

Terms of Business Agreement

Issued 28 October 2019



Insurance | Risk Management | Consulting

- This Agreement sets out the basis on which we will provide our Services to you.
- We will be entitled to receive commission and/or fees for providing our Services.
- Our liability to you under this Agreement is limited.
- We may change these terms from time to time by giving you written notice.

1. Introduction

Thank you for appointing Arthur J. Gallagher & Co (Aus) Limited (ABN 34 005 543 920) Australian Financial Services License (AFSL) no. 238312 (**we, us, our** or **Gallagher**) as your insurance broker and risk management consultant.

These Terms of Business, along with our Financial Services Guide (**FSG**), contain the terms on which we agree to provide our services (**Services**) to you (**Agreement**).

Please read our FSG, which sets out important information about the Services we can provide you, how we and our representatives are remunerated, and our dispute resolution procedures.

If you have a separate service level agreement in place with us, the terms of that agreement will apply.

If you have any concerns or cannot comply with this Agreement, please contact us immediately.

1.1 Appointment

If you have received this Agreement because you are responsible for procuring our Services on behalf of a business which is a company, trust or partnership, we assume that you are authorised to accept these terms on behalf of the business, unless we are notified otherwise in writing.

Where you have received this Agreement because you are the person responsible for procuring our Services on behalf of a company, these terms bind the company and each of the group companies if they also receive the benefit of our Services, unless otherwise agreed in writing. References in this Agreement to “you” or “your” mean the company, each of your group companies or the business, and include your respective employees, officers and agents (where appropriate).

1.2 Term

The Agreement between us is binding as soon as we perform the Services for you after the date you receive this document, unless you notify us otherwise in writing. The Agreement will continue from that time until either party terminates it.

2. Our Services

We will provide the Services with due care and skill, in accordance with relevant professional and ethical standards, and in compliance with applicable legislation.

The Services may be provided to you by one or more of the companies in our group or an authorised representative of one of those companies as explained in our FSG.

3. Your Obligations

We will rely on the accuracy and completeness of the information you provide to us. We do not independently verify the information you provide before sending it to the insurer.

Before you enter into, vary or renew an insurance contract, you have a legal duty to disclose all material facts and information that are relevant to the insurer’s decision whether to accept the risk.

Carefully review your insurance contract to ensure it accurately reflects the cover, conditions, limits and other terms that you require. If the contract does not meet your needs, please contact us immediately.

For further information about your legal duty of disclosure and about your insurance, please refer to our FSG.

4. Remuneration & Payments

Unless we have agreed otherwise, our remuneration typically constitutes:

- a professional broking fee as agreed with you;
- a commission paid to us by the insurer; or
- a combination of fees and commissions.

With your prior agreement, we may also charge you for out of pocket expenses, such as travel and accommodation, that we reasonably incur in providing the Services.

For further information about our remuneration, please refer to our FSG.

You agree to pay our fees and all insurance premiums (including any statutory charges) incurred by us in providing the Services on or before the due date stated on our tax invoice.

Unless stated otherwise, all fees in our invoices are exclusive of GST (as defined in A New Tax System (*Goods & Services Tax*) Act 1999).

When you engage us to provide the Services, you consent to us deducting any amounts you owe under this Agreement from any payments we receive on your behalf (such as claims monies or premium refunds). We will advise you in writing of the amount and reason for the deduction within 5 business days of receipt of the payment. We can make deductions at any time, including after you notify us that you are terminating our Services.

5. Third Parties

From time to time, you may instruct us to engage third parties on your behalf in relation to the Services. We will tell you about the fees charged for third party services if we procure them for you or your benefit. Unless otherwise agreed you must pay any relevant fees and expenses, and we will not be liable to any third parties.

6. Limitation of Liability

To the maximum extent permitted by law, our entire liability to you (whether in tort, common law or under statute and whether by reason of negligence or breach of this agreement) will not exceed \$20 million in the aggregate.

Notwithstanding the above, we will not be liable to you for any punitive, special, aggravated, exemplary or liquidated damages or indirect, incidental or consequential loss of any kind, including loss of profits or revenue, loss of opportunity or contract, loss of data, loss of production, use or supply, loss of reputation or goodwill, deterioration in value or increased business cost.

