

## **(TOBA) Terms Of Business Agreement & Disclosure Information**

### **1. Disclosure Information & Terms of Business (“Terms”)**

In these Terms references to “we” or “us” refers to Capital Indemnity Ltd. We recommend that you carefully read these Terms that will apply to our appointment by you and the services that we will provide.

### **2. Who we are and who we regulated by?**

Capital Indemnity Ltd, Company Registration Number 12904305. Registered Office Address: Duke House, 15 Seymour Street, London, SE18 6SX is authorised and regulated by the Financial Conduct Authority (“FCA”). Our Firm Reference Number is 936947

The FCA is the independent watchdog that regulates financial services. Our details can be checked on the FCA’s website <https://www.register.fca.org.uk/s/> or by contacting the FCA on 0800 111 6768.

Permitted business: Our permitted activities are, arranging (bringing about) deals in investments, assisting in the administration and performance of a contract of insurance, dealing in investments as agent, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance, all in connection with non-investment general insurance business.

### **3. Are we covered by the Financial Services Compensation Scheme (“FSCS”) Yes.**

We are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim. Most Insurance contracts are covered for 90% of the claim, without any upper limit. Further information about compensation scheme arrangements is available from the FSCS on 020 7892 7300 or by visiting <http://www.fscs.org.uk/>

### **4. Complaints**

Our objective is to provide a high standard of service to you at all times. However, we recognise that things can go wrong occasionally and if this occurs, we are committed to resolving matters promptly and fairly. If you wish to register a complaint please contact us:

- ❖ in writing, to the Managing Director at the address shown on the letter (or business card) that accompanies this document, and/or
- ❖ by telephone, using the number shown on the letter document (or business card) that accompanies this document
- ❖ in person, at the address shown on the letter (or business card) that accompanies this document.

In all cases, please quote your policy number or other reference we have given you. If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service by telephone on 0300 123 9123. Further information is available at <http://www.financial-ombudsman.org.uk>.

## **5. Which insurance companies do we use to select for your insurance?**

We will usually provide guidance or information on the basis of a fair analysis of the market. The number of insurers approached will depend upon the type of insurance required and sometimes a selection of insurers or single insurer may be used. If you wish, you may ask us for a list of insurers we offer insurance from. We will confirm to you whether we have approached the whole market, a selection of insurers or a single insurer.

## **6. Our Service**

We are an insurance intermediary acting on your behalf as your agent in arranging your insurance cover. Our service may include assisting you on your general insurance needs, arranging insurance cover with insurers to meet your requirements, issuing policy documentation to you in a timely manner and helping you with any ongoing changes you wish to make to your insurance. We will endeavour to ensure that the products or services we offer you match your stated requirements. We will seek to identify your insurance needs in reliance upon information which you provide to us. If we cannot match your requirements, we will seek to provide you with enough information so that you can make an informed decision about your insurance. We will explain the main features of the products and services that we offer you including details of the insurer, main details of cover and benefits, any usual restrictions or exclusions, any significant conditions or obligations which you must meet and the period of cover. If you need extra time to consider the products or services we have offered you, we will endeavour to confirm: (a) how long you accept the insurance on the terms we have offered (any quotation given will remain valid for thirty (30) days from the date of issue), and/or (b) give you a written quote if you request one, including all the information we believe you need to make an informed decision, and/or; provide you with a sample policy if you ask for one.

## **7. Remuneration, Fees and Charges**

Our remuneration may be as a fee, or as commission, which is a percentage of the insurance premium paid by you and allowed by the insurer with whom the insurance is placed, or both. If we propose to operate on a fee basis, we will agree its basis, frequency and method with you in writing before we carry out any chargeable work. Commission and fees are earned for the policy period and we will be entitled to retain all fees and commission in respect of the full policy period in relation to the policy or policies with have arranged for you.

In addition to any commission earned under the policy or policies we have arranged for you or separate fee arrangements, we reserve the right to make the following charges, irrespective of any additional charge or return premium by the insurance company, as follows:

- ❖ £25 in respect of any policy mid-term alteration
- ❖ £25 in respect of the provision of any duplicate document requested
- ❖ £20 in respect of policy renewals
- ❖ £25 in respect of a policy cancellation request (Please note that we may collect this amount from the return premium provided by insurers, wherever possible).

