



Euler Hermes UK

Broker Terms of Business Agreement

www.eulerhermes.co.uk



EULER HERMES

Our knowledge serving your success

This Terms of Business Agreement (“TOBA”) takes effect and applies to our business relationship with you from 25th May 2018.

It replaces and supersedes all other TOBA in existence between you and us unless we have agreed otherwise in writing. This TOBA will enable us to work together in a mutually profitable way. As the agent of the Client or Policyholder you must ensure that the Client or Policyholder discloses all material facts and circumstances to us which may affect our underwriting of the insurance policy or our pricing of any risk covered. You must also ensure that the Client or Policyholder is fully aware of and understands the terms and conditions of their Policy so that they are able to fulfil all their obligations under the Policy and claim any benefits due to them. We want to ensure that all our Clients and Policyholders receive and obtain the highest possible standard of service. We recognise that you have an important role in providing expert advice, guidance and quality service to Clients and Policyholders. We acknowledge that the type and level of service which Clients and Policyholders require will vary. In some cases your role will be comprehensive while in others it will be supported by professional assistance from us. We will endeavour to provide you with Policy terms, documentation, credit limit decisions, claims processing, accounting and an other reasonable support and assistance you may require from us in a timely and efficient way.

1 Definitions

“Authorised Person” means an individual, firm or company that is registered with and authorised by the Financial Conduct Authority (FCA) or any other relevant Regulatory Authority to carry out regulated activities including insurance mediation;

“Broker” means an individual, firm, partnership, company or any other incorporated or unincorporated association that is an Authorised Person and who represents the Client or Policyholder as their agent in their introduction and/or subsequent business dealings with us;

“Client” means a customer that a Broker represents or introduces who is accepted by us as an Insured under a Policy;

“Data Protection Legislation” means, in the UK, (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law

In Ireland, this definition means (i) the Data Protection Act 1988 and Data Protection (Amendment) Act 2003, until the effective date of the repeal of the relevant Act, (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in Ireland, and (iii) any successor legislation to the Data Protection Act 1988 and Data Protection (Amendment) Act 2003 and the GDPR, in particular the Data Protection Bill 2018, once it becomes law. Please note that use of the terms controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures in this TOBA are as set out in the Data Protection Legislation in force at the time.

“New Business” means any business where the Client or Policyholder has not been insured under a Policy with Euler Hermes or any other Euler Hermes group company or Branch within the previous 12 months of the Client or Policyholder being introduced to Euler Hermes for a new Policy;

“Permitted Data Recipients”: the parties to this TOBA, the employees of each party, and in our case, any company of the Euler Hermes Group, fraud prevention agencies and any third parties engaged by us to perform obligations in connection with the Policy, including credit reference agencies;

“Policy” means an Euler Hermes trade credit insurance policy;

“Policyholder” means a customer, whether or not represented by a Broker, whose Policy is administered and managed directly by Euler Hermes’ Direct Business team;

“You/your” means the Broker;

“We/us/our” means Euler Hermes UK or Euler Hermes Ireland (as applicable) or any of its group companies;

“Euler Hermes” means Euler Hermes UK or Euler Hermes Ireland, branches of Euler Hermes SA(NV), Avenue des Arts 56, 1000 Brussels, Belgium. Company no. 0403.248.596 RPM Brussels. Insurance firm, registered under code 418.

2 Broker Registration

It is a pre-condition of registration with us that the Broker is an Authorised Person. The Broker must remain an Authorised Person in order to maintain its registration with us. The Broker must provide us with any information or evidence that we may require concerning the Broker's status as an Authorised Person.

3 Broker Classification

On registration with us we classify brokers as 'Specialist' and 'General'. The granting of either classification in respect of both UK and non-UK domiciled Brokers, is at our sole discretion.

