

Terms of Business Agreement - Commercial Customers

Brian Davies Insurance Consultants Ltd T/A Shoreham Insurance Services

We are an independent insurance intermediary authorised and regulated by the Financial Conduct Authority No: 304975. Registered Office: ASM House, 103a Keymer Road, HASSOCKS, BN6 8QL. Registered in England No: 3730500, Consumer Credit Act No 631771.

Please read this document carefully. It sets out the terms and conditions on which we agree to act for you, contains details of our responsibilities together with your responsibilities both to us, to insurers and to other third party providers. Please contact us immediately if there is anything in this document that you do not understand/or with which you disagree. Your receipt of this document constitutes your informed consent to its contents. By instructing us you are accepting this Terms of Business agreement.

In the interests of security, staff training and to generally improve our service please be aware that telephone calls may be monitored and/or recorded.

1. Our service

- 1.1. We are committed to providing you with quality advice, service and insurance products. As an intermediary and your agent we owe various duties to you and will advise you as necessary if circumstances occur that may create a possible conflict of interest.
- 1.2. Our permitted business activities are advising, arranging (bringing about) deals in investments, making arrangements with a view to transactions, dealing as agent, assisting in the administration and performance of a contract and agreeing to carry on a regulated activity in respect of General Insurance contracts.
- 1.3. We will advise you and will make a personal recommendation after we have assessed your insurance needs. This will include the type of cover you require together with the costs involved. We undertake to explain the main features of the products and services that we offer to you as well as the basis on which we have provided information and/or advice.
- 1.4. Upon receipt of your instructions we will place, amend or renew insurance cover on your behalf with insurers. We will advise you of any inability to place your insurance.
- 1.5. You are not to rely on any insurance policy you have instructed us to place on cover until we have confirmed in writing to you that the insurer has agreed to such insurance cover being in place. Please note that you must comply with the terms and conditions of the insurance policy you purchase, including any matters where the insurer makes cover subject to your compliance with conditions or with express or implied warranties. Failure to comply may entitle the insurer to cancel your insurance contract and/or risks a claim you make not being paid in part or in full. (Also see Clause 10. Claims).
- 1.6. Please also note, unless your policy confirms otherwise, the rights under your policy may only be pursued in an English court.

2. Our remuneration and other income

- 2.1. We are remunerated by commission from your insurer(s) for our insurance broking services which is a percentage of the total annual premium, or by way of a fee negotiated and agreed with you. If we receive both, this will be confirmed in writing to you at the time of incepting or renewing your insurance. In addition:
 - 2.1.1. Where we are remunerated by commission, we may also make individual charges to cover the administration of your insurances, e.g. arranging a new policy, mid-term adjustments, short period or mid-term cancellations, renewals, and issue of replacement or duplicate documents. We may also make individual charges where we prepare and issue documents on behalf of insurers; these will be confirmed in writing to you at the time of incepting or renewing your insurance where applicable.
 - 2.1.2. Some insurers may make additional payments to us reflecting the size and/or profitability of our account with them and/or in respect of work we undertake on their behalf. In addition we may also receive payment from other firms, such as premium finance providers, where non-insurance products or services are supplied to you.
- 2.2. Our remuneration in whatever form and in respect of any policy shall be due on the date of inception or renewal of that policy. We shall be entitled to retain all commission and/or agreed fees in respect of the full policy period including where you appoint another intermediary in our place during the currency of a policy, or where a policy is cancelled after inception or renewal. (Also see Clause 9. Short period and cancelled policies).
- 2.3. You are entitled, at any time, to request information regarding any commission which we may have received as a result of placing your insurance business or arranging your premium finance facility.

3. Duty of fair presentation

- 3.1. Your attention is drawn to the accompanying Duty of Disclosure and Fair Presentation document which sets out a number of your obligations. In addition, the below sets out further obligations which apply to all services that we provide to you when arranging your insurance cover.
- 3.2. You shall provide us with all relevant information in relation to your business to enable us to provide our services. Such information must be provided in a format which allows us to provide a clear presentation to insurers. We can rely on any information provided to us by you and/or your previous insurance broker.

