

Wholesale Terms of Business

October 2021

AIB'S Wholesale Terms of Business

These terms of business supersede all previous agreements, understandings and negotiations between Affinity Risk Partners (Brokers) Pty Ltd t/a Affinity Insurance Brokers (**AIB, we, us, our**) as an Authorised Representative (No 1288354) of Aon Risk Services Australia Limited ABN 17 000 434 720 AFSL 241141 (**Aon**) and any Australian Financial Service Licensed Insurance Broker (**Retail Broker, You or Your**) in relation to the subject matter set out below (**Agreement**).

1. Background

- 1.1. Thank you for engaging AIB to provide, advise and deal, as appropriate, in relation to general insurance products and services for your clients (**Services**) pursuant to the terms of this Agreement. By continuing to instruct us, you are taken to have accepted this Agreement (as amended from time to time), unless otherwise agreed in writing with you.

2. Licence and Registration

- 2.1 The Retail Broker holds an Australian Financial Service Licence (AFSL) that authorises them to provide financial product advice and to deal in general insurance products to either retail or wholesale clients (or both).
- 2.2 AIB, as an authorised representative of Aon, is authorised by agreement with Aon to deal in and provide advice on general insurance products.
- 2.3 The Retail Broker will notify AIB immediately if its AFSL is suspended or cancelled, or any authorisation on the licence is varied other than by the addition of authorisations, or in the case of an exemption, the party is no longer entitled to an exemption.

3. Relationship

- 3.1. The Retail Broker acts as agent for each of its clients, and not as agent for AIB or any insurer, in providing any financial advice or dealing in any financial product under its own AFSL.
- 3.2. AIB acts as agent for insurers, unless otherwise notified.
- 3.3. AIB and the Retail Broker are and remain independent contractors at all times and for all purposes. Except as expressly provided for in this Agreement, neither AIB nor the Retail Broker has authority to act on behalf of or represent the other and shall not purport to have such authority.

- 3.4. The Retail Broker is responsible for the acts, defaults and negligence of its authorised representatives, agents, employees and contractors.
- 3.5. Nothing in this Agreement creates a binder or relationship of agency, joint venture, partnership or employment between the parties.

4. Variation and Termination

- 4.1. AIB may change this Agreement from time to time by providing the Retail Broker with 30 days' written notice.
- 4.2. Either party may terminate this Agreement, without cause, upon giving to the other not less than 30 days' notice in writing.
- 4.3. Otherwise, this Agreement may be terminated by a party with immediate effect by either party giving written notice to the other if any of the following occur:
 - a. the other party breaches any term of this Agreement, which cannot be rectified;
 - b. the other party breaches any term of this Agreement that is capable of being rectified and the party fails to rectify the breach within 14 days of written notice from the other requiring it to rectify the breach;
 - c. the other party enters into any composition or arrangement with its creditors, has a receiver, a receiver and manager or an administrator appointed to it or is the subject of any resolution or petition for winding up (other than for the purpose of amalgamation or reconstruction while solvent) or becomes bankrupt; or
 - d. the other party fails to hold any authority or licence that allows it to carry on the business covered by this Agreement or such authority or licence is altered in such a manner as materially affects in any way the ability to transact general insurance or any activity contemplated in this Agreement.
- 4.4. Termination of this Agreement will not:
 - a. prejudice the rights of either party in connection with anything that occurred between them before its termination; or
 - b. affect any rights of a party under any provisions of this Agreement that are expressed, or by necessary intentment are intended, to survive termination.

- 4.5. As soon as practicable after termination of this Agreement and, in any event, within 90 days:
- a. each party must pay all money owed to the other, if any, after taking into account any adjustments required; and
 - b. the Retail Broker must return (at its expense) all documents, stationery and materials supplied by AIB to the Retail Broker.

