

Terms of Business (Commercial Customers)

1. Terms of Business (“Terms”)

In these Terms references to “we” or “us” are to the firm whose details are set out in the covering letter that accompanies these Terms. We recommend that for your own benefit and protection you should read these Terms carefully. These Terms constitute our standard client agreement upon which we intend to rely and will apply to our appointment by you and the services that we will provide. If you do not understand any point please ask for further information. **IN PARTICULAR we draw your attention to CLAUSE 4 and CLAUSE 9 of these Terms which relate to the amount you will receive if you cancel your policy, and the maximum amount we will be liable for in the event of our negligence.**

2. Fees in Lieu of Commission

This paragraph applies where we have, as an alternative to commission, agreed to charge fees in lieu (“FIL”). Where we have agreed to charge a FIL the services which we shall perform shall be set out in a separate service summary (“Service Summary”). Any commission which we receive which is directly connected with the insurances placed by us on your behalf will be retained by us and set off against the FIL and any other amounts from time to time due and payable by you under this Agreement. Unless otherwise agreed by us the FIL will cover the period set out in the Service Summary. The FIL is calculated by reference to the full term of insurance policy or policies arranged for you. Unless we agree otherwise no refund of any FIL or other remuneration shall be payable in the event that (for whatever reason) the actual period of insurance is less than the full term or you terminate this Agreement before the expiry of any policy arranged by us on your behalf. In the event that, as a consequence of any insurance being for less than the full term, or your termination of this Agreement, we are obliged to refund any commission which has been paid to us and retained by us in lieu of all or part of the FIL we reserve the right to charge you for the amount of commission refunded. We reserve the right to charge fees in addition to the FIL where you request services which go beyond those specified in the Service Summary. We will endeavour to agree these additional charges with you before they are incurred, failing which the additional fee will be calculated by reference to the hourly charge out rate (from time to time) which applies to the staff involved in providing such additional services. The hourly charge out rate for any additional services is subject to any applicable tax which may be levied from time to time and does not include travelling or other expenses where the additional services are performed other than at our offices.

3. Your legal duty to disclose information to us and insurance companies

It is your responsibility to provide complete and accurate information to insurers when you take out your insurance policy, throughout the life of the policy and when you renew it. It is important you ensure that all statements you make on the proposal form, claim forms and other documentation are full, frank and accurate. If you are in any doubt as to the relevance of any information you should disclose it. Please note that if you fail to disclose any material information or change of circumstances to your insurers, this could invalidate your insurance cover and could mean that part or all of a claim may not be paid. We strongly recommend that the information provided is checked thoroughly prior to submission and that you keep a record of all correspondence supplied in relation to the arrangement of your insurance cover.

Please also note that any renewal of insurance will be made in reliance upon the information provided by you in connection with your previous insurance policy – we will assume that such information remains correct unless you tell us otherwise.

4. Cancellation and Mid-Term Adjustments

Please note that cancellation rights vary between insurers and you should check their documentation if you are considering cancelling your policy. To exercise your right of cancellation, you should contact the insurance company or contact us either by telephone or by letter in each case in the manner and within the time limits set out in your policy documentation. If you exercise your right to cancel your policy your insurer will, as a minimum, charge you for the period during which you were covered, and other charges may be applied to cover the insurer’s and our costs in arranging the cancelled policy. **Be aware that some insurers do not offer any refund of premiums for cancelled policies.**

YOUR ATTENTION IS SPECIFICALLY DRAWN TO THE FOLLOWING:-

Where you cancel your policy or where you request a mid-term adjustment which reduces the cover provided under the policy, *we reserve the right to charge you for our time and costs. This will usually result in us reducing the amount refunded to you by the FULL amount of the commission and fees we would have received had you not cancelled.* The reason for this is that the majority of our costs are incurred either in initially finding and setting up your policy or in the annual renewal process when we might check the ongoing suitability of the cover the policy offers. These costs are recovered through the commission and fees we earn. If you cancel, this does not give us an opportunity to recover the costs we incurred and would often result in us making a loss. However, any charge made will not exceed the cost of the commission and fees we would have earned.

Where you are paying for your insurance by instalments (and an instalment payment is not received by us or the relevant premium finance provider on or before the date when it is due to be paid) you agree that we may on your behalf instruct the insurer to cancel the insurance (or where the first instalment payment has not been received, notify the insurer that the policy has not been taken up) and offset any refund of premium which may be received against any money which you owe to us, the insurer and/or the premium finance provider. In such circumstances you will remain liable for any time on risk or other charge. You will also be responsible for putting in place any alternative insurance.

5. Our right to set off monies you owe us

We shall be entitled (but not obliged) without notice to you to set off any amounts due to us from you against any amounts which we may receive on your behalf (such as claims monies, refunded premiums and other sums).

