Terms of Business

Between

Mirabelle Underwriting Pty Ltd (Mirabelle)
ABN 93 627 823 910
Po Box 3510, ERINA
Mirabelle is a corporate authorised representative (AR 001284118) of Specialist Underwriting Agencies Pty Ltd (ABN 18 010 862 754 | ASFL 231104)
(Underwriting Agency)

and

The person identified in the Quote attached to these terms
(Broker)

1. Background

1.1. The Underwriting Agency is authorised to underwrite insurance products on behalf of the Insurers for the classes of insurance quoted pursuant to an agreement between the Underwriting Agency and the Insurer.

1.2. The Broker has an AFS licence.

1.3. These terms regulate the relationship between the Underwriting Agency and the Broker.

2. Licence and registration

2.1. The Broker warrants that it holds an AFS licence that authorises it to provide financial product advice, deal in general insurance products and do all things the Broker is required or authorised to do under this agreement.

2.2. The Underwriting Agency warrants that it holds an AFS licence that authorises it to provide financial product advice and to deal in (by issuing) general insurance products.

2.3. Each party must notify the other, in writing, immediately in the event that it's AFS licence is suspended or cancelled, or any authorisations on the licence are varied other than by the addition of authorisations, or, in the case of an exemption, the party is no longer entitled to the exemption.

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3. Relationship

3.1. Unless and to the extent agreed otherwise, the Broker acts as agent for each of the Broker's clients, and not as agent for the Underwriting Agency or the Insurer, in providing financial advice or dealing in any financial product.

3.2. The parties are independent contractors. Other than for the limited purposes set out in the Schedule (in which the Broker acts as the Underwriting Agency's agent in relation to certain invoicing), nothing in this agreement creates a binder, a franchise relationship, the appointment or acceptance of an authorised representative or any agency, partnership or employment between the parties or between the Broker and Underwriting Agency or the Insurer.

3.3. Unless expressly stated otherwise in this agreement, the Broker is not authorised to do anything as agent or on behalf of the Underwriting Agency or the Insurer, including the making of any representations or statements.

3.4. The Broker warrants that it has authority from each of its clients to receive all notices, refunds and other documents or funds for an insured or intending insured under the *Insurance Contracts Act 1984* and the *Corporations Act 2001*.

3.5. The parties agree to act at all times in good faith in their dealings with each other.

3.6. The parties agree that the Quote forms part of this agreement. To the extent of any inconsistency between the Quote and this agreement, the terms of the Quote will prevail.

4. Compliance obligations

4.1. The parties agree to comply, at all time, with all Legal Requirements.

5. Remuneration

5.1. The Underwriting Agency will pay the Broker commission on each Premium received by the Underwriting Agency or the relevant Insurer (as the case may be) in accordance with clause 7 below and the Quote.

5.2. The terms of the Quote can be amended by the Underwriting Agency by providing 90 days written notice to the Broker.

5.3. The Underwriting Agency will notify the Broker of the commission payable on any policy of insurance that is not included in the Quote and for specially quoted policies of insurance and agrees to pay that commission to the Broker.

5.4. The parties acknowledge that the Broker may charge clients fees in addition to commission earned pursuant to this agreement.

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5.5. The Broker acknowledges that:

(a) it is responsible for collecting Premiums; and

(b) commission is payable only in relation to Premiums received by the Underwriting Agency.

5.6. This clause survives termination of this agreement.

6. Arranging insurance

6.1. The Underwriting Agency has authority from the Insurers to enter into this agreement.

6.2. If the Underwriting Agency/relevant Insurer has offered a renewal of any policy of insurance with a client of the Broker, and that renewal has not been accepted before expiry of the policy of insurance (acceptance being by payment of the applicable Premium and notice as per clause 6.3 below), then the policy of insurance will not be renewed and all coverage shall cease as at the expiry date, unless other arrangements are made and confirmed in writing by the Underwriting Agency.