5. Arranging Insurance

- 5.1. The Retail Broker must, in relation to any new business, alteration, variation or renewal:
- a. prepare the underwriting information sought by the insurer(s) based solely on information provided by its client;
 - b. provide all necessary advice about the insured's duty of disclosure under the Insurance Contracts Act 1984 (Cth) (ICA) and the consequences of breaching that duty including the insurer(s) remedies for non-disclosure and misrepresentation under the ICA;
 - c. procure its client's approval of all underwriting information before it is provided to AIB;
 - d. provide all necessary professional and financial product advice to its client in connection with the insurances sought to be arranged through AIB, including advice in relation to:
 - i. the terms and conditions of the relevant policy;
 - ii. the adequacy and suitability of cover for that client's circumstances; and
 - iii. the suitability of the price and the security of the cover;
 - e. provide all necessary assistance to enable AIB to arrange the insurances sought, including obtaining the information required by the insurer(s) from the Retail Broker's client within the time period required by AIB; and
 - g. declare and disclose all commissions, fees, charges and other remuneration to its client as required by law. AIB makes the remuneration and benefits disclosures as set out in AIB's Financial Services Guide which can be accessed at <https://www.affinityib.com.au/legal-information/legal-information-financial-services-guide/> (**AIB FSG**).

- 5.2. The Retail Broker acknowledges that it has each of its client's authority to receive for that client all notices for an insured or intending insured under the ICA and Corporations Act 2001 (Cth) (**Corporations Act**).

6. Closings and Hold Covered

- 6.1. If the Retail Broker wants to inception or renew (as relevant) an insurance product through AIB, the Retail Broker must, no later than 14 days before the contract of insurance inception date (or an alternate timeframe permitted by AIB in writing), provide written instructions to AIB to accept the contract of insurance, together with all proposal forms (where applicable) and closing instructions from the insured.
- 6.2. If AIB does not receive written acceptance instructions from the Retail Broker in accordance with the above, the insurance product will not be inception or renewed (as applicable) and in the case of a renewal product, all coverage will cease at the expiry date of that product, unless other arrangements are made and confirmed in writing by AIB.
- 6.3. If AIB becomes liable to any insurer arising out of failure to give notice of expiry in accordance with Section 58 of the ICA, and such failure is due in whole or in part to the failure of the Retail Broker to send the renewal notice to their client as required by any applicable laws after receipt by the Retail Broker of a renewal notice, the Retail Broker must indemnify AIB for any Damage¹ suffered by AIB as a result, provided that the Retail Broker has received the renewal notice within sufficient time for it to be able to reasonably comply with its requirements under this section. The indemnity is reduced proportionally to the extent that AIB has caused or contributed to any such Damage.

7. Claims

- 7.1. The Retail Broker is responsible for all claims notifications for its clients. At the request of the Retail Broker, AIB must provide reasonable assistance to the Retail Broker in notifying the insurer(s) of a claim. The parties acknowledge that AIB has no authority to admit liability on behalf of the insurer, nor to deal with or settle a claim.

¹ "Damage" means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment,

interest and penalties, but excluding indirect, consequential and special loss or damage.

8. Invoices and GST

- 8.1. The Retail Broker must pay any tax invoices for Premium² and any administrative or other charges within 30 days from the date of the invoice issue date.
- 8.2. AIB will pay the Retail Broker commission on Premium written on a gross basis as agreed in writing between the parties in which case any Retail Broker commission and other charges will be identified on the relevant tax invoice. Where it is otherwise agreed that Premium is written on a net basis, the Retail Broker will remit Premium on a net of commission basis. Any change to the Retail Broker commission must be communicated by providing at least 30 days' written notice to the Retail Broker.
- 8.3. Please note that all remuneration referred to in this agreement or in any invoice, unless clearly stated otherwise, is to be treated as exclusive of GST. If anything supplied under or in connection with this Agreement constitutes a taxable supply for the purposes of A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**), the recipient of the supply must, subject to receiving a proper tax invoice, pay to the supplier an additional amount equal to that GST.