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6. Information on our remuneration

Other companies (including members of our group of companies) may act as underwriting agents, intermediaries for insurers or Lloyd's/London Market placing brokers in connection with your insurance. Where such companies are involved in placing or servicing your business they may charge an administration fee or other payment which will be passed on to you and disclosed separately from the cost of your insurance. Such businesses earn commission in respect of placing such business which is separate from that which we receive.

In addition to commission which is paid to us by insurers we may earn a "profit-share", management or administrative fees and other payments from insurers for efficiently managing business transacted with them. These payments may be calculated by reference to various criteria such as overall annual profitability of the insurance business transacted, taking into account the total amount of claims arising under policies we place with them. "Profit-share" payments are not directly referable to individual policies and consequently it is not possible to calculate such payments on an individual policy basis, meaning that we are unable to disclose to you how much your policy contributed to any "profit-share" payment we might receive. Ordinarily, and if such a "profit-share" payment is received (which is not guaranteed) it represents a small proportion of the normal commission we receive and will be retained by us.

Depending on the services which you have asked us to perform we may earn referral fees from third parties which are incidental to the insurance arranged for you. Such payments may be derived from a number of incidental activities including arranging premium financing, risk management, legal expenses cover and uninsured loss recovery services and will be retained by us. In limited circumstances additional amounts may also be paid to us by third parties where compensation for a personal injury claim is obtained or where a hire car is arranged following an accident. In each case we will retain these payments.

From time to time insurers may make loan facilities available to us on commercially advantageous terms as an incentive for us to efficiently and profitably manage business transacted with them. This may involve (for example) reduced or nil interest rates and extended repayment terms which apply to such loans provided we meet or exceed efficiency and profitability targets set by the insurers in respect of the business we have placed with them.

During the course of our appointment we may hold certain monies on your behalf. This may include premiums to be paid to insurers, commissions derived from your insurance, claims monies and other sums. Interest and investment returns which are derived from such sums whilst temporarily held on your or your insurer's behalf will belong to and be retained by us in addition to any other remuneration which we may earn in connection with the services which you have asked us to perform.

For each insurance contract, including any subsequent renewal, you have a right to request information regarding any remuneration that we may have received as a result of placing your insurance business.

7. Insurer Solvency

Whilst we will endeavour to place business with insurers who demonstrate an adequate level of financial solvency, and although their regulator requires them to maintain a minimum level of capital, we cannot guarantee the solvency of any insurer. We do not monitor insurer solvency on an ongoing basis, and shall not be liable for losses suffered by you in the event of the insolvency of an insurer.

8. Notification of incidents

It is essential that you notify us promptly after discovery of all incidents or allegations that may result in a claim against your insurance policy. You must do so whether you believe you are liable or not. Any failure to do so may result in your insurer refusing to accept a claim. Any letter or other communication making allegations which could give rise to a claim which is received by you from any third party must be passed to us immediately, without acknowledgment. Only by providing prompt notification of incidents can your insurance company take steps to protect your interests.

9. Limitation/Exclusion of Liability

YOUR ATTENTION IS SPECIFICALLY DRAWN TO THIS CLAUSE WHICH LIMITS OR EXCLUDES OUR LIABILITY TO YOU

Our liability for losses suffered by you as a direct consequence of any negligent performance of our *services shall be limited in all circumstances to £10,000,000 per claim*. In respect of any other claim arising out of our performance or non-performance of the services hereunder our liability shall be limited to the amount of commission and fees which we have received for arranging your insurance cover during the 12 months prior to such claim arising.

We shall not be liable to you for any pure economic loss, loss of profit or loss of business, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (such as that listed above and howsoever caused) which arise out of or in connection with our services or this agreement. Nothing in this paragraph excludes or limits our liability for death or personal injury caused by our negligence, or for loss caused by our fraud, wilful misrepresentation or breach of regulatory obligations owed to you.

You are welcome to contact us to discuss increasing the limitations of our liability and/or varying the exclusions set out above. Please note however that an additional charge and other terms may apply should we agree to amend this clause.

10. How to make a claim

If you wish to report a claim or potential claim, please call the number shown on the headed paper (or business card) that accompanies this document. Please quote your policy number or other reference we have given you. Your insurance documents will also provide details as to how to make a claim and to whom to contact.

For some policies, Insurers give us authority to act on their behalf in settling claims. In these circumstances, and in recognition of a potential conflict of interest, we will seek your permission for us to deal with such a claim.

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11. Your insurance policy(ies)

As and when we feel it appropriate we may review your policy and look to enhance and/or extend the cover offered.

12. Terms of Payment

In the absence of any alternative terms which we agree with you in writing (such as payment by instalments which we can arrange for you) our payment terms are as follows:

- new policies – full payment of premium and fees on or before the inception date of the policy;
- mid-term adjustments to existing policies – full payment of any additional premium and fees on or before the effective date of the change;
- renewals – full payment of premium and fees prior to the renewal date.

