

Trading Terms and Conditions



Effective Date: 1 September 2020

These Trading Terms and Conditions (Terms and Conditions) shall apply to insurance services business between Sompo Japan Insurance Inc. ABN 31 000 837 801 Incorporated in Japan (Sompo) its agent SURA Pty Ltd ABN 36 115 672 350 AFSL 294313 (SURA) and any AFS licenced Insurance Broker (Broker) who advises on and transacts in insurance products provided by Sompo.

1. Context

The Broker wishes to carry on a financial services business to provide financial product advice for insurance products, and to deal in financial products by applying for, acquiring, varying or disposing of insurance products provided by Sompo subject to the Broker's Australian Financial Services Licence ('AFSL') authorisations. In consideration of the Remuneration paid by Sompo, the Broker agrees to advise and deal in any insurance products provided by Sompo, subject to these Terms and Conditions.

2. Relationships

The Broker holds an AFSL that authorises it to advise and deal in insurance products to either retail and/or wholesale clients. The Broker will advise Sompo immediately if it's AFSL is varied, suspended or cancelled.

The Broker acts as agent for its clients and is not an agent of Sompo and will not provide or purport to provide any financial services on behalf of Sompo. SURA acts as agent for Sompo, unless otherwise advised. The Broker is also responsible for the actions and omissions of its authorised representatives, agents, employees and contractors. These Terms and Conditions do not create any form of binder, employment, joint venture or partnership.

3. Placing Insurance

The Broker must accept the offer for the contract of insurance in writing prior to or on the inception date and provide Sompo with all proposal forms, where applicable, and closing instructions received from the insured within 14 days from the inception date of the contract of insurance, unless written instructions have been provided by Sompo with an alternate timeframe.

The contract of insurance will be in the same terms and conditions as the written offer provided by Sompo and any subsequent documents or other conduct, including any counter-offer from the Broker, will have no effect unless confirmed in writing by Sompo.

Hold covered terms may be available in limited circumstances upon written request and at the sole discretion of Sompo.

4. Insureds

Sompo will only directly contact insureds in the following circumstances:

- Promoting, marketing and selling its services or products 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 client of the Broker specifically;
- Pursuant to statutory requirements;
- If requested by the insured in writing;
- If required in relation to a claim; or
- If following reasonable efforts, Sompo has been unable to provide the Broker with any of the relevant notices and information required by any statutory requirements.

5. Duty of Disclosure

The insured has a duty of disclosure under sections 21, 21A and 21B of the Insurance Contracts Act 1984 (Cth) ('ICA') and as set out in the product disclosure statement (PDS), policy wording or insurance documentation associated with the contract of insurance.

6. Payment of Premium, Fees and Statutory Charges

The Broker will remit premium on a net of commission basis and any applicable fees and statutory charges on a gross basis to Sompo within the credit terms provided in the Remuneration Schedule, which commences from the contract of insurance's inception date. All collected premium, applicable fees and statutory charges are to be held in a trust account in accordance with statutory requirements.

7. Remuneration

Sompo will pay the Broker commission on each base premium in accordance with the rates agreed between the parties. Unless otherwise agreed, the base premium is exclusive of statutory charges (including GST), any fire services levy or any other fee. Sompo will provide the Broker with 30 day's written notice of any change in commission. Where the Broker has a fee for service arrangement in respect of a policy, the Broker will not be entitled to commission in respect of that policy. Further, no commission will be payable for any policy cancelled during the cooling off period.

8. Cancellation of the Contract of Insurance

Sompo, on behalf of the insurer, will have the right to cancel the contract of insurance if the premium is not paid in accordance with the terms of the contract of insurance and these Terms and Conditions.

Any interim contracts of insurance will be cancelled in accordance with sections 38 and 60(4) of the ICA.

Any instalment contracts of insurance will be cancelled in accordance with section 62 of the ICA.

Subject to the terms of the contract of insurance, Sompo maintains all rights under the ICA to cancel the contract of insurance.

If a contract of insurance is cancelled following the cooling off period, if applicable, the premium refund will comprise of a prorated percentage of the net premium received by Sompo and a prorated percentage of commission earned by the Broker for arranging the contract of insurance.

Fees are non-refundable unless the contract of insurance is cancelled during the cooling off period, if applicable, or is a full term cancellation.

The PDS, policy wording or insurance documentation associated with the contract of insurance will disclose when a fee is payable and/or premium is non-refundable as a result of cancellation.

9. Claims

The Broker will provide all reasonable assistance to Sompo, or a party nominated by Sompo or the insurer, in respect of all claims and agrees that any claim will only be paid upon receipt of all outstanding premium(s) and other fees and statutory charges for that contract of insurance.

