

TOBA



UIBL

United Insurance Brokers Ltd

Terms of Business Agreement



Your attention is drawn to the limits on our liability in paragraph 15

1. Introduction and business service

United Insurance Brokers Ltd (referred to in this document as "UIBL", "we", "us" or "our") is an independent international insurance and reinsurance⁽¹⁾ Lloyd's broker, a member of the **UIB Group** of companies operating worldwide. Our registered office and principal place of business is 69 Mansell Street, London E1 8AN and we are authorised and regulated by the UK Financial Conduct Authority (FCA). Our permitted business is arranging general insurance contracts and our FCA Firm Reference number is 307812. This can be verified on the Financial Services Register on the FCA's website at <https://register.fca.org.uk>.

The purpose of this *Terms of Business Agreement* ("TOBA") is to set out the terms on which UIBL undertakes to act for you, our client, as your insurance broker. This TOBA provides information on our services as well as including our regulatory and statutory obligations. It also identifies your own responsibilities, both to us and to insurers.

In order to satisfy our obligations with regard to financial crime legislation, we will carry out certain checks from time to time to ensure that there are no prohibitions against working with you.

These are our standard terms and can only be varied with our written consent. Please read these terms carefully and contact us immediately if there is anything in this document which you do not understand or with which you disagree. If you instruct us to proceed with any insurance placement, or to undertake any other insurance related service, and we do not hear from you, this will serve as your consent to working with us on the terms set out in this TOBA and will have contractual effect between us. We will at all times act with integrity and good faith.

Since March 28 2017, Mitsui Sumitomo Insurance Company, Limited of Japan (MSI), owns 11% of the issued share capital of UIB Holdings (UK) Limited, the ultimate parent company of UIBL, which also represents an indirect holding of the same amount in UIBL. Neither UIBL nor any other member of the UIB Group directly or indirectly owns any interest in any insurers (including MSI). Any and all transactions between UIBL and insurers within the MSI group will be conducted at arm's length and on normal commercial terms.

From time to time it may be necessary for us to amend or supersede these terms by new terms. Where this is the case we shall notify you of the proposed changes and, unless we hear from you to the contrary within 28 days after such notification, the amendments or new terms will come into effect from the end of that period.

2. Your obligations

As an Intermediary

If you are an intermediary you will be a "commercial customer" as defined in the FCA regulations, and our duties are solely to you as our client, though in turn, you owe a duty of care, either to the ultimate insured or to another intermediary. In all cases you must ensure that you have full authority to instruct us.

It is your obligation to ensure that the ultimate insured is aware of all the terms of any insurance policy obtained by us on your instructions. It is also your obligation to ensure that you hold and comply with all necessary licences, statutory law and regulatory rules that apply in your local domicile, including the retention of records and reproduction of such, if required, on a timely basis.

(1) Any reference to insurance or insurer in this TOBA respectively includes reinsurance or reinsurer as appropriate.

General

If you are not an intermediary, as the insured you must disclose all material facts that are known to you, or which ought to be known by you, before your insurance contract is finalised, both for new contracts, and at renewal. Please refer to *Duty to make a fair presentation of the risk*. If you are an intermediary you must do this for your client.

All instructions must be confirmed to us in writing, for instance to bind or amend cover or to report a claim, in a timely manner or in line with any claims notification conditions in the insurance policy. You should also notify us immediately if there is any change in circumstances.

Premiums should be paid promptly, paying due regard to premium payment conditions and warranties.

3. Confidentiality

We may disclose the fact that you are our client and the nature of your insurance, but no other details about you.

Except as stated below information provided by you to us will not be used or disclosed to any other person not entitled to receive such information other than:

- in the course of carrying out your instructions as your insurance broker;
- except as may be required by law or regulatory authority; and
- where necessary to our insurers or reinsurers, actuaries, auditors, professional agents and advisers and other UIB Group companies.

The restrictions on UIBL above do not apply to information which:

- rightfully comes into UIBL's possession from a different source;
- is already public knowledge or becomes so at a future date (except where that happens because we have broken the restrictions in this provision); or
- which is trivial or obvious.

4. Conflict of interest

We seek to avoid conflicts of interest in the conduct of our business and have procedures, systems and controls in place to deal with possible conflicts of interest that may arise when dealing with you. For example occasions may arise where we, or one of our other clients, will have some form of interest in business which we are transacting for you. We will notify you immediately when and if a conflict should occur and recognise that where a conflict arises you may wish to secure the services of another intermediary to assist you. Your interest will be to the fore at all times.

