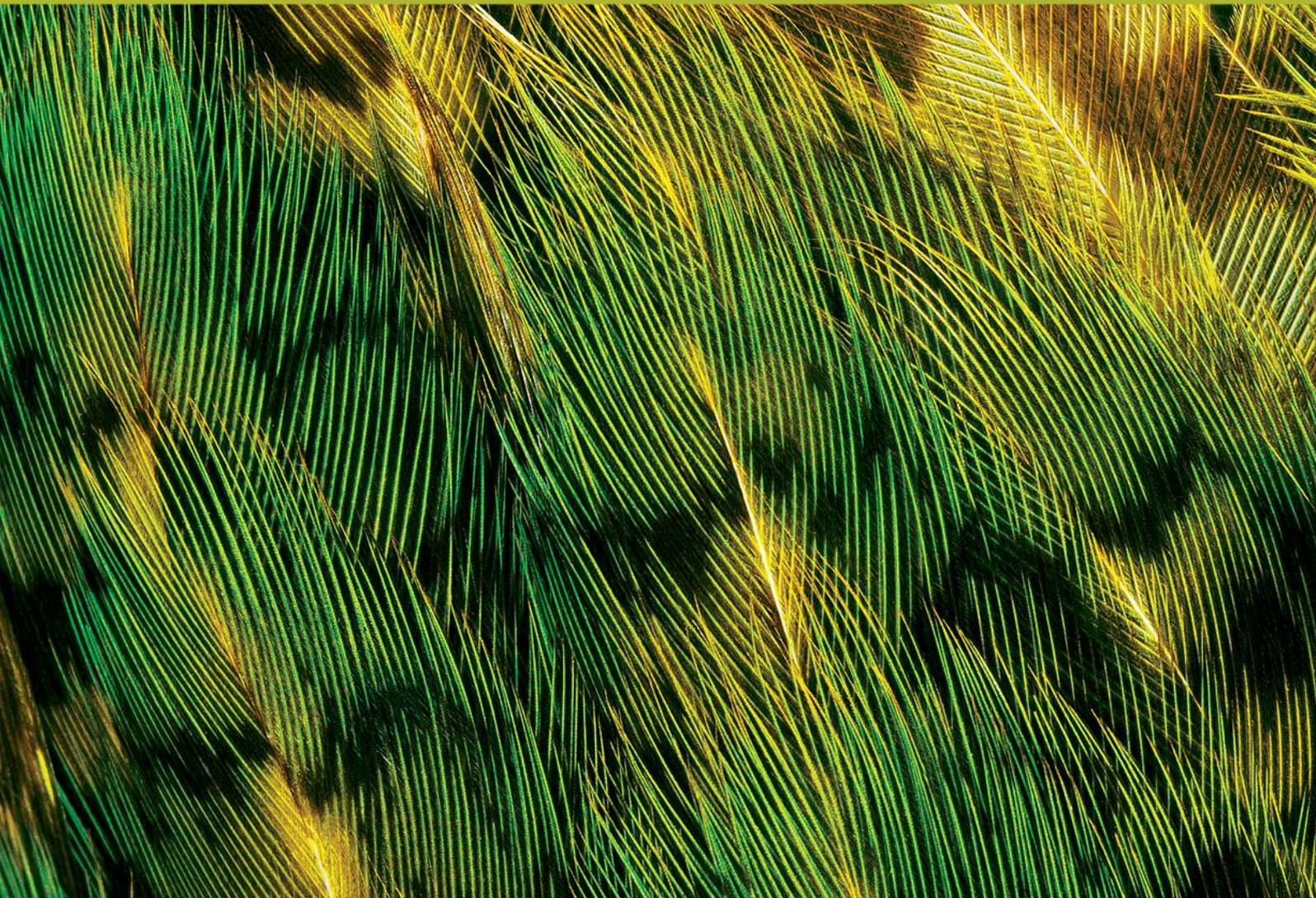


# **Crombie Lockwood**

# **Terms of Business**

October 2020



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## Introduction

Here are the standard **terms of business** on which **we** will provide **our services** to **you**. These **terms of business** apply whenever **you** ask **us** to act for **you** for all **services we** provide to **you**, together with any additional or different terms as agreed in writing with **you**. By taking on **our services**, **you** acknowledge **you** accept these terms. This means **you** do not need to sign any formal agreement to indicate your acceptance, unless **we** ask **you** to.

These **terms of business** supersede and replace any previous **terms of business** **you** have received from **us**, and will apply unless and until **we** provide **you** with new or amended **terms of business** or replace it with different terms agreed with **you**.

If there should be any inconsistency or conflict between these **terms of business** and additional or different terms agreed with **you**, **we** will respect the terms agreed with **you**.

*In this agreement the meaning of words in bold are defined on page 11 of this document.*

## About us

### Crombie Lockwood

**Crombie Lockwood** is a group of New Zealand companies that provide insurance broking and other related services. **Our services** may be provided to **you** by one or more of the following companies in **our** group who are collectively referred to in this document as **we**, **us**, **our**, or **Crombie Lockwood**:

- **Crombie Lockwood (NZ) Limited (CLNZ)** – for more information about CLNZ, please visit [www.crombielockwood.co.nz](http://www.crombielockwood.co.nz)
- **Monument Insurance (NZ) Limited (MINZ)** – a wholesale underwriting agency that creates bespoke insurance products for CLNZ clients. The company also engages independent advisers to provide life and health insurance advice to clients.

**We** are also part of a group of international companies owned by Arthur J. Gallagher & Co (Gallagher Group), an insurance brokerage, risk management and consulting company. The parent company, Arthur J. Gallagher & Co. is listed on the New York Stock Exchange.

In New Zealand, the Gallagher Group also includes related service providers such as:

- **Monument Premium Funding Limited (MPFL)** – provides a finance facility to cover the cost of insurance. If **you** choose to use this premium funding facility, interest and administrative costs will apply.
- **Offshore Market Placements Limited (OMPL)** – specialist underwriters who source insurance solutions from international markets. OMPL works exclusively with CLNZ brokers to provide clients with alternatives to the New Zealand market for insuring specialist and niche risks.

### Our authority to provide financial advice

**CLNZ** holds a licence issued by the **Financial Markets Authority (FMA)** to provide a financial advice service (being the provision of financial advice on fire and general insurance products and life and health insurance products). Under this licence, **we** may only provide **you** financial advice in

relation to fire and general insurance and life and health insurance products. **MINZ** is an authorised body under the licence. The licence will come into effect when the Financial Services Legislation Amendment Act 2019 (FSLAA) comes into force on 15 March 2021.

Until 15 March 2021, **CLNZ** is not required to be licensed to provide a financial advice service.

## **Nature and scope of our advice and services to you**

**Crombie Lockwood's** broking division acts as insurance advisers and brokers, providing fire & general and life & health insurance, and risk management-related advice and services to clients.

When recommending insurance products to **you**, **we** can use a range of local and overseas insurers. Some insurers however, do not make their products available to intermediaries such as ourselves.

If and to the extent you are a retail client, **we** are required to comply with certain competency and conduct requirements under the **code of conduct**, in respect of our financial advice service. If you are a retail client, while carrying out **our services** to **you**, **we** will ensure that **we**, and any person giving advice on **our** behalf:

- meet the standards of competence, knowledge and skill set out in the **code of conduct**;
- give priority to your interests where there is a conflict by taking all reasonable steps to ensure our advice is not materially influenced;
- exercise care, diligence and skill; and
- meet the standards of ethical behaviour, conduct and client care set out in the **code of conduct**.

## **Our responsibilities**

As part of **our** responsibilities to **you**, **we** may (where applicable):

- Act on your behalf (unless **we** tell **you** otherwise) according to your instructions and the arrangements **you** have made.
- Provide advice to **you** based on **our** understanding of your requirements, and on receipt of your instructions endeavour to arrange insurance (subject to availability).
- Provide **you** promptly with your policy documents from the insurer unless the insurer sends the policy directly to **you**.
- Help **our** fire and general insurance clients to prepare, manage and negotiate any claims.
- Retain your insurance documents securely in either electronic or paper form, in line with **our** records retention policies (for some insurance types, **you** may need to make a claim against a policy after **our** retention period has ended. **You** remain responsible for your records and **we** recommend that **you** store your policy documents safely).
- Handle money that **our** fire and general insurance clients give **us** (for example to pay insurance **premiums**) or **we** receive for them (for example from an insurer for an insurance claim payment) according to the Insurance Intermediaries Act 1994 requirements.

As insurance advisers and brokers, **we** only provide insurance and risk management-related advice.

- **We** do not provide safety inspections, valuations or advice on every potential hazard or threat to your business (unless **you** specifically ask).
- **We** also do not provide advice on tax, regulatory, legal or accounting matters. **We** recommend **you** seek expert advice on these matters.
- **We** only engage insurers who meet **our** particular requirements, unless **you** specifically ask **us** to do otherwise. **We** do not however guarantee or are responsible for the solvency or ability of any insurer to pay any amounts for insurance claims or other payments.

## Your responsibilities

### Give us all relevant information

When asking **us** to arrange a new insurance policy or renew a policy, **you** are responsible for giving **us** all **relevant information**, including all facts and details that are pertinent to an insurer's assessment of risk for your potential cover.

Your duty to give information is not limited to the questions **we** ask **you** on behalf of insurers. **You** must also tell **us** about anything that could affect an insurer's decision to insure **you** or the terms and conditions **you** will be offered. If **you** are in doubt about the sort of information your insurer wants, it is important that **you** ask **us**.

Once your insurance cover has started, for **our** fire and general insurance clients, **you** need to give **us** all **relevant information** about key changes to your circumstances, particularly any material factors or relevant additional information or change of circumstances that could affect your level of risk and cover terms that comes to light throughout the period of your policy.

If **you** misrepresent or do not declare all **relevant information** when **you** take out a new policy, renew a policy, or during an existing policy, the insurer may refuse to pay a claim or cancel your entire policy.

### Renewals

Unless you instruct us otherwise, **you** authorise us to renew your policy on your behalf if and to the extent it is due for renewal. If **we** do, **you** are deemed to have directed **us** to do so. **We** will not be liable, however, for any failure to renew in these circumstances.

### We rely on you for accuracy

It is important that **you** understand that **we** will rely on the accuracy and completeness of the information that **you** give **us** or someone else gives **us** on your behalf. **We** will not be responsible for verifying the accuracy or completeness of any information **you** or someone else provides **us** on your behalf.

**You** must check the documentation supplied to **you** by **us** or insurers to ensure there are no mistakes or misunderstandings. **You** should advise your usual **Crombie Lockwood** contact immediately of any errors or anything **you** believe is not in accordance with your instructions or specifications.

### Pay your premium on time

**You** are responsible for paying the **premium** and other charges within the period specified on each invoice or credit note as provided by your insurer or **us**.

## **Understand the terms of your cover**

**You** need to carefully read your policy documents to make sure the cover accurately fits your needs, and **you** understand and comply with the obligations under your policy or any specific terms or conditions that apply to your policy. Failure to do so may affect your ability to make a claim or invalidate your insurance.

## **When making a claim**

It is very important that **you** familiarise yourself with any claim requirements or obligations in your policies.

If **you** have a claim or become aware of a circumstance that may give rise to a claim, **you** need to let **us** know all the relevant details as soon as possible so **we** can provide assistance and support.

## **Premiums, expenses and other amounts payable**

### **Paying your premium and other additional and statutory charges**

For fire and general insurance, **we** will invoice **you** for the **premium** (which may include **our remuneration**) and relevant statutory charges (including GST, fire and emergency levies and EQ cover premiums). **We** may also charge **you** a fee or broker administration charge to cover any administration expenses and disbursements. **Our** charges vary depending on the costs associated with providing the **services you** require. **You** must pay any **premium**, additional charges and statutory charges to **us** by the due date on the invoice, unless otherwise specified on the invoice.

For personalised life and health insurance, all **premiums** and administration fees are charged directly to **you** by your insurer who will detail these in the communications they provide to **you**.

### **If you make a late or no payment**

If **you** do not pay the **premiums** within the time specified on your invoice an insurer may cancel the policy and **you** may be uninsured. The insurer may also charge a **premium** for any time they may have covered **you** without payment.

Where applicable, **we** will let **you** know if insurers have imposed a premium payment warranty or condition that may give the insurer the right to cancel your policy. Please contact your broker if **you** are unable to comply with a premium payment warranty or condition.

**We** may charge interest, collection costs and legal fees incurred in recovering overdue accounts.

## **Taxes and levies**

### **Goods & Services Tax**

**We** will charge Goods & Services Tax (GST) on **our remuneration** where applicable. Any quote, estimation or invoice that **we** may give **you** will exclude GST unless otherwise specified.

### **The Earthquake Commission levy**

The Earthquake Commission (EQC) levy contributes to earthquake and other natural disaster insurance provided by the EQC. This levy is included in some general insurance policies and is collected by insurers on behalf of the EQC.