9. Recipient Created Tax Invoice

- 9.1. AIB may issue recipient created tax invoices (**RCTI**) to the Retail Broker in accordance with the GST Act in respect of commission payable under this Agreement to that other party (the **Supplier**) and the Supplier must not issue a tax invoice in respect of such supply. AIB agrees to:
 - a. retain an original or copy of the RCTI (and any adjustment note); and
 - b. set out the Supplier's ABN in the RCTI (and any adjustment note).

10. Remuneration

- 10.1. The Retail Broker acknowledges and agrees that AIB will:
 - a. be paid a commission by the relevant insurer(s) on placement of insurance under this Agreement as set out in the AIB FSG; and

² "Premium" means where the insurance is arranged on:

- a. a gross premium basis, the amount charged to a policyholder by the insurer for general insurance including commission, fire services levies, stamp duty, GST and other government and statutory levies and charges; and

- b. also be entitled to receive a policy administration charge for policy invoicing, Premium collection and remittance and for issuing policies and other administrative work as set out in the relevant tax invoice issued by AIB to the Retail Broker.

- 10.2. The Retail Broker acknowledges and agrees that AIB fully earns its wholesale broker commission, fee and any other remuneration at the time of placement of the relevant insurance and may retain in full all such remuneration in the event of any mid-term cancellation of a policy or future downward adjustment of Premium, unless it has agreed with the Retail Broker to another arrangement in writing. The Retail Broker also agrees that AIB and the insurer may offset such remuneration from any Premium refund the Retail Broker is entitled to.

11. Refund of Retail Broker Commission – Where insurance is varied, cancelled or avoided

- 11.1. If any policy of insurance is varied, cancelled or avoided, the Retail Broker will refund to AIB that part of the Retail Broker commission for payment to the insurer(s) that relates to the proportion of Premium refunded to the client (if any).

12. Retail Broker not to approach insurer directly

- 12.1. During the currency of this Agreement and for thirteen (13) months after its termination, the Retail Broker must not approach any insurer to which AIB has brokered or placed a risk at the request of the Retail Broker to solicit, create or develop any arrangement for the Retail Broker to broke and place the insurance product covered by this Agreement other than through AIB.

13. Ownership of Insurance Business

- 13.1. During the currency of this Agreement and for thirteen (13) months after its termination, AIB will not make any direct approach to any insured for whom a contract of insurance has been arranged pursuant to this Agreement for the purpose of selling or issuing any insurance business and will only directly contact an insured where:

- b. a net premium basis, the amount charged to a policyholder by the insurer for general insurance including fire services levies, stamp duty, GST and other government and statutory levies and charges but excluding commission.

- a. AIB is required to do so by law;
- b. the Retail Broker fails to give any notice or disclosure document to the insured that is required by law;
- c. the person makes a claim under the contract of insurance, in which case AIB may liaise with the insured about the claim;
- d. the insured requests AIB do something, in which case AIB may comply with that request,
- e. the Retail Broker is no longer the insurance intermediary for the insured; or
- f. where the insured has advised the Retail Broker in writing that it wishes to deal directly with AIB.

13.2. Nothing in this Agreement prevents AIB from marketing its business or products to the general public.

14. Indemnity

14.1. The Retail Broker indemnifies AIB for and against all claims, damages, judgments, losses, costs and expenses which are directly or indirectly caused by any act or omission or breach of this Agreement. This clause survives termination.

15. Confidentiality

15.1. Each party acknowledges that the other party's confidential information is valuable to that other party and must, to the extent it is within its control and except as otherwise required by this Agreement, keep the other party's confidential information secret and preserve its confidential nature. Each party authorises the other to disclose its confidential information to its (re)insurers, actuaries, auditors, professional agents and advisors and any related bodies corporate. Confidential information does not include information:

- a. which is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the discloser; which the recipient can prove by contemporaneous written documentation was:
 - i. already known to it at the time of disclosure by the discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);

- ii. independently developed by the recipient without reference to the confidential information of the discloser; or
- iii. which the recipient acquires from a source other than the discloser or any of its representatives where such source is entitled to disclose it on a non-confidential basis. This clause survives the termination of this Agreement.

