

# Broker Terms and Conditions

These terms and conditions between you and Ag Guard Pty Ltd ABN 42 168 502 645 (**Ag Guard, we, us and our**) govern the arrangement of insurance by you on behalf of your clients through the placement portal to which we provide you access (**Portal**). By arranging insurance on behalf of your client through the Portal, you agree to comply with and be bound by these terms and conditions.

## 1. Acceptance of risk

All business placed through the Portal will be transacted on an offer and acceptance basis. We are under no obligation to agree to insure a proposed risk, regardless of whether a quotation has been provided or interim cover has been granted in respect of that risk.

## 2. Interim cover

We will not issue interim contracts.

## 3. Surveys

- (a) We reserve the right to survey any risk submitted through the Portal. If the survey reveals that your client has breached the duty of disclosure or misrepresented the risk, the relevant insurer may be entitled to avoid the policy or reduce their liability in respect of a claim pursuant to section 28 of the *Insurance Contracts Act 1984*.
- (b) No conditions imposed or recommendations made by us or the insurers, whether following survey or otherwise, shall constitute a representation that the risk is safe, fit for its purpose or compliant with any law, regulation, code or the like.

## 4. Compliance

- (a) You agree to give our Financial Services Guide (“**FSG**”) to your client when you recommend that your client acquire an insurance contract offered by us, if the client is a retail client at law.
- (b) You agree to comply with all the legislation, regulation and codes of practice that regulate or affect your obligations under these terms and conditions.

## 5. Commission

We will pay you a percentage of the base premium as commission for each contract of insurance you arrange through the Portal on behalf of your clients. The commission rate for each product is specified in the Portal and you can adjust this from time to time, however we will pay you no more than 17.5% of the base premium. Commission is payable after our receipt of the premium, or otherwise you may elect on the Portal to remit premium net of commission.

Where we do not receive the premium, no commission is payable to you. Where premium is received outside of our standard terms, we reserve the right not to pay commission on affected policies. Where a renewable policy is cancelled mid-term by the insured, and a premium refund is due and payable, we will:

- (a) For policies where the premium is paid annually, require you to repay to us the pro-rated commission in respect of the cancelled portion of the insurance period. If the commission

has not yet been paid to you, we will not pay you any commissions in respect of the part of the insurance period that has been covered; or

- (b) For policies where the premium is paid monthly, we will have no obligation to pay you any further commissions in respect of the cancelled period of insurance.

Where we appoint a debt collector to collect premium from the insured, no commission is payable to you.

## **6. Payment**

- (a) You will forward the full amount of premium and charges to us (less any commission and brokerage fee payable and the GST applicable to you):
  - (i) In respect of winter crop insurance, no later than 15 February (being closest to the applicable underwriting season for which the policy premium is owing);
  - (ii) In respect of summer crop insurance, by 31 May (being closest to the applicable underwriting season for which the policy premium is owing);
  - (iii) In respect of cotton crop insurance, no later than 30 calendar days after the date we issue the invoice to you; and
  - (iv) In respect of Farm Pack insurance, no later than 30 calendar days after the start date of the Period of Insurance in the Portal (or Endorsement Date as may be applicable).
- (b) We will invoice you for each cover bound, but we are under no obligation to provide statements.

## **7. Hold covered**

The insurers are not obliged to hold any risk covered after expiry of any contract of insurance, interim or otherwise.

## **8. Claims**

- (a) In respect of crop insurance, we are authorised to manage and settle claims on behalf of insurers.
- (b) In respect of Farm Pack insurance, we are not authorised to manage and settle claims on behalf of insurers. All claims handling is carried out by InsurX on behalf of Great Lakes Australia.

## **9. Contact with your clients**

We will not initiate direct contact with your client in relation to any contract of insurance you arrange while that insurance remains in force or for a period of 12 months after its expiry, unless we have your consent, or otherwise we may make contact in relation to cancellation of the contract of insurance or claims or any other contact we are required to make to comply with our legal obligations. This clause does not apply where you are in liquidation or we have ceased to arrange insurance business.

## 10. Licence warranties

- (a) You warrant that you have and will at all times hold an Australian financial services licence or a valid written authorisation to act as authorised representative of a person that holds an Australian financial services licence which covers your arrangement of insurance on behalf your clients.
- (b) You must notify us in writing within 24 hours if your Australian financial services licence is suspended or revoked, or your appointment of an authorised representative is revoked.