We normally accept payment by cash, cheque, debit or credit card or monthly instalment (full details available on request). Time shall be of the essence, both as regards times, dates and periods specified in this paragraph and as to any times, dates or periods which we may agree can be substituted for any of them. In the event that you fail to pay any premium and/or fees when due your insurer may cancel your policy from the inception/renewal date and reject any claims thereunder.

13. Important Information Relating to Renewal of Policies

Prior to the expiry of your policy where we will be inviting a renewal we (or your insurance company) will endeavour to send you details of the cost and terms to renew your policy. *On occasions your renewal may be offered with a different insurer, however, we will notify you if this is the case in writing before the renewal date.*

In order to protect your interests relating to the risks/property you have insured, and in the event that we do not receive your instructions and payment prior to the date of renewal, we reserve the right (but shall have no obligation) to renew your policy and (in the case of direct debit/instalment payments) to continue to accept payment from you unless and until you specifically notify us or your insurance company in writing that you wish to cancel your policy. In circumstances where we have assumed (in the absence of instructions to the contrary) that renewal is required you may be liable to make payment to us and/or your insurance company.

14. How we hold your money

Premium(s) and any other monies we may hold on your behalf (for example refund premiums and claim cheques received from an insurer) will be held in Trust until such time as they are remitted by us to your insurance company/to you. This may be a Statutory or Non-Statutory Trust account operated in accordance with FSA regulations. However, some (but not all) of the insurance companies we deal with have agreed to deem any premiums that you pay to us as having been received directly by themselves. This improves your protection against financial loss in the event of our insolvency. Please note that this is not the case for all the insurance companies we deal with and where this added protection does apply it may only extend to premiums, and not to any claim payment, refund or other monies that we may from time to time hold on your behalf. Should such an arrangement be agreed with an insurer(s) we may not hold your funds in Trust because of this added protection

Where we hold money in a non-statutory trust we may use the funds in that account as a short term credit facility to fund another client's premium before it is received from that other client and/or to pay claims and premium refunds to another client before we receive the same from an insurer. The total funds held in the non-statutory trust account must always comply with the FSA regulations to ensure you are protected from loss.

Occasionally as part of the process of finding a policy that suits your requirements, we may pass your premium to another insurance intermediary who will also be required to hold your money in Trust until the premium is deemed to have been received by the relevant insurer. Between receiving any money from you and us passing it on to insurers (and vice versa), we may remove it from the Trust account in which it is held to another account in order to earn interest or other investment income from it. In such an event the account in which it is placed will be set-up with the same Trust protection as the account from which it is removed. To improve the efficiency of our business we may wish to transfer your policy between companies within the Towergate Partnership group of companies. In such circumstances we may transfer any money we hold on your behalf to a new bank account with the same trust protections as the existing account to ensure that the protection afforded to your money remains in place at all times. We will retain any interest or income accrued.

By accepting these terms you consent to the way we will hold your premium (and/or other insurance related money) in accordance with this paragraph.

15. Confidentiality and Data Protection

All information about you of a sensitive or personal nature will be treated as private and confidential. We will however use and disclose the information we have about you in the course of arranging, placing and administering your insurance. This may involve passing information about you to insurers, other intermediaries, risk management assessors, uninsured loss recovery agencies and other third parties involved (directly or indirectly) in your insurance.

We may also pass information about you to credit reference agencies and premium finance providers in connection with the assessment of your financial standing generally and, in particular, where you have requested a premium instalment plan – this may include details of your payment record with us.

We may also pass information about you to other companies which are in or are associated with our group. We or they may also use the information we hold about you to provide you with information on other products and services we or they can offer and which we or they feel may be of interest to you. If you do not wish to receive marketing information from us or them, or for us to disclose information about you to other parties for marketing purposes, please contact us immediately.

In the interests of security and to improve our service, telephone calls you make to us may be monitored and/or recorded.

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16. No Waiver and Amendments

A failure at any time by us to enforce any right or obligation shall not be deemed to be a continuing waiver of such right or obligation. Without the agreement of the other, neither we nor you may alter these Terms at any time during our appointment (including for the avoidance of doubt during the term of your insurance). We reserve the right to make amendments that are required to reflect a change of applicable law or regulation. Whenever possible we will provide at least one month's written notice to you, before any such changes take effect. We may freely assign or delegate all or any part of these Terms and/or the services to any third party only where such assignment or delegation ensures that your rights under this Agreement will not be prejudiced.

17. Prior Agreements and Acceptance

These Terms supersede all proposals, prior discussions and representations (whether oral or written) between us relating to our appointment as your agent in connection with the arranging and administration of your insurance. These Terms constitute an offer by us to act on your behalf in the arranging and administration of your insurance – in the absence of any specific acceptance communicated to us by you (whether verbal or written) you are deemed to accept our offer to act for you on the basis of these Terms by conduct upon your instructing us to arrange, renew or otherwise act for you in connection with insurance matters.

18. Governing Law

These Terms and conditions are governed by English Law and we both agree to submit to the non-exclusive jurisdiction of the English courts.