Our liability will be proportionate to the share of responsibility we have for any loss you incur, according to the degree to which we (or our employees, authorised representatives or agents) caused or contributed to your loss.

7. Confidentiality

Each party agrees to treat all information received from the other party as confidential and not to disclose it without the written approval of the other party, except where:

- the recipient is the party's professional advisor, who agrees to keep the information confidential;
- disclosure is reasonably required to carry out the Services, including disclosing information to current or prospective insurers, other insurance intermediaries, or a party's group companies;
- disclosure is required by law; or
- the information is already in the public domain, or in a party's lawful possession other than through breach of this Agreement or any other obligation of confidence.

8. Intellectual Property

We retain all ownership, title, copyright and other intellectual property rights in all materials used, developed or created by us in providing the Services to you. These include our knowledge, ideas, concepts, systems, software, documentation, models, studies and methodologies.

9. Privacy Notice

Both parties agree to comply with the *Privacy Act 1988 (Cth)*. You also acknowledge and agree to the way Gallagher collects, stores, uses and discloses personal information as set out in our privacy policy (as amended from time to time).

The latest version of our Privacy Policy is available at www.ajg.com.au.

We may collect personal information, which is required for providing the Services, such as the personal details of you or your employees. Before you give Gallagher personal information about an individual, you must inform them that you intend to provide their personal information to us and obtain any necessary consents for us to collect, store, use and disclose that personal information in accordance with our privacy policy.

You agree to indemnify Gallagher for all damages, losses and expenses which we incur in connection with any investigation, claim or proceedings arising from or caused by your failure to comply with your obligations under this clause.

10. Bribery/Corruption

We each agree to comply with all applicable laws, statutes and regulations including those relating to anti-bribery and corruption as they apply to the Services and this Agreement. Any breach of these requirements entitles the other party to terminate the Agreement immediately.

11. Sanctions

We implement a global policy aimed at ensuring compliance with economic, financial and trade sanctions, and foreign export controls. We may be required to take actions such as freezing the funds of parties subject to these sanctions, and not performing some obligations under this Agreement.

We reserve the right to take steps to comply with our sanctions policy (and we will not be liable to you for this or for similar steps taken by third parties).

12. Termination

This Agreement may be terminated by either party providing 30 days written notice of termination. You are required to pay our remuneration in relation to the Services we perform up to this date.

From the date of termination we will cease providing Services to you, including those in relation to any claims we may be managing on your behalf, unless otherwise agreed in writing. If this Agreement is terminated while we are managing your claim, you (or another service provider you appoint) will have to manage this process with the relevant insurer.

We may decline to provide certain services and/or terminate this Agreement with immediate effect if doing so breaches any applicable laws, or professional or ethical standards. We will tell you if this is the case.

Clauses 4-12 (inclusive) and 15 will survive the expiry or the termination of this Agreement.

If we intend to terminate this Agreement, we will give you written notice using your contact details from our records. Please ensure this information remains current and advise us of any change.

13. Variation

It may be necessary for us to vary the terms of this Agreement by sending you an updated version of our Terms of Business or FSG.

We will give you written notice of any intended variation to this Agreement, which will take effect 14 days after the date we give you notice, unless otherwise stated. If you do not wish to continue receiving our Services after receiving a notice of variation you may terminate this Agreement immediately by giving us written notice.

14. General

If any part of this Agreement becomes illegal or unenforceable it may be severed with the remaining clauses or parts of a clause in this Agreement remaining in force.

The laws of New South Wales govern this agreement and NSW courts have exclusive jurisdiction.

15. Notice

We may give notice to you under this Agreement at your registered address (if you are a company) or the most recent email or postal address supplied by you.

You can notify us, or lodge a dispute in relation to this Agreement by:

- **contacting your Gallagher broker;**
- **emailing:**
the Gallagher Risk & Compliance Team at complaints@ajg.com.au; or
- **writing to:**
Company Secretary
Arthur J. Gallagher & Co (Aus) Limited
Level 12, 80 Pacific Highway,
North Sydney, NSW 2060