## 8. Your legal duty to disclosure information to us and insurance companies

It is your responsibility to provide complete and accurate information when you take out your insurance policy, through the life of the policy and when you renew it. It is important to ensure that all statements you make on the proposal form, claims forms and other documentation are full and accurate. Please note that if you fail to disclose any material information or change or circumstances to your insurers, this could invalidate your insurance cover and could mean that part or all of your claim may not be paid. We strongly recommend that the information provided is checked thoroughly prior to submission and that you keep a record all correspondence supplied in relation to the arrangement of your insurance cover. Please also note that any renewal of insurance will be made in reliance upon the information provided by you in connection with your previous insurance policy - will assume that such information remains correct unless you tell us otherwise.

Examples of a Material Fact that you may need to disclose prior or during the policy period:

- ❖ Your business activity
- ❖ Any previous insurance claims
- ❖ Any significant changes to your business
- ❖ Any new business activities
- ❖ Any incidents that would have led to an insured claim but, for whatever reason, no claim was made on your insurance policy
- ❖ Any processes that may not be assumed as 'standard' to a particular trade or business activity

This list is by no means exhaustive and if you are in any doubt of anything that may be constitute a material fact, speak to your sales representative immediately. Failure to do so may invalidate your policy in the event of a claim. For more information about the duty of disclosure and fair presentation, visit [www.capitalindemnity.co.uk](http://www.capitalindemnity.co.uk), or contact our Capital Indemnity representative on 0843 523 5734.

### ***Failure to Disclose***

The consequences of failing to comply with the duty of fair presentation and 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 remedy 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. Similar proportionate remedies are available to your insurer in the event of a breach of the duty of fair presentation in relation to a variation of your policy, and will depend on whether the breach was deliberate or reckless and what the insurer can show it would have done had the duty not been breached. This may result

in the insurer treating the policy as if the variation was never made, reducing your claim payment, applying additional terms, or even avoiding the entire policy.

## **9. Cancellation Rights**

You will find full details of your cancellation rights, and any related charges, which may be levied by your insurer, in the documentation produced by your insurance company. In general, Consumer customers (as defined by FA) have 14 days to cancel with effect from the later of: (a) the day they receive the full terms and conditions of their policy, or; (b) the day the policy is sold – but in either case this usually does not apply to policies of less than one month’s duration, or single trip travel policies. Please note that the above is by way of general guidance only – cancellation rights vary between insurers and you must make specific reference to your insurer’s documentation if you are considering cancelling your policy. To exercise your right of cancellation, you should contact us either by telephone or by letter in each case in the manner and within the time limits set out in your policy documentation. If you are a Consumer customer and you exercise your right to cancel within the 14 day cancellation period you will be charged for the period during which you were temporarily covered, and other charges may be applied to cover the insurer’s and our costs in arranging the cancelled policy.

## **10. Our rights to set off monies you owe us**

We shall be entitled (but not obliged) without notice to you to set off any amounts due to us from you against any amounts, which we may receive on your behalf (such as claims monies, refunded premiums and others sums).

## **11. Information on our remuneration**

At times we place business with companies that may act as underwriting agents, intermediaries for insurers or Lloyd’s/London Market placing brokers in connection with your insurance. Where such companies are involved in placing or servicing your business, they may charge an administration fee or other payment which will be passed on to you and disclosed from the cost of your insurance.

In addition to commission, which is paid to us by insurers, we may earn from a “profit-share”, management or administrative fees but other payments from insurers for efficiently managing business transacted with them. These payments may be calculated by reference to various criteria such as overall annual profitability of the insurance business transacted, taking into account the total amount of claims arising under policies we place with them. “Profit-Share” payments are not directly referable to individual policies and consequently it is not possible to calculate such payments on an individual policy and it is not possible to calculate such payments on an individual policy basis, meaning that we are unable to disclose to you how much your policy contributed to any “profit-share” payment we might receive (which is not guaranteed) it represents a small proportion of the normal commission we received and will be retained by us.

## **12. Insurer Insolvency**

Whilst we endeavour to place business with insurers who demonstrate an adequate level of financial solvency, and although their regulator requires them to maintain a minimum level of capital, we cannot guarantee the solvency of any insurer.