4. Notification of changes, alterations and renewals

- 4.1. Amendments to policies may be arranged upon receipt of full details and on return of the certificate of insurance (if applicable). Cover is subject to acceptance by insurers and payment of any additional premium required inclusive of Insurance Premium Tax (IPT).
- 4.2. Renewals are invited on the basis that there have been no changes in the risk other than those specifically notified to us or your insurers.

5. Insurer security

- 5.1. We will only place cover with insurers who satisfy certain minimum criteria assessed by the rating agencies and/or our own assessment, or for whom you have given us specific approval to use. Whilst the information upon which we rely is obtained from sources considered to be reliable, and we use all reasonable endeavours to review that information in order to protect your interests, predictability of solvency cannot be, and is not, guaranteed by us. The financial standing of any insurer can, of course, change after the insurance contract had incepted. We do not guarantee the ongoing ability of any insurer to meet their contractual obligations.

6. Documentation

- 6.1. It is your responsibility to read all documentation upon receipt and raise any query regarding it, otherwise you risk a loss you suffer not being

paid in part or in full. Documentation including your policy and certificate, if applicable, will be issued to you upon receipt from insurers.

- 6.2. You must check all documentation issued to you, to ensure the details are correct and the insurance cover provided meets your requirements. We will arrange insurance cover according to your instructions but only you can identify if it does not meet your intentions. If you have any concerns in respect of your insurance cover, or are uncertain as to the meaning of any terms and conditions, or if you discover errors in the documentation, then you must notify us immediately.

7. Payment of the premium

- 7.1. We must receive your payment, unless it is made by you directly to your insurer, by cheque, credit or debit card, electronic funds transfer, or be in receipt of a completed premium instalment application form (with deposit where requested), drawn on a bank, building society or other UK financial institution account, in the policyholder's name and before cover commences unless we agree otherwise. A charge may apply to payments made by business or corporate credit card and this will be confirmed to you in writing at the time of incepting or renewing your insurance. If we agree to accept payment from someone other than the policyholder then this must be notified to us and agreed by us.
- 7.2. We have no obligation to fund any premium, taxes or fees (if applicable), on your behalf, nor do we have any responsibility for any loss you may suffer as a result of cancellation of insurance cover, or any other prejudicial steps taken as a result of late payment substantially attributable to you. If we decide to retain certain documents whilst awaiting payment, we shall provide details of your insurance cover and any information or documents required by law.
- 7.3. We shall be entitled (but not obliged), without providing notice to you to set off any amounts due to us from you, against any amounts which we may receive on your behalf (i.e. claims moneys, refunded premiums and other sums). Please be aware that full or partial non-payment of a premium or default on a credit agreement may result in the cancellation or lapsing of your policy.

8. Transferred business

- 8.1. When we are appointed to service insurance policies other than at their inception or renewal and which were originally arranged via another party, we shall not be liable during the current insurance period for any loss arising from any errors or omissions or gaps in your insurance cover, or advice not supplied by us. Should you have any concerns in respect of a policy, which has been transferred to us, or if you require an immediate review of your insurance arrangements, you must notify us immediately; otherwise we shall review your insurance arrangements and advise accordingly as each policy falls due for renewal.

9. Short period and cancelled policies

- 9.1. If you wish to cancel your policy, then you will need to return the policy document and current certificate of insurance (if applicable), and confirm your cancellation instructions. Subject to the cancellation terms of your policy, a refund of premium may be available. Details of any applicable cancellation terms and charges will be found in your policy documents. Our commission and/or fees are fully earned from the date insurance cover commences and may not be refundable in the event of cancellation, avoidance or early termination of a policy.

