

# TERMS OF ENGAGEMENT

## 1. TERMS OF ENGAGEMENT

- 1.1. These are Marsh Limited's ("Marsh", "we", "our" or "us") terms of engagement. They replace all prior terms of engagement or terms of business and we will provide all future services to you on the basis of these terms. If you do not agree with any aspect of these terms please notify us immediately. You are deemed to accept these terms of engagement in full upon receipt, unless you notify us to the contrary in writing.
- 1.2. Any reference to "you" in this document includes anyone else who you represent in engaging us.
- 1.3. These terms of engagement, along with any fee schedule and/or report, represent the legal contract ("the Engagement") between Marsh and you.

## 2. OUR STATUS

- 2.1. We will usually act on your behalf as an independent insurance broker but this is not always the case. In some cases we will offer products from one, or a limited number of providers. For example, in the case of domestic insurance we may exclusively recommend an insurance facility we have negotiated, and for premium finance for loans of less than \$100,000 we may provide quotations from only one provider.
- 2.2. For some types of insurance we or MMA may hold delegated authorities from an insurer or insurers. In these cases we may not seek alternative quotations unless you ask us to do so. We may engage contractors and other MMC group companies (such as MMA) to assist us to provide services. "MMC" means Marsh & McLennan Companies, Inc. "MMA" means Marsh & McLennan Agency Ltd.
- 2.3. We will normally make a recommendation to you for insurance policies. You will need to make your own choice about how to proceed and, on receipt of your instructions, we will endeavour to arrange insurance, subject to availability, to meet your stated requirements.

## 3. OUR SERVICES

- 3.1. As your insurance broker we may provide the following services (the "Services") under the Engagement.
- 3.2. Pre-insurance marketing services
  - Help you assess your risks and develop insurance specifications to submit to a potential insurer or insurers
  - Recommend potential insurances and insurers
- 3.3. Insurance marketing, placement and premium finance
  - Seek quotes from a potential insurer or insurers
  - Negotiate on your behalf
  - Report and discuss the options
  - Seek to bind coverage when you have authorised us to do so (except in urgent circumstances in which case unless you instruct otherwise we may choose to bind insurance on your behalf if we consider that is in your best interests)
  - If we think you may be interested in premium finance, we may also obtain and provide you with a premium finance quotation
- 3.4. Post-placement services
  - Send confirmation of coverage
  - Follow up with the insurer as necessary to prepare or obtain policies and/or endorsements
  - Review insurance policies and endorsements for conformity with agreed terms and coverages
  - Provide coverage summaries
  - At your request, issue or arrange certificates or confirmation of insurance(s)
  - Prepare or review premium adjustments
  - Invoice you for premiums, our fees and charges, and applicable taxes and levies
  - Remit collected premiums to insurers in accordance with their requirements and, where applicable, remit collected taxes and levies to the relevant authorities

- Monitor published financial information about your current insurer(s) and alert you if, during the period of a policy we place, one of those insurers falls below our minimum guidelines (but we will not take any action to replace your insurer(s) unless you instruct us to do so)
- Assist you in establishing claims reporting procedures
- Assist you to lodge claims, and (with your approval) negotiate on your behalf
- If you ask, we may offer advice in our capacity as insurance brokers on the insurance and indemnity provisions of your commercial contracts

3.5. We or another MMC group company may also act as your risk management consultant or claims preparer, if you sign a separate agreement and agree a fee for the provision of those services. In the absence of such an agreement, you will pay us a reasonable fee for the services carried out, based on our standard charge out rates for the staff involved.

## 4. YOUR OBLIGATIONS TO US AND TO YOUR INSURERS

### 4.1. Provision of information:

In order to be able to arrange insurance to meet your requirements, you must:

- a) act at all times with utmost good faith towards your insurers and us;
- b) disclose to insurers before the policy is placed, and before the policy is renewed, extended, varied or reinstated, and at any other time when providing information to the insurer, all information, facts or circumstances which are, or ought to be, known to you and which are material to the risk or which are relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms; and
- c) ensure that when completing and signing any proposal form, or otherwise confirming information to insurers, the information provided is complete, accurate and provided within an agreed timescale.