6.3. The Broker must confirm acceptance, by written notice to the Underwriting Agency of any offer of renewal of an existing contract of insurance. Such notice must be received by the Underwriting Agency no later than 4.00 pm (local time in the State or Territory that the Broker's business is located) on the day of expiry of the original contract of insurance, otherwise all coverage in relation to the original contract of insurance will cease (subject to the *Insurance Contracts Act 1984*).

6.4. Neither the relevant Insurer nor the Underwriting Agency will hold any risk covered after expiry of any contract of insurance, interim or otherwise unless agreed in writing between the Broker and Underwriting Agency.

6.5. The Underwriting Agency may charge a minimum premium plus statutory charges and GST or as agreed in writing between the Broker and Underwriting Agency.

6.6. The Broker must provide all documentation in relation to each policy entered into by the Underwriting Agency and/or the relevant Insurer. All documentation must be provided within fourteen (14) days of coverage being bound or such shorter time as required by the Underwriting Agency. The Broker must, on demand, provide the Underwriting Agency with all documentation in relation to Premiums payable to or received by the Broker.

6.7. Acceptance of any offer of insurance, whether new business or the endorsement of an existing contract of insurance, must be by written notice to the Underwriting Agency from the Broker. Such notice must be received by Underwriting Agency prior to the time and date from which insurance cover is to apply.

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7. Paying premium and commission

7.1. The Broker must pay to the Underwriting Agency the Net Premium the Broker has received for each insurance policy arranged through or in connection with the Underwriting Agency, within the time specified by the Quote. If no time is specified in the Quote, the Net Premium must be paid to the Underwriting Agency within 7 days of the end of the month in which each Premium is received.

7.2. The Broker is entitled to retain the commission payable under clauses 5.1 and 5.3 at the time the Net Premium is paid to the Underwriting Agency under clause 7.1.

7.3. The Broker will retain all amounts earned on investment of the Premium before payment to the Underwriting Agency in accordance with clause 7.1.

8. Cancellation, variation or avoidance of policies of insurance

8.1. Other than for instalment policies of insurance, if the Broker has not received the relevant Premium from the insured within fourteen (14) days of the commencement of the relevant coverage period the Underwriting Agency may, in its absolute discretion, on behalf of the Insurer (subject to the terms of the policy of insurance and the *Insurance Contracts Act 1984*), cancel the relevant policy of insurance on behalf of the Insurer.

8.2. Subject to clause 8.3, the policy of insurance may be otherwise avoided or cancelled in accordance with the *Insurance Contracts Act 1984*.

8.3. The Underwriting Agency must notify the Broker in writing of any intention by the Insurer to cancel or avoid any policy of insurance. The Broker warrants that it has authority to receive such notice.

8.4. If a Premium refund is payable when a policy of insurance is varied, cancelled or avoided, the Underwriting Agency will refund the client through the Broker. The Broker warrants that it has authority to receive such refund.

8.5. If any policy of insurance is varied, cancelled or avoided, the Broker will refund to the Underwriting Agency that part of the amount due or paid to it by the Underwriting Agency under clause 5.1 that relates to the proportion of Premium refunded to the client (if any). The Underwriting Agency may set-off the amount that the Broker must refund to the Underwriting Agency against any funds owing from the Underwriting Agency to the Broker.

9. Claims

9.1. The Broker will provide all reasonable assistance to the Underwriting Agency and the Insurer with respect to all claims on any insurance the Broker has been involved in or arranged and will use reasonable endeavours to obtain any information required from the Broker's client promptly.

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10. Documentation and promotional material

10.1. The Broker must not change printed material supplied by the Underwriting Agency to the Broker (including but not limited to marketing material such as brochures, advertisements, articles, editorials, posters, insurance documents such as proposals, policy wordings, certificates of insurance and certificates of currency) without the written consent of Underwriting Agency.

