

# Terms of Business

## **Terms of Business – Commercial Customers**

This agreement is intended for 'Commercial' customers rather than 'Consumers' (retail customers); Commercial customers are those that are – to any extent – acting within their trade, business or profession. If you are not a Commercial customer, ask us for our Consumer Terms of Business Agreement.

### **Acceptance**

The purpose of this agreement is to set out our professional relationship and detail the services we will provide to you. For your own benefit and protection, you should read all of the information carefully and in particular, we would like to draw your attention to the 'Duty of Fair Presentation', the 'Processing of your Personal Data' and the 'Client and Insurer Money' sections. By asking us to quote for, arrange or handle your insurances, you are providing your informed agreement to these Terms of Business. If you do not agree to any part of the information, please write to us.

This agreement will supersede any previous version of our Terms of Business.

### **Who regulates us?**

James Hallam Limited is authorised and regulated by the Financial Conduct Authority (FCA). Our Firm Reference Number is 134435. Our details may be confirmed on the Financial Services Register at [www.fca.gov.uk/register/](http://www.fca.gov.uk/register/) or by calling 0800 111 6768.

Our permitted business is introducing, advising, arranging, dealing as agent, and assisting in the administration and performance of general insurance contracts, and credit broking in relation to insurance instalment facilities.

### **Our Service**

We act as an intermediary, not an insurer.

We are committed to providing you with a quality service. We only select from insurance products in which we have confidence to meet the needs of our clients.

As a broker, we will usually act on your behalf when arranging your insurances, when helping you make changes to your policy or when you renew your insurance. If there are any circumstances when we act as an agent of the insurer (e.g. in binding the insurer to contract or in handling or settling claims) we will let you know before your insurance arrangements are concluded.

Under risk transfer, we also act on behalf of insurers when collecting premiums and handling refunds due to clients as well as the transfer of claims monies. Such monies are deemed to be held by the insurer(s) with which your insurance is arranged.

If you mislay your policy at any time, we will arrange a replacement policy document, if you request it.

As your agent and unless we hear from you otherwise:

We will assist in arrangement and administration of your insurances (and on-going changes) including agreeing the terms and conditions of your insurance policy with insurers consistent with your instructions:

Upon receipt of your instruction we will place, amend or renew insurance cover on your behalf with insurers

We will advise you of any inability to place your insurance

We will assist you if you need to make a claim, or where we outsource claims handling facilities to give you an enhanced service.

You should not 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.

### **Scope of Our Recommendations**

We will ask questions to enable us to assess reasonably your insurance requirements; this may include checking information that we already hold about you and your existing insurance arrangements with us and other parties.

Unless stated otherwise we will make a personal recommendation to you based upon our assessment of your needs and our experience of dealing with similar risks. This may or may not be on the basis of a fair and personal analysis of the market (see below). The recommendation will include a summary of our assessment together type of policy and cover proposed and the associated cost

We will undertake to provide you with details of the main features of the product and services, which we will offer.

Where we are making a personal recommendation based on a fair and personal analysis of the market, this will involve an assessment of a sufficient number of contracts, their product features, the premium and the service provided by the insurer.

We are not under a contractual obligation to do so, but on occasion, we may only offer the products from a single insurer or from a panel of insurers at which time we will provide you with a list of the insurers concerned prior to the conclusion of your insurance arrangements.

If we propose using another intermediary to help to place your business, we will also advise you accordingly.

Where we confirm that we are not providing a personal recommendation we will simply provide you with information (with no advice) to enable you to make an informed decision on how you wish to proceed

## Law and Jurisdiction

These Terms of Business 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

Unless your policy confirms otherwise, the rights under your policy may only be pursued in an English court.

If you are domiciled in a country other than the UK, the law or regulations in your country of domicile may take precedence over any relevant UK legislation. Therefore references in this document to the FCA or Financial Ombudsman Service (FOS) and any rights or benefits there under may not apply.

## Limitation and Exclusion of Liability

Unless we have otherwise agreed with you in writing our liability to you (whether in contract or tort including negligence) will in all circumstances be limited to £10,000,000 per claim

Notwithstanding the preceding paragraph we shall not be liable to you under any circumstance for any loss of profit indirect loss or consequential loss whatsoever.

This exclusion and limitation will not apply in respect of our liability:

- i) arising from any fraudulent act or
- ii) for death or personal injury arising from our negligence or
- iii) from any duty or obligation owed to you under any statutory or regulatory stipulation.



### Your Duty of Fair Presentation

**Under the Insurance Act 2015 you have a Duty of 'Fair Presentation.'**

You must:

- Disclose all "material circumstances" which you know or ought to know or, failing that,
- Provide sufficient information to put the underwriter on notice to ask further questions.

