

BRITISH ENGINEERING SERVICES LIMITED

Terms of Business Agreement For the Provision of Engineering Insurance

 SINCE 1859

British Engineering Services
5 New York Street
Manchester
M1 4JB
0345 678 2985
info@briteng.co.uk
britishengineeringservices.co.uk

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THIS AGREEMENT IS MADE:

Governing the conduct of Insurance Business between:

- (1) **BRITISH ENGINEERING SERVICES LIMITED**, registered in England and Wales with company no. 9299724 and whose registered office is at 5 New York Street, Manchester, M1 4JB ("**BES**") on behalf of the Insurer (the "Coverholder"); and
- (2) **The Intermediary**, registered in England and Wales with a company number and registered address,
(together referred to as the "**the Parties**" and each of them a "**Party**")

RECITALS

- A. The Intermediary is an FCA authorised insurance intermediary and provides and arranges various services for its customers.
- B. BES provides various engineering insurance products.
- C. The Intermediary wishes to arrange for BES to provide engineering insurance products for the Intermediary's customers.
- D. The Parties have entered into this Agreement to record and formalise the contractual arrangements in relation to the provision of the engineering insurance.

IT AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The Parties agree that the following terms shall have the following meanings for the purposes of this Agreement:

"Agreement"	The "Terms of Business Agreement.
"CASS"	The FCA's Client Assets Sourcebook.
"Commission"	Means the commission payable by BES to the Intermediary as set out in clause 5.
"FCA"	The Financial Conduct Authority or any successor regulatory body.
"Group"	Has the meaning given to it either in section 421 of the Financial Services and Markets Act 2000 or section 474 of the Companies Act 2006.
"ICOBS"	The Insurance Conduct of Business Sourcebook promulgated and issued from time to time by the FCA.
"Insured"	Any Party (not being the Coverholder) entering into a contract of insurance which is subject to this Agreement.
"Insurer"	The insurers who have given authority to the Coverholder to act as their agent in accordance with a Delegated Authority Scheme Agreement (DASA).

“Insurance Business”	Any insurances or reinsurances falling within the definition of “contract of insurance” in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or as amended together with insurances concluded under any contracts for insurance made by the Coverholder where the Intermediary is the coverholder or the placing broker. For the avoidance of doubt Insurance Business does not include any outwards (re)insurance business placed by the Intermediary as agent of the Coverholder.
“Records”	Anything on which any information of any description is recorded.
“Taxes”	All Insurance Premium Taxes (IPT) and other parafiscal charges which may be levied by overseas fiscal authorities on insurance premiums.
“BIPAR Principles”	A set of high-level principles to follow when handling the placement of a risk with Multiple insurers, agreed with DG Competition by BIPAR, the European Federation of Insurance Intermediaries.
“Law” or “Legal Requirements”	Any reference to “law” or “legal requirements” includes any applicable, common or customary law and any treaty, constitution, statute, legislation, decree, rule, regulation, code of practice, judgment, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or compliance with which is in accordance with the general practice of such jurisdiction.
“Statutory Provision”	In this Agreement where appropriate, reference to a statutory provision (including for the avoidance of doubt a reference to an FCA rule) includes a reference to the same as modified, re-enacted or both from time to time before or after the date of this Agreement and any subordinate legislation made under the same before or after the date of this Agreement.

2. SCOPE

- 2.1 The purpose of this Agreement is solely to set out the rights and obligations of the Parties only in respect of the matters specifically addressed in the Agreement. To the extent that any matters relating to the relationship between the Parties are not expressly addressed in this Agreement, they remain unaffected and unaltered by this Agreement. This Agreement shall not override the terms of any underlying contract for or of Insurance Business or the terms of any Slip save the Parties agree that clause 6.1 shall apply to any monies held by the Intermediary as placing broker to the Coverholder of the Insurer, where the binding authority agreement in question does not make provision for monies to be held in accordance with CASS or in a segregated trust account.
- 2.2 Except to the extent stated in clauses 6.2, 7.2 and 11.3 nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or as appointing either

Party as agent of the other Party for any purpose and neither party shall have the authority to bind the other Party or to contract in its name for any purpose.

