

# Client Terms of Business



**Please read this document carefully. It sets out the terms on which we agree to act for you and contains details of our regulatory and statutory responsibilities. Please contact us immediately if there is anything in these terms of business which you do not understand. You have consented to working with us on these terms if, having received these terms of business, you continue to do business with us.**

This document supersedes and replaces any and all previous terms of business agreements between us. We reserve the right to update or modify this agreement at any time without prior notice when necessary to comply with changes in the applicable law.

Reference throughout this document to "insurance" business, "insurers" and "insureds" is also to "reinsurance" business, "reinsurers" and "reinsureds".

## About us

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We are Ed Broking LLP, a privately owned independent insurance intermediary and Lloyd's broker. Our registered office is 52 Leadenhall Street, London, England, EC3A 2EB. Our business addresses and contact details are set out on our website at [www.edbroking.com](http://www.edbroking.com). Our Company Number is OC339735.

## About our regulator

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We are authorised and regulated by the Financial Conduct Authority ("FCA"), the independent statutory watchdog that regulates financial services in the UK. Our FCA Firm Reference Number is 490648.

These details can be checked on the Register at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register) or by contacting the FCA on +44 (0) 20 7066 1000.

## Getting it right for our client

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Our aim is to efficiently deliver effective insurance solutions that satisfy your requirements. It is always our intention to provide a high standard of service. However, if we fail to reach the standards you expect of us you should notify your usual contact in the first instance. Otherwise please contact the Complaints Officer at the above address or at [complaints@edbroking.com](mailto:complaints@edbroking.com). We will

endeavour to ensure that the matter is handled fairly and promptly by a suitably senior and independent member of staff. If we cannot resolve your complaint and you are either a private individual or a small business, you may be entitled to refer your complaint to the Financial Ombudsman Service:

[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

## Conflicts of interest

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We are committed to acting in the best interests of you, our client. We never deliberately put ourselves in a position where our interests, or our duties to another party, prevent us from discharging our duty to you.

In certain circumstances we may act for and owe duties of care to other parties; we may receive administrative fees or commissions for services provided to insurers, including commissions contingent on the profitability of facilities arranged by us for ease of placement or certainty of market.

We will take all reasonable steps to mitigate any possible conflict of interest and will advise you if we feel that such a conflict is significant. Should a potential conflict of interest be particularly complex or difficult to manage, we will agree with you the best way forward.

## Remuneration

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Unless otherwise agreed with you, our remuneration will be either a fee agreed with you or brokerage or commission set by insurers, details of which we will disclose at your request. If we are remunerated by way of brokerage, we take our brokerage on receipt of premium. Brokerage and fees are fully earned at the time of placement of the policy and we are entitled to retain all fees and brokerage in respect of the full policy period for cover placed by us.

In the event of a mid-term adjustment, we may be entitled to further brokerage from any additional premium.

There will be no return of brokerage or fee once the policy is placed if the insurance is later varied, terminated or otherwise cancelled.

You should note that we may be instructed by an insurer subscribing to an insured's contract to place reinsurance on the insurer's behalf; this reinsurance is a separate and distinct contract from the insured's contract. In such circumstances, the insurer is our client and any related remuneration is outside of the scope of our arrangements with you.

Where we consider it appropriate we may instruct a sub-broker to assist us in arranging or administering an insurance. For example, many countries require the use of local intermediaries to access local insurance markets. Sub-brokers may be remunerated by way of a fee agreed with us or brokerage commission set by insurers. Please note that the basis of remuneration for a sub-broker may be different to the basis of our remuneration in relation to the insurance.

We may receive compensation from insurers for services provided by us which are unconnected with any specific client transaction.

## **Providing information to us**

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### **Insurer subscriptions subject to the Insurance Act 2015**

English Law policies are from 12 August 2016 by default subject to the provisions of the Insurance Act 2015; but each of your subscribing insurers has the right to contract out of certain provisions, in which case:

- they will have to draw every proposed departure from the Act's provisions to your attention pre-contract; and
- their opt-out status will be shown on your insurance contract; and
- information provision will be subject to the criteria noted under "Insurer subscriptions not subject to the Insurance Act 2015" below.