In providing a Fair Presentation you are deemed to know what your senior management knows, what the people arranging the insurance know and ought to know what would reasonably have been revealed by a reasonable search. There is no longer an exemption from providing information about matters which are subject to a warranty (including any breaches) which should now form part of the fair presentation.

You do not have to disclose information if the insurer knows it, ought to know it or is presumed to know it. The insurer knows what is actually known to its underwriter or their agent. The insurer is presumed to know what underwriters writing that class of business should know.

All statements and information disclosed verbally and on proposal forms, statements of fact, claim forms, declarations and other documents should be full, true and accurate. Where forms are completed or partially completed on your behalf you should check them for accuracy before signing. If you are in any doubt as to whether a fact is material, you should disclose it.

**FAILURE TO COMPLY MAY ENTITLE THE INSURER TO AVOID THE POLICY, IMPOSE ADDITIONAL TERMS OR REDUCE CLAIMS PAYMENTS.**

## Notification of Changes and Alterations

Please notify us immediately in the event of any change in your circumstances which are detailed in your proposal form or statement of fact.

We would also refer you to the section titled **Your Duty of Fair Presentation** which details your duty to provide complete and accurate up to date information to your insurers at all times.

Amendments to policies after inception may be arranged upon receipt of your instructions with full details. Cover is subject to acceptance by insurers and the payment of any additional premium required, if applicable.

## Renewals

Renewals are invited on the basis that there have been no changes to your circumstances or the risk other than those specifically notified to your insurers and for which you have received an acknowledgement and revised documentation. Please see section headed **Notification of Changes and Alterations** which also outlines your duties of care with regards to Disclosure and Fair Presentation.

## Insurer Security

Insurers are subject to FCA regulation and are required to have adequate capital resources. We carry out regular checks on all insurance markets used but cannot guarantee the solvency of any individual insurer. Your liability for the premium, whether in full or pro rata, may arise under policies where a participating insurer becomes insolvent. An insolvent insurer may also be unable to meet a proportion or all of any claim made. Consequently, we recommend wherever possible insuring with those firms with higher credit ratings which satisfy our requirements. Should you be concerned or require any further information regarding your insurer then we will discuss this with you on request.

## Quotations

Quotations are valid until the date cover commences up to a maximum of 30 days, unless otherwise stated. Specimen policy wordings are available upon request.

## Documentation

Documentation including your policy schedule and certificate (if applicable) will be issued to you in a timely manner. It is your responsibility to read all documentation upon receipt to ensure that all details are correct and that the cover provided meets with your requirements.

We will arrange cover according to your instructions but only you can identify if it does not meet your intentions.

Any query regarding the accuracy of the information shown or any uncertainty over the content should be raised with us immediately.

Incorrect information may invalidate your policy cover completely or mean that in the event of a claim all or part of it may not be paid.

## Payment of Premium

We must receive your payment, unless it is made by you directly to the insurer, by cheque, credit or debit card, or be in receipt of a completed Direct Debit Mandate (with deposit if required) drawn on a bank or building society or UK financial institution account in the policyholder's name and before cover commences unless we agree otherwise in writing.

We do not accept payment by cash or postal order but a bankers' draft or building society cheque is acceptable if it shows the policyholder's name as account holder.

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 or non-payment substantially attributable to you. If we decide to retain certain documents whilst awaiting full payment of premium, fees or administration charges we shall provide details of your insurance cover and any information or documents required by law.

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. You will also be responsible for any collection costs, legal fees and court costs we may incur in recovering debts from you.

## Transferred Business

When we are appointed to service insurance policies other than at their inception or renewal and which were originally arranged by 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 provide advice accordingly as each policy falls due for renewal.

## Cancellation

You may cancel your policy at any time.

On receipt of your request we may require you to confirm your instructions in writing and also return the policy document.

You may be entitled to a refund of premium where no claims has been made and or where a minimum and deposit premium has not been charged.

Please refer to your policy documents for full details of the cancellation terms.

## Ending your Relationship with Us

Subject to your immediate settlement of any outstanding premiums and fees, you may instruct us to stop acting for you and we will not impose a penalty. Your instructions must be given in writing and will take effect from the date of receipt.

If our authority to act in connection with your insurance arrangements is terminated (by you or us), you will remain liable to pay for any premium or fee for any transaction concluded prior to the termination. Any transaction in progress at the time of termination will be completed unless we receive written instructions to the contrary.

You will also be liable for the payment of any premium or fee, which may become due upon completion of any pending transaction.

**We also reserve the right to cancel this agreement at any time. In any event, we will provide you with at least 7 days' notice in this regard to enable you to make alternative arrangements.** Valid reasons may include non-payment of premium or fees, failure to provide requested documentation or information, deliberate failure to comply with terms set out within this Agreement or insurer's documentation, or deliberate misrepresentation or non-disclosure or attempted fraud. **We will notify you of any such termination in writing together with an explanation for our decision if appropriate.**

## Claims

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 will risk a loss you suffer not being paid or being paid in part only.