5. Duty to make a fair presentation of the risk

The following summarises the duty under the law in the United Kingdom. Although the duty is very similar where your insurance is in place under another system of law it may not be exactly the same. If in doubt please ask for more information.

In order for us to arrange insurance on your behalf, you must make a fair presentation of the risk you want to insure against. This means you must disclose every material circumstance you know or ought to know or, failing that, give insurers sufficient information to put a prudent insurer on notice that it needs

to make further enquiries. All information disclosed must be in a manner which would be reasonably clear and accessible to a prudent insurer and you must not make misrepresentations. You, as insured, are deemed to know every circumstance which, in the ordinary course of business, ought to be known by you. As a business insured, it is taken that you know what is known to senior management and individuals responsible for your insurances. You ought to know what would have been revealed by a reasonable search of information available to you.

A deliberate or reckless failure to make a fair presentation of the risk can lead to avoidance of your contract of insurance. Otherwise the onus is on the insurer to show what it would have done had it received a fair presentation of the risk when:

- the insurer may avoid the policy if it can show that, had it received a fair presentation of the risk, it would not have entered into the contract at all, but
- if the insurer can show it would have entered into the contract on different terms the insurer may treat the policy as having included them from the outset, and
- if the insurer can show it would have entered into the contract at a higher premium, the insurer may reduce the amount to be paid on a claim proportionately. For example, if the premium would have been £250,000 rather than £200,000 then the insurer need only pay 80% of any claim.

You are reminded that the responsibility to make a fair presentation of the risk, and for the accuracy of all the details given in any proposal or claim form or other document is yours and yours alone.

You must advise us immediately with full details of any material alteration or change in risk which occurs at any time during the policy period (some policies require this as a condition of continuing cover) as well as at renewal.

6. Financial and economic crime

UIBL has a zero tolerance policy of all *financial and economic crime*, and we reserve the right to end our relationship with anyone who is involved with, or is convicted of, any financial or economic crime in any part of the world. This includes giving notice of immediate termination (without having to wait for a notice period to come to an end) of any contract with that person in such circumstances.

UIBL have strict *anti-bribery and corruption* policies and procedures in compliance with applicable regulatory requirements, rules and laws, including the UK *Bribery Act 2010*. It is integral to our relationship with you that when you are doing business with us, you and all of your agents have similar policies and procedures in place to help ensure that acts of bribery or corruption do not take place.

Any breach of anti-bribery laws by any party with whom we transact business, either directly or indirectly, will entitle us to serve immediate notice of termination of our agreement with that party.

Additionally, UK *anti-money laundering* laws and regulations require us to obtain evidence of the identity of those for whom we act. We will request the necessary information from you and seek further information if you request payment to be made to a third party. We are obliged to report to the UK National Crime Agency ("NCA") any evidence or suspicion of money laundering at the first opportunity and we are prohibited from advising you of any such report or even that we are thinking of whether or not to make such a report.

To comply with sanctions laws and regulations we will not at any time provide any service to you or anyone owned or controlled by you, with any benefit or economic resource, or provide you or anyone owned or controlled by you with any benefit or economic resource if to do so would expose us (or our parent company, or any other member of the group of companies of which we form part at any time) to any penalty or restriction, including extraterritorial penalties or restrictions arising out of any trade

or economic sanctions law or regulation. Accordingly we may under this provision suspend services to you for so long as we reasonably believe that this provision applies, or immediately end our agreement with you by written notice to you, in each case without any direct or indirect liability whatever to you or to any other person.

7. Quoting and placing

We will seek to understand your requirements and keep you fully informed of progress at all stages of negotiations providing you with details of the terms indicated by insurers, including an indication of the likely premium cost. It is vital that you provide us with all relevant information and that you keep us informed of changes in material circumstances to enable us to properly represent your interests. Please refer to *Your Obligations* and *Duty to make a fair presentation of the risk*.

We will place your insurance with one or a combination of insurers, the selection of which is based on our experience and knowledge of the relevant market sector.

8. Market security

We assess the financial soundness of the proposed insurers we recommend for your requirements using public information, including that produced by recognised rating agencies. However, we do not in any circumstances act at any time as an insurer, and we do not guarantee or otherwise warrant the solvency of any insurer at any time. The suitability of any insurer rests with you, and we will be glad to discuss with you any concerns you may have. Occasionally it may be necessary to seek your specific written approval for use of a proposed insurer, for example where you have asked to use the particular insurer in question.

