

## Effective Date: 1 February 2019

These Terms and Conditions of Trade ('**T&Cs**') apply to any licenced insurance broker ('**Broker**') advising on and dealing in or wishing to advise on and deal in insurance products provided by Hollard Commercial Insurance Pty Ltd (ABN 86 603 039 023, AFSL 474540) ('**HCl**'). These T&Cs replace any existing service agreement between HCl and any Broker.

## 1. INTRODUCTION

The Broker wishes to carry on a financial services business that provides financial product advice for general insurance products, and deals in a financial product by applying for, acquiring, varying or disposing of an insurance product provided by HCl subject to the Broker's Australian Financial Services Licence ('**AFSL**') authorisations. The Broker agrees to be bound by these T&Cs. In consideration of the Remuneration (set out at section 7 below) by HCl, the Broker agrees to advise and deal in an insurance product provided by HCl in accordance with the Broker's AFSL authorisations.

## 2. RELATIONSHIP

The Broker holds an AFSL that authorises them to advise and deal in insurance products to either retail or wholesale clients (or both). The Broker will advise HCl immediately if the AFSL is varied, suspended or cancelled.

The Broker acts as agent for their clients and is not an agent of HCl nor do these T&Cs create any form of binder, employment, joint venture or partnership. HCl acts as agent for insurers. The Broker acknowledges that by becoming an intermediary of HCl, product updates and related information will be communicated electronically (including by e-mail) to all staff of the Broker. The Broker agrees that HCl is entitled to continue to send all such communications to the Broker and its staff and that any unsubscribe request from staff of the Broker will be applied only in respect of marketing initiatives and the staff will continue to receive all updates and related information that is intended to give the Broker more information about HCl products or assist the Broker to fulfill its obligations as an intermediary, for example by providing information about HCl systems or processes.

## 3. ARRANGING INSURANCE – CLOSINGS

The Broker must provide HCl with all closing instructions received from the insured within 14 days from incepting the contract of insurance.

## 4. FINANCIAL SERVICES GUIDE ('FSG')

For retail products distributed by HCl, where there is no combined FSG/PDS for the insurance product, the Broker must issue the relevant FSG on behalf of HCl to the Broker's client.

## 5. DUTY OF DISCLOSURE

The law (sections 21 and 21A of the Insurance Contracts Act 1984 ('ICA')) requires an insured to tell HCl, as agent for the insurer, everything known or:

- could reasonably be expected to be known in the circumstances (s21); or
- that a reasonable person in the circumstances would include in their answer (s21A- eligible contracts)

which is relevant to HCl and the insurer's decision to accept the risk. This duty requires the insured to tell HCl of any changes to the information provided up until the time the insured enters into the insurance contract. This duty applies prior to the insured entering into a contract of insurance and prior to each renewal, extension, variation or reinstatement of the contract of insurance. Each person named as an insured has the same duty.

The insured does not need to advise HCl and the insurer of anything which:

- reduces the risk;
- is common knowledge;



- HCl or the insurer already knows, or ought to know in the ordinary course of HCl's or the insurer's business; or
- HCl or the insurer indicates is not required.

#### **If you do not tell us**

If the insured does not comply with the duty of disclosure, HCl, as agent for the insurer, may reduce or refuse to pay a claim and/or cancel the contract of insurance. Once the contract of insurance has been entered into by the insured, ongoing disclosure obligations may apply.

### **6. PAYMENT OF PREMIUM AND FEES**

The Broker will remit premium on a net basis and any applicable fees on a gross basis to HCl within 90 days of the contract of insurance inception date. All collected premium and applicable fees are to be held in a trust account in accordance with statutory provisions. The Broker acknowledges that any premium refund, whether arising from a mid-term alteration or cancellation, will be calculated on a net basis. Any commission adjustment arising from the refund will be accounted for and issued to the Broker on record at the time of the transaction on the respective policy in the next monthly commission statement.

### **7. REMUNERATION**

HCl will pay the Broker commission on each base premium in accordance with the rates agreed between the parties. The applicable commission for each policy is in the policy details on the quoting platform. For the avoidance of doubt, the base premium is exclusive of statutory charges (including Goods and Services Tax ('GST'), any emergency services levy or any other fee). Any change to the Broker commission must be communicated by providing 30 days' notice to the Broker.