- 2.3 Subject to clause 11 (which is to be given a free and unfettered interpretation), nothing in this Agreement overrides the Intermediary's duty to place the interests of its client before all other considerations nor shall this Agreement override any legal or regulatory requirements (whether obligatory or advisory) which may apply to the Intermediary, the Coverholder, or the placing of any Insurance Business.
- 2.4 Subject to clause 2.6 below, the Parties agree that the terms herein shall apply to the conduct of any Insurance Business which has been or may be transacted between the Parties on or after the date of this Agreement. The terms of this Agreement supersede the terms of any other terms of business agreement (TOBA) already in place between the Parties before the date of this Agreement. All monies held by The Intermediary as the agent and trustee of the Insurer under such previous TOBA(s) shall continue to be held by The Intermediary as agent and trustee of the Insurer until such monies are paid by The Intermediary to the relevant party.
- 2.5 Each proposal for Insurance Business, renewal of existing Insurance Business or continuation of cover in respect of any existing Insurance Business will be accepted or declined by the Coverholder at its sole discretion. The Intermediary is under no obligation to offer any proposal for Insurance Business or renewal of any existing Insurance Business to the Coverholder.
- 2.6 Prior to or at the time of placement of any Insurance Business (or as otherwise agreed separately in writing between the Parties), the Intermediary and the Coverholder may agree provisions relating to the conduct of that Insurance Business. These provisions may include (but are not limited to) roles and responsibilities relating to administration of the Insurance Business and the handling of claims and processes by which amendments to the risk may be agreed, and so forth. This Agreement shall be subject to any provisions so agreed and does not seek to address such provisions.

3. REGULATORY STATUS

- 3.1 The Intermediary warrants that it is authorised by the FCA to conduct insurance mediation activities (as defined in the FCA's Handbook) from the date of this Agreement. The Coverholder warrants that it is authorised to conduct Insurance Business from the date of this Agreement.
- 3.2 The Intermediary shall inform the Coverholder immediately in writing if at any time during the period of this Agreement:
- 3.2.1 The FCA suspends or withdraws the Intermediary's authorisation; or
 - 3.2.2 The Intermediary otherwise ceases in anyway to be authorised by the FCA to undertake any activities in relation to any Insurance Business subject to this Agreement; or
 - 3.2.3 The Intermediary becomes insolvent.
- 3.3 The Coverholder shall inform the Intermediary immediately if:

- 3.3.1 The FCA suspends or withdraws the Coverholder's authorisation; or
- 3.3.2 The Coverholder otherwise ceases to be authorised by the FCA to undertake any activities in relation to any Insurance Business subject to this Agreement; or
- 3.3.3 The Coverholder becomes insolvent.

4. AUTHORITY

- 4.1 This Agreement sets out the basis on which the Coverholder will accept Insurance Business from the Intermediary.
- 4.2 Nothing in this Agreement shall grant the Intermediary authority to accept, amend, or vary Insurance Business, settle, negotiate or compromise claims, alter any document or policy, make any non-exempt financial promotion on the Coverholder's behalf, without the Coverholder's prior written consent and/or commit the Coverholder in any way.
- 4.3 Unless separately agreed between the Parties, nothing in this Agreement shall affect the Intermediary's implied authority to "sign down" the Coverholder's participation on any Insurance Business where cover is placed in excess of 100% of order in accordance with market practice.

5. COMMISSION

- 5.1 Commission will be charged by the Intermediary to the Customer in addition to the Inspection Fee at a rate of the Inspection Fee (the "Rate of Commission") as agreed with BES.
- 5.2 The Intermediary shall be entitled to retain the Commission provided that the agreed net Inspection Fee has been paid in full to BES by the Intermediary. The Intermediary hereby confirms that the rate of the Commission shall be transparent and it shall provide BES with details of the Rate of Commission for all Inspection Services. The Intermediary agrees that it shall resolve any dispute over payment of the Commission with its Customers and will fully indemnify BES in respect of any such dispute.