10. Claims

- 10.1. We will assist you with advice when you make a claim under your policy, but it remains your responsibility to have read, understood or queried all documentation upon receipt. All incidents that could possibly give rise to a claim must be notified to us or your insurer in accordance with the terms of your policy and a claim form completed where required. Delay on your part in notifying a claim and/or completing required forms may risk a loss you suffer not being paid in part or in full.
- 10.2. You must not under any circumstance admit liability for a loss or agree to any course of action, other than emergency measures carried out to minimise the loss, as you will risk your claim not being met in part or in full. All correspondence, claims, writs, summonses etc. should be forwarded immediately, unanswered, either to us or to your insurer. You are also reminded of your duty to keep all losses and costs arising from an incident to a minimum and that failure to comply with policy terms and conditions may invalidate cover.
- 10.3. We will remit claim payments received on your behalf, to you as soon as practicable after confirmation of receipt of cleared funds in our bank account. In the event that an insurer becomes insolvent or delays making settlement, we do not accept liability for any unpaid amounts.
- 10.4. Where we have a delegated authority from an insurer to settle your claim on their behalf, we shall make you aware of this on notification of the claim and obtain your informed consent to proceed.

11. Client and insurer money

- 11.1. **The firm named in the heading is not authorised by the Financial Conduct Authority to handle client money.** All client money is held as agent of the insurer under a Risk Transfer Agreement with your insurer; the purpose of which is to protect you in the event of financial failure since, in such circumstances, general creditors would not be able to make claims on client money as money received is treated as if it had been received by the insurer.
- 11.2. We hold all money in a Trust bank account. The firm intends to act as agent for insurance undertakings and as such, any money received by the Firm as agent for insurance undertakings will be held on trust for the insurer separate from the firm's money. Risk-transferred money may include any premiums including additional and return premiums, claims money, refunds and professional fees. Under the terms of operating as agent for insurance undertakings we can:
- 11.2.1. For the purpose of effecting a transaction on your behalf, pass your money to another intermediary, including those resident outside the UK who would therefore be subject to different legal and regulatory regimes. In the event of a failure of the intermediary, this money may be treated in a different manner from that which would apply if the money were held by an intermediary in the UK. Please inform us if you do not agree to this.
- 11.2.2. Retain for our own use, any interest earned on client money.
- 11.3. Your money will be held as agent of the insurer. This means that when we have received your cleared premium, it is deemed to have been paid to the insurer.
- 11.4. Unless we receive your written instruction to the contrary, we will treat receipt of payment from you and of any claim payment and/or refund of premium which fall due to you, as being with your informed consent to the payment of those monies into the Trust bank account.

12. Our liability to you

- 12.1. Unless we have otherwise agreed with you in writing, we shall treat your instructions to us to place or renew your insurance cover as acceptance of the limitation of our liability to you and to any other person with an interest in your insurance cover.
- 12.2. Our aggregate liability and the liability of our Affiliates to you, on any basis (including for example for breach of contract or negligence), arising out of or in connection with these Terms of Business, shall be limited in total to £1,250,000. We shall not be liable to you in any circumstances for any special indirect or consequential loss or loss of profits. These provisions shall not apply to any liability which cannot lawfully be

excluded or limited.

12.3. This limitation of liability clause shall survive termination of these Terms of Business.

12.4. You agree that if you do not notify us of material facts and circumstances relevant to the risk to be insured, including those which may arise during the period of your insurance cover, then this will be treated by us as a statement that you have no information to supply in relation to that fact or circumstance. If you do not understand any point please ask for further information.

13. Confidentiality and security

13.1. To help make sure you receive a competitive quotation, offer of appropriate payment options, protect against fraud and to verify your identity, insurers may use publicly available data which they obtain from a variety of sources, including a credit reference agency and other external organisations. Their search will appear on your credit report whether or not your application proceeds.

13.2. All information on our records relating to you will be treated as private and confidential and will only be disclosed to others such as our business partners, insurers, credit providers and other third parties who are directly involved in the normal course of arranging and administering your insurance. By accessing our sites and using our services, you consent to any such transfer of information to a third party.

13.3. Where you have given us consent we may use the data we hold about you to provide you with a renewal quotation and information about products and services we consider may be appropriate.

13.4. Our Retention of your Personal Information - By using our services you consent to us and our partners retaining any personal information you have provided. We will retain any personal information only for as long as is necessary to fulfil the business purpose for which it was collected. We will also retain and use your personal information for as long as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

Under the General Data Protection Regulations 2018, you have the right to ask us for a copy of any personal information about yourself that we hold on our records. Please contact us if you require any more information. For further information on your rights under the General Data Protection Regulations please refer to the Information Commissioners Office – www.ico.org.uk.

14. Termination of our authority to act on your behalf

14.1. You or we may terminate our authority to act on your behalf, by providing at least 14 days notice in writing (or such other period we agree). Termination is without prejudice to any transactions already initiated by you, which will be completed according to these Terms of Business, unless we agree otherwise in writing.

14.2. You will remain liable to pay for any transactions or adjustments effective prior to termination and we shall be entitled to retain any and all commission and/or fees payable, in relation to insurance cover placed by us, prior to the date of written termination of our authority to act on your behalf.

15. Severability

15.1. If any provision of these Terms of Business is found to be invalid or unenforceable, in whole or in part, the validity of the other provisions of these Terms of Business and the remainder of the provision in question will not be affected.

16. Assignment

16.1. We are entitled to assign these Terms of Business to any other company within the group of companies of which we are part. You are entitled to assign these Terms of Business with our prior written consent, not to be unreasonably withheld.

16.2. We are entitled to transfer client monies to an identical bank account held in the name of any other company within the group of companies of which we are a part but then only for so long as such company remains a member of such group.

17. Law and jurisdiction

17.1. These Terms of Business which form our agreement with you shall be governed by and construed in accordance with the laws of England and the exclusive jurisdiction of the English courts unless we agree with you otherwise.

18. Rights of Third Parties

18.1. Unless otherwise agreed between us in writing no provision of this Terms of Business is enforceable under the Contracts (Rights of Third parties) Act 1999 by any person other than you or us.

19. Bribery and corruption

19.1. We have no tolerance for bribery and corruption and this policy extends throughout the company for all of its dealings and transactions in all countries in which we operate. Our anti bribery policy is updated in line with the changes in law, changes in our business and our reputational demands. All employees are required to comply with this policy.

19.2. Both parties agree to comply fully with the requirements of the Bribery Act 2010, and will not engage in any of the following activity:

- promising or giving of an advantage, financial or otherwise, to another person to bring about an improper performance or to reward such improper performance
- requesting, agreeing to receive or accepting of an advantage, financial or otherwise to act improperly
- bribing a foreign public official to do or reward them for doing, something improper.

19.3. Additionally, where applicable, a firm will prevent bribery being committed on its behalf by its employees and third parties.

20. Sanctions

20.1. Both parties shall pay due regard to, and co-operate in respect of the observance of, any applicable international economic, financial or trade sanctions legislation.

21. Complaints

21.1. While we will always endeavour to provide you with a high level of customer service, if you feel dissatisfied with the service you have received you should, in the first instance, contact the office you usually deal with to register your complaint.

Or, alternatively you may refer the matter to -

email: brian@bdinsurance.co.uk

post: 2 John Street, Shoreham-By-Sea, West Sussex, BN43 5DN

Tel: 01273 465046

Fax: 01273 465040

- 21.2. We need you to help us by summarising the problem, policies affected and the resolution you expect. Please ensure whenever possible that you quote your customer reference number together with the identity of our member of staff and office address.
- 21.3. We will endeavour to rectify the problem immediately, but if we are unable to do so your complaint will be dealt with in accordance with our formal Complaints Procedure, a copy of which will be provided to you.
- 21.4. If you remain dissatisfied you may be an eligible complainant within the rules of the Financial Ombudsman Service (FOS). Their jurisdiction broadly covers those that employ less than 10 persons and whose turnover or annual balance sheet is less than 2 million Euros, and charities or trusts whose turnover or net assets respectively are less than £1m. Should you remain dissatisfied with our final decision or more than eight weeks have passed since receipt of your complaint, then if you wish, you may contact the FOS, details of which can be found at www.financial-ombudsman.org.uk. Full details will be supplied in our Complaints Procedure.