16. Intellectual Property

16.1. The parties agree that nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any intellectual property rights of a party. This clause survives the termination of this Agreement.

17. Privacy

17.1. Each party agrees to comply with the Privacy Act 1988 (Cth) (**Privacy Act**) and any other applicable privacy or data protection laws regulating the collection, storage, use and disclosure of "personal information" as defined under the Privacy Act, including the Spam Act 2003 (Cth) and Do Not Call Register Act 2006 (Cth) and do all that is reasonably needed on each of our parts to enable the other to comply with them.

17.2. The Retail Broker must ensure that it has obtained all necessary consents so that all personal information disclosed by the Retail Broker to AIB may be collected, collated, used and distributed in accordance with this Agreement and Aon's Privacy Policy (<https://www.aon.com.au/australia/legal/privacy-policy.jsp>).

18. Electronic Communication

18.1. AIB may correspond with the Retail Broker by electronic communications unless you instruct us not to do so. Electronic communications are not always secure and may be read, copied, lost or interfered with in transit. AIB is not responsible for any of the risks associated with electronic communication, including loss of data.

19. Dispute Resolution

19.1. The parties must attempt in good faith to resolve any dispute between them in connection with this Agreement by negotiation.

- 19.2. If any dispute cannot be resolved by negotiations between the parties within 10 days or such further period as the parties agree is appropriate, then within the following 10 days, the parties must seek to agree on procedural rules and a timetable for resolving the dispute through mediation by a mediator agreed upon by the parties, or if the parties cannot agree, a mediator appointed by the Australian Commercial Disputes Centre or any body which replaces it.
- 19.3. A party may not commence court proceedings or arbitration (other than an urgent interlocutory application) relating to any dispute arising from this Agreement unless that party has complied with the above.

20. International Trade Sanctions

- 20.1. AIB follows a global policy regarding compliance with international trade sanctions laws (the **TS Policy**) including those administered in the United States by the Office of Foreign Asset Control (**OFAC**). Compliance with the TS Policy is mandatory for all AIB staff worldwide, and no exceptions to the TS Policy are permitted under any circumstances. In summary, the TS Policy may apply to certain transactions related to countries including Cuba, Syria, Crimea, Sudan, Iran, and North Korea (collectively known as **Restricted Territories**), restrictions under Australian sanctions regimes or designated or sanctioned parties, including OFAC Specially Designated Nationals (**SDNs**). The Restricted Territories under the TS Policy may be subject to change in line with international trade restrictions.
- 20.2. If the Retail Broker becomes aware that any of its business dealings connected with this Agreement:
- a. involve a Restricted Territory;
 - b. involve a designated or sanctioned party (including a SDN or a
 - c. designated person or entity under Australian law); or
 - d. are otherwise subject to trade restrictions under Relevant Laws³,

³ "Relevant Laws" means all relevant statutes, regulations and laws, including but not limited to the Corporations Act 2001 (Cth), the ICA, the Australian Securities and Investments Commission Act 2001 (Cth), the Competition and Consumer Act 2010 (Cth), the State Fair Trading Act equivalents, the Privacy Act and any other requirements of any laws or the Australian

the Retail Broker must tell us immediately. Where AIB becomes aware that a transaction is contrary to the TS Policy, then AIB may not act with respect to a part of the transaction (whether it involves a placement, renewal, variation of an insurance contract, payment, processing or any other service) or at all.

21. Bribery and Corruption

- 21.1. Each party agrees to maintain appropriate policies and procedures designed to ensure that no acts of bribery or corruption take place. Any breach of Relevant Laws by either party will entitle the other party to terminate this Agreement immediately.