6. INSURANCE PREMIUMS AND CLAIMS

- 6.1 The Intermediary will hold all insurance monies, including premiums it receives from clients and all return premiums and claims money that it receives from the Insurer, as agent of the insured client unless clause 6.2, below, is applicable. The Intermediary shall not hold any money on behalf of the Coverholder.
- 6.2 Where The Intermediary holds monies within the scope of this agreement:
 - (a) either as cover-holder for the insurers or as placing broker for a cover-holder of the insurers; or
 - (b) for onwards payment to agents or representatives of the Insurers in respect of claims adjustment, legal and similar professional fees; or

- (c) on behalf of the Insurers by reason of any legal or regulatory requirements or if specified in the relevant Slip then The Intermediary shall hold such monies as agent and trustee of the insurers.
 - (d) Premiums paid by the intermediary to BES are deemed to have been paid to the insurer
- 6.3 The Intermediary shall advise the Coverholder within 7 days of receipt of any request from the Coverholder, whether it has received any specified premiums.
- 6.4 Provided the Intermediary shall itself have received the premium (including Taxes) or part thereof, the Intermediary shall pay that premium (net of Commission, but including Taxes) or part thereof to the Coverholder within the time permitted for the Insured to pay such premium in accordance with the terms of trade incorporated in the relevant Slip or otherwise as agreed whether between the Coverholder and the Insured or between the Insurer and the Intermediary. In the event the Intermediary receives the premium after the time permitted for the Insured to pay the premium and provided the relevant contract of insurance has not been validly cancelled, the Intermediary shall pay that premium (net of Commission but including Taxes) to the Coverholder as soon as reasonably possible.
- 6.5 Pending payment to the Coverholder a third party or the Intermediary's client (as the case may be), the Intermediary shall hold the monies described in clause 6.2 above as the agent of the Insurer within its client monies account, which shall be a non-statutory trust account, established in accordance with CASS 5. The Coverholder confirms that the Insurer consents to such monies being co-mingled with the Intermediary's other client monies. The Coverholder confirms that the Insurer further consents to its rights with regard to monies held in the client monies account being subordinated to those of Intermediary's clients, in accordance with CASS 5 and further agrees that any interest earned on the said account shall accrue to the Intermediary.
- 6.6 The Intermediary will notify the Coverholder, within such time as may be agreed between the Parties, that the insured has failed to pay the premium (or, as the case may be, any provisional premium).
- 6.7 In the event of the cancellation or avoidance of a contract of insurance, where the Coverholder is obliged by law, regulation or the terms of the contract of insurance to refund gross premiums in respect of such contract of insurance, the Intermediary agrees to refund the relevant Commission (which shall not for the purpose of this clause include fees paid by the Insured) unless the Intermediary deems that such commission is fully earned and not to be refunded. Such repayment shall, in the case of cancellation, be only in respect of Commission received by the Intermediary which is attributable to that part of the premium repaid. Unless otherwise obliged to by law, regulation or terms of the contract of insurance, the Coverholder shall refund premiums net of Commission.

7. TAXES

- 7.1 Except where required by law or regulatory authority or by the terms of this Agreement, the Parties agree that the Intermediary will not be expected to act as guarantor to the Coverholder with regard to the payment of any Taxes relating to any Insurance Business. Where at the date of this Agreement it is market practice that the Intermediary administratively arranges payment of Taxes, that practice shall continue.
- 7.2 Where the Intermediary processes and pays Taxes on behalf of the Coverholder related to premium in respect of any Insurance Business, the Intermediary will hold such monies in accordance with clause 6.1 above for the Coverholder and account to the Coverholder for amounts received by the Intermediary in respect of such liability for Tax which the Coverholder may have in respect of that Insurance Business.

8. COMPLIANCE

- 8.1 Each Party will comply with their respective legal, licensing and regulatory requirements applicable to the production, placing, claims handling and premium and claims accounting of any Insurance Business which the Intermediary places with the Coverholder.
- 8.2 The Intermediary will inform the Coverholder in relation to all Insurance Business whether the Insured is classified as a retail customer or a commercial customer for the purposes of ICOBS.
- 8.3 The Intermediary will forward promptly notices of Insureds' rights to cancel Insurance Business in all instances where such notices are required by Chapter 7 of ICOBS and in accordance with those rules.
- 8.4 The Parties will pay due regard to the Contract Certainty Code of Practice published by the London Market Group (or successor body) in issue at the time of placing the Insurance Business.
- 8.5 Each Party will pay due regard to the BIPAR Principles.
- 8.6 Each Party shall pay due regard to, and co-operate in respect of the observance of, any applicable international economic, financial or trade sanctions legislation which bind the relevant customer, The Intermediary or the Insurer.
- 8.7 Neither Party shall be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any law against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010). The Parties shall insofar as required to do so, and whether or not either party is an associated person of the other for the purposes of the Bribery Act 2010, maintain on an ongoing basis its own anti-corruption/bribery policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to prevent corruption/bribery offences and will enforce them where applicable.