10.2. The Broker must not make any statement or representation in respect of in an insurance product offered by the Underwriting Agency or relevant Insurer, unless such statement or representation:

(a) is present on the printed material referred to in clause 10.1; or

(b) has been approved in writing by the Underwriting Agency.

10.3. Where the material referred to in clause 10.1 was originally supplied to the Broker by or on behalf the Underwriting Agency or the relevant Insurer, such material remains the property of the Underwriting Agency and must be returned to the Underwriting Agency, unless already distributed, when requested.

11. GST

11.1. The Broker warrants that it is registered for GST.

11.2. Unless stated otherwise in this agreement, all amounts payable under or relating to this agreement are exclusive of GST.

11.3. Where one party makes a taxable supply to the other party pursuant to this agreement, the other party shall pay the first party an amount equal to the GST on that taxable supply.

11.4. A tax invoice will be issued (by the Broker) for the Premium and commission payable for the policy of insurance in accordance with the Schedule.

11.5. Words in this clause 11 and in the Schedule have the same meaning as any definition of those words in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12. Confidential information

12.1. Subject to clause 18, during and after termination of this agreement, each party must keep confidential and must not use, the other party's Confidential Information except as necessary to perform this agreement or as required by law.

12.2. If a government, regulatory authority or a court orders a party to disclose Confidential Information, that party will, to the extent permitted, immediately advise the other party and will disclose only such of the Confidential Information necessary to comply with the order.

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12.3. Nothing in this clause 12 restricts the use or dissemination of Confidential information obtained lawfully from a third party.

12.4. Each party authorises the other to disclose its Confidential Information to its (re)insurers, actuaries, auditors, professional agents and advisors and any related bodies corporate.

12.5. This clause survives termination.

13. Privacy

13.1. The Underwriting Agency's privacy policy is published on its website and the Broker acknowledges having read and understood the privacy policy.

13.2. The Broker will comply with the Underwriting Agency's privacy policy in respect of all information provided by the Underwriting Agency and or any client of the Underwriting Agency and or Broker.

13.3 This clause survives termination.

14. Indemnity

14.1. Subject to clause 13.3, the Broker indemnifies the Underwriting Agency against all claims, damages, judgments, fines, penalties, losses, costs and expenses (including but not limited to legal costs on a solicitor/client basis) to the extent that they arise out of or in connection with the Broker's conduct (including but not limited to any breach by the Broker of its obligations under this agreement).

14.2. This clause survives termination.

14.3. Neither party will be liable to the other in respect of consequential loss, including but not limited to loss of profits, loss of opportunity or loss of goodwill.

15. Dispute resolution

15.1. The parties must attempt in good faith to resolve any dispute between them in connection with this agreement by negotiation.

15.2. If any dispute cannot be resolved by negotiations between the parties within 10 days or such further period as the parties agree is appropriate, then within the following 10 days, the parties must seek to agree on procedural rules and a timetable for resolving the dispute through mediation by a mediator agreed upon by the parties, or if the parties cannot agree, a mediator appointed by the Australian Commercial Disputes Centre or any body which replaces it.

15.3. A party may not commence court proceedings or arbitration (other than an urgent interlocutory application) relating to any dispute arising from this agreement unless that party has complied with clauses 15.1 and 15.2.

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16. Variation

16.1. This agreement may not be varied, other than as provided for specifically in this agreement, unless such variation is agreed upon by the parties and recorded in writing.

17. Assignment

17.1. Subject to clause 1, the Broker may not assign, change or otherwise deal with its rights and obligations under this agreement in any way without the prior written consent of the Underwriting Agency.

17.2. The Underwriting Agency may assign its rights and obligations under this agreement at any time.

18. Termination

18.1. Either party may terminate this agreement, without cause, upon giving to the other not less than 90 days' notice in writing.

18.2. This agreement will terminate with immediate effect, by either party by giving written notice to the other, if any of the following events occur:

(a) Any officer or employee of the other party is guilty of malpractice or misconduct that will materially affect in any way the ability to transact general insurance.