You must not in any circumstances admit liability for a loss or agree to any course of action, other than emergency measures carried out to minimise the loss, as you risk a loss you suffer not being paid or being

paid in part only. 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.

We will remit claims 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. We reserve the right to charge for our claims service if you request this to extend beyond our appointment to your policy and this will be confirmed in writing before you incur any charge.

If our authority to act in connection with your insurance arrangements is terminated (by you or us) we will immediately cease to handle claims already reported and will be unable to deal with any which may be subsequently incurred.

### **Severability**

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.

### **Assignment**

We are entitled to assign the benefits of these Terms of Business (but not the burdens as set out in these Terms of Business) to any other company within the Group of Companies of which we are part but then only for so long as such Company remains a member of such Group. We are entitled to transfer Client Monies to a similar bank account held in the name of any other company within the Group of Companies of which we are a part but the only for so long as such Company remains a member of such Group.

### **Our Remuneration / Fees**

In return for placing business with insurers underwriters and or other product providers, we generally receive a commission from them which is a percentage of the annual premium that you are charged.

We may on occasion also receive additional payments from insurers depending upon the volume of our account with them and or the profitability of that account.

For arranging premium instalment facilities we earn commission from our premium finance provider(s) which is usually a percentage of the interest that you pay. This means that the amount you pay for credit and the overall cost of arranging your insurance will vary according to the interest charged by the lender and the amount of commission we earn. There may be occasions where there is a choice of instalment payment options which may charge different interest rates. Typically we will not receive any instalment

payment commissions from insurers if policies are placed on direct debit instalment arrangements with the insurer. We will receive commissions from the premium finance providers.

Using premium finance or paying an insurer direct debit arrangement (rather than paying the premium in one amount) makes the overall cost of the insurance more expensive.

A full breakdown of the cost of your insurance and the cost of credit will be provided as part of your new business or renewal quotation before you decide whether to proceed.

In any instance where we elect to either charge you a Brokerage Fee in addition to or in lieu of commission, we will confirm to you, prior to the conclusion of your insurance arrangements, the method of the remuneration and the amount of any fees payable by you.

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 premium finance. Please be assured that the way in which we are remunerated will not at any time conflict with our responsibilities to meet your needs and treat you fairly.

We may require you to pay an administration fee for any transaction including cancellation but we will confirm to you, prior to the conclusion of your insurance arrangements, the amount of any administration fees payable by you.

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.

### **Conflict of Interest**

Circumstances may arise where we may have a potential conflict of interest between us and you or between you and another of our clients.

For example we may arrange insurance for you through Touchstone Underwriting Ltd which is a wholly owned Managed General Agency of Seventeen Group Ltd, who also own James Hallam Ltd.

We operate conflict management policies and procedures which are designed to prevent any conflict of interest adversely affecting or compromising your interest. In such instances we will always act in your best interests when arranging such cover.

If you wish to discuss this arrangement please contact us.

### **Client and Insurer Money**

Prior to your premium being forwarded to the insurer, and for your protection, we either hold your money as an agent of the insurer (termed risk transfer) in which case your policy is treated by the insurer as being paid for the premium will be held in a client bank account on trust for you.

The account in which these funds are kept is a Non-Statutory Trust Account (as defined by the FCA Rules).

This means that we may extend credit to other customers from this account. We may also transfer your money to another intermediary in some cases for the purposes of effecting your policy.

However, your money will be protected at all times because of the requirements of FCA rules. We also reserve the right to retain interest earned on this account.

By accepting this Terms of Business document together with your agreement to pay the premium you are deemed to be giving your informed consent for us to operate in this way.



### Processing of your Personal Data

In our dealings with you, we will comply at all times with all applicable Data Protection Legislation (including, as appropriate, the Data Protection Act 2018, the General Data Protection Regulation, any relevant secondary legislation, and any amendments or replacements to any of these). Please ensure that if applicable your directors, employees, contacts and agents are aware of this section on the processing of personal data.

We implement generally accepted standards of technology and operational security in order to protect personal data from loss, misuse, or unauthorised alteration or destruction. We will notify you and all relevant individuals promptly in the event of any breach of personal data which might expose you or (if applicable) your directors, employees, contacts or agents to serious risk.