3.1 Specialist Broker

To **qualify** for this status new Brokers must introduce New Business to us of at least £250,000 (or its equivalent) in actual debited premium. To **maintain** Specialist Broker status with us, you must be able to demonstrate to us that you:

- 3.1.1 specialise in providing credit insurance and associated services;
- 3.1.2 have the appropriate level of expertise in credit insurance and quality of resources to provide a high degree of service to Clients.
- 3.1.3 maintain a varied business portfolio with us of at least £250,000 (or its equivalent) actual debited premium per annum. We reserve the right to reduce the status of any Specialist Broker by notification who fails to introduce New Business in any calendar year;
- 3.1.4 continue to be an Authorised Person and that you comply with all the rules and regulations pertaining to your authorisation. If you can no longer be classified as an Authorised Person under this TOBA then you must notify us immediately in writing;
- 3.1.5 have the appropriate internal systems to collect and remit premiums on our behalf, if we authorise you to do so; and
- 3.1.6 comply with all your responsibilities as a Specialist Broker.

3.2 Responsibilities of Specialist Brokers

- 3.2.1 Specialist Brokers must ensure that the Client fully understands our Policy documents, Policy terms and conditions, and Policy management procedures. 1
- 3.2.2 Regarding New Business Specialist Brokers must:

- i) provide our underwriters with a full New Business submission together with our completed proposal form and a Broker proposal form approved by us; plus all material supporting information provided by the customer or Client;
- ii) keep us informed of all material information prior to and during pre- Policy negotiations. Such information must not be less than that given to competing underwriters and must include all information that would objectively influence underwriters in underwriting the Policy and fixing the premium;
- iii) within 30 days of receipt of Policy documents, ensure that they fully explain to the Client: the documents, Policy terms and conditions, credit limit processing, overdues reporting, claims procedures, declarations, premium payment and other Policy management procedures; and
- iv) explain the benefits and strengths, and encourage and support the use by the Client of our services such as our online system EOLIS, First Source, Collections and any other products and services that we may develop from time to time.

3.2.3 Regarding claims under the Policy Specialist Brokers must ensure that claims are submitted on our claim form, fully completed in accordance with the terms and conditions of the Policy, signed by the Client and supported by the inclusion of all material documentation and information.

3.2.4 Regarding Policy renewal/continuation Specialist Brokers must:

- i) provide our underwriters with all material pre-renewal/continuation information at least 30 days prior to the renewal/continuation date which must include a review of unwanted credit limits and any contentious issues;
- ii) ensure that the Client understands his obligations on declarations, returns, claims reporting and payment of premium; and
- iii) ensure that the information provided to us prior to the renewal/ continuation date is no less than that given to competing underwriters including all information that would objectively influence underwriters in underwriting the Policy and fixing the premium. The information must include any fresh proposal form completed by the Client.

3.3 General Broker

To qualify for this status the Broker must:

- 3.3.1 use Euler Hermes's Direct Business team, Customer Service Unit and Business Centres to provide expert support;
- 3.3.2 provide us with evidence that the Broker is an Authorised Person.

3.4 Responsibilities of General Brokers

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3.3 General Broker

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- 3.3.1 use Euler Hermes's Direct Business team, Customer Service Unit and Business Centres to provide expert support;
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3.4 Responsibilities of General Brokers

3.4.1 General Brokers must:

- i) ensure that the Policyholder understands our Policy documents, Policy terms and conditions and Policy management procedures;
- ii) inform our Business Centre staff immediately on receiving any notification of claims under the Policy, overdue returns or any other material information from Policyholders;
- iii) pass on to Policyholders all Policy documentation and correspondence received from us without delay;

3.4.2 Expert knowledge from Euler Hermes' Direct Business team, Customer Service Unit and Business Centre staff is available to General Brokers who require clarification or interpretation of Policy terms and conditions.