9. DATA PROTECTION

9.1 The Parties acknowledge and agree that where a Party processes Personal Data under or in connection with this Agreement it alone determines the purposes and means of such processing as a Controller.

9.2 In respect of the Personal Data a Party processes under or in connection with this Agreement, the Party:

- (a) shall comply at all times with its obligations under the Data Protection Law;
- (b) shall notify the other Party without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach; and
- (c) shall assist and co-operate fully with the other Party to enable the other Party to comply
- (d) with their obligations under Data Protection Law, including but not limited to in respect of
- (e) keeping Personal Data secure, dealing with Personal Data Breaches, complying with the
- (f) rights of Data Subjects and carrying out data protection impact assessments.

9.3 The Parties shall work together to ensure that each of them is able to process the Personal Data if processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the Data Protection Law. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable each Party to comply with the Data Protection Law.

9.4 For the purposes of clause 9:

“Controller” means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;

“Data Protection Law” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data;

“Data Subject” means the identified or identifiable natural living person to whom the Personal Data relates;

“Personal Data” means any information relating to the Data Subject; and

“Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

10. TERMINATION

10.1 This Agreement shall terminate:

- 10.1.1 at any time by one party giving written notice of termination to the other;
 - 10.1.2 immediately, without notice, should either Party become the subject of voluntary or involuntary rehabilitation or liquidation proceedings (save for the purposes of amalgamation or solvent re-organisation) or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency;
 - 10.1.3 immediately, without notice, should the Intermediary have any authority or permission granted to it by the FCA withdrawn or altered by the FCA in such a manner as materially to affect in any way the Intermediary's ability to introduce, arrange, conclude, administer, perform or otherwise be involved with any Insurance Business which is carried out between the Parties under this Agreement.
- 10.2 Following termination:
- 10.2.1 the Parties will agree the procedure for administering the Insurance Business current at the time of termination;
 - 10.2.2 the Intermediary will make all reasonable efforts to provide the Coverholder with contact details for any Insured or other Party with whom the Coverholder has contracted in the conduct of Insurance Business where:
 - 10.2.2.1 the Intermediary has acted as the agent of the Coverholder; and
 - 10.2.2.2 where such information is reasonably required in order for the Coverholder to carry out its obligations in relation to Insurance Business concluded in accordance with this Agreement.
 - 10.2.3 where permissible the Parties will remain liable to perform their obligations in accordance with the terms of this Agreement in respect of all Insurance Business subject to this Agreement until all Insurance Business has expired or has otherwise been terminated.

11. ACCESS TO RECORDS

- 11.1 The Intermediary will retain all of the Records created or held by it in its capacity as agent of the Coverholder and all Records received by the Intermediary for the purposes of the introduction, arranging, concluding, administration or performance of the Insurance Business for a minimum of six years and in any event the minimum periods required by law or any regulatory body with jurisdiction over the Intermediary, the Coverholder or the Insurance Business.
- 11.2 The Intermediary agrees to allow the Coverholder, on reasonable notice, to inspect and to take copies of the following:
 - 11.2.1 the accounting records pertinent to any Insurance Business information relating to the receipt and payment of premiums and claims and documentation such as any insurance

contract or Slip endorsements, addenda or bordereaux in the possession of the Intermediary relating to the Insurance Business; and

- 11.2.2 documents as may be in the possession of the Intermediary which were disclosed to the Coverholder by the Intermediary in respect of any Insurance Business including, but not limited to, documentation relating to the proposal for the Insurance Business, the placing thereof (including endorsements and reinstatements) and any claims thereunder.
- 11.3 In the event that the Coverholder requests the Intermediary to carry out any functions or duties on its behalf, such as the appointment of loss adjusters, lawyers or others, or the Intermediary otherwise acts as an intermediary between the Coverholder and its representatives or agents:
- 11.3.1 The Intermediary accepts the Coverholder's appointment or instructions on the basis that the information received by it in respect of a claim made upon any Insurance Business is disclosable to the Intermediary's client.
 - 11.3.2 All documentation and records created or received by the Intermediary in the performance of such functions or duties shall be and remain the property of the Coverholder, other than documents over which the Intermediary has a proprietary commercial interest.
 - 11.3.3 The Intermediary will take reasonable steps to retain, maintain and safeguard any of the Coverholder's documents in the Intermediary's possession in accordance with any regulatory requirements which apply to the Coverholder and of which the Intermediary has notice.
 - 11.3.4 On termination of this Agreement for whatever reason and on reasonable notice the Intermediary will deliver up to the Coverholder such documentation if requested.

