

Wholesale Terms of Business

November 2023

Affinity Risk Partners (Brokers) Pty Ltd ABN 15 091 944 580 t/a Affinity Insurance Brokers is an
Authorised Representative (No 1288354) of Aon Risk Services Australia Limited
ABN 17 000 434 720 AFSL 241141.



These terms of business supersede all previous agreements, understandings and negotiations between 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 (**Aon**) (**AIB, we, us, our**) 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 and AIB each hold 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). Each party will notify the other 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 relationship between the parties.

4. Variation and Termination

4.1. AIB may change this Agreement from time to time by providing the Retail Broker with thirty (30) days' written notice.

4.2. Either party may terminate this Agreement, without cause, upon giving to the other not less than thirty (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 fourteen (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 intendment are intended, to survive termination.

4.5. As soon as practicable after termination of this Agreement and, in any event, within ninety (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 all documents, proprietary and confidential 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
- (f) 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 [here](#) (**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. Closing and Hold Covered

- 6.1. If the Retail Broker wants to incept or renew (as relevant) an insurance product through AIB, the Retail Broker must, no later than fourteen (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 may not be incepted or renewed (as applicable) and in the case of a renewal product, all coverage may cease at the expiry date of that product, unless other arrangements are made and confirmed in writing by AIB.

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.

8. Invoices and GST

- 8.1. The Retail Broker must pay any valid invoice within thirty (30) days from the date of the invoice.
- 8.2. AIB will pay the Retail Broker commission as agreed in writing between the parties in which case any Retail Broker commission and other charges will be identified on the relevant 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.
- 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 valid invoice, pay to the supplier an additional amount equal to that GST.

9. Remuneration

- 9.1. 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
 - (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.
- 9.2. The Retail Broker acknowledges and agrees that AIB fully earns its 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.

10. Refund of Retail Broker Commission – where insurance is varied, cancelled or avoided

10.1. Unless otherwise agreed, 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).

11. Retail Broker not to approach insurer directly

11.1. 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.

12. Ownership of Insurance Business

12.1. 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:

- (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, or
- (e) the Retail Broker is no longer the insurance intermediary for the insured.

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

13. Indemnity

13.1. The Retail Broker indemnifies AIB for and against all claims, damages, judgments, losses, costs and reasonable legal expenses which are directly caused by any act, omission or breach by the Retail Broker of this Agreement. This indemnity is reduced proportionately to the extent such claims, damages, judgments, losses, costs and expenses are caused or contributed to by AIB. This clause survives termination.

13.2. To the maximum extent permitted by law, in no event will either party be liable to the other party for Consequential Loss (being indirect, incidental, consequential, exemplary, reliance, special, or punitive damages (including but not limited to loss data, business or goodwill, or government fines, penalties, taxes, or filing fees), or any lost sales, business opportunities, revenues or profits regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, statutory liability or otherwise) even if advised of the likelihood of such damages.

14. Confidentiality

14.1. Subject to the remaining provisions of this Clause 14, where in connection with this Agreement or Services a party (the "Receiving Party") receives any Confidential Information from the other party (the "Disclosing Party") or on the Disclosing Party's behalf, the Receiving Party will treat the Confidential Information as set out herein.

14.2. The Receiving Party will not distribute or disclose any Confidential Information without the Disclosing Party's prior written consent except where:

- (a) it is necessary for the Receiving Party to disclose such Confidential Information to its professional advisers or auditors or where it is required to disclose such Confidential Information by law or any regulatory authority; and
- (b) in respect of AIB, the disclosure is for the purposes of providing the Services, including to insurers or prospective insurers.

14.3. Where the Receiving Party is required to make any disclosure of Confidential Information by law or regulation under Clause 15.2(a), the Receiving Party will notify the Disclosing Party of such disclosure to the extent reasonably practicable and legally permissible.

14.4. AIB may disclose your Confidential Information to:

- (a) AIB's service providers as needed for services provided to AIB;
- (b) AIB's Related Bodies Corporate (as that term is defined in the Corporations Act 2001 (Cth) to the extent necessary to perform its obligations under the Agreement; and
- (c) any subcontractors as necessary for them to perform or support the Services,

provided that AIB will have in place with such service providers and subcontractors appropriate and reasonable obligations regarding the safeguarding of such Confidential Information.

14.5. Each party will treat any Confidential Information provided as confidential and take appropriate measures to protect the privacy and confidentiality of such Confidential Information and comply with all applicable laws and regulations.