## Fire & Emergency New Zealand Levy

Fire and Emergency New Zealand (FENZ) is mainly funded by a levy on insurance contracts where property (including contents and stock) is insured against the risk of fire. This charge is paid by insurance clients and is collected by insurers on behalf of FENZ.

If **you** are late paying any government or statutory charges **you** may be charged interest and/or fines and penalties.

## Our remuneration

As an insurance broker, **we** use **our** knowledge and expertise to understand your business or personal circumstances, assess the risks, and negotiate and place insurance on your behalf in order to provide **our services** to **you**. As a result, **we** receive **remuneration**; this is usually paid by the insurer calculated as a proportion of the insurance **premium**, and/or a fee (including an administration fee for fire and general insurance clients) to be paid by **you**.

For fire and general insurance, **our remuneration** is earned for the policy period and may be paid on each renewal or on some variation to your policy.

For life and health insurance, **our remuneration** is earned when a new policy is taken out, and maybe subject to ongoing trail **remuneration**.

**We** are entitled to retain all **remuneration** covering the full policy period for the insurances **we** have arranged for **you**, even where an insurance policy is amended, terminated or otherwise cancelled.

## Other ways in which we may be remunerated

In addition to **our remuneration** noted above, **we** may also be remunerated for **our services** by other means where applicable:

- When fire and general insurance clients pay us the **premium**, **we** will hold it in **our** trust account until **we** pass it on to the insurer in accordance with **our** arrangements with them. **We** will earn interest on the **premium** while it is in **our** trust account.
- Where applicable, **CLNZ** may offer to arrange premium funding through **MPFL** to help spread the cost of your insurance over the year, including **premiums**, taxes, fees and levies. If **CLNZ** arranges premium funding for **you**, they will be remunerated by **MPFL**, usually as a percentage of the cost of the insurance being funded.

Please note that where **CLNZ** offers and arranges premium funding, it does not act as your credit provider or finance broker, but as agent for **MPFL** who is your premium funder. **CLNZ** may also act as **MPFL's** agent in cancelling any insurance where **you** have failed to meet your repayment obligations. The details of your premium funding arrangement will be set out in your separate agreement with **MPFL**. Should your funded insurance policy be cancelled mid-term, for any reason, **you** should be aware that there may be a shortfall between the balance of the amount payable under the premium funding contract and the return **premium** and **you** may be required to pay the difference to **MPFL** under that agreement.

- If **we** provide consulting or other administrative **services** to insurers, **we** may be remunerated for those **services**. These **services** are designed to improve product offerings available to clients, assist insurers in identifying new opportunities, and enhance insurers' operational efficiency.
- If **we** act as an underwriting authority for fire and general insurers (which provides **us** with authority to review, quote, bind coverage and service policies on the insurer's behalf), **we** will be remunerated for the services **we** perform for the insurer. This may also include managing and settling claims on their behalf where **we** have claims authority from insurers to do so.
- If **we** recommend a product or service of a company within the Gallagher Group or refer **you** to another company within the Gallagher Group, **we** may receive benefits for the referral or the business **you** subsequently do with that Gallagher company. This may include arranging insurance with overseas markets using specialised broking divisions within the Gallagher Group. Where such divisions assist in arranging insurance, **we** or another Gallagher Group company may be remunerated for those services.

In relation to the **services we** provide and the ways in which **we** are remunerated:

- **We** may pay a share of **our remuneration** to third parties who refer clients to **us**.
- **Our** internal remuneration arrangements encourage **our** employees and contractors to ensure **our** clients receive practical and effective advice and **services** via a combination of salary and performance-based rewards that consider both the value and quality of the work they do for **our** clients, and the **remuneration we** receive. From time to time, **we**, and **our** employees and contractors, may receive non-monetary benefits from insurers including sponsorship of conferences, training, hospitality, and insurer sponsored functions. **You** do not bear the cost of sending **our** staff to these events and **we** have, and monitor compliance with, policies and procedures that ensure these situations do not create a conflict with your interests.

## Conflicts of interest

In giving advice in relation to a financial advice product, **we** have a duty to give priority to clients' interests. Among other things, products that do not meet **our** client's needs will not be recommended.

Should a conflict of interest situation arise and **we** become aware of it, **we** will manage it in accordance with applicable regulation and **our** conflicts of interest policy, which all employees, contractors and representatives must comply with. This consists of processes for escalation, review, and management, including letting **you** know and working with **you** to resolve the situation where relevant.