12. CONFIDENTIALITY

Each of the Parties will treat information received from the other relating to this Agreement and to the Insurance Business as confidential and will not disclose it to any other person not entitled to receive such information except as may be necessary to fulfil their respective obligations in the conduct of the Insurance Business and except as may be required by law or regulatory authority. For the avoidance of doubt each party shall be entitled to disclose such information where necessary to its insurers or reinsurers, actuaries, auditors, professional agents and advisers and other Group companies.

This clause will not apply to information which was rightfully in the possession of such party prior to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.

13. COMPLAINTS

Each Party will notify the other in accordance with FCA Rules of any complaint concerning the other Party relating to Insurance Business subject to this Agreement.

14. PROTECTION OF REPUTATION

Each Party agrees it will not, without the written authority of the other Party, make use of the other Party's corporate or trading names or logos and trademarks.

15. CONFLICTS OF INTEREST

The Parties will adopt and/or maintain procedures to ensure that each has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to any Insurance Business.

16. DISCLOSURE

The Intermediary will comply with relevant regulatory, fiduciary and legal requirements regarding disclosure of all forms of remuneration from any arrangements it may have for remuneration in connection with Insurance Business.

17. VARIATION AND ASSIGNMENT

This Agreement may be assigned or varied only in writing by duly authorized representatives of the Parties.

18. RIGHTS OF THIRD PARTIES

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause shall not affect any right or remedy of a third party which exists or is available apart from that Act.

19. DISPUTE RESOLUTION

19.1 The Parties to this Agreement are committed to resolving all disputes arising under it (and whether such dispute arises before or after termination of this Agreement) without the need for litigation and to allow as far as possible for commercial relationships to remain unaffected by disputes and therefore the Parties:

19.1.1 will attempt in good faith to resolve any dispute or claim promptly through negotiations between respective senior executives of the Parties who have authority to settle the same;

19.1.2 will attempt in good faith, if the matter is not resolved through negotiation within three months of the dispute arising to resolve the dispute or claim through mediation with the assistance of a mediator agreed between the Parties or as recommended to the Parties by the Centre for Dispute Resolution or such similar organisation as the Parties may agree; or

19.1.3 if the matter has not been resolved by mediation within six months of the dispute arising, or if either Party will not participate in a mediation procedure, the Parties will refer the dispute in accordance with the *Jurisdiction and Choice of Law Clause* below.

19.2 Notwithstanding the above, either Party may seek the immediate protection or assistance of the High Court of England and Wales if appropriate.

20. JURISDICTION AND CHOICE OF LAW

This Agreement shall be construed according to English law and any disputes arising under it shall, subject to the provisions of clause 19 above, be determined in the English Courts.

21. ENFORCEABILITY CLAUSE

In the event any portion of this Agreement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

22. GENERAL INTERPRETATION OF THIS AGREEMENT

In this Agreement, words importing the singular shall include the plural and vice versa. Headings are included for ease of reference and convenience only and shall not affect the interpretation of the Agreement.

23. SERVICE OF NOTICES

23.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice at the address specified by the relevant Party from time to time by written notice to the other Party or, in the absence of such notice, the relevant registered office address set out at the head of this Agreement marked for the attention of the relevant party's Company Secretary.

23.2 Any notice shall be deemed to have been duly received:

23.2.1 if delivered personally, when left at the address and for the contact referred to in this Clause 22; or

23.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; or

23.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

23.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.

23.4 The provisions of this Clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

24. FORCE MAJEURE

Neither Party shall be liable for any delay or non-performance of its obligations under this Agreement caused by an event beyond its control (a "Force Majeure Event") provided that the Party affected gives prompt notice

in writing to the other part of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under the Agreement.

Either Party may terminate this Agreement if such Force Majeure Event continues for more than 3 months.