In providing information under the Insurance Act 2015, the insured must make a fair presentation of the risk to insurers before the contract is made, when it is renewed and any time that it is varied. The policy wording may also provide that this duty continues for the duration of the policy. This means:

- disclosure of every material circumstance which should reasonably have been revealed by a reasonable search of the information available to the insured (including its senior management, co-insureds and agents); or
- provision of sufficient information to put a prudent underwriter on notice to ask further questions to reveal those material circumstances;

and in all cases the provision of information to insurers must be clear and accessible.

Failure to disclose a material circumstance may entitle an insurer to impose different terms on your cover or proportionately reduce the amount of any claim payable. In some circumstances an insurer will be entitled to avoid the policy from inception and in this event any claims under the policy would not be paid.

### **Insurer subscriptions not subject to the Insurance Act 2015**

In providing information to insurers of contracts not subject to English Law and to insurers of English Law contracts who have opted out of the disclosure provisions of the Insurance Act 2015, the policyholder must disclose to insurers all material facts before the contract is made, when it is renewed and any time that it is varied. This duty of disclosure is not limited to material facts of which the policyholder is aware; it extends to matters of which it ought to be aware in the ordinary course of its business or affairs.

In addition, prospective and actual insureds are obliged to act at all times towards insurers with utmost good faith. This means that both parties must enter into the contract in good faith, must disclose all relevant facts and have the intent to carry out their respective obligations.

Failure to disclose a material fact may entitle an insurer to avoid the policy from inception and any claims under it would not be paid.

### **All Policies**

A circumstance is material if it would influence an insurer's judgement in determining whether to accept the risk and, if so, on what terms. If you are in any doubt whether a circumstance is material, we recommend that it be disclosed. Individual policy terms may stipulate stricter requirements.

The duties of disclosure and utmost good faith, as applicable and as explained above, also apply to the claims process and to any situations during the period of the contract in which the insured is required, under the terms of the contract or otherwise, to provide information to insurers; this includes an extension or amendment to the contract and the renewal of the contract.

In completing a proposal or claim form, or other document relating to an insurance contract, the accuracy of all answers, statements and/or information is your sole responsibility.

## **Giving us instructions**

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All significant instructions, for instance to bind cover or to notify a claim, must be given in writing; i.e. by post or email. As there is no certainty of the completeness, accuracy or receipt of a message or data sent by email, please note:

- if an instruction is given by email, a confirmatory reply must be received for your instruction to be effective; if you do not promptly receive such a confirmation, please raise the matter with your usual contact;
- we accept no responsibility if information sent by you to us by email is incomplete or corrupted; and we also will be entitled to act upon any instruction from you received by email which reasonably appears to have been sent by you.

We do not accept instructions by alternative media such as text message, instant messaging or via social media.

By instructing us you are warranting that you have authority to do so and that you are not acting in breach of any local law or regulation.

## **Wholesale business**

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If you act as an intermediary for your client, you should note that it is your responsibility to ensure that:

- (a) you have full authority to instruct us; and
- (b) you have advised your client of the duties of disclosure and utmost good faith, as applicable and as explained above in "Providing information to us"; and
- (c) the demands and needs of your client are met by the coverage you instruct us to obtain; and
- (d) your client is made aware of the full terms and conditions of that coverage.

We will ask you to demonstrate to us that you are appropriately licensed as an insurance intermediary and request that you advise us of any material adverse change to that status. In giving us instructions you warrant that you have authority to do so on behalf of the Insured.

## **Placing your business**

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According to your demands and needs we may seek quotations from and place business with a single insurer and/or a group of subscribing insurers acting on a co-insurance basis. Co-insurance wordings ordinarily incorporate terms to enable competition between subscribing insurers and prevent anti-competitive terms. However, we

will let you know if we consider that a co-insurance may not be in your best interests.

We seek coverage only from insurers which meet our financial security criteria, unless we receive specific instructions from you to the contrary. However, we cannot and do not guarantee or accept responsibility for the financial standing or performance, including solvency or continuing solvency, of any insurer used. You should note that the financial position of an insurer can change after cover has inception. We will do our best to assist any client who is adversely affected should an insurer cease trading.