22. Compensation

- 22.1. We are covered by the Financial Services Compensation Scheme (FSCS), and you may be entitled to compensation from the FSCS if we cannot meet our obligations. This does not extend to consumer credit lending, i.e. credit broking/lending. Insurance advising and arranging is covered for 90% of the claim with no upper limit, although compulsory insurance is protected in full. Further details regarding the FSCS can be obtained from its website www.fscs.org.uk. Full details and further information on the scheme are available at www.fscs.org.uk.

The Duty of Disclosure and Fair Presentation

If your insurance¹ policy is governed by the laws of England and Wales, Scotland or Northern Ireland² please read this guidance note carefully, as any failure to disclose material information to your insurer, may adversely affect the validity of your insurance policy. If you have any queries, please do not hesitate to contact us in the first instance.

If your insurance policy is not governed by the laws of England and Wales, Scotland or Northern Ireland, we recommend that you obtain independent advice as to your obligations under the relevant law. If you are not sure about which law applies to your insurance policy, you should discuss this with us.

This guidance note does not purport to constitute legal advice but it does reflect the law. Your insurance policy may contain clauses which vary the strict legal position. If appropriate you should, in addition to speaking with us, consider taking your own independent legal advice.

Please tell us if the person in your organisation responsible for arranging insurance changes so that we may explain the duty of disclosure/fair presentation to that person.

REMEMBER – you are responsible for the accuracy and completeness of all the information you provide to us and to your insurer.

Your Obligations

If you are a business and your insurance policy is governed by English Law, you must, at all times, act with utmost good faith towards your insurer. This means that before your policy is placed, at renewal, when varying or extending the policy (and also during the policy period if your policy contains a particular clause stating that any change in the circumstances must be advised to your insurer), you must disclose to your insurer all information, facts and circumstances which are, or ought to be known to you and which are material to the risk. When providing information or completing a proposal form, or otherwise confirming any information to your insurer, you should take care to ensure that the details provided are complete and accurate.

Even where a proposal form is used, you should note that your duty of disclosure is not confined to answering the specific questions listed in the form, and/or asked by us or your insurer and that all material circumstances should be disclosed to your insurer, regardless of whether or not your insurer has asked for the information.

What is 'Material'?

Under English Law, every circumstance is material if it would influence the judgement of a prudent insurer in fixing the premium and/or the terms of the insurance and/or determining whether to accept the risk. This refers to 'any' prudent insurer, not just the insurer who has been offered the risk. A circumstance may be material even if disclosure would not necessarily lead to an increased premium or declination of the risk.

The Insurance Act 2015 gives some guidance as to what a 'fair presentation' of the risk means:

- You must disclose every material circumstance which is known by
 - Your senior management (the Act defines 'senior management' as 'those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised'); and
 - Those individuals responsible for arranging your insurance (which includes risk managers and any employee who assists in the collection of data, or who negotiates the terms of the insurance, such as your individual brokers).
- You 'ought to know' what should reasonably have been revealed by a 'reasonable search' of information available to you. This means you must conduct a reasonable search for, and disclose, material information that is available to you. It is important to note that this includes not only information held within your organisation but also outside it, including information held by your agents, and also held by persons and entities who are to be covered by the insurance.
- You must not make any misrepresentations to your insurer.
- You must provide the information to your insurer in a manner which would be 'reasonably clear and accessible' to a prudent insurer. This is a new, standalone, duty.

In the context of business insurance policies, insurers are likely to regard matters such as, but not limited to, the examples detailed in last page of this document as material. If you are unsure whether a fact or circumstance should be disclosed, or whether the duty to disclose information continues throughout the period of a particular policy, we recommend that you disclose the information anyway, as failure to do so may lead to your insurer reducing its claim payment, applying additional terms or even avoiding the policy.