14.6. For the purposes of this Clause 14, Confidential Information means any information, disclosed by the Disclosing Party to the Receiving Party, which:

- (a) either derives economic value, actual or potential, from not being generally known or has a character such that the Disclosing Party and/or any third party from whom the Disclosing Party has received the Confidential Information has a legitimate interest in maintaining its secrecy;
- (b) relates to the Disclosing Party's business (and/or to those of its suppliers and clients, and/or any third party from whom the Disclosing Party has received the Confidential Information) and includes, but is not limited to: equipment; software; designs; technology; technical documentation; product or service specifications; marketing or business plans and strategy; pricing information; financial information; information relating to existing, previous, and potential suppliers, customers, and contracts; inventions; trade secrets; trademarks; intellectual property; applications; methodologies; insurance practices, plans, and strategies, and other know-how which is identified as confidential at the time of disclosure or that a reasonable person would consider, from the nature of the information and circumstances of disclosure, as confidential to the Disclosing Party;
- (c) includes the existence and terms of this Agreement; and
- (d) Confidential Information excludes information which:
 - (i) is publicly available at the time of its disclosure under this Agreement;
 - (ii) becomes publicly available (other than as a result of disclosure by the Receiving Party contrary to the terms of this Agreement);
 - (iii) was lawfully in the possession of the Receiving Party free of any restriction as to its use or disclosure prior to it being disclosed under this Agreement; or
 - (iv) is or has been developed independently by the Receiving Party and without use of the Confidential Information disclosed under this Agreement.

15. Intellectual Property

15.1. 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.

16. Privacy

16.1. 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.

16.2. 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 Australia Privacy Notice available [here](#).

17. Electronic Communication

17.1. 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.

18. Dispute Resolution

18.1. The parties must comply with this Clause 18 before commencing court proceedings in relation to any dispute between the parties arising out of or in connection with this Agreement.

18.2. The parties shall attempt in good faith to resolve any dispute arising out of or relating to the Agreement promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. If these representatives are unable to resolve the dispute within thirty (30) days, the dispute shall be referred to more senior executives who will likewise meet in an attempt to resolve the matter in dispute.

18.3. All negotiations between the parties conducted pursuant to the dispute resolution process described herein (and any of the parties' submissions in contemplation hereof) will be kept confidential by the parties and will be treated by the parties and their respective representatives without

prejudice as compromise and settlement negotiations for purposes of the applicable court rules of evidence.

18.4. Nothing in this clause shall prevent either party from seeking urgent interlocutory relief.

19. International Trade Sanctions

19.1. AIB is part of the Aon group of Companies. The Aon group maintains a strict global policy regarding compliance with international trade restrictions (the "TR Policy") including, those administered in the United States by the Office of Foreign Asset Control (OFAC). Compliance with the TR Policy is mandatory for all Aon staff worldwide, and no exceptions to the TR Policy are permitted under any circumstances.

19.2. In summary, the TR Policy incorporates all applicable laws, which may expose AIB to the risk of sanctions or other penalties, including those that relate to export controls and designated parties (including parties regarded by OFAC as Specially Designated Nationals). The TR Policy affects, in particular (but not solely), certain transactions related to countries subject to sanction, prohibition or restriction under UN Security Council Resolutions or under other applicable trade or economic sanctions, laws or regulations (collectively known as "Restricted Territories"). The Restricted Territories under the TR Policy may be subject to change in line with international trade restrictions.

19.3. AIB expect the Retail Broker to carry out appropriate due diligence to ensure your activities are in accordance with all applicable trade restrictions laws and regulations. AIB do not assume responsibility for your compliance with such requirements. If you become aware that any of the Services, including any risk you have (re)insured or are proposing to (re)insure through AIB involves a Restricted Territory or any other relevant trade restrictions, you should inform us (or the relevant Aon group entity) immediately. Where AIB become aware that an entire transaction is contrary to the TR Policy, then we will be unable to act for the period during which the transaction is contrary to the TR Policy. If part of a transaction we has been asked to carry out (or has already carried out) would constitute, or constitutes, a breach of the TR Policy, we will not be able to act with respect to that part, whether it involves a placement, renewal, variation of (re) insurance contract, payment, processing, advising, the handling of a claim or any other Service for the period during which that part of the transaction is contrary to the TR Policy. AIB will be able to continue to provide other Services that do not contravene the TR Policy.

19.4. AIB will not incur any liability whatsoever to you in the event we rely upon this Clause 19.

20. Bribery and Corruption

20.1. The parties undertake:

- (a) to maintain appropriate policies, procedures and internal controls designed to prevent any acts of bribery or corruption in breach of any anti-bribery and anti-corruption laws applicable to either party, in relation to the Services;
- (b) not to do, or omit to do, any act that will cause or lead either party to breach any anti-bribery and anti-corruption laws applicable to it; and
- (c) to keep proper and accurate books and records reflecting all payments made, and expenses incurred in connection with the performance of the Services.

21. Use of Non-personal Data and Information

21.1. 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).

21.2. 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.

21.3. 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.

21.4. 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.

21.5. 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.

21.6. 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.

22. General

22.1. Both parties agree to comply with applicable laws.

22.2. 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 and certificates of currency) without the written consent of that party.

22.3. 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.

22.4. New South Wales law governs our agreement and the New South Wales courts have exclusive jurisdiction.

22.5. 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.

22.6. 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 thirty (30) days written notice to the other party).

22.7. Any notice under this Agreement must be in writing and if sent to the last known address or e-mail address of the party. Each of the parties will give notice to the other of any change of address, telephone number 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.

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