documentation full records of all transactions, including the original proposal form, must be retained for a period of three years following cancellation of the policy or the relevant period required by the FSA whichever is the greater.
- 9.3 Where the Company is responsible for the issue and retention of documentation, all required documentation must be provided to the Company by the Agent promptly, fully completed and in a legible format.
- 9.4 The agent shall allow the Company and/or the FSA to access the premises of the Agent and any representatives or sub-contractors used pursuant to this agreement to inspect review and or copy without limitation all records documents files audio and video tapes computer databases information stored electronically and any other material or information that the Company or the FSA may require which relate to the Agents obligations under this agreement and or the regulatory regime for General Insurance Business.
- 9.5 Notwithstanding the above the Agent shall at all times comply with the FSA requirements for the creation, maintenance and retention of business records.

10 TERMINATION

- 10.1 Either party giving 7 days written notice to the other may terminate this Agreement.
- 10.2 In the event of such termination the Agent may, either
- 10.2.1 Commencing not more than 30 days after notice of termination and subject to the continued settlement of all monies outstanding and due to the Company, take 12 months to place existing business elsewhere or
 - 10.2.2 with the consent of the Company and, subject to the settlement of all monies outstanding and due to the Company, transfer the Agent's insurance business to another agent with whom the Company has a current Terms of Business Agreement, or is prepared to enter into a new Terms of Business Agreement.
- 10.3 Either party may terminate this Agreement immediately on written notice to the other if
- 10.3.1 In respect of the other party any resolution is passed or order made for the winding up of the company or a receiver, administrator or administrative receiver is appointed over the assets, or any arrangement or composition is made with its creditors or a petition for bankruptcy or an administrative order is filed, or it is adjudged bankrupt.
 - 10.3.2 Where one party has reasonable grounds for suspecting fraud or dishonesty by the other party its staff agents or Appointed Representatives.
 - 10.3.3 The other party commits a material breach of any provision of this Agreement which is not remedied within 21 days from discovery of the breach by either party.
- 10.4 The Company may suspend or terminate this Agreement forthwith if
- 10.4.1 the Agent ceases or threatens to cease to carry on business or suspend payments or is unable to pay its debts as they fall due.
 - 10.4.2 The Agent takes up residence or becomes domiciled outside the UK.
 - 10.4.3 The Agent is in breach of this Agreement.
 - 10.4.4 The Agent ceases to be authorised by the FSA.
 - 10.4.5 The Agent or any director or partner of the Agent is convicted of a criminal offence.
 - 10.4.6 The business of the Agent is acquired, amalgamated, controlled or administered by any other person, partnership, company, corporation or authority.
 - 10.4.7 A director of the Agent is appointed with whom the Company in its absolute discretion decides it is unable to continue this Agreement.
- 10.5 On termination of the Agreement under 10.3 or 10.4
- 10.5.1 The Company reserves the right to deal direct with clients/policyholders in the best interests of the policyholders, and in such circumstances the Agent will not be entitled to any payment for goodwill which may arise from such arrangements neither will the Company be under any duty to account to the Agent in respect of such arrangements in any way whatsoever.
 - 10.5.2 All rights to commission cease from the date of termination other than in respect of completed business introduced by the Agent up to and including the date of termination..
 - 10.5.3 All books, papers, records, software and other property of the Company must be surrendered immediately.
 - 10.5.4 If required, the Agent must provide to the Company full details of all transactions being carried out by the Agent in the course of the Agreement at the date of termination.
 - 10.5.5 All monies outstanding to the Company become immediately due and payable.
 - 10.5.6 Where at the date of termination, premiums are due from policyholders for cover issued before termination the Company may collect the premium direct from the policyholder and retain the commission in respect of all monies owed by the Agent to the Company.

11 INTERPRETATION

- 11.1 This Agreement shall be construed according to English law and any disputes arising under it shall be determined in the English courts.
- 11.2 The Agent will not be liable for any share of the liabilities and losses of the Company except to the extent that such liabilities and losses have arisen by virtue of a breach by the Agent of the provisions of this Agreement and Codes of Practice and conduct.
- 11.3 This Agreement is personal to the parties and the benefits and obligations may not be assigned or delegated by any party without the Company's written consent.
- 11.4 References to statutory provisions shall include any modification, re-enactment or consolidation.
- 11.5 No failure by either party in enforcing any of its rights shall prejudice its right to do so in the future.
- 11.6 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement which will remain in full force and effect. In such event the parties shall negotiate in good faith with a view to replacing the invalid or unenforceable provision with the legal and enforceable provisions which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

12 INTELLECTUAL PROPERTY

- 12.1 The Intermediary shall not use the Company's or the Insurer's name or logo or other trademark or similar device without the express permission of the Company or Insurer, nor shall any intellectual property rights in the same be transferred to the Agent as a result of this agreement. All Intellectual property rights in Policy or other documentation or marketing materials relating to Policies or otherwise shall remain with and vest in the Company and/or the Insurer.

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