When to Disclose

Your duty of disclosure applies throughout the negotiations preceding the placing of your policy, until your insurer has agreed to accept the risk and has set the terms, price and level of participation, and the contract has been finalised.

After the policy has been placed, the duty of disclosure arises again if you wish to make changes to the policy, so that your insurers takes additional risk, when there is an extension of the policy period and when a policy condition requires you to advise your insurer of a specific increase or alteration in risk. The duty to disclose material facts and circumstances arises again during the renewal process.

Failure to Disclose

The consequences of failing to disclose a material fact or circumstance will depend on the precise terms of your insurance policy.

The Insurance Act 2015 sets out the remedies that your insurer will have if you fail to comply with the duty of fair presentation. Your insurer's remedies will depend on whether or not your failure was deliberate or reckless:

- If you deliberately or recklessly fail to comply with your duties, your insurer will be able to avoid the policy, that is, to treat it as if it had never existed, and may retain the premium.
- If your failure to comply with your duties was not deliberate or reckless, your insurer's remedy will depend on what the insurer can show it would have done had a fair presentation of the risk been made:
 - If your insurer would not have entered into the contract on any terms, it can still avoid the contract but must return the premium;
 - If your insurer would have entered into the contract but on different terms (not relating to premium), the contract may be treated as if it included those terms from the outset;
 - If your insurer would have entered into the contract but would have charged a higher premium, the amount paid on a claim may be reduced proportionately.

The Insurance Act 2015 will also apply to variations made to policies on or after 12 August 2016 even if the policy inception prior to this date

¹ References to insurance/insured/insurer also apply to reinsurance/reinsured/reinsurer, save for consumer insurance references.

² All references to English Law include the law of Wales, Scotland and Northern Ireland

Non-Exhaustive Illustrative Examples of Material Information

Circumstances which may be considered material are:

- Special or unusual facts relating to the risk;
- Any particular concerns which led you to seek insurance cover for the risk;
- Anything which would generally be understood as being something that should be disclosed for the type of risk in question.

By way of example:

General Information about Your Business

- Business activity (or change to business activity), including processes, products and geographic presence;
- New companies, markets, acquisitions or disposals;
- Additional premises/insurable items;
- Changes to premises;
- Higher than ordinary degree of risk or liability (specific to your business or industry-specific);
- Business financial status;
- Loss history/experience, including paid and outstanding claims and potential claims/circumstances/incidents/losses that were not reported as claims (whether insured or not);
- Details of criminal charges and convictions of your organisation, its directors or employees; regulatory investigations or enforcement/health and safety investigations and prosecutions;
- Any insurers' previous declinatures, refusals to renew, imposed terms/restrictions in cover, mid-term cancellations etc.

Material Damage Policies

- Changes in construction and/or purpose;
- New/amended processes;
- Changes to fire protections;
- Increased storage of hazardous materials/attractive stock;
- Any attempted break-in or arson attack;
- Use of temporary/third party premises.

Liability Policies

- Changes to business activities (including disclosing historic activities that have ceased);
- The creation or acquisition of new companies for which cover is required;
- Products exported to, or work in, overseas territories (particularly in the USA or Canada);
- Work in or on hazardous locations such as offshore installations;
- Health and safety investigations/prosecutions.

Motor Fleet Policies

- Driving convictions;
- Corporate investigations/prosecutions;
- Undisclosed accidents;
- Changes to vehicle performance;
- Change of use of vehicle.

Business Personal Accident and Travel Policies

- Changes to business activities;
- Material differences in the travel pattern (different geographies, number of journeys, etc.).

REMEMBER - This list provides examples only. If in doubt - Disclose.

For more information about the duty of disclosure and fair presentation, please contact us.

The information contained herein is based on sources we believe reliable and should be understood to be general risk management and insurance information only. The information is not intended to be taken as advice with respect to any individual situation and cannot be relied upon as such.