4 Responsibility Of All Brokers

As Brokers are the agent of the Policyholder/Client, they will owe fiduciary duties to the Policyholder/ Client. In addition, under this TOBA all Brokers must:

- i) give independent and objective advice to prospective and current Policyholders/ Clients;
- ii) provide us with all material facts or documents immediately upon discovery or upon our reasonable request;
- iii) fully explain the value and benefits of our products and services to the Policyholder/ Client;
- iv) at all times act in the best interest of the Policyholder/Client;
- v) maintain best practice and quality standards and professionalism applicable to the credit insurance industry;
- vi) maintain Professional Indemnity cover to meet the minimum requirements of the applicable regulatory regime;
- vii) if registered as a broker in the Republic of Ireland, comply with the requirements of the Central Bank of Ireland or such other regulatory regime as applicable; and
- viii) inform us immediately of any identified New Business prospect.

5. Appointment

5.1 Admission to, or removal from, our register of **Brokers** and our classification of General or Specialist **Brokers** is at our sole discretion.

5.2 We will only accept Letters of Appointment/ Letters of Authority completed in accordance with the specimen wording and guidelines contained in the 'Broker Appointment Addendum'.

5.3 You can only collect premiums under the **Policy** from the **Client** on our behalf if you have Specialist **Broker** status and if we have given you written authority to do so. Please refer to the Collecting Addendum.

6. Commission

6.1 Commission is payable only on premiums invoiced/ debited and actually received by us.

- 6.2 We will pay commission to a Broker in respect of a Policyholder provided that we have written evidence that the Policyholder has appointed that Broker no less than 7 days before the anniversary date shown on the Policy.
- 6.3 We will pay commission in respect of any Policy where, before the start of the Policy, we have accepted in writing the Client's written notice appointing the Broker.
- 6.4 We will pay commission to the holding Broker who, in the 90 calendar days immediately before the expiry date of the Policy in question, has negotiated the renewal/continuation terms of the Policy and provided our underwriters with the Policyholder's/Client's written acceptance of those renewal/continuation terms.
- 6.5 If a Policy is issued for a period of more than one year or where a two-year or long-term agreement is arranged, we will pay commission to the Broker for the full period of the Policy or long-term agreement, subject to paragraph 8.2.
- 6.6 We reserve the right to reclaim any commission paid to a Broker where a refund has been made to the Policyholder.
- 6.7 We reserve the right to cease both to do business with and to pay commission to any Broker in respect of any Policy or account which, in our opinion, the Broker is failing to service or administer satisfactorily or if the Broker ceases at any stage to be an Authorised Person.
- 6.8 For current rates of commission, please see the attached Commission Addendum. At our discretion, we may review and amend these from time to time.

7 Terms of Payment

7.1 Payment of Premiums

- 7.1.1 Premiums and other charges due under the Policy are payable by the Policyholder/ Client to us in accordance with the Terms and Conditions of the Policy.
- 7.1.2 The Policyholder/Client must pay premiums and other charges due under the Policy either against invoice or by direct debit.
- i) **Invoices**
We will send debit/credit notes to the Policyholder/ Client requiring payment direct to us.
 - ii) **(ii) Direct Debit**
The Policyholder/Client will complete and sign our approved form instructing their bank to pay Direct Debits to us and at our request.

7.2 Payment of Commission

7.2.1 General Brokers

We will pay commission due to General Brokers shortly after the end of the month following the month in which we debited the premium.

7.2.2 Specialist Brokers - (non-premium collecting)

We will pay commission due to Specialist Brokers shortly after the end of the month following the month in which we debited the premium.

7.2.3 Specialist Brokers - (premium collecting)

Please refer to the Collecting Addendum. 7.3 Receipt of any premium and other charges by the Broker will not be treated as receipt by us until we actually receive them.