## Foreign Account Tax Compliance Act

The Foreign Account Tax Compliance Act (FATCA) is a US tax law designed to identify US citizens and tax residents who use offshore financial accounts to evade their US tax responsibilities. It applies to any insurance placements containing US risk.

To comply with FATCA, insurance brokers and companies such as **Crombie Lockwood** must meet certain legal requirements.

Insurance placed with an insurance company that is not FATCA compliant may result in 30% withholding tax on your **premium**. If FATCA relates to **you**, **we** will only place your insurance with FATCA-compliant insurers and intermediaries for which no withholding is required, unless **you** ask **us** to do otherwise.

If **you** do ask **us** to place your insurance with a non-FATCA compliant insurer or intermediary, **you** may have to pay an extra amount equivalent to 30% of the relevant **premium** to cover the withholding tax. **We** will not place your insurance with a non-FATCA compliant insurer if **you** instruct **us** to do so but do not agree to pay the additional 30% withholding tax if required.

## 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 clients subject to these sanctions, and not performing some obligations under these **terms of business**.

**We** reserve the right to take immediate steps without notifying **you** in order to comply with **our** sanctions policy (and **we** will not be liable to **you** for this or for similar steps taken by third parties).

**You** should advise **us** of all of the countries connected to the insurance **you** require.

## Privacy and confidentiality

### How we use your personal information

**We** are committed to protecting your personal and sensitive information. When **we** collect, hold, use, disclose and otherwise handle your personal information **we** must comply with the Privacy Act.

**We** collect, hold and use your personal information so **we** can provide, manage and administer the insurance broking, risk management and consulting **services**. If **you** do not supply the personal information **we** request, **we** may not be able to provide the **services you** require.

**We** provide your personal information to insurers to allow them to determine whether to insure **you** and if so, on what terms.

When conducting **our services** for **you**, **we** may share your information with other Gallagher Group members to access their specialist expertise and connections to the global insurance market, as appropriate for **you**.

### How we protect and store your information

When using your personal information to carry out **our services** to **you**, **we** must comply with **our [Privacy Policy](#)** available on the **CLNZ** website or on request. This explains how and why **we** collect your personal information, disclosure of your personal information to third parties and the security and access to your personal information.

The personal information or confidential information **we** hold may include written information **you** provide **us** and recordings of calls with **you** to collect information and manage or support any

claims. In accordance with **our** internal retention periods, your personal information or confidential correspondence and documentation is generally stored for seven years, after which time **we** archive or destroy the files without notice. It is your responsibility to keep any personal information or confidential information that **you** may require.

**You** can access and correct your personal information that **we** hold. If **you** would like to do so, please refer to **our** Privacy Policy for contact details.

### **Disclosure of information**

To reasonably perform **our services**, **we** may disclose your personal and confidential information to your insurers or prospective insurers or to other product or service providers providing **us** with additional support, unless **you** advise otherwise. **We** will use it solely to provide **you** with **our** agreed **services** or for an agreed other purpose. **We** may also be required to provide client information to a regulatory authority as part of **our** licence obligations and any other obligation that may apply.

However, **our** confidentiality obligation does not apply to information that:

- **You** have given express or implied permission to disclose;
- Is required by law;
- Is in the public domain; and
- **We** rightfully hold, except if there has been a breach of any confidentiality obligation.

**We** may also contact **you** about other products and services that may be of interest or benefit to **you**, unless **you** let **us** know otherwise.

## **Complaints and dispute resolution**

**We** are committed to providing **our** clients with the highest level of customer service. If **our** service should occasionally fall short, **we** make every effort to resolve issues promptly and fairly.

### **How to make a complaint**

If **you** have any concerns or issues about the **services we** have provided to **you** or about any product **we** have arranged on your behalf, please contact **us** as soon as possible (quoting your policy or claims number or reference **we** gave **you**) so **we** can address the problem.

- Your first port of call is to talk to your broker directly who is committed to sorting out the matter within 5 working days of receiving your complaint.
- If your broker cannot resolve the matter with **you** within 5 days, they will refer your complaint to their manager for their review who will make every effort to fix the issue within 10 working days of when **we** first received your complaint.
- If **we** are unable to make the matter right within 10 working days, it will be escalated to **our Crombie Lockwood Client & Conduct Committee**. This committee, which comprises senior representatives from **our** compliance, legal and customer care teams, will review your complaint and aim to settle the matter directly with **you** within 4 weeks.

Alternatively, if your broker or manager has proposed a resolution that does not meet your approval, **you** can contact the committee directly at [complaints@crombielockwood.co.nz](mailto:complaints@crombielockwood.co.nz)

- **We** will do everything **we** can to fix the matter, but if **we** have been unable to resolve it after 4 weeks, **you** can refer your complaint to the Financial Services Complaints Ltd (FSCL).

**Crombie Lockwood** is a member of FSCL's dispute resolution scheme. The scheme provides complainants with access to a free, independent dispute resolution service, which may help to investigate or resolve your complaint if it is not resolved to your satisfaction using **our** internal complaints process.

**You** can contact FSCL by phone: 0800 347 257, email: [info@fscl.org.nz](mailto:info@fscl.org.nz) or write to PO Box 5967 Wellington 6140. To find out more about FSCL, visit [fscl.org.nz](http://fscl.org.nz)

## Non-dissemination of material

**Our** communications with **you**, your employees or agents, whether written or oral, are provided solely for your information and use in connection with any engagement and so must not be used for anything else without **our** prior agreement.

No other person or company can rely on any of **our** information, advice or reports for any purpose at all, and **we** have no responsibility to any such third party who has received such information, advice or report.

## Electronic communications

**We** may communicate with **you** by email, unless otherwise agreed with **you**.

As email security can be externally compromised, these communications can be intercepted or interfered with, or contain viruses or defects. **We** will do **our** best to protect these communications but **you** must make your own security checks. **We** accept no responsibility for any loss or damage caused by the corruption of an email communication or attachments.

As **we** use third party service providers **we** do not guarantee the confidentiality of information sent to or by **us** electronically. For the avoidance of doubt this provision overrides any separate agreement as to confidentiality of business information.

## 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 NZ\$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.

## **Force majeure**

**We** are not liable for any failure or delay to carry out any of **our** obligations due to causes outside **our** reasonable control.

## **Termination and amendments**

**You** can end **our** engagement by giving **us** a minimum of 30 days' written notice. If **you** do so, **you** will need to make any payments owing as at the termination date. Any outstanding claims will be transferred to **you** to manage from the termination date, unless agreed otherwise.

If **we** are unable to continue to provide **services** to **you**, **we** will give **you** a minimum of 30 days' notice (except where **we** become aware or have reasonable cause to suspect that **you** are involved in any actions which in **our** opinion may breach any applicable sanctions legislation or which may cause **us** to be in breach).

**We** reserve the right to make amendments to these **terms of business** that are required to reflect a change of applicable law or regulation.

## **Law and jurisdiction**

**Our** relationship with **you** is governed by New Zealand law and the New Zealand Courts have exclusive jurisdiction.

## **Severability and enforceability**

If any term contained in these **terms of business** or part of these **terms of business** becomes invalid or unenforceable for any reason whatsoever, the remaining terms will continue to apply, subject to any modifications as are necessary to continue to give effect to them.

Any failure by **us** to enforce any right or obligation under these **terms of business** will not in any way limit or waive **our** right to subsequently enforce such right or obligation.

## Definitions

In this agreement, the following words are defined below:

**code of conduct** – standards of adviser competence and professional conduct established under the Financial Services Legislation Amendment Act 2019 (FSLAA) (which amends the FMCA), in force on and from 15 March 2021.

**Financial Markets Authority (FMA)** – the New Zealand government agency responsible for financial regulation.

**Financial Markets Conduct Act (FMCA)** – means the FMCA as amended by FSLAA (on and from 15 March 2021), and which regulates the provision of financial advice in New Zealand.

**premium** – the amount payable to an underwriter including relevant statutory charges for insurance placed or renewed by **us** on your behalf under this agreement.

**relevant information** – accurate and complete information and facts in relation to the **services we** will be providing to **you**. It includes all the information and facts that may be material to an insurer's assessment of a risk for the insurance cover **you** have asked **us** to arrange.

**remuneration** – received for arranging insurance on your behalf, principally by way of commission paid by the insurer and/or a fee (including an administration fee for fire and general insurance clients) to be paid by **you**. The amount of commission varies depending on the policy and insurer but is generally calculated as a proportion of the insurance **premium** excluding any applicable government charges, taxes, fees and levies as determined by the insurer.

**services** – the provision of insurance and risk-management related advice and any other services **we** mutually agree to be provided.

**terms of business** – the standard terms on which **Crombie Lockwood** will provide **our services** to **you**.

**you** – a **Crombie Lockwood** client who instructs **us**, or for whom **we** may provide **services**.

