

# Terms and conditions of trade (including Personal Cyber Protection Insurance URL)

Emergence Insurance Pty Ltd ABN 46 133 037 153  
(AFSL 329634)

Effective date: 26 August 2021

These Terms and Conditions of Trade (Terms and Conditions) shall replace any prior or existing service agreement between Emergence Insurance Pty Ltd (Emergence) and any AFS Licensed Insurance Broker (Broker) and apply to financial services business from and including the Effective Date. Any Broker wishing to advise on and deal in insurance products provided by Emergence agrees to be bound by these Terms and Conditions.

These Terms and Conditions include the obligations when using the Personal Cyber Protection Insurance URL (URL Business).

## 1.1 Background

The Broker wishes to carry on a financial services business to provide financial product advice for insurance products, and deal in a financial product by applying for, acquiring, varying or disposing of an insurance product provided by Emergence subject to the Broker's Australian Financial Services Licence (AFSL) authorisations. The Broker agrees to be bound by these Terms and Conditions. In consideration of the Remuneration (set out at section 1.8 below) by Emergence, the Broker agrees to advise and deal in an insurance product provided by Emergence.

## 1.2 Relationship

The Broker holds an AFSL that authorises them to advise and deal in insurance products to either retail or wholesale clients (or both).

The Broker will advise Emergence immediately if the AFSL is varied, suspended or cancelled.

The Broker acts as agent for their clients and is not an agent of Emergence nor do these Terms and Conditions create any form of binder, employment, joint venture or partnership. The Broker will not provide or purport to provide any financial services on behalf of Emergence. The Broker is also responsible for the actions and omissions of its authorised representatives, agents, employees and contractors.

Emergence acts as agent for insurers, unless otherwise advised.

### 1.3(a) Arranging Insurance – Closings & Hold Covered (excluding URL Business)

The Broker must accept the offer for the contract of insurance in writing prior to or on the inception date and provide Emergence 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 Emergence advising of an alternate timeframe.

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

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

### 1.3(b) Arranging Insurance - Closings & Hold Covered – URL Business Only

A URL link has been provided by Emergence to the Broker for the Broker to arrange URL Business. The URL for the URL Business is personal to the Broker and must not be shared with any other party.

The Broker may only use the URL for the URL Business on an electronic medium controlled by the Broker operating under the Broker's AFSL.

All URL Business is arranged under the Broker's AFSL.

Emergence reserves the right to terminate the use of the URL for URL Business at any time.

## 1.4 Financial Services Guide (FSG)

For retail products distributed by Emergence, where there is no combined FSG/PDS for the insurance product, the Broker must issue the relevant FSG on behalf of the Emergence to the Broker's client.

## 1.5(a) Insureds

Emergence will only directly contact insureds in the following circumstances:

- In accordance with section 1.5(b) of these Terms and Conditions;
- 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, Emergence has been unable to provide the Broker with any of the relevant notices and information required pursuant to statutory requirements.

## 1.5(b) Insured Contact – URL Business Only

Emergence will directly contact insureds in the following circumstances when insurance is arranged as URL Business:

- New business bound confirmation email (confirmation of insurance once payment for premium has been confirmed);
- Renewal notification;
- Renewal bound confirmation email;
- Renewal failure email (where the renewal payment has failed).

The Broker will be copied into all correspondence with the insured noted under this section 1.5(b) to the Broker's email address notified to Emergence in writing.

## 1.6 Duty of Disclosure

An insured has either a duty to take reasonable care not to make a misrepresentation or a duty of disclosure under the Insurance Contracts Act 1984 (Cth) (ICA). The relevant sections of the ICA, subject to the general insurance product, is section 20B. The relevant duty of disclosure is also set out in the product disclosure statement (PDS), policy wording or insurance documentation associated with the contract of insurance.

## 1.7(a) Payment of Premium, Fees and Statutory Charges (excluding URL Business)

The Broker will remit premium on a net of commission basis and any applicable fees and statutory charges on a gross basis to Emergence within 60 days of 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 provisions.

## 1.7(b) Payment of Premium, Fees and Statutory Charges – URL Business Only

Emergence will issue a monthly report to the Broker setting out the URL Business and commission and any applicable fees including GST payable to the Broker for the prior month's bound and paid URL Business.

Emergence will remit the commission and any applicable fees including GST set out in the monthly report to the Broker.

## 1.8 Remuneration

Emergence will pay the Broker commission on each base premium in accordance with the rates agreed between the parties. For the avoidance of doubt, the base premium is exclusive of statutory

charges (including GST), any fire services levy or any other fee. Any change to the Broker commission will be communicated by providing 30 days' written notice to the Broker.