4.2. You acknowledge that this duty is not limited to answering specific questions that may be asked by us or the insurer, and further that the duty of disclosure arises again if you wish to make changes to your policy or when the policy is renewed or extended.

4.3. We remind you that any failure to disclose all material information to the insurer whether intentionally or by error, could result in the impairment or voiding of coverage. Information will be material if it would influence an insurer to accept a risk and if so on what terms and at what premium. Similarly, a failure to set adequate sums insured for specific locations, or types of loss, or for the policy as a whole can prejudice coverage. If you are in doubt about whether information is material, and whether you have a duty to disclose it, or are not sure that the sums insured are adequate, it is very important that you let us know as soon as possible.

4.4. You shall be solely responsible for the accuracy and completeness of all information that you furnish to us and/or insurers, and you shall sign any required application for insurance. We shall not be responsible to verify the accuracy or completeness of any information that you provide and we shall be entitled to rely on that information.

4.5. We shall have no liability for any errors, deficiencies or omissions in any Services provided to you, including the placement of insurance on your behalf, that are based on inaccurate or incomplete information provided to us. You understand that the failure to provide all necessary information to an insurer, whether intentional or in error, could result in the impairment or voiding of coverage.

4.6. We may communicate with you by electronic means, including sending renewal notices and policy documentation, unless you specifically request that this is not done.

### 4.7. Records:

You agree promptly to check all documentation supplied to you by us or insurers to ensure there are no mistakes or misunderstandings. You will advise your usual Marsh contact or the insurer immediately of any errors or anything you believe is not in accordance with your instructions or specifications.

You are responsible for maintaining copies of your insurance policies, and any amendments to them, in a safe place for as long as it is possible for a claim to be made under them. New documentation may not be issued every year, and subject to any legal requirements, after expiry or termination (whatever the reason) of our appointment as your insurance broker, we may not retain copies of policies placed by us on your behalf.

#### 4.8. Payments by you:

Our invoices for the premiums due to insurers, our fee (if applicable) and any taxes, Fire Service Levies, and other charges due to us or a third party are due immediately on receipt of our invoice, unless you have advised us that you wish to arrange premium financing through us. While it is not our usual practice to pay any amount due from our clients to a third party (for example, premiums due to your insurers) before receiving it, if we choose to do so, you must immediately reimburse us on request.

Where we place New Zealand risks with overseas insurers we are deemed by law to be their agent and are liable for the payment of New Zealand Fire Service Levies. You must indemnify us against any liability we may incur in this regard.

## 5. REMUNERATION

- 5.1. We may agree a fee payable by you covering the placement of a specific insurance policy or policies and/or we will be entitled to receive commission/brokerage payable by your insurer.
- 5.2. We reserve the right to retain in full all remuneration deemed earned even where an insurance policy is amended, terminated or otherwise cancelled. Our remuneration is not conditional on the placement of an insurance policy being made, and we reserve the right to be remunerated for the work we have undertaken.
- 5.3. Your insurers may also pay us, or MMA, or other MMC companies sums in addition to commission/brokerage or the fee we receive from you for Services or benefits we provide to them in connection with placements we make for you and other clients.
- 5.4. We may recommend contracts of insurance which are arranged through facilities in place with insurers whereby Marsh, or another member of the MMC group of companies, acts as the agent of the insurer and/or we may obtain the assistance of another broker or member of the MMC group of companies in New Zealand or overseas, in order to carry out your instructions to arrange contracts of insurance.  
  