22. Use of Non-personal Data and Information

- 22.1. The Aon Group may provide analytics, consulting and other services to its clients based on the non-personal data the Aon Group collects from you, and your related parties, as part of our engagement with you (**Collected Data**).
- 22.2. These services may include: (i) providing our clients with customised services and recommendations; (ii) identifying client opportunities; (iii) optimising and improving our products, services and operations; (iv) creating industry reports, conducting benchmarking and undertaking market research; (v) providing and developing analytical solutions; (vi) performing statistical, financial and risk modelling, among other services. Aon Group members may earn compensation for providing such services to their clients, service providers, (re)insurers and other business partners.

Prudential Regulation Authority, the Australian Securities and Investments Commission or any other legislative or government body which must be complied with in order to avoid a penalty and any codes of practice or external dispute resolution scheme to which the parties may subscribe or be bound by from time to time.

- 22.3. If corporate clients receive (re)insurance broking services from us, subject to local law restrictions, Aon Group services provided to (re)insurers and other business partners may involve the disclosure of Collected Data about (i) our corporate clients and (ii) their actual and prospective (re)insurance placements. Such Collected Data may include, but may not be limited to: company names, industry codes, policy types, premium and policy expiration dates as well as information about the providers or potential providers of (re)insurance, claims and other loss related services to our clients. The Aon Group provides such services with a focus on creating distinctive value for clients.
- 22.4. The Aon Group may also disclose Collected Data to its service providers to perform certain analytics and other processing services on Aon's behalf. Such service providers are contractually restricted from using or disclosing Collected Data for any other purposes. Other contractual and operational safeguards are in place with all Aon Group service providers to protect the security of Collected Data. Due to the global nature of services provided by the Aon Group, information that the Aon Group receives may be transmitted, used, stored and otherwise processed outside the country where you submitted the information.
- 22.5. This "Use of Non-personal Data and Information" clause shall supersede conflicting provisions of any other agreements entered into between us, including but not limited to non-disclosure agreements, to the extent such agreement is inconsistent with this clause.
- 22.6. For the purpose of this clause, "Aon Group" means the Aon group of entities worldwide, being Aon PLC, Aon's ultimate parent company, and all its subsidiaries, related/associated companies, affiliates as well as joint ventures of such subsidiaries, related/associated companies and affiliates.

23. General

- 23.1. Both parties agree to comply with all Relevant Laws.
- 23.2. Each party must not change printed material supplied by the other party (including but not limited to marketing material such as brochures, advertisements, articles, editorials, posters, insurance documents such as proposals, policy wordings, certificates of insurance and certificates of currency) without the written consent of that party.
- 23.3. If any part of the Agreement is or becomes invalid, unlawful or unenforceable, it will be read down or interpreted and enforced to the extent permissible or if this is not possible, it will be severed and the remainder of the Agreement will remain unaffected.
- 23.4. New South Wales law governs our agreement and the New South Wales courts have exclusive jurisdiction.
- 23.5. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, the Agreement or any part of it.
- 23.6. Neither party can assign, charge or otherwise deal with its rights and obligations under this Agreement without the prior written consent of the other party (except to a "related body corporate" (as defined in the Corporations Act) by providing 30 days written notice to the other party).
- 23.7. Any notice under this Agreement must be in writing and if sent to the last known address, facsimile number or e-mail address of the party. Each of the parties will give notice to the other of any change of address, telephone and facsimile numbers and e-mail address as soon as practicable after such change.

About AIB

AIB is an Authorised Representative (No 1288354) of Aon Risk Services Australia Limited, a leading provider of insurance and risk services. It is part of the Aon Group, which is a global leader in the design and provision of insurance, reinsurance, risk and employee benefit services. Aon holds an Australian Financial Services Licence.

If you have any questions about our services or anything in this Agreement, please contact your AIB Client Relationship Manager on 03 8587 7700 or Aon Australia's head office in Sydney on 02 9253 7000.

Published by Affinity Risk Partners (Brokers) Pty Ltd t/a Affinity Insurance Brokers as an Authorised Representative (No 1288354) of Aon Risk Services Australia Limited ABN 17 000 434 720 AFSL 241141.

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