### **8. CANCELLATION OF INSURANCE POLICIES**

HCl will have the right to cancel the contract of insurance if premium is not paid in accordance with the terms of the contract of insurance.

Any interim contracts of insurance will be cancelled in accordance with sections 38 and 60(4) of the ICA.

Any instalment contracts of insurance will be cancelled in accordance with section 62 of the ICA.

Subject to the terms of the contract of insurance, HCl maintain any other rights under the ICA to cancel the contract of insurance.

HCl must notify the Broker of any intention to cancel or avoid a contract of insurance.

If a contract of insurance is cancelled following the cooling off period (if applicable), the premium refund will be made up of two components:

- (i) a prorated percentage of the net premium received by HCl; and
- (ii) a prorated percentage of commission earned by the Broker for arranging the contract of insurance.

**Note:** Fees are non-refundable unless the contract of insurance is cancelled within the cooling off period (if applicable) or is a full term cancellation.

### **9. CLAIMS**

The Broker will provide all reasonable assistance to HCl, or a party nominated by HCl, in respect of all claims and agrees that any claim will only be met upon receipt of all outstanding premium and other contributions for that contract of insurance.

### **10. ELECTRONIC DISTRIBUTION**

If the Broker chooses to distribute insurance documentation via electronic means, the Broker must comply with any regulatory guides and any statutory requirements.



## 11. MARKETING MATERIAL

Any marketing material for HCl products created or developed by the Broker must be approved by HCl. The Broker will not change any marketing material provided by HCl without the prior written consent of HCl.

## 12. INDEMNITY

Each party indemnifies the other, on demand, for all claims, damages, judgments, losses, costs (party/party basis) and expenses to the extent that they are reasonably incurred in connection with any breach by a party of either these T&Cs or statutory requirements. The indemnity survives the expiry or termination of these T&Cs.

## 13. GST

GST may be payable on all amounts relating to these T&Cs.

## 14. RECIPIENT CREATED TAX INVOICE ('RCTI')

Both parties agree that they are parties to this RCTI Agreement for the purpose of dealing in general insurance products and declare that these T&Cs apply to supplies to which a tax invoice relates. HCl may issue tax invoices for the supplies, in which case the Broker will not issue tax invoices for the supplies. Both parties are registered for GST and will notify the other if the registration ceases. Both parties agree to comply with the Australian Taxation Office requirements for a valid RCTI, which may be amended from time to time.

## 15. DISPUTE RESOLUTION

The parties will attempt in good faith to negotiate any dispute between them in connection with these T&Cs. If the parties cannot resolve the dispute by negotiation within 30 days from the original written notice of the dispute, they will mediate in accordance with the Australian Commercial Disputes Centre guidelines for commercial mediation then in operation. This clause does not apply to any urgent court application, including interlocutory relief.

## 16. PRIVACY

The Broker, if providing HCl with personal information about other individuals, shall comply with all relevant obligations under the Privacy Act 1988 (Cth), including having made or making the individual(s) aware that their personal information will be disclosed to HCl and the insurer and that HCl will handle their personal information in accordance with HCl's Privacy Policy available at [www.hollard.com.au](http://www.hollard.com.au) or [www.hollardcommercial.com.au](http://www.hollardcommercial.com.au).

## 17. TERMINATION AND VARIATION

These T&Cs may be varied by HCl without cause by providing the Broker with 30 days' written notice. Further, these T&Cs may be terminated without cause by either party by providing 30 days' written notice to the other or immediately if a party has its AFSL suspended or cancelled. HCl reserves the right to terminate these T&Cs immediately by providing written notice to the Broker, if the Broker is subject to an insolvency event, breaches a material term or condition or engages in serious misconduct including fraudulent activity. As soon as practicable after any termination of these T&Cs and in any event within 90 days, each party must pay all money owed to the other, if any, after taking into account any adjustments required and the Broker must return at its own expense all documents including marketing materials supplied by HCl.

## 18. GOVERNING LAW

These T&Cs will be governed by the laws of New South Wales and the parties irrevocably submit unconditionally to the non-exclusive jurisdiction of the Courts of New South Wales and any courts which may hear appeals from those Courts.