Where we do so, we, a member of the MMC group of companies, the other broker and/or the agent may receive additional remuneration from the relevant insurer or charge a fee.
- 5.5. Where we, or another MMC group company, are instructed by insurers to place reinsurance on their behalf, we or they may receive remuneration from the insurers or their reinsurers.
- 5.6. If a fee payable by you is not stated to include or exclude GST and/or any other applicable tax or levy, then it is payable by you in addition to the fee.
- 5.7. If we spend more than 10 hours on a claim or series of related or similar claims, we may charge you an hourly rate for any further claims services provided.
- 5.8. We may also make an administration charge to you of a minimum of \$75 plus GST per policy, endorsement or invoice. These charges are disclosed on our invoices.
- 5.9. If any adjustments are made to your insurance during the policy period, mid-term or at year end, we will be entitled to receive commission/brokerage on the increased premium. We may retain any commission/brokerage already received on downward premium adjustments or in the case of policy cancellation or avoidance. We will not be entitled to additional commissions if a fee has been agreed for the placement of that policy, unless the additional work falls outside the scope of that fee.

5.10. If during the term of this Engagement, you instruct us to arrange a contract of insurance (that was not included in the insurance program at the commencement of this Engagement) or premium funding contract, we will agree with you additional remuneration which may include:

a) commission/brokerage from an insurer or premium funder as the case may be in accordance with customary market practice; and/or

b) an additional fee.

5.11. If during the term of this Engagement, you instruct us to provide any additional services we will agree with you additional remuneration.

5.12. We earn and retain interest income on monies received from you between the time of receipt and disbursement. We receive commissions and/or other payments from premium financiers.

## 6. DISCLAIMERS; EXTENT OF LIABILITY

6.1. We shall not be responsible for the solvency of any insurer or its ability or willingness to pay claims, return premiums or meet its other financial obligations.

6.2. We do not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to you.

6.3. We do not guarantee that any tax or Fire Service Levy payment advantages will result from the way in which we arrange your insurances and we disclaim liability for any additional expense or liability that may be incurred, or planned saving which is not made.

6.4. We will not be responsible for the adequacy or effectiveness of any insurance programmes or policies implemented by a non-MMC broker, nor any of their acts or omissions.

6.5. If we directly cause any loss or damage, we will be liable only to the extent and in the proportion (which may be nil) that our conduct or the conduct of someone whom we are responsible for (rather than the conduct of another party) caused the loss or damage.

6.6. If as a result of your engagement of Marsh, insurance broking or risk consulting services are provided to you by other MMC group companies or our contractors they will be provided as our agent. Claims for any form of loss or damage (even in the case of negligence) may only be made against Marsh Limited, not other MMC group companies nor their or our respective directors, representatives, contactors and/or employees.

## 7. LIMITATION OF LIABILITY

7.1. In no event shall either party to this Engagement be liable for any indirect, special, consequential or punitive damages or for any lost profits arising out of or relating to any Services provided by:

a) Marsh and/or its related companies and associated entities and their representatives (including but not limited to its / their employees, agents, consultants and authorised representatives); and/or

b) Marsh & McLennan Agency Limited or any other entity within the Marsh & McLennan Companies Inc, group of companies or its / their related companies and associated entities and its / their representatives (including but not limited to its / their employees, agents, consultants and authorised representatives) (these entities and individuals shall collectively be referred to as the "Relevant Persons").

7.2. **The aggregate liability of Marsh and the Relevant Persons combined, arising out of or relating to the provision of Services or any additional services, shall not exceed one million dollars (NZ\$1,000,000).** This provision applies to the fullest extent permitted by applicable law for all events giving rise to any liability on the part of Marsh and/or the Relevant Persons, whether arising in contract, tort (including negligence), equity, statute, or on any other basis, but does not apply to any liability arising as a result of fraud by Marsh and/or the Relevant Persons.

## 8. TERM AND TERMINATION

8.1. Either you or we may terminate our appointment upon written notice to the other, in which case:

8.2. **If you pay us a fee.** If we terminate this Engagement, or if you terminate this Engagement due to our material breach of this Engagement or following our insolvency, our fee will be adjusted. Any annual fee from you for placing insurance is deemed 40% earned for any service provided up to placement, 30% earned on placement and 30% earned for ongoing servicing activities pro-rata in the following months.

If you terminate this Engagement for any other reason, our annual fee from you and any other remuneration will be deemed fully earned as at the effective date of termination.

8.3. **Where we receive commission/brokerage.** If this Engagement is terminated by you for any reason, all commission/brokerage received by us will be retained.