If your insurer is unable to pay valid claims against it, or if we are unable to meet our financial obligations to you, you may be entitled to compensation from the Financial Services Compensation Scheme ("FSCS") which acts as the UK's compensation fund of last resort if you are a private individual, a small business or the policyholder of a UK compulsory class of insurance. Full details of the FSCS can be found at

[www.fscs.org.uk](http://www.fscs.org.uk)

## **Paying premium to us**

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Our bank details for premium payment are available on request. Clients in certain jurisdictions may be directed to specific alternative accounts which we will advise as required. All such accounts are segregated non-statutory trust accounts held with approved banks and established and maintained under the client assets rules of the FCA.

You must provide the premium due in cleared funds in accordance with the amounts and payment due dates specified in our documentation. Should you pay by cheque you must allow sufficient time for the cheque to clear before the payment due date. We recommend you allow 10 business days for us to secure clearance of funds and to pass those funds to insurers.

Insurers may include a premium payment condition or warranty as a term of the insurance. Failure to comply in full with the terms of such a clause may, according to the specific policy terms, result in insurers issuing notice of cancellation or their obligations under the contract either being suspended for the period of breach or terminating absolutely.

Payment must be made in the currency invoiced, unless otherwise agreed by us in advance. This includes, where we have been able to identify them, any taxes and/or other similar charges which insurers are obliged to collect or you are

required to pay in respect of the contract of insurance. Responsibility for accounting for taxes and/or other similar charges is a matter for you and insurers; we do not accept such responsibility unless we have a legal duty imposed in a specific jurisdiction or we have in advance formally agreed to do so.

We will only pay your premium due to insurers when we hold cleared and reconciled funds on your behalf; except as we may specifically agree, we do not fund premium payments. We cannot and do not:

- accept uncleared funds as a basis on which we should pay due premium to your insurers;
- accept your expectation of a receipt of return premiums or paid claims as a basis for us to pay premium due;
- accept liability for a late payment to insurers in circumstances where:
  - the funds we receive are not from you and you have not made a prior arrangement which we have agreed having satisfied our anti-financial crime due diligence requirements; and/or
  - the funds we receive are not readily reconcilable to the premiums advised by us as being due.

Accounting arrangements in the London insurance market may give rise to an automatic deduction of premium from our broker account on your behalf; if that occurs when you have not paid the premium to us, you agree to refund that amount to us without delay.

Should we exceptionally agree to fund a premium payment for you, this would be by way of a loan to you repayable on demand by us and you would remain the party primarily responsible for the payment of that premium.

## **Handling your money**

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Normally premiums, returned premiums and claims funds that we receive in the course of carrying on insurance mediation on behalf of our clients will be held by us as agent of those clients.

We hold client money either:

- in segregated non-statutory trust accounts, held with approved banks and established and maintained under the client assets rules of the FCA. This regime permits us to use monies from our non-statutory trust accounts for short-term funding of premium and claims settlements on behalf of clients; or

- in separately and FCA-permitted designated investments with a value at least equivalent to the money that would otherwise have been paid into a client bank account, in which case we will be responsible for any shortfall which is attributable to falls in the market value of a segregated investment.

We reserve the right to recover from you any loss relating to exchange differences or otherwise arising from payments made in a currency different to that stated in your documentation with us. Any interest or exchange gains realised from client money held by us will be retained by us; reasonable exchange losses will accordingly be borne by us.

Should your insurers have a relevant contractual arrangement with you or us, premiums, returned premiums and claims monies may be held by us as agent of insurers; this means that in paying us you are deemed to have paid your insurer(s) so you have no further rights over that payment.

We may transfer client money to another person, such as another intermediary or agent, for the purpose of carrying out a transaction. This may include intermediaries or agents outside the UK. You should notify us if you do not wish your money to be passed to a person in a particular jurisdiction.

## **Your insurance documents**

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We will issue documentation confirming the details of the contract purchased, including the identity of insurers. It is important that you:

- read all your documentation carefully to make sure there are no mistakes or misunderstandings and inform us immediately if you have concerns with the coverage arranged for you; and
- keep your documents in a safe place while your contract remains open to you to make a claim.