10. Electronic Distribution

If the Broker chooses to distribute insurance documentation via electronic means, the Broker must comply with all ASIC regulatory guides and any statutory requirements.

11. Marketing material

Any marketing material for Sompo's products created or developed by the Broker must be approved by Sompo. The Broker will not amend any marketing material provided by Sompo without the prior written consent of Sompo.

12. Indemnity

Each party indemnifies the other for all claims, damages, judgments, losses, costs and expenses to the extent that they are reasonably incurred in connection with any breach by a party of either these Terms and Conditions or statutory requirements. This indemnity survives the expiry or termination of any contract or agreement incorporating these Terms and Conditions.

13. GST

Where GST is payable, it must be calculated and paid in accordance with A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended. All amounts referred to in these Terms and Conditions are GST exclusive.

14. Tax Invoices

The Broker will issue to the insured a tax invoice in the Broker's name that specifies the GST payable on any taxable supply made by Sompo to the insured. Where an adjustment event such as variation or cancellation of the policy occurs, the Broker will issue to the insured an adjustment note in the Broker's name.

The Broker will issue to Sompo a tax invoice that specifies the GST payable on any taxable supply made by the Broker to Sompo. Where an adjustment event such as variation or cancellation of the policy occurs, the Broker will issue to Sompo an adjustment note.

15. Records

The Broker will retain all records including correspondence (whether electronic or otherwise) either created by or supplied to the Broker for the purpose of providing financial product advice or dealing with the insurance products under these Terms and Conditions for a minimum of seven years or longer if required by any statutory requirement.

16. Dispute Resolution

The parties will attempt in good faith to resolve any dispute between them in connection with these Terms and Conditions within 30 days after written notice from a party. If the parties cannot resolve the dispute by negotiation within 30 days from the original written notice, they will mediate in accordance with the Australian Disputes Centre guidelines for commercial mediation, as amended. This clause does not apply to any urgent court application, including interlocutory relief.

17. Privacy and Confidentiality

Privacy

The Broker, if providing Sompo with personal information about individuals, will comply with all relevant obligations under the Privacy Act 1988 (Cth), including having made or making the individual(s) aware that their personal information will be disclosed to Sompo and handled in accordance with Sompo's Privacy Policy (<https://static1.squarespace.com/static/5f18d6568325736fd58b1f61/t/5f190082eca2744d8bd8ad8d/1595474052095/Privacy+Policy.pdf>).

Confidentiality

Subject to clause 4 (Insureds), each party must keep confidential and must not use the other party's Confidential Information, except as necessary to perform under these Terms and Conditions or as required by law. Nothing in this clause (Privacy and Confidentiality) restricts the use or dissemination of Confidential Information obtained lawfully from a third party.

Each party authorises the other to disclose its Confidential Information to its insurers, (re)insurers, actuaries, auditors, professional advisors and any related bodies corporate. This clause survives the expiry or termination of any contract or agreement incorporating these Terms and Conditions.

Confidential Information 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 under these Terms and Conditions but 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.

18. Complaints

The Broker must inform Sompo immediately of any complaint received by the Broker which relates specifically to a contract of insurance issued by Sompo or the services provided by Sompo. The Broker must fully cooperate with Sompo's dispute resolution procedures and provide all reasonable assistance to Sompo, including providing all relevant documents and information in the investigation and resolution of the complaint.

19. Termination and Variation

These Terms and Conditions may be varied by Sompo by providing the Broker with 30 days' written notice, unless the variation is to comply with a statutory requirement where the variation will apply with immediate effect. Further, any contract or agreement incorporating these Terms and Conditions may be terminated without cause by either party by providing 30 days' written notice to the other or immediately if a party has its AFSL varied, suspended or cancelled. Sompo may terminate any contract or agreement incorporating these Terms and Conditions immediately by providing written notice to the Broker if the Broker is subject to an insolvency event, breaches a condition or engages in serious misconduct including fraudulent activity. As soon as practicable after any termination of any contract or agreement incorporating these Terms and Conditions and in any event within 90 days of termination, each party must pay all money owed to the other, after taking into account any adjustments and the Broker must return at its own expense all documents to Sompo including marketing materials supplied by Sompo.

20. Inconsistency and No Assignment

In the event of any inconsistency between these Terms and Conditions and the PDS, policy wording or insurance documentation associated with the contract of insurance, the PDS, policy wording or insurance documentation will take precedence. The Broker may not assign its rights or transfer obligations under any contract or agreement incorporating these Terms and Conditions without the prior written consent of Sompo.

21. Governing Law

Any contract or agreement incorporating these Terms and Conditions will be governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales and any courts which may hear appeals from those Courts.