8.4. **If you pay us a fee which is based on an appointment for a fixed term in excess of 12 months.** If this Engagement is terminated by you within that term (other than by you due to our material breach of this contract, or following our insolvency), we shall be entitled to (i) receive or retain any remuneration which is deemed earned at the effective date of termination and (ii) be paid 50% of the outstanding fee(s) which would have become payable for the remainder of the term.

8.5. **In all cases.** Any obligation we have to provide Services to you will cease upon the effective date of termination, unless otherwise agreed in writing. If requested, we will assist you in arranging a smooth transition process, subject to receipt of all amounts due to us from you (or as the case may be, from your insurers). We will be entitled to be fairly remunerated for any pre-insurance marketing work for which we have not received any remuneration, along with any handover costs.

## 9. INTELLECTUAL PROPERTY

9.1. We shall retain all ownership, title, copyright and other intellectual property rights in all materials developed, designed or created by us (or any of the MMC group of companies) before or during the Engagement, including systems, methodologies, software, knowhow and working papers. We will also retain all ownership, title, copyright and other intellectual property rights in all reports, written advice or other materials provided by us to you, and we grant you a perpetual and royalty free licence to use those materials, but only for the purposes for which they were created under this Engagement.

## 10. CONFIDENTIALITY AND PRIVACY

10.1. We will keep all information about you and your business confidential and, except where necessary for the purpose of providing Services, which includes offering premium finance, we will not disclose it outside the MMC group of companies and our or their contractors without your consent. This does not apply to information that is already public knowledge.

10.2. We may store information (including personal information) that we receive or hold about you in secure server locations outside New Zealand.

10.3. Where we collect personal information from individuals, those individuals have the rights of access to, and to seek correction of, personal information about them. Marsh or other MMC group companies may wish to contact you, including by email, with goods or services which may be of interest to you, including sending you newsletters and service offerings. If you do not object to this, which you may do at any time, your and your staff's consent will be assumed.

10.4. We may obtain information about you and where you are a company your related entities, from third party sources (such as banks), as is necessary for the purpose of establishing the origin of unidentifiable payments we receive, and such third parties are hereby authorised by you to make such disclosure to us.

## 11. ENTIRE AGREEMENT

11.1. This Engagement sets out the entire understanding of the parties in relation to the matters that it deals with and supersedes and invalidates all previous letters, agreements and understandings (oral or written) in relation to those matters.

## 12. CLIENT AS REPRESENTATIVE

12.1. If, in performing the Services, we arrange contracts of insurance for you under which another entity is also indemnified, we will rely upon you to:

- a) give and receive all notices on behalf of you and the other entity;
- b) make available to the other entity a copy of the policy document for each contract of insurance we arrange on that entity's behalf;
- c) give us, on the other entity's behalf, all information relating to the other entity that is required by us for the performance of the Services;
- d) pay premiums, and receive return premiums in relation to the contracts of insurance on behalf of the other entity; and
- e) give a valid release for any claims monies paid to you on behalf of the other entity.

### 13. MISCELLANEOUS

- 13.1. We shall not have any liability for any failure or delay in performing any Services because of an event beyond our reasonable control.
- 13.2. We are entitled to retain copies of any documents which in our reasonable judgement we deem necessary for the conduct of our business and in order to comply with our legal obligations.
- 13.3. You will provide reasonable access to any files and documents delivered by Marsh to you (including making copies) in the event that Marsh wish to review them for the purpose of addressing any allegations, claims or actions which may be made against Marsh or where Marsh are legally compelled to disclose documents to third parties.
- 13.4. You consent to us including the name of your company or group in Marsh's internal publications, new business reports or tenders.
- 13.5. We may assign this Engagement at any time to any member of the MMC group of companies.
- 13.6. We reserve the right to amend these terms by giving notice to you.
- 13.7. The laws of New Zealand govern this Engagement and the New Zealand courts have exclusive jurisdiction over any dispute between you and us.

### FOR FURTHER INFORMATION

For further details, please contact your Marsh Client Executive - 0800 627 744

[www.marsh.co.nz](http://www.marsh.co.nz)