Individuals have the following rights in respect of their personal data held by us:

- (a) to access any personal data which we hold on them. This may be obtained by writing to our Privacy Officer [details as shown below]. Where permitted under Data Protection Legislation, a nominal charge may apply for providing the information;
- (b) to be provided with information about how their personal data is processed (this information is set out in these Terms of Business);
- (c) to have their personal data corrected where necessary (they should contact us promptly if they become aware of any incorrect or out-of-date information);
- (d) to have their personal data erased in certain circumstances (please refer to the appropriate data protection legislation or consult the Information Commissioner's Office for details);

- (e) to object to or restrict how their personal data is processed; to have their personal data transferred to themselves or to another

Individuals also have the right to take any complaints about how we process their personal data to the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF <https://ico.org.uk/concerns/> 0303 123 1113.

For more details, you may request a copy of our Privacy Policy or alternatively please address any questions, comments and requests regarding our data processing practices to our Privacy Officer namely:

Andrew Hall at James Hallam Ltd, Queen of the South Arena, Lochfield Road, Dumfries, DG2 9BG.

We may collect, use and store personal data relating to you (applicable to individuals only) or where applicable your directors, employees, contacts and agents where necessary in order to:

- (a) Perform insurance contracts with individuals or take steps at an individual's request prior to entering into such a contract;
- (b) exercise our legitimate business interests as an independent insurance broker in order to provide the relevant information and services;
- (c) carry out other functions with express consent (which may be amended or withdrawn at any time by notifying us);
- (d) comply with our legal obligations.

In particular, we will use that personal data, and may disclose some or all of it to other parties, for the purposes of arranging, placing and administering your insurance. These other parties may include the FCA for compliance matters; insurance companies and other agents for underwriting and claims purposes and credit agencies for premium collections identity checks and anti-fraud protection. We may also monitor and record phone calls in the interests of security and staff training.

We may in addition use personal data for communicating with you about our insurance products and services (and similar products or services provided by us). Communication with you in this regard may include mail SMS text, telephone or email. If individuals do not want us to use their information in this way, they should notify us promptly in writing to that effect or use the unsubscribe option as set out in each communication.

We will never sell personal data or, except as mentioned above, make it available to any third parties without appropriate prior consent (which may be freely amended or withheld) except where required to do so by law or in the event that we sell any part of our business or assets (in which case we may disclose personal data confidentially to the prospective buyer a

as appropriate in accordance with our legitimate interests in that respect).

Notwithstanding the above, all personal data of a sensitive nature (as defined in the Data Protection Legislation) will be treated as strictly private and confidential.

We will not use or disclose it except either with explicit consent or where we are required to do so for legal or regulatory purposes and/or permitted to do so by the Data Protection Legislation.

In processing personal data for insurance purposes about health or criminal offences we will only do so to enable us to provide our service to you and on the basis of it being in the public interest.

### Complaints

It is our intention to provide a high level of service at all times. However if you have reason to make a complaint about our service you should contact Andrew Hall at the above address or e-mail [complaints@jameshallam.co.uk](mailto:complaints@jameshallam.co.uk). You may be entitled to refer the matter subsequently to the Financial Ombudsman Service (FOS).

You will be able to do this if you are fall within any of the following categories;

- Consumers (private individuals acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession)
- Micro-enterprises (businesses employing fewer than 10 persons and with a turnover or annual balance sheet total not exceeding €2 million)
- Other small businesses (with an annual turnover of below £6.5m, and less than 50 employees or with an annual balance sheet total of below £5 million)
- Charities with an annual income of under £6.5 million
- Trustees of a trust with a net asset value of under £5 million

Whether you are so entitled will not affect the promptness and fairness with which we will strive to resolve any complaints. You can contact the FOS by telephone on 0800 023 4567 and further information is available at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

If you do decide to refer any matter to the FOS your legal rights will not be affected. (If your complaint cannot be resolved immediately, you may be required to put this in writing for us to investigate further).

**A full copy of our complaints procedure is available on request.**

### Rights of Third Parties

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.

### Financial Crime

- As an FCA regulated company, we work within its regulatory framework designed to prevent financial crime – such as financial sanctions, money laundering, fraud or bribery and corruption. We may need to seek additional information from you to ensure compliance with these obligations.

### Compensation

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business, the size of your business and the circumstances of the claim. Insurance advising and arranging is covered for:

- 90% of the claim, without any upper limit;
- 100% of the claim without any upper limit for compulsory classes of insurance (such as Third-Party Motor or Employers Liability); and 'pure protection' contracts, professional indemnity insurance, and general insurance claims arising from the death or incapacity of the policyholder owing to injury, sickness or infirmity, all where the insurance intermediary has failed to pay money to an insurer, pay away money it has received from an insurer, or has failed to take steps to allow the insurer to effect the contract of insurance.

Further information about compensation scheme arrangements is available from the FSCS on 0800 678 1100 or by visiting [www.fscs.org.uk/](http://www.fscs.org.uk/)

Ref: Commercial TOBA 10.4 MAY 21