## **Making a claim**

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You should notify a claim as soon as possible in accordance with the terms of your coverage. This should be made to your usual contact with us providing all available information concerning the claim. We do not accept liability for any delayed or unpaid claims by your insurer(s).

Information submitted in support of a claim should be purely factual.

Should you make a claim, please note that we may be asked to engage and liaise with claims

experts on behalf of insurers; we do not normally consider that this presents us with a conflict of interest and unless you register a specific objection with us your consent to this practice will be assumed.

## **Retail Insurances**

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Unless we advise you to the contrary:

- we will act solely on your behalf; and
- we will give you a personal recommendation to fit your demands and needs on the basis of a fair and personal analysis of the market.

## **Financial crime**

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We are committed to the global financial community's fight against crime and corruption, including money laundering, bribery and other forms of inducement, in which regard we aim to meet FCA best practice guidance as well as complying with legal requirements. We look to our business partners and clients to support us in this stance.

As such we require suitable evidence of the identity and standing of our clients prior to transacting business with them. Any non-standard element to a transaction, such as a payment to/from a third party to the transaction, is likely to require careful scrutiny and authorisation by us following the receipt of additional due diligence information from you.

We are obliged to report immediately to the UK National Crime Agency ("NCA") any evidence or suspicion of financial crime and may be prohibited from disclosing any such report to our clients and counterparties.

Neither party shall take any action which facilitates the evasion of taxes anywhere in the world or which is contrary to any related financial crime laws and regulations (including without prejudice to the generality of the foregoing the Criminal Finances Act 2017).

Neither party shall be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any laws and regulations against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010).

## **Sanctions**

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We intend always to operate in compliance with relevant legislation, including laws regarding

sanctions; accordingly we will act as your broker only on the following terms:

- the business we are asked to conduct does not in our opinion involve a risk of breach of any UK, EU, UN, US or other applicable sanctions legislation;
- you will immediately notify us should you become aware of any actual or potential breach of such legislation in the business you ask us to conduct;
- any policy we place for you should contain the following sanctions clause or an equivalent wording unless otherwise confirmed by us:

"No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America."

- we shall bear no responsibility for any contract terms that (re)insurers may impose with regard to applicable sanctions legislation;
- we shall bear no responsibility for the freezing of premiums or claims monies by a bank for sanctions reasons; in such circumstances we will take all reasonable steps to secure the release of the frozen funds;
- if, having accepted a risk, underwriters subsequently amend or terminate the contract for any reasons involving applicable sanctions legislation, no liability shall attach to us for that change or termination of coverage;
- should we be involved in what is in our opinion a breach of applicable sanctions legislation through acting as your agent we will have no obligation, whether contractual or otherwise, to continue to act as your agent in such circumstances and any such obligation will cease immediately and without notice; and you shall indemnify us and hold us harmless in respect of any and all losses caused by such breach;
- should we become aware or have reasonable cause to suspect that you are involved in any actions which in our opinion may breach any UK, EU, UN, US or

other applicable sanctions legislation or which may cause us to be in breach, we may withdraw our services immediately without notice and without liability to you; and

- you recognise that we are not experts in sanctions legislation and you should not rely on our understanding of it but rather seek relevant expert advice.

## Data security

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We collect data about you and your insurance placements, their structure and the markets that consider and provide coverage to you. This information is shared with our group subsidiary companies and utilised to provide varied client and carrier services including, but not limited to, market-making, benchmarking and price comparison. This allows us to provide better advice to you and ensure that carriers can evolve their propositions with a focus on creating value for you. We regard your provision to us of information for insurance placement or claims purposes as evidencing your informed and explicit consent to the use of that information also for the above purposes.

We may hold information provided by you in an electronic format as well as or as an alternative to hard copy; and information provided by you, whether for placing or claims purposes, may be provided to underwriters electronically, by e-mail or by way of a relevant market repository in line with current market practice.

We will take appropriate and reasonable steps to maintain the security of your confidential documents and information which is in our possession. If documentation related to you is necessarily lodged with, or communicated by or through a market repository, we will take all reasonable care to ensure it is true, fair and complete.

Both parties acknowledge and agree that where a party processes Personal Data under or in connection with this agreement, it alone determines the purposes and means of such processing as a Controller.