If an insurer who has granted risk transfer to UIBL becomes insolvent, any related premiums we hold for that insurer are deemed to have been paid to it and will not be returnable to you.

In the event of any insurer's insolvency you may still have a liability to pay premium. We do not accept any liability for any unpaid amounts in respect of claims or return premiums due to you from a participating insurer who becomes insolvent or delays settlement.

You will also additionally have the responsibility for payment of premiums if you require replacement security.

9. Evidence of cover and policy documentation

We will promptly confirm cover to you in the form of a UIBL produced Evidence of Cover document, an insurance policy, a certificate of insurance, or a copy of the Market Reform Contract (the placing slip). It will confirm the basis of the cover, setting out the terms of the insurance and the names of the insurers with whom it has been placed and their respective signed lines.

If you are an intermediary we will confirm the basis of cover to you in the same format as stated above. It is your obligation to ensure that the ultimate insured is aware of all the terms of any insurance policy obtained by us on your instructions.

You should check the document sent to you carefully, to ensure that it is entirely in accordance with your understanding and instructions. Should this not be the case, or if you require any clarification of the content, or if you are dissatisfied with the insurance security, you should contact us immediately. If we do not hear from you we will take this as your confirmation that the documentation is in order.

For some types of insurance cover, it is possible that a claim may be made under a policy long after its expiry date. Retention of such documents is therefore essential. UIBL retain documents for business that we place on your behalf in electronic and paper formats in line with market practice and regulatory requirements.

If you are a Retail Client (a Consumer) a statement of demands and needs will be attached to the contract documentation. You should read this carefully. It will confirm whether the policy has been personally recommended and, if so, the reasons for this. Before expiry of the policy (within no less than 21 days) you will be provided with renewal terms for reference purposes, or notified that renewal is not being invited.

10. Warranties, subjectivities and insured values

It is important that you familiarise yourself with all the terms of any insurance contract purchased. In particular failure to comply with any *warranties* contained in your policy could lead to your insurance claim being denied by the insurer.

A *subjectivity* in your insurance contract if it remains outstanding may lead to the contract being invalidated or coverage prejudiced.

The *Insured Value* is also important; in the event that you insure your property for less than its current replacement value, underwriters may apply average. For example if your insured values are 80% of replacement value you may only be paid 80% of your loss.

11. Payment of Premium Debit/Credit Notes

A Debit Note or Invoice will be sent to you which, in addition to any taxes and charges, will clearly show the total amount of premium due and the date that is due to the insurer. Premium should be received by UIBL in cleared funds in sufficient time to enable us to honour the payment terms to the insurers, which must be at least 15 days prior to the due date or as stated on the Debit Note or Invoice. If you do not think that you will be able to comply with any premium payment condition or warranty please contact us immediately. Failure to pay on time may lead to the cancellation or avoidance of the insurance. Payment must be in the currency shown on the Debit Note or Invoice.

If you pay in a different currency the converted funds will be applied against the amount due, with any shortfall arising from the exchange differences remaining your liability.

A Credit Note will be issued where there are return premiums due to you, and for the payment of a claim. You may not set Debit Notes and Credit Notes against each other. This is only permissible with our prior written agreement, which we may give in a statement of accounts.

Certain accounting arrangements in the London insurance market can give rise to an automatic deduction of premiums from our broker account, and if that occurs at a time when you have not paid the premium to us, you agree to settle that amount to us without delay.

12. Methods of payment

Our preferred method of payment is by direct transfer to our bank account. We will advise you of our banking details and you are not to accept any changes to these details unless we notify them to you in writing in the form of a letter signed by 2 members of our board of directors.

When settling premium to us, it is not permissible to make deductions (e.g. return premiums or claims) of any kind without our prior written consent.

13. Client money

Client money is money of any currency that we receive and hold in the course of carrying on insurance mediation on behalf of our clients, or which we treat as client money in accordance with the FCA's client money rules. All client money is held by us on trust for our clients and is deposited with one or more approved banks, a list of which can be provided on request.

Where you do not wish your money to be passed to a particular bank, intermediary or jurisdiction, you should inform us in writing.

Client money is held in one of the following ways:

- (a) as your agent in a non-statutory trust in accordance with the FCA Client Asset Sourcebook (CASS) which, in the unlikely event of our company failure, is available to clients ahead of insurers and other creditors; or
- (b) as agent of your insurer(s) under agreements which allow for risk transfer; or
- (c) as agent of your insurer(s) where there is no risk transfer, but where they have agreed for their funds to be co-mingled with client money in our non-statutory trust bank account, and for the insurers' rights to those funds to be subordinated to those of our clients.