## 11. Trust account warranties

You warrant that:

- (a) Your trust account is and will be operated in accordance with all applicable laws, rules and regulations;
- (b) You have appropriate systems and controls in place to prevent fraud or misappropriation from the trust account; and
- (c) That all money you receive in relation to insurance provided under these terms and conditions will, at all times it is in your possession, be held in your trust account.

## 12. Privacy and data breach reporting obligations

- (a) You will comply with the Privacy Act 1988 (Cth) including the requirements of the notifiable data breaches scheme, but this clause 12 only applies to personal information and data breaches relating to business placed through the Portal.
- (b) You will immediately notify us when you suspect or believe there has been unauthorised access to, unauthorised disclosure of, or loss of, any personal information you hold.
- (c) You will, when we request:
  - (i) Provide any assistance or information to us to the extent permitted by law;
  - (ii) Undertake and complete an investigation into the data breach and report on the outcome to us;
  - (iii) Notify an affected individual and/or the Office of the Australian Information Commissioner (OAIC) of the data breach; and
  - (iv) Take any other actions (including remedial actions) reasonably required by law.
- (d) You will not notify an affected individual or the OAIC of a data breach (unless directed to by the OAIC) without providing information about the notification to us for review and approval. We have the right to decide if we will make the notification, and if we make the notification, you agree that you will not.
- (e) We undertake to make a decision about making a notification to the OAIC submitted for review and approval under clause 12(d) within 10 business days.
- (f) Nothing in clause 12(d) prevents you from notifying the OAIC if we fail to provide approval in accordance with clause 12(e).

### **13. Your conduct**

You must not:

- (a) use the Portal for any unlawful purpose or otherwise in breach of any applicable laws;
- (b) use information obtained from the Portal for any unlawful purpose, or to transmit or authorise the transmission of junk mail, chain letters, or unsolicited emails;
- (c) interfere with, disrupt, or create undue burden on the operation of the Portal; and
- (d) use any robot, spider, or other device or process to retrieve, index, or in any way reproduce, modify or circumvent the navigational structure, security or presentation of the Portal.

### **14. Disclaimer of warranties**

You understand and acknowledge that:

- (a) while we make every effort to keep the Portal up and running smoothly, we take no responsibility for, and will not be liable for, the Portal being temporarily unavailable due to technical issues beyond our reasonable control;
- (b) we do not provide any warranty or guarantee as to the performance, accuracy, timeliness, completeness or suitability of the information (which may contain mistakes, inaccuracies or errors) and services found or offered on the Portal for any particular purpose, and we expressly exclude any liability for such to the fullest extent permissible by law; and
- (c) your use of any information or services on the Portal is entirely at your own risk, for which we will not be liable.

### **15. Indemnity**

You indemnify and release us from and against all claims, suits, demands, actions, liabilities, costs and expenses (including reasonable legal costs and expenses awarded by a court) resulting from any negligent or wrongful act or omission by you in the course of your use of the Portal or breach of these terms and conditions, except you will not be liable for any claim, suit, demand, action, liability, cost or expense to the extent they were caused by our negligent or wrongful acts or omissions.

### **16. Limitation of liability**

Neither party is liable to the other for any consequential or indirect loss including, but not limited to, loss of profit, loss of data, lost opportunity cost, loss of enjoyment.

### **17. Changes to terms and conditions**

We may amend these terms and conditions from time to time. The updated terms will appear on the Portal. If you do not agree to comply with the new terms and conditions, you must immediately cease using the Portal. We may also terminate these terms and conditions immediately at any time.

## **18. General**

**Choice of law** – These terms and conditions and the relationship between the parties shall be governed by the laws of the State of New South Wales, Australia. The parties agree to submit to the personal and exclusive jurisdiction of the courts of New South Wales, Australia.

**Waiver and severability of terms** – Any failure on our part to exercise or enforce any right or provision of these terms and conditions shall not constitute a waiver of such right or provision. If any provision of these terms and conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of these terms and conditions remain in full force and effect.

**Summary version changes:**

Version 1.5 – 20 April 2020:

- Paragraph 5 – Commission  
The amount has been changed from 15% to 17.5%.