

# General Terms and Conditions

**General Terms and Conditions and information pursuant to Art. 45 IOA for the provision of services as an insurance broker**

**1**

## **KESSLER – YOUR INSURANCE BROKER**

KESSLER & CO Inc. (hereinafter “Kessler”) is an independent insurance broker for all lines of insurance pursuant to Art. 40 (2) IOA (Swiss Insurance Oversight Act). At the commencement of the cooperation with the client, a client executive will be designated to service the client’s insurance portfolio. This person is at the client’s disposal as a direct contact and is responsible for all customer care for the client. Kessler and its client executives are fully licensed for rendering insurance broking services in accordance with the requirements of Swiss insurance oversight legislation (FINMA brokers’ register no. F01046141). Kessler is a member of the Swiss Insurance Brokers Association (SIBA).

**2**

## **SUBJECT MATTER OF THE CONTRACT, SERVICES**

The client engages Kessler by means of a separate Broker Service Agreement to continuously service its insurance portfolio, on the basis of a business relationship guided by mutual trust. The provisions listed hereinafter form an integral part of the Broker Service Agreement, which may only be amended or supplemented through a document signed by both parties.

Kessler shall be authorized, on the client’s behalf, to negotiate with insurers and obtain quotes and, with the client’s approval, place and service the insurance portfolio. Kessler shall advise and assist the client on all insurance matters forming part of the Broker Service Agreement, i.e. in particular in risk and insurance analysis, in the formulation of a risk and insurance management policy, in concepts for risk financing solutions, in determining insurance needs, in placing and continuously servicing insurance, through the support of in-house lawyers on issues relating to insurance law, and in support and assistance in the event of claim against the insurers.

The advice or information provided by Kessler’s client executives and insurance brokers is based on years of experience as an insurance broker. It is no substitute for legal or tax advice offered by, for example, lawyers, banks, tax experts or any authorities in any given case.

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## **COOPERATION WITH INSURANCE BROKERS ABROAD**

In cases where it is deemed expedient and necessary to carry out any tasks stipulated in the Broker Service Agreement outside Switzerland, Kessler, after consulting with the client, shall be authorized to cooperate with a local insurance broker abroad and to send it the data required for this purpose.

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## **REMUNERATION**

Kessler is remunerated for rendering the services pursuant to Section 2 with a commission in line with the market, which is paid by the insurer. The commission is calculated as a percentage of the insurance premium paid by the client. The commission is included in the premiums quoted by the insurers. Prior to commencement of the Broker Service Agreement, Kessler shall notify the client of the basis for its calculation and ranges or of the estimated amount of the expected commission on the basis of the information available pertaining to the client’s insurance portfolio. By signing the Broker Service Agreement, the client agrees to waive the distribution of the commission and confirms that it has been expressly informed of the remuneration by Kessler. Kessler will disclose amounts actually received on request. Kessler expressly waives any volume-, growth- or loss-based additional remuneration by third parties. Other forms of remuneration shall be agreed separately between the contracting parties in writing. Kessler will negotiate a separate fee with the client in advance for any other additional services rendered at the client’s request.

Turnover generated from insurance broker services is exempt from VAT in Switzerland (Art. 21 [18] [d] VAT Act). Kessler reserves the right to charge VAT for services rendered pursuant to Section 2 if the practice of the Swiss Federal Tax Administration changes. Kessler will not accept any liability for the correct payment of any of the client’s taxes, such as insurance premium taxes.

**5**

## **COOPERATION WITH INSURERS**

Kessler has cooperation agreements with all major insurers licensed in Switzerland (incl. health insurance companies and registered community foundations/collective foundations); however, within the meaning of

Swiss insurance oversight legislation, Kessler is neither legally nor commercially nor in any other way tied to an insurance company.

Kessler services the client's insurance contracts on the basis of working relationships with the relevant insurers, thus also alleviating the insurers' workload. However, Kessler explicitly maintains a fiduciary relationship with the client and solely represents its interests.

As a rule, the relevant insurer will identify the risks and will handle and settle claims in cooperation with Kessler. At the client's request, Kessler shall support and assist the client with the handling and settlement of claims. As a rule, premiums will be collected directly by the insurer.

## **6** **DATA PROTECTION, DATA SECURITY AND CONFIDENTIALITY**

Kessler guarantees that its employees handle data entrusted to them in accordance with the principles of Swiss law governing data protection. In cases where it is necessary to transmit data abroad to render the broking services correctly, the client shall consent to its data being transmitted abroad by Kessler in compliance with data protection laws. The client hereby consents to the processing of data by Kessler using applications offered by insurers or third parties that serve to simplify the administrative management of insurance policies.

Any data belonging to the client obtained within the scope of executing the contract or any information pertaining to its business activities shall be handled in confidence and only processed for the purpose of executing the Broker Service Agreement. Data storage devices shall be kept under lock and key at the premises of Kessler and shall only be made accessible to the employees of Kessler. Strict confidentiality shall be maintained without reservation beyond the duration of the contractual relationship with respect to any uninvolved third parties. Kessler reserves the right to forward data to service providers involved, in so far as this is necessary for the performance of insurance broking services or for troubleshooting or improving applications operated by Kessler, in particular to insurers or third-party providers for the purpose of tendering for or renewing policies or in connection with claims. The most recent version of Kessler's privacy policy is available on [www.kessler.ch](http://www.kessler.ch) and forms an integral part of this Broker Service Agreement.

## **7** **EMPLOYEE TRAINING AND DEVELOPMENT**

The registered client executives and insurance brokers of Kessler have the legally required qualifications and complete the mandatory continuing education courses pursuant to Art. 43 IOA. Adherence to the minimum legal standards is monitored by industry organizations recognized by FINMA. Inquiries regarding the training and development of individual registered client executives and insurance brokers can be sent to the following address: Kessler & Co Inc., Executive Committee, Forchstrasse 95, 8032 Zurich, Switzerland.

## **8** **LIABILITY**

Kessler shall provide the services with due care and diligence. Kessler shall be liable to the client for any losses resulting from negligence, errors or inaccurate information in accordance with the principles outlined below: Kessler, its group companies and subsidiaries, and their directors and officers or employees shall be liable only for intentional or grossly negligent breaches of contract and only for causal losses, costs and expenses incurred by the client as a direct and immediate result of such an intentional or grossly negligent breach of contract.

Any liability for such losses, including all costs and expenses, shall be limited to twice the annual remuneration paid out to Kessler under this broker agreement, but no more than CHF 2,000,000. Kessler shall under no circumstances be held liable for claims resulting from intentional, grossly negligent or incorrect conduct by the client, its directors and officers or employees or for claims for losses resulting from incomplete, inaccurate or misleading documents or information on the part of the client or third parties. Kessler & Co Inc., Forchstrasse 95, 8032 Zurich, as the contracting party, is the relevant contact within the meaning of Art. 45 (1) (d) IOA.

## **9** **APPLICABLE LAW AND PLACE OF JURISDICTION**

The Broker Service Agreement is subject to Swiss substantive law, under exclusion of any conflict of law rules. The exclusive place of jurisdiction is the location of the client's registered office in Switzerland on the date when an action is filed.