We are permitted, in the course of business, to use client money held on behalf of one client or insurer to pay another client's or insurer's premium or claim. We may also ask others to assist us in carrying out your instructions, such as lawyers, surveyors, other intermediaries and loss adjustors, whose fees and expenses will be settled using client money. We may not, however, use client money to pay ourselves commissions before we receive the premium from the client, but all interest earned on client money held by us, and any investment returns will be retained by us for our own use.

14. Remuneration

For the services that we carry out on your behalf our principal remuneration is by way of brokerage/ commission which is determined by insurers with whom we place your business. You may separately agree to remunerate us by way of a fee for placing and administering your insurance and/or providing claims and other services. Where we are to be remunerated by you by a fee we will negotiate and agree it with you, and you will be responsible for paying the fee to us. In some circumstances remuneration will be by way of a combination of both commission and a fee, which will also be discussed and agreed with you prior to the conclusion of the placement of your insurance.

As all our remuneration is earned on placement, we will be entitled to retain it (or to receive it where unpaid) even where a policy, placed by us, is terminated, amended or cancelled for any reason, such as the appointment of another broker during the policy period. Where we place multi-year policies we will be entitled to retain all commission upon placement even if such policies are cancelled.

You may wish us to carry out any task beyond the services you initially require, and these may be subject to an additional fee, brokerage or both, but we will not impose any additional charges without prior notice or discussion with you.

In addition to the above you should also be aware that UIBL may receive fees or additional commissions from arranging your insurance from the following sources:

- interest earned on the insurance money passing through our client money bank accounts;
- expense allowances or commissions from insurers with whom we have placed your insurances for certain financial management, business processing, policy administration and other services which we provide directly to insurers (supplementary to services we furnish to you), all of which provide a better service to you;
- profit commissions paid by insurers on specific facilities and arrangements for a limited class of business. These are usually at the end of their accounting period and in recognition for the additional work that may have been carried out by us;
- income from arranging premium finance;
- we may have arranged, or be requested to arrange, facultative or treaty reinsurances for the insurers for whom we effect your insurance. These are separate and distinct contracts where we act as the agent of the insurers concerned, for which remuneration may be paid separately outside of the scope of our agreement with you.

UIBL is committed to transparency. We will deal with you openly, and when requested we will disclose the amount of our income (or where this is not feasible we will give you an estimate and the basis of calculation) from the above sources which we may receive in relation to the insurance we arrange for you.

15. Exclusions and limitations of the liability of UIBL and of its directors and employees

Our services are provided solely and exclusively by UIBL, acting through its directors and employees, and accordingly no director or employee will owe you any personal duty of care. In providing you with our services UIBL does not undertake or accept any duty (including any duty of care) to any person apart from you (and if you are an insurance intermediary or insurance broker that means you personally, not any of your clients).

No UIBL director or employee will be personally liable to you for any direct or indirect loss or damage, however that may arise, as a result of anything which that UIBL director or employee may do or fail to do (and this includes negligent acts and omissions), but this does not apply where the loss or damage is caused by fraud by that director or employee, or where liability cannot otherwise be lawfully excluded. UIBL itself will be liable to you to the same extent that we would have been without this exclusion, and we will not defend our position by saying that because you cannot be compensated under this exclusion by our directors or employees personally that automatically also means that UIBL will not be responsible to you for what has happened. This does not mean that we may not defend ourselves on some other ground.

You may also only ask us to compensate you for loss or damage in proportion to our contribution to the overall fault for that loss or damage. We will for this purpose take into account any contributory negligence by you, and the negligence by your other advisers and everyone responsible to you, or liable in respect of the same loss or damage.

UIBL's total liability for breach of contract, negligence, breach of statutory duty and all other claims arising out of or in connection with this TOBA or any of our services is limited as follows:

- (a) for personal injury or death caused by our negligence, no limit applies;
- (b) for any fraudulent act (including theft and conversion) or our wilful default, no limit applies;
- (c) for claims which are not within either a) or b) above, our total aggregate liability is limited to GBP 5 million; and
- (d) subject to a) and b) above, we are not liable at all in any circumstances in respect of any one or more (including all) of the following losses (whether direct or indirect):
 - loss of revenue;
 - loss of opportunity;
 - loss of reputation;
 - loss of profits;
 - loss of anticipated savings;
 - increased costs of doing business,

and all indirect or consequential loss which is not already covered above.

