

## TERMS OF BUSINESS AGREEMENT

Please complete your details at the bottom of this page and sign and date the final page before returning to: [ch@leadenhallinsurance.com](mailto:ch@leadenhallinsurance.com)

### 1. Interpretation and Definitions

- 1.1 Within this *Agreement*, unless otherwise stated, the following words or expressions, shown throughout in italics, shall have the meanings set against them respectively:

**'Agreement'** refers to this Terms of Business *Agreement*, hereunder signed and agreed by *Both*.

**'Client'** means a customer introduced by you whose proposal has been accepted by *Us* on behalf of an *Insurer* and is protected under a contract of insurance.

**'Commission'** means the Commission to which *You* are entitled under this *Agreement*.

**'Insurance Regulator'** means the regulator in *Your* home state which is responsible for implementation of the *IMD*.

**'FSA'** means the Financial Services Authority in the United Kingdom or its successor.

**'Gross Premium'** means the premium including any Commission, excluding *IPT*.

**'Insurer'** means a person who writes contracts of general insurance falling within the terms of Schedule 1, Part 1 of the United Kingdom's Financial Services and Markets Act (Regulated Activities) Order 2001.

**'IMD'** means the Insurance Mediation Directive (2002/92 EC) or any subsequent legislation amending or replacing the same

**'IPT'** means Insurance Premium Tax in the United Kingdom or any equivalent tax or levy in another state which applies to general insurance business.

**'Net Premium'** means *Gross Premium* after deduction of Commission.

**'Rules'** means the *FSA Handbook* and any rules, guidance or regulations issued by the *FSA* and all other rules to which either *You* or *We* are subject in undertaking general insurance business and any rules, guidance or regulations issued by the *Insurance Regulator* to which *You* are subject in undertaking general insurance business.

**'Unauthorised Person'** means a person who is not authorised by the *FSA*.

**'We' or 'Us' or 'Our'** means Leadenhall Insurance Brokers Ltd, a registered Lloyd's Broker of 145-146 Leadenhall Street, London EC3V 4QT and **'You' or 'Your'** means (your company name) of (your company address). Together **'We'** and **'You'** are referred to as **'Both'**. **'Our, 'Us' and 'Your'** have corresponding meanings as the context requires.

- 1.2 In this *Agreement*:
- a) The masculine gender shall include the feminine and neuter and words importing the singular form shall include the plural and vice versa
  - b) The headings are used for convenience only and do not affect its interpretation
- 1.3 Nothing in this *Agreement* shall create a partnership or joint venture between *Both*.
- 1.4 No waiver by *Us* of any breach by *You* of any terms of this *Agreement* shall be construed as a waiver of any subsequent breach.
- 2. Scope**
- 2.1 This *Agreement* specifies the terms under which *We* will place the *Client's* business on *Your* behalf with *Insurers* with whom *We* hold agency facilities.
- 2.2 This *Agreement* is exclusive to *Both* and shall not be assignable by either, unless formally agreed to in writing by *Both*.
- 2.3 This *Agreement* supersedes all previous *Agreements* between *Both*.
- 3. Client Ownership**
- 3.1 All *Clients* introduced by *You* remain *Yours* and not *Ours* for the duration of this *Agreement*.
- 3.2 *We* shall not contact *Clients* directly for any purpose without *Your* prior permission, except as provided for elsewhere in this *Agreement*.
- 4. Service and Delivery Requirements**
- 4.1 *You* have no authority to accept or amend insurances, settle, negotiate or compromise claims, alter any receipt, document or policy or commit *Us* in any way. Any exceptions must be authorised in advance by *Us* in writing.
- 4.2 Instructions from *You* to place an insurance risk on cover will only be accepted if confirmed in writing by *You*.
- 4.3 *You* are not to make any alterations or amendments to any forms supplied by *Us* or use any advertising promotional or other selling materials in relation to the insurance transactions covered by this *Agreement*, except those supplied by or approved in writing by *Us*.
- 4.4 *You* agree that *Our* name or logo may only be used in marketing materials or on any website or in any other context with *Our* express written consent. *We* reserve the right to accept or reject applications for the use of *Our* name or logo.
- 4.5 *You* shall pass to *Us* promptly any material information in *Your* possession. In the event of *You* being aware of any non-disclosure of material information by a *Client* or prospective *Client*, *You* shall either inform *Us* or decline to act on behalf of that *Client* or prospective *Client* in undertaking any general insurance business with *Us*. *You* remain, for these purposes, the *Client's* agent and notification by the *Client* to *You* shall not constitute notification to *Us*.
- 4.6 *You* shall present information and proposals relating to any general insurance cover requested in the form which *We* specify from time to time or as otherwise in writing agreed by *Us*.
- 4.7 *You* shall retain all documentary and electronic records relating to insurance transactions covered by this *Agreement* for the duration of cover and for a minimum of three years thereafter.

- 4.8 Whenever any insurance is bound under this *Agreement*, *We* will use our best endeavours to ensure that the policy is delivered to *You* promptly.
- 4.9 As agent of the *Client*, it is *Your* responsibility, not *Ours*, to ascertain and satisfy the *Client's* insurance requirements.
- 4.10 If a *Client*, who has arranged insurance through *Us* following an introduction from *You*, subsequently contacts *You* on matters relating to a claim or potential claim, *You* shall not make any comments, offer any advice or give an opinion that may prejudice the *Insurers'* interest or *Our* interests in any way in the handling of the claim. *You* shall relay all relevant information to *Us* as soon as it comes into *Your* possession.
- 4.11 *You* are not permitted to place business with *Us*, which is introduced to *You* by another agent or broker unless specifically agreed with *Us*.
- 4.12 *We* cannot guarantee the solvency of any *Insurer* with whom *We* may place *Your Client's* business. In the event of an *Insurer* with whom *We* have placed *Your Client's* business becoming insolvent *Your Client* may be liable for all or part of the premium.

## **5. Payments and Collection**

- 5.1 *We* are authorised to invoice, collect and receive premiums and to pay return premiums and other sums due as agents of the insurer.
- 5.2 Unless otherwise agreed by *Us* in writing, *You* will hold premiums and pay return premiums as agents of the *Client*. All such premiums must be held in accordance with the *Rules*.
- 5.3 *We* will submit a statement of account to *You* on a monthly basis. *You* will pay all *Net Premiums* debited on the statement no later than the last working day of the month in which the statement is received. Payment may be required in respect of certain business outside normal terms of credit; this must be settled on an invoice basis when advised in writing by *Us* in advance of policy inception or renewal date.
- 5.4 *Your* obligations to pay *Net Premiums* to *Us* by the due date shall not be affected by any credit agreement *You* have made with the *Client* or delays with *Your* accounting systems.
- 5.5 If there are any items on the statement that are in dispute, *You* must contact *Us* prior to the premium becoming overdue in order that the account can be paid in full. Failure to do so may lead to the cover being terminated.
- 5.6 *We* reserve the right to charge interest on late payment of any sums due to *Us* at 3% above bank base rate as supplied by *Our* bankers at the time.

## **6. Remuneration**

- 6.1 *We* will allow *You Commission* on each placement at a rate which is separately negotiated and agreed with *You*. *We* reserve the right to amend the rate provided notice is given verbally at the time of the quotation or renewal and in writing subsequently.
- 6.2 If, after *We* have arranged insurance cover for a *Client*, they subsequently cancel the policy or reduce cover or reduce the premium in any other way, *You* will be liable to reimburse *Us* for the unearned proportion of the *Commission* *We* have paid *You* within 30 days unless *Both* parties agree to offset the amount against future *Commission* payments.
- 6.3 *Commission* is not due or payable on the handling charge in respect of any instalment payments or on any element of *IPT* or on any fees payable in addition to the insurance premium.

## 7. Fees and Charges

- 7.1 Any policy fee, service charge or any other fee or charge whatsoever made by *You* or *Us* must be shown separately on documentation issued to the *Client* and not concealed in any way. Any such fees may only be applied when not in breach of the *Rules*.
- 7.2 *We* may charge *You* a fee in respect of policies cancelled through failure to settle the policy premium on the due date (after due notice is provided) and subsequently requested for reinstatement. The fee amount will be notified in writing.

## 8. Professional Indemnity Insurance

- 8.1 *You* shall maintain Professional Indemnity Insurance with an *Insurer*, providing cover in connection with the operation of the *Agreement* at least to the extent of the minimum required by the *IMD* or any regulatory practices that may be in force at the time for any liability arising out of any:
- a) negligent act, error or omission by *You* including any past or present director, partner or employee of *Yours*
  - b) any dishonest or fraudulent act or omission by *You* including any past or present employee of *Yours*;
- 8.2 *You* agree to supply evidence of *Your* Professional Indemnity Insurance cover to *Us* on request.

## 9. Compliance

- 9.1 *You* shall comply with all *Rules* to which *You* are subject including all requirements relating to authorisation and supervision in respect of *Your* insurance mediation activities.
- 9.2 *We* shall at all times comply in full with the *Rules* insofar as they apply to *Our* Business.
- 9.3 *We Both* shall at all times comply with all applicable data protection legislation from time to time. *We Both* shall ensure that all processing of *Client* data under this *Agreement* is lawful and that all appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of *Client* data and against accidental loss or destruction of or damage to the *Client* data.
- 9.4 *We* may disclose personal data relating to *You* including details of *Your* directors, officers, partners and employees to any governmental or regulatory body, agency or authority and to an *Insurer* with whom a *Client's* business is placed, or submitted for enquiry, for any purpose connected with the proper maintenance, administration and regulatory compliance and control of the conduct of this *Agreement*.
- 9.5 *You* must ensure that *You* procure the consent of all such individuals for disclosure for the above purposes and if *You* are unable to do so *You* must notify *Us* immediately.
- 9.6 *We* reserve the right to carry out an audit of *Your* compliance procedures in respect of *Our* general insurance business and *You* shall allow *Us* access to *Your* premises, files and documents in relation to this *Agreement* on reasonable notice for this purpose and to take copies.
- 9.7 *You* undertake to notify *Us* in writing immediately in the following circumstances:
- a) variation or cancellation of permission to transact general insurance business
  - b) initiation of any regulatory disciplinary or investigation action in relation to *You* or *Your* staff.

9.8 You shall be responsible as principal for all regulatory requirements in relation to *your* representatives. For the avoidance of doubt, *You* shall remain fully responsible to *Us* for all acts and omissions in relation to this *Agreement*, which shall have effect in relation to the acts and omissions of such representatives as if they were *Your* acts or omissions.

## 10 Notification of Change

10.1 You shall immediately notify *Us* in writing: -

- a) in the event of any changes, which are material and have relevance to this *Agreement*, for instance any changes of address.
- b) if there is any change in *Your* regulatory status.

10.2 Unless otherwise stated in this *Agreement*, *We* may vary the terms of this *Agreement* at any time by sending to *You* *Our* current version and the changes shall be effective not less than 30 days from notification and shall be confirmed in writing.

## 11. Termination

11.1 This *Agreement* may be terminated or varied in writing by written agreement.

11.2 *You* or *We* may terminate this *Agreement* by giving 30 days written notice to the other.

11.3 *We* may terminate any *Agreement* with immediate effect in the following circumstances:

- a) where *You* become insolvent or an order has been made or resolution passed for *Your* liquidation, administration, winding-up, bankruptcy or dissolution (other than for the purposes of a solvent amalgamation or reconstruction with *Our* prior written consent)
- b) where, if *You* are a partnership, any of the partners becomes insolvent, a resolution is passed for a partner's bankruptcy or a partner is unable to pay his debts
- c) an administrator or another receiver, manager, trustee, liquidator, or similar officer is appointed over all or any substantial part of *Your* assets
- d) where, if *You* are a partnership, any of the partners enters into or proposes any composition or arrangement with *Your* or his creditors
- e) where anything analogous to the matters set out in 11.3 a) to d) occurs in any jurisdiction
- f) on *Your* death, if *You* are a sole trader
- g) *You* have breached or are likely to breach any of the *Rules*
- h) *You* have any relevant license, permission or authorisation to conduct insurance business refused, suspended, removed or impaired by any breach of a *Rule*
- i) *You* or any partner or director or principal of *Your* firm is convicted of any criminal offence (other than a minor driving offence) or *We* have reason to suspect any such person has committed any act of fraud or dishonesty or his conduct of business under this *Agreement* is such as to prejudice the interests of *Us* or any *Client*
- j) If any of the answers given by *You* in *Your* agency application form (where completed) are subsequently found to be untrue or misleading or incomplete in any material respect
- k) There is any other material breach by *You* of the terms of this *Agreement*.

## 12. Consequences of Termination

- 12.1 Following termination of this *Agreement*, *We* shall not accept any new business proposed by *You* and shall not issue Renewal invitations to *You* in respect of this *Agreement*.
- 12.2 On termination of this *Agreement*, *We* shall prepare a statement of account as between *You* and *Us*. Settlement of this account shall be made by either party paying the balance due as shown in the statement of account to the other party immediately. *You* shall also pay to *Us* immediately all known premiums not included in the statement of account.
- 12.3 On termination of this *Agreement*, *We* reserve the right to take whatever actions which are necessary to protect the interests of the *Clients*.

## 13. Complaints Handling Procedure

- 13.1 Either party shall notify the other party immediately on receiving a complaint from a *Client* which *relates* to the other party's regulated activities and provide them promptly with copies of any relevant information and documentation, the originals of which shall be retained by *Both* parties for at least 3 years from the date the complaint is received.

## 14. Jurisdiction

- 14.1 This *Agreement* and any variation to it, is subject to English Law and Practice and to the exclusive jurisdiction of the English Courts, unless *Both* parties agree otherwise.

## 15. Indemnity

- 15.1 Each party shall indemnify and keep indemnified the other from all losses, costs, claims and liabilities whatsoever incurred by the other arising from:
- a) any failure by the indemnifying party to comply with the provisions of any regulatory requirements
  - b) any other breach by the indemnifying party of this *Agreement* including, without limitation, any loss, cost, claim or liability incurred by *Us* arising out of business arranged through *Us* without authorisation.

## 16. Rights of Third Parties

- 16.1 A Person who is not a party to this *Agreement* has no right under the United Kingdom's Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this *Agreement* but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 17. Force Majeure

- 17.1 Neither *You* nor *We* shall be liable for any breach of *Our* respective obligations, acts or omissions hereunder resulting from causes beyond *Our* reasonable control being an 'Event of Force Majeure'.
- 17.2 In the event of a Force Majeure occurring, the party whose obligations are suspended by virtue of this event shall use all reasonable endeavours to mitigate the effect of such circumstances and carry out such obligations or duties hereunder in such other way as may be reasonably practicable in all the circumstances.
- 17.3 *We Both* agree to give notice to the other as soon as is reasonably practicable after becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Force Majeure.

## 18. Confidentiality

- 18.1 Both parties shall treat any information relating to the other party, its business and *Clients* as confidential (except to the extent that such information is known to that party other than as a result of any breach of this *Agreement*).
- 18.2 Neither party shall disclose such information to any third party, nor use it for any purpose except as is necessary for the performance of this *Agreement* or the enforcement of that party's right in law or contract. The provisions of this clause shall continue notwithstanding any termination of the *Agreement*.

## 19. Counterparts

- 19.1 This *Agreement* may be entered into in any number of counterparts and by the parties on separate counterparts each of which when so executed and delivered shall be deemed an original but all of which together shall constitute the *Agreement*.

## 20. Notices

- 20.1 Any notice under this *Agreement* shall only be effective if it is in writing.
- 20.2 Any notice served or another document to be served under this *Agreement* may be delivered or sent by first class post, recorded delivery or facsimile message to the other party to be served at its last known address
- 20.3 Any notice or document shall be deemed to have been served:
- a) if delivered, at the time of delivery
  - b) if posted one week after it was posted (copy to be faxed on day of postage)
  - c) if sent by facsimile message, at the expiration of two hours after the time of transmission if transmitted before 3.00 pm on any business day, and in any other case at 10.00 am on the business day following the date of transmission. In both cases the times stated are local times in the United Kingdom.
  - d) In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as prepaid first class or recorded delivery or that the facsimile message was properly addressed and despatched (as evidenced by a transmission report produced by the facsimile machine from which the transmission was sent) as the case may be.

## 21 Arbitration

- 21.1 Subject to Clause 21.2, any dispute, difference or disagreement between the parties arising out of or in connection with this *Agreement* shall be referred to the arbitration in London of a single arbitrator appointed by agreement between the parties within 30 days' after a request for a reference is made by either party, nominated on the application of either party by the President for the time being of the Law Society.
- 21.2 Clause 21.1 shall not:
- a) apply to any dispute, difference or disagreement in respect of which the provisions of this *Agreement* specify the consequences; or
  - b) preclude the making of an application to the Court for injunctive relief.

For and on behalf of Leadenhall Insurance Brokers Ltd

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

For and on behalf of \_\_\_\_\_ (your company name)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_