In respect of the Personal Data processed by each party under or in connection with this agreement, that party undertakes to comply at all times with its obligations under the Data Protection Law; (b) to notify the other party without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach; and (c) assist and co-operate fully with the other party to enable the other party to comply with their obligations under Data

Protection Law, including but not limited to in respect of keeping Personal Data secure, dealing with Personal Data Breaches, complying with the rights of Data Subjects and carrying out data protection impact assessments.

Both parties shall work together to ensure that each of them is able to process the Personal Data it processes under or in connection with this Agreement lawfully, fairly and in a transparent manner and in compliance with Data Protection Law.

In respect of the above "Controller" means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; "Data Protection Law" means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data; "Data Subject" means the identified or identifiable natural living person to whom the Personal Data relates; "Personal Data" means any information relating to the Data Subject; and "Personal Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

## Emails

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We scan our outgoing e-mails for viruses but advise that you should make your own security checks. We accept no responsibility for loss or damage arising from the receipt of e-mails from our system.

We allow employees to use the e-mail system for personal e-mails. Therefore the views expressed in e-mails sent to you may not be the company's views.

We reserve the right to monitor all incoming and outgoing e-mails.

As we use third party service providers we do not guarantee the confidentiality of information sent to or by us electronically. For the avoidance of doubt this provision overrides any separate agreement as to confidentiality of business information.

As the delivery of e-mails routed through third party service providers cannot be guaranteed you should telephone to ensure that time-critical information has been received.

## Termination

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We are each entitled to terminate this appointment to act as your agent at any time, at which point:

- We will retain and destroy information and documentation in line with our document retention policy which takes into account legal and regulatory requirements.
- although we provide post-placement and claims handling services for you for as long as you remain our client, we reserve the right at our discretion to charge a reasonable fee for such services when you cease to be a client but still wish us to act for you (and we are prepared to do so). Otherwise you will arrange and we will facilitate the prompt transfer of the run-off of your existing business and related claims to a successor broker or to you; and, except as you may specifically arrange and agree with us:
- our other obligations to you will cease and we will owe you no further obligations to provide any services in relation to your business; and
- we will be entitled to receive any fees or brokerage earned; and
- our other obligations to you will cease and we will owe you no further obligations to provide any services in relation to your business.

## Limitation of liability

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We will not be liable to you or your client for any direct or indirect losses, damages, costs or expenses resulting from the services we provide or any failure to provide services unless arising directly from our negligence, wilful default or fraud (or that of our directors, officers or employees).

If we are liable to you or your client in circumstances where you or your client have incurred a loss which is caused partly by us and partly by contributory actions or omissions by you or your client or others acting for either of you, then our total combined liability to you and your client will not exceed our proportionate responsibility for the loss having regard to the proportionate responsibility for the loss of you, your client and others acting for either of you, as agreed, or if not agreed, as decided by a court or a tribunal.

We shall not be liable to you or your client for consequential or special damages, loss of profit or loss of goodwill, howsoever arising.

We shall not be liable to you or your client for any partial or non-performance of our obligations by reason of any cause beyond our control, including without limitation any breakdown, malfunction or failure of transmission, communication or computer facilities, industrial action, acts and regulations of any government bodies or authorities or the failure of any relevant third party, for any reason, to perform its obligations to us.

Without prejudice to any other provision of this Limitation of Liability Clause, if you or your client suffer or incur losses, damages, costs or expenses as a result of or in connection with the services that we provide or any failure to provide services otherwise than as a result of our wilful default or fraud, then our total liability to you and your client for such losses shall not exceed a sum equal to ten (10) times the amount of annual brokerage or fee paid or due to us relating to our services.

Nothing in this Agreement will limit, or will be construed as limiting, our liability for death or personal injury resulting from our negligence.

## Severability

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If any provision of these terms of business is found to be invalid or unenforceable in whole or in part, the wording of other provisions of these terms of business and the remainder of the provision in question will not be affected.

## Entire agreement

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These terms of business constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this agreement.

## Law and jurisdiction

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These terms of business shall be governed by and construed in accordance with English law. In relation to any legal action or proceedings arising out of or in connection with these terms of business all parties irrevocably submit to the exclusive jurisdiction of the English courts.