Both you and we agree that each of the exclusions and limitations in this paragraph 15 is reasonable, based on the level of risk assumed by us in connection with the services we provide and the fees and commission or brokerage earned by us.

The provisions of this paragraph 15 are, if necessary, enforceable by our directors and employees.

16. Claims

You must notify us immediately of any incident or circumstance that may give rise to a claim under your insurance, providing us with all known material information in order for us to assist you to comply with the terms of your insurance contract. Failure to notify an incident may enable insurers to deny your claim. If you have any doubt whether or not a matter or circumstance is required to be notified to insurers you should contact us immediately.

When you advise us of a claim we will provide you with a claims handling service as long as you remain a client of UIBL, and we will assist you in the submission of your claim to insurers.

However, if you cease to be our client or terminate our appointment but request us to handle a claim on your behalf (or continue to do so), we reserve the right to charge a fee for our services.

In the event that you submit a claim or are due a return premium on a policy where one or more of the subscribing insurers has become insolvent or is delaying its settlements, we cannot and do not accept liability for the uncollected amounts. We will settle to you the amounts collected from the responding insurers and advise you of those insurers who have not paid and the amounts unpaid by them.

Claims payments will be made in favour of you or to any applicable claim payee stated under the original policy. If the claim is payable to you, but you require the payment to be made to a third party then this must be confirmed in writing and include bank details of the payee and be signed off by an authorised signatory of the company. Please note that in those circumstances we will need to apply anti-money laundering checks in relation to the payee, and we reserve the right to refuse your instructions if those checks do not produce results that are acceptable to us.

17. Complaints

We take any complaints very seriously and we will ensure that complaints are handled fairly, effectively and promptly and are resolved at the earliest opportunity. We have a formal complaints policy in line with regulatory and statutory requirements. All complaints should be in writing and addressed specifically to the Chief Executive Officer or the Compliance Officer to United Insurance Brokers Ltd, 69 Mansell Street, London E1 8AN or by e-mail to enquiries@uib.co.uk.

If we are still unable to settle your complaint, you may be entitled to refer it to the Financial Ombudsman Service at South Quay Plaza, 183 Marsh Wall, London E14 9SR, or at www.financial-ombudsman.org.uk.

18. Compensation

We are members of the Financial Services Compensation Scheme (FSCS). Certain personal and small business policyholders are entitled to compensation from the FSCS if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Full details and further information on the scheme are available from the FSCS at 10th Floor Beaufort House, 15 St Botolph Street, London EC3A 7QU or at www.fscs.org.uk.

19. Data protection

We are registered under the UK Data Protection Act 1998 and we undertake to comply with the Act and, from when it comes into effect in 2018, the EU General Data Protection Regulation in all our dealings with your personal data. Your personal information will be kept secure.

We undertake to ensure your personal data is:

- processed lawfully, fairly and in a transparent manner;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
- accurate and, where necessary, kept up to date and every reasonable step will be taken by UIBL to ensure that personal data that is inaccurate, having regard to the purposes for which it is processed, is erased or rectified without delay;
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data is processed;
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

As part of our day-to-day communications with you, we will generally use e-mail and unless you advise us to the contrary in writing then you accept this is a valid communication enforceable as written communication for legal and regulatory purposes.

20. Third party rights

Except for the right of our directors and employees to enforce the provisions of paragraph 15 above this TOBA is not intended to confer a benefit or remedy on any third party, whether by virtue of the Contract (Rights of Third Parties) Act 1999 or otherwise. With the same exception for our directors and employees, all other third party rights are excluded to the fullest extent permitted by law. You agree that we may rescind or vary our agreement with you and this TOBA either wholly or partly without the consent of any third party.

21. Intellectual property

We shall retain all title, copyright, patents and other intellectual property rights to all methodologies and documents used in our provision of services to you.

22. Authority to give instructions

We work with you on the basis that unless and until you instruct otherwise, all of your employees, directors and officers who give us instructions are authorised by you to do so on your behalf.

23. Force majeure

We shall not be liable to you if we are unable to provide services as a result of any cause beyond our reasonable control. In the event of any such occurrence affecting us we shall notify you as soon as reasonably practical.

24. Governing law and jurisdiction

This TOBA and our business relationship with you are governed by, and are to be construed solely in accordance with, English law and this TOBA and everything arising out of our dealings with you are subject to the exclusive jurisdiction of the English courts.



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United Insurance Brokers Limited is an accredited Lloyd's insurance broker, authorised and regulated by the Financial Conduct Authority (FCA).