### **13. Notification of Incidents**

It is essential that you notify us immediately of all incidents or allegations that may result in a claim against your insurance policy. You must do so whether you believe you are liable or not. Any failure to do so may result in your insurers refusing to accept a claim. Any letter or other communication making allegations which could give rise to a claim which is received by from any third party must be passed to us immediately, without acknowledgement. Only by providing prompt notification of incidents can your insurance company take steps to protect your interests.

### **14. How to make a claim**

If you wish to report a claim or potential claim, please call the number shown on the headed paper (or business card) that accompanies this document. Please quote your policy number or other reference we have given you. Your insurance documents will also provide details as to how to make a claim and to whom to contact. For some policies, Insurers give us authority to act on their behalf settling claims. In these circumstances, and in recognition of a potential conflict of interest, we will seek your permission for us to deal with such a claim

### **15. Your insurance policy(ies)**

As and when we feel it appropriate, we may review your policy and look to enhance and/or extend the cover offered.

### **16. Terms of Payment**

In the absence of any alternative terms which we agree with you in writing (such as payment by instalments which we can arrange for you) our payment terms are as follows:

- ❖ New policies – full payment of premium and fees within 14 days of the inception date of the policy.
- ❖ Mid Term adjustments to existing policies – full payment of premium and fees within 14 days of the effective date of the change.
- ❖ Renewals – full payment of premium and fees within 14 days of the effective date of the change.

If it has been agreed to extend these terms for any reason, you will be notified in writing by us. We normally accept payment by cheque, BACS or monthly instalments (full details on request). In the event that you fail to pay any premium and/or fees when due your insurers may cancel your policy from inception/renewal date and reject any claims under the policy.

The acceptance by us any payment from you (including the encashment of cheques) does not constitute acceptance of any risk by insurers or any commitment by us to arrange insurance cover on your behalf. Accordingly, you should not assume that insurance cover is in place, until you have received written confirmation of cover in the form of a cover note, policy certificate or equivalent.

## **17. Important Information Relating to Renewal of Policies**

Prior to expiry of your policy where we will be inviting a renewal. We (or your insurance company) will endeavour to send your details of the cost and terms to renew your policy. In order to protect your interests relating to the risks/property you have insured, and in the event that we do not receive your instructions and payment prior to the date of renewal, we reserve the right (but shall have no obligation) to renew your policy and (in the case of direct debit/instalment payments) to continue to accept payment from you unless and until you specifically notify us or your insurance company in writing that you wish to cancel your policy.

In the event we accept verbal instructions to cancel a policy, we will notify you in writing that we have accepted such instructions and the policy has been cancelled. In circumstances where we have assumed (in the absence of instructions to the contrary) that renewal is required you may be liable to make payment to us and/or your insurance company

## **18. How we hold your money**

We are unable to handle “Client Money”. Our Insurer monies are kept in an “Insurer Trust Account”, set up in accordance with BIBA guidance. Our financial arrangements with insurance companies are on a ‘Risk Transfer’ basis. This means that we act as agent of the insurer in collecting premiums and handling refunds due to clients. In these circumstances, such monies are deemed to be held by the insurer(s) with which your insurance is arranged. By accepting these terms, you consent to the way we will hold your premium (and/or other insurance related money) in accordance with this paragraph.

## **19. Confidentiality and Data Protection**

All information about you of a sensitive or personal nature will be treated as private and confidential. We will however use and disclose the information we have about you in the course of arranging, placing and administering your insurance. This may involve passing information about you to insurers, other intermediaries, risk management assessors, uninsured loss recovery agencies and other third parties involved (directly and indirectly) in your insurance.

We may also pass information about you to credit reference agencies and premium finance providers in connection with the assessment of your financial standing generally and, in particular, where you have requested a premium instalment plan – this may include details of your payment record with us.

We may also pass information about you to other companies which are associated with our group. We or they may also use the information we hold about you to provide you with information on other products and services we or they can offer and which we or they feel may be of interest to you. If you do not wish to receive marketing information from us or them, or for us to disclose information about you to other parties for marketing purposes, please contact us immediately.

## **20. Governing Law**

These terms are governed by and construed in accordance with the Laws of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales