

ECN TRADE PTY LTD

# Client Agreement

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Margin FX and CFD's

Updated: 25<sup>th</sup> March 2021

ECN Trade Pty Ltd  
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Australia

Enclosed is a document you must read and understand as it is a client agreement between you and ECN Trade Pty Ltd.

## TABLE OF CONTENTS – CLIENT AGREEMENT

|   |           |
|---|-----------|
| <b>1. CLIENT AGREEMENT</b> .....  | <b>6</b>  |
| 1.1 INTRODUCTION.....   | 6         |
| 1.2 INTERPRETATION .....  | 6         |
| 1.3 ACKNOWLEDGEMENTS .....  | 6         |
| 1.4 APPLICATION FORM .....  | 7         |
| 1.5 ANTI-MONEY LAUNDERING LEGISLATION .....   | 7         |
| <b>2. OUR OFFICE AND TRADING HOURS</b> .....  | <b>7</b>  |
| 2.1 HOURS .....   | 7         |
| 2.2 LIMITED TRADING HOURS .....   | 7         |
| <b>3. ESTABLISHMENT OF ACCOUNT</b> .....  | <b>7</b>  |
| 3.1 NAME .....  | 7         |
| 3.2 SEGREGATED BANK ACCOUNT .....   | 7         |
| 3.3 SPLIT ACCOUNT .....   | 7         |
| 3.4 NAMING OF CLIENT .....  | 7         |
| <b>4. INSTRUCTIONS</b> .....  | <b>7</b>  |
| 4.1 DETAILS IN PDS .....  | 7         |
| 4.2 ACCOUNT DETAILS .....   | 8         |
| 4.3 BY TELEPHONE OR EMAIL .....   | 8         |
| 4.4 CHANGING AUTHORISED PERSONS .....   | 8         |
| 4.5 ACCOUNT SECURITY INFORMATION .....  | 8         |
| 4.6 FURTHER INSTRUCTIONS .....  | 8         |
| 4.7 CONFIRMATION OF INSTRUCTIONS .....  | 8         |
| 4.8 ACKNOWLEDGEMENT OF INSTRUCTIONS .....   | 8         |
| 4.9 INTERNET INSTRUCTIONS .....   | 8         |
| 4.10 INSTRUCTION NOT A CONTRACT .....   | 8         |
| 4.11 CORRECT DESIGNATION .....  | 8         |
| <b>5. CONSENT TO RECORDING OF TELEPHONE CONVERSATIONS</b> .....                       | <b>9</b>  |
| <b>6. OPERATING YOUR ACCOUNT</b> .....  | <b>9</b>  |
| 6.1 CHARGES AND FEES YOU PAY .....  | 9         |
| 6.2 OVERNIGHT FINANCING FOR SHARE AND INDEX CFDS .....                                | 9         |
| 6.3 COMMISSION .....  | 9         |
| 6.4 TIMING OF CREDITS DEDUCTIONS OR FEES WHICH YOU ARE TO PAY FROM YOUR ACCOUNT ..... | 9         |
| 6.5 INCORRECT CREDITING OF ACCOUNT .....  | 9         |
| 6.6 CERTIFIED DOCUMENTATION .....   | 9         |
| 6.7 REPORTING TO YOU .....  | 9         |
| <b>7. CORPORATE EVENTS</b> .....  | <b>10</b> |
| <b>8. OPENING A POSITION</b> .....  | <b>11</b> |
| 8.1 NO RIGHTS IN UNDERLYING INSTRUMENT .....  | 11        |
| 8.2 OPENING A POSITION USING OUR TRADING PLATFORM .....                               | 11        |
| 8.3 TELEPHONE AND EMAIL INSTRUCTIONS .....  | 12        |
| 8.4 NATURE OF QUOTE .....   | 12        |
| 8.5 FORMATION OF CONTRACT .....   | 12        |
| 8.6 CURRENCY .....  | 12        |
| 8.7 BASE CURRENCY PAYMENTS .....  | 12        |
| 8.8 POSITION DURATION .....   | 12        |
| 8.9 OPPOSING POSITIONS .....  | 12        |
| 8.10 DIFFERENCE IN BUY AND SELL PRICES .....  | 13        |
| 8.11 PROFIT AND LOSSES .....  | 13        |
| <b>9. PRICING</b> .....   | <b>13</b> |
| 9.1 QUOTES .....  | 13        |
| 9.2 AMENDED QUOTES AND MARGIN CONTRACTS OUTSIDE THE NORMAL TRADING SIZE .....         | 13        |
| 9.3 MINIMUM TRADING SIZE .....  | 13        |

|            |   |           |
|------------|---|-----------|
| 9.4        | SHARE CFDS AND INDEX CFDS .....   | 13        |
| 9.5        | INDEX FUTURES CFDS .....  | 14        |
| 9.6        | BULLION CFDS .....  | 15        |
| 9.7        | COMMODITY CFDS .....  | 15        |
| 9.8        | MARGIN FX CONTRACTS .....   | 15        |
| 9.9        | YOUR CHOICE TO DEAL .....   | 15        |
| 9.10       | ERRORS IN PRICES .....  | 15        |
| 9.11       | LOSS OR DAMAGE .....  | 15        |
| 9.12       | CHANGE IN SPREAD .....  | 16        |
| <b>10.</b> | <b>MARGIN .....</b>   | <b>16</b> |
| 10.1       | PAYMENT AND MAINTENANCE OF MARGIN .....   | 16        |
| <b>11.</b> | <b>YOUR OBLIGATION TO MONITOR AND PAY MARGIN .....</b>  | <b>16</b> |
| 11.1       | YOUR OBLIGATION TO PAY .....  | 16        |
| 11.2       | COLLATERAL .....  | 17        |
| 11.3       | YOU MUST MONITOR MARGIN .....   | 17        |
| 11.4       | WHEN YOUR LIABILITY TO PAY MARGIN ACCRUES .....   | 17        |
| <b>12.</b> | <b>CLOSING A MARGIN FX CONTRACT OR CFD .....</b>  | <b>18</b> |
| 12.1       | WHEN CAN A MARGIN FX CONTRACT OR CFD BE CLOSED? .....   | 18        |
| 12.2       | AUTOMATIC CLOSURE .....   | 18        |
| 12.3       | TIME LIMITS FOR CLOSING .....   | 18        |
| 12.4       | METHOD OF CLOSING MARGIN CONTRACTS BY US .....  | 18        |
| 12.5       | CONTRACT PRICE AT CLOSING .....   | 18        |
| 12.6       | CONTRACT VALUE AT CLOSING .....   | 18        |
| 12.7       | CLOSURE DURING BUSINESS DAY .....   | 18        |
| 12.8       | TIMING OF PAYMENTS .....  | 18        |
| 12.9       | AUTOMATIC CLOSURE: MARGIN FX CONTRACTS AND CFDS .....   | 19        |
| 12.10      | CLOSURE: LONG AND SHORT CONTRACT .....  | 19        |
| 12.11      | CLOSURE: TWO OR MORE MARGIN CONTRACTS .....   | 19        |
| <b>13.</b> | <b>CLOSE OF BUSINESS ACCOUNTING .....</b>   | <b>19</b> |
| 13.1       | WHEN WE ACCOUNT .....   | 19        |
| 13.2       | CONTRACT VALUE .....  | 19        |
| 13.3       | CONTRACT VALUE AT CLOSE .....   | 19        |
| 13.4       | VALUATION .....   | 19        |
| 13.5       | FINANCING CHARGE: SHARE CFDS .....  | 20        |
| 13.6       | DAILY ROLLOVER OF MARGIN FX CONTRACTS AND CFDS (OTHER THAN SHARE CFDS & EXCEPTED CONTRACTS) ..... | 20        |
| 13.7       | ENTITLEMENT .....   | 20        |
| 13.8       | LONG MARGIN FX CONTRACTS .....  | 20        |
| 13.9       | LONG BULLION CFDS .....   | 20        |
| 13.10      | SHORT MARGIN FX CONTRACTS .....   | 20        |
| 13.11      | SHORT BULLION CFDS .....  | 20        |
| 13.12      | REVALUATION OF POSITIONS AFFECTED BY LIMITED HOURS TRADING .....                                  | 21        |
| 13.13      | SETTLEMENT .....  | 21        |
| 13.14      | WHEN WE MAKE ACCOUNTING PAYMENTS .....  | 21        |
| <b>14.</b> | <b>STOP LOSS ORDERS &amp; LIMIT ORDERS .....</b>  | <b>21</b> |
| 14.1       | AVAILABILITY OF ORDERS .....  | 21        |
| 14.2       | MARGIN REQUIREMENTS TO FILL ORDERS .....  | 21        |
| 14.3       | LIABILITY FOR LOSSES ARISING FROM ORDERS .....  | 21        |
| 14.4       | OUR RIGHT TO IMPOSE A STOP LOSS ORDER .....   | 21        |
| 14.5       | INFORMING YOU OF ORDERS WE IMPOSE .....   | 22        |
| <b>15.</b> | <b>OUR RIGHT TO LIMIT OR CLOSE YOUR POSITIONS .....</b>   | <b>22</b> |
| 15.1       | OUR RIGHT TO LIMIT OR CLOSE YOUR POSITIONS .....  | 22        |
| 15.2       | RIGHTS NOT RESTRICTED BY TAKING ORDERS .....  | 22        |
| 15.3       | PROCEEDS MAY OFFSET AMOUNTS OWING TO US .....   | 22        |
| 15.4       | YOUR ACKNOWLEDGEMENT .....  | 22        |

|            |