(b) A party breaches a material term of this agreement, which breach cannot be rectified.

(c) A party breaches any term of this agreement that is capable of being rectified and the party fails to rectify the breach within 14 days of written notice from the other requiring it to rectify the breach.

(d) The Broker fails to pay the Net Premium to the Underwriting Agency within the time specified by the Quote.

(e) The other party enters into any composition or arrangement with its creditors, has a receiver, a receiver, manager, administrator or liquidator appointed to it, is the subject of any resolution or petition for winding up (other than for the purpose of amalgamation or reconstruction while solvent), becomes bankrupt or is otherwise unable to pay its debts as and when they fall due.

(f) The Broker is subject to a change in its effective shareholding existing at the time of signing this agreement (whether occurring at one time or through a series of transfers or issues) altering the effective control of the Broker without obtaining the Underwriting Agency's prior written consent.

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(g) 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.

18.3. Termination of this agreement will not prejudice the rights of either party in connection with anything that occurred between them before its termination.

18.4. Termination of this agreement will not affect any rights of a party under any provisions of this agreement that are expressed, or by necessary intendment, are intended to survive termination.

18.5. As soon as practicable after termination of this agreement and, in any event, within 7 days:

(a) each party must pay all money owed to the other, if any, after taking into account any adjustments required; and

(b) the Broker must return (at its expense) all documents, stationery and materials supplied by the Underwriting Agency to the Broker.

19. Contact with clients

19.1. The Underwriting Agency will not, and will ensure that the Insurer does not, contact any client of the Broker during the term of this agreement other than for the following reasons:

(a) Promoting, marketing and selling its services or products (or those of an Insurer) to the general public or to groups of persons who are members of a specific industry, association, profession, club or ethnic community provided that in doing so it does not target any Insured specifically.

(b) Negotiating to enter into and entering into any policy of insurance with any client who approaches the Underwriting Agency or Insurer directly or who is represented by another insurance intermediary;

(c) Making any direct approach to any client in the following circumstances:

i. prior to and after termination of this agreement, where the Underwriting Agency or Insurer are required to do so by law, but this does not apply to the provision of notices and information required by the *Insurance Contracts Act 1984* unless the Insured is represented by another insurance intermediary;

ii. where the policyholder makes a claim under a policy of insurance, the Insurer and/or Underwriting Agency may deal with the client in relation to that claim;

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iii. where the policyholder directly requests the Underwriting Agency or Insurer to do something; or

iv. where the Broker has not provided or has not agreed to provide to the client any of the relevant notices and information required by the *Insurance Contracts Act 1984* or other law to be provided by the Underwriting Agency or Insurer.

(d) Approaching any client with the written consent of the Broker.

(e) Where the person is no longer a client of the Broker.

(f) With respect to any workers compensation policy, where necessary to meet obligations under any workers compensation legislation or the terms of industry codes of conduct.

20. Notices and change of address

20.1. Any notice under this agreement must be in writing and if sent to the last known address, email or facsimile number of the party, is deemed to be received:

(a) three business days after the date of posting, if posted; the date of sending, if sent by email to the recipients last know email address;

(b) the date of sending, if sent by facsimile; or

(c) on the next succeeding business day, if received or deemed to be received on a day which is not a business day.

20.2. Each of the parties will give notice to the other of any change of address, telephone, email and facsimile numbers and the like as soon as practicable after such change.

21. Relevant law

21.1. This agreement is governed by the laws of the State of New South Wales.

22. Interpretation

22.1. In this agreement the following definitions apply unless the context requires otherwise:

AFS licence means an Australian financial services licence under the Corporations Act.

Broker means the broker specified on page 1 of this agreement .

Corporations Act means *Corporations Act 2001* (Cth).