8 Change of Broker

- 8.1 If we receive written instruction from a **Policyholder/ Client** appointing a **Broker** to an existing **Policy** before at least 7 days prior to the renewal/continuation date of the **Policy**, commission will become payable to that **Broker** after the renewal date shown on the current **Policy**, subject to paragraphs 6.3 and 6.4 as applicable.
- 8.2 Following a change in Broker, if an existing Policy is cancelled and replaced before the renewal/anniversary date of the Policy by a new Policy procured by the new Broker, we will pay commission as follows:
- i) to the outgoing Broker, we will pay commission out of the commission payable under the new Policy as set out below:
 - despite paragraph 6.1 our payment will have regard to the minimum amount which this Broker would have been entitled to receive in respect of the cancelled and replaced Policy if it had not been replaced by the new Policy; and
 - our payment will always be subject to there being sufficient commission payable under the new Policy;
 - ii) to the new Broker, we will pay commission in respect of the new Policy but the amount will be reduced by the amount payable to any outgoing broker under paragraph 8.2(i)

9 Confidentiality and Communications

- 9.1 All documents or information concerning a Policy that we or the Policyholder/Client have marked or otherwise designated as 'Confidential' and which has been shared with you must be kept strictly confidential and not divulged to our competitors or any other third party without prior consent in writing.

9.2. Your Registration with us as a Broker and written confirmation by the Policyholder/ Client appointing you as their Broker will be treated as conclusive authority that we can communicate with you on all matters relating to the Policy.

10 Termination

10.1 Subject to paragraphs 6.7 and 10.2, we are entitled to terminate your Broker registration with us upon giving you three months' prior written notice. On expiry of the notice, we will then deal with the relevant Policyholders / Clients direct or through any new Broker registered with us and appointed by the Policyholder/Client. No further commission will be payable to the outgoing Broker.

10.2 We will terminate your Broker registration with us without notice if you:

- a) commit an act of bankruptcy or become insolvent or compound with your creditors or if a resolution is passed or proceedings begun for your liquidation, or if a receiver, administrator or manager is appointed in respect of all or part of your assets or undertaking; or
- b) commit a breach of any of this TOBA which, if remediable, is not remedied within 30 days of the Broker's receipt of our written notice specifying the breach; or
- c) cease to carry on business as an insurance broker; or
- d) your authorisation as an Authorised Person is terminated, revoked or cancelled in any way whatsoever.

11 General

11.1 Nothing gives you any authority to act for us or bind us in any respect, or to present yourself to the Policyholder/ Client or to any person, company or organisation as acting or as being authorised to act on our behalf. In particular, the following actions do not give such authority:

- a) our acceptance of business introduced by you; or
- b) our payment of commission to you; or
- c) the performance of your responsibilities under paragraphs 3 and 4; or
- d) you undertaking any Policy accounting procedures (if applicable).

Accordingly, you warrant to us that you have not and will not state or imply, direct or indirectly, to any proposed, existing or former Policyholder/Client that you will be, are or were authorised to act on our behalf or bind us in any way.

11.2 At all times we reserve the right to communicate direct, whether in writing or otherwise, with any proposed, existing or former Policyholder/Client, but will normally inform you of such action.

11.3 We will give you at least three month's notice of any alteration of this TOBA. Alterations will apply to all Policies issuing or renewing after the expiry of the notice period.

11.4 You must co-operate with us in supporting and promoting the installation and use of the customer on-line services we provide. If you have on-line access to our information systems you must fulfil your obligations on confidentiality and use the on-line service agreement. You must ensure that your systems are in proper working order and compliant with current industry standards.

11.5 Any disputes relating to this TOBA which cannot be settled amicably between you and us must be referred to Arbitration by a single Arbitrator to be appointed at the request of either party to the Registrar of the London Court of International Arbitration (LCIA). The Arbitration will be in London, England and the Arbitrator will apply English law.

11.6 This TOBA will be governed by and interpreted in accordance with English law.

11.7 We warrant to each other that we have adequate procedures in place to detect and prevent corruption and bribery on the part of our officers, employees and agents.

Each party shall not commit, authorize or permit any action which would cause the parties or their affiliates to be in violation of any applicable anti-corruption laws or regulations and, specifically, will not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 ("Relevant Regulations").