## 1.9 Cancellation of the Contract of Insurance

Emergence, on behalf of the insurer, will have the right to cancel the contract of insurance if premium is not paid within 60 days 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, if offered, will be cancelled in accordance with section 62 of the ICA.

Subject to the terms of the contract of insurance, Emergence maintain any other rights under the ICA to cancel the contract of insurance.

Emergence must notify the Broker of any intention to cancel or avoid a contract of insurance.

If a contract of insurance is cancelled following the cooling off period (14 days if applicable), the premium refund will be made up of two components:

- (i) a prorated percentage of the net premium received by Emergence; and
- (ii) a prorated percentage of commission earned by the Broker for arranging the contract of insurance.

Note: Fees are non-refundable unless the contract of insurance is cancelled within the cooling off period (if applicable) or is a full term cancellation.

In the circumstance where a fee is payable and/or premium is non-refundable as a result of cancellation this will be disclosed in the PDS, policy wording or insurance documentation associated with the contract of insurance.

## 1.10 Claims

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

## 1.11 Electronic distribution

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

Insurance documentation distribution will only be by electronic distribution where it is URL Business.

## 1.12(a) Marketing material

Any marketing material for Emergence's products created or developed by the Broker must be approved by Emergence. Also, the Broker will not change any marketing material provided by Emergence without the prior written consent of Emergence.

## 1.12(b) Marketing material and Co-Branding - URL Business Only

The URL for the URL Business may be co-branded following approval from Emergence, such approval being at the sole discretion of Emergence. Where approved by Emergence, Emergence grants the Broker a non-exclusive, royalty free, non-transferrable licence to use Emergence's intellectual property for the purposes of the URL Business (Emergence's IP Licence). Emergence's IP Licence will terminate upon written notice from Emergence or termination of these Terms and Conditions.

The Broker agrees that noting in this agreement transfers ownership in, or otherwise grants any rights in, any intellectual property rights of Emergence.

## 1.13 Compliance with applicable requirements

The Broker will at all times comply with all statutory requirements, ASIC regulatory guides and codes of conduct affecting the Broker's business.

## 1.14 Indemnity

Each party indemnifies the other, on demand, for all claims, damages, judgments, losses, costs (party/party basis) 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. The indemnity survives the expiry or termination of these Terms and Conditions.

## 1.15 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). All amounts referred to in these Terms and Conditions are GST exclusive.

## 1.16 Recipient created tax invoice (RCTI)

Both parties agree that they are parties to a RCTI Agreement for the purpose of dealing in insurance products and declare that these Terms and Conditions apply to supplies to which a tax invoice relates.

Emergence may issue tax invoices for the supplies, in which case the Broker will not issue tax invoices for the supplies. Both parties are registered for GST and will notify the other if the registration ceases. Both parties agree to comply with the Australian Taxation Office requirements for a valid RCTI, which may be amended from time to time.

## 1.17 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 requirements.

## 1.18 Dispute resolution

The parties will attempt in good faith to negotiate 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 then in operation. This clause does not apply to any urgent court application, including interlocutory relief.

## 1.19 Privacy & confidentiality

### 1.19.1 Privacy

The Broker, if providing Emergence 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 Emergence and handled in accordance with Emergence's Privacy Policy.

### 1.19.2 Confidentiality

Subject to section 5 (Insureds), during and after termination of these Terms and Conditions, 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.

If a government, regulatory authority or 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.



Nothing in this section 19 (Privacy & 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 section 19 survives termination.

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.

Confidential Information 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).

## 1.20 Termination & variation

These Terms and Conditions may be varied by Emergence without cause by providing the Broker with 30 days' written notice, unless the variation is to comply with a statutory requirement where immediate notice will apply. Further, 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.

Emergence reserves the right to terminate 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, or there is a statutory requirement. As soon as practicable after any termination of these Terms and Conditions and in any event within 90 days, each party must pay all money owed to the other if any, after taking into account any adjustments required and the Broker

must return at its own expense all documents including marketing materials supplied by Emergence.

## **Contact details**

A party will provide notice to the other of any change of address, telephone and facsimile numbers and email address as soon as practicable after such change.

### 1.21 Inconsistency & 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 these Terms and Conditions without the prior written consent of Emergence.

### 1.22 Governing law

These Terms and Conditions will be governed by the laws of New South Wales and the parties irrevocably submit unconditionally to the non-exclusive jurisdiction of the Courts of New South Wales and any courts which may hear appeals from those Courts.

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