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Confidential Information:

(a) means all information, data, practices and techniques relating to a party, or a related body corporate, customers, competitors, business, operations, strategies, computer systems, marketing systems and intellectual property or other property of which the other party becomes aware in negotiating or performing this agreement and the terms of this agreement and arranging or issuing policies of insurance.

(b) does not include information that is in the public domain or later comes into the public domain (unless it came into the public domain by a breach of confidentiality or this agreement).

(c) does not include the commission rates set out in the Quote.

Insurance Contracts Act means the *Insurance Contracts Act 1984* (Cwth)

Insurer means the Insurer(s) listed in the Quote.

Legal Requirements means all applicable requirements or obligations under any statute, regulation or statutory instrument, including without limitation, the provisions of the *Insurance Contracts Act 1984* (Cth), *Corporations Act 2001* (Cth), the *Trade Practices Act 1974* (Cth), and the *Privacy Act 1988* (Cth).

Premium means the amount charged to a policyholder by the Insurer for general insurance including commission, fire service levies, stamp duty, GST and other government and statutory levies and charges.

Net premium means the Premium less commission calculated in accordance with this agreement.

Quote means a written quotation document provided by the Underwriting Agency to the Broker, from time to time, recording the commissions (and if applicable any agreed credit terms), read subject to the terms of this agreement.

Underwriting Agency means Mirabelle Underwriting Pty Ltd ABN 93 627 823 910 a corporate authorised representative (AR 001284118) of Specialist Underwriting Agencies Pty Ltd ABN 18 010 862 745, AFS License Number AFSL 231104.

22.2. A reference to a schedule of this agreement is a reference to the terms of the schedule as amended by the Underwriting Agency in accordance with this agreement.

22.3. A reference to any legislation (or any provision of any legislation) includes any subsequent amendment or its replacement by a corresponding enactment in force from time to time.

22.4. A reference to the singular includes the plural.

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SCHEDULE

Broker will issue tax invoices for premium

1. Where the Underwriting Agency makes a taxable supply of a policy of insurance (or variation) to a client of the Broker, the Underwriting Agency authorises the Broker, and the Broker agrees to issue any tax invoice or adjustment note required in respect of that taxable supply as an agent of the Underwriting Agency.

2. The Broker must issue a tax invoice or adjustment note no later than the earlier of the following times:

   (a) within twenty-eight (28) days of a request from the recipient of the supply whether the request is directly to the Broker or passed on from the Underwriting Agency; or

   (b) fourteen (14) days after the end of the month in which the taxable supply was made or the adjustment event occurred.

3. The Broker is responsible to ensure that the tax invoice or adjustment note issued is GST compliant and otherwise complies with the Legal Requirements. The Broker indemnifies the Underwriting Agency in relation to any claims, liability, fines, penalties and other costs (including but not limited to legal costs on a solicitor/ client basis) incurred in connection with the Broker failing to issue complying documentation.

4. The Broker is responsible to ensure that all amounts disclosed in the tax invoice or adjustment note issued to the client are the same amounts included in the closing forwarded to the Underwriting Agency. The Broker indemnifies the Underwriting Agency in respect of any claims, liability, fines, penalties or other costs incurred in connection with of the Broker failing to comply with this obligation.

5. The Underwriting Agency and the Broker each agree they are GST registered when entering into this agreement and will notify the other if they cease to be registered.

6. The Underwriting Agency agrees to notify the Broker if it ceases to satisfy any of the requirements for issuing tax invoices.

7. The Broker agrees to notify the Underwriting Agency if it ceases to satisfy any of the requirements for issuing tax invoices.

8. The Broker agrees that as agent of the Underwriting Agency for the purposes set above, it will indemnify the Underwriting Agency and keep the Underwriting Agency indemnified in respect of all claims, liability, fines, penalties or other costs (including but not limited to legal costs on a solicitor/client basis) incurred in connection with an understatement of the GST payable on any supply for which the Broker has issued a tax invoice.

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