Each party shall promptly notify the other party if it becomes aware of or has any suspicion of any corruption with regard to the negotiation, conclusion or the performance of this TOBA.

Breach of this clause shall be deemed a material breach of this TOBA. We will be entitled to terminate this TOBA with immediate effect and without notice if you or any person associated with you shall have committed any offence under the Relevant Regulations.

12 Data Protection

- 121 The Data Protection Legislation regulates the processing of individuals' personal data. We will process personal data given to us:
- a) in the 'Application for Appointment as a Broker' for the purpose of processing the application and assessing your and your officers' propriety and fitness to act as a broker;
 - b) in relation to Clients and Policyholders and their buyers, for the purposes of the administration of Policies or bonds and providing associated services to Clients and Policyholders (together "Permitted Purposes").
- 122 Each party acknowledges that one party (the Data Discloser) may disclose to the other party (the Data Recipient) Shared Personal Data (as defined below) collected by the Data Discloser for the Permitted Purposes with each party acting as a data controller. The personal data to be shared between the parties shall be confined to the following categories of information relevant to the following categories of data subject ("Shared Personal Data"):
- a) Your incorporated Clients' (or prospective Clients') or their buyers' representatives: contact details (e.g. directors or other officers) and information regarding their creditworthiness (e.g. payment and risk incidents);
 - b) Your unincorporated Clients (or prospective Clients) or their buyers (i.e. sole traders and partnerships): owner's / partner's name, email address, trading address, trade sector, legal form and information regarding their creditworthiness (e.g. payment and risk incidents);
 - c) Your and our employees / business representatives: contact names, email addresses, telephone numbers, and job titles.
- 123 Each party shall:
- a) ensure that it has all necessary notices and consents (where applicable) in place to enable lawful transfer of the Shared Personal Data to the Permitted Data Recipients for the Permitted Purposes. For the avoidance of doubt, when we are provided by you with any personal data relating to Clients, their buyers or your employees, it will be received by us on the basis that you are authorised to process it in compliance with the Data Protection Legislation;
 - b) give full information to any data subject whose personal data may be processed under this TOBA of the nature of such processing;
 - c) process the Shared Personal Data only for the Permitted Purposes;
 - d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this TOBA;
 - f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - g) not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - 1) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - 2) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 124 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall, in relation to the Shared Personal Data and where appropriate:
- a) consult with the other party about any notices given to third party data subjects;
 - b) provide the other party with reasonable assistance in complying with any third party data subject access request;
 - c) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - d) maintain complete and accurate records and information to demonstrate its compliance with this clause 12, and
 - e) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation.

125 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to penalties, fines, and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

126 With regard to our processing of your own personal data, you should refer to the most recent version of our privacy notice available at <https://www.eulerhermes.co.uk/privacy-notice.html>

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Euler Hermes UK and Euler Hermes Ireland are branches of Euler Hermes SA(NV), Avenue des Arts 56, 1000 Brussels, Belgium. Company no. 0403.248.596 RPM Brussels. Insurance firm, registered under code 418.

Euler Hermes UK is registered as a branch in England and Wales with no. BR015404, and registered branch address 1 Canada Square, London E14 5DX. Euler Hermes Ireland is registered as a branch in Ireland with no. 906694, and registered branch address Allianz House, Elmpark, Merrion Road, Dublin 4.

Euler Hermes SA (NV), trading as Euler Hermes UK, is authorised by the National Bank of Belgium and the Belgian Financial Services and Markets Authority and is subject to limited regulation by the Financial Conduct Authority. Details about the extent of our regulation by the Financial Conduct Authority are available from us on request.

Euler Hermes SA (NV), trading as Euler Hermes Ireland, is authorised by the National Bank of Belgium and the Belgian Financial Services and Markets Authority in Belgium and is regulated by the Central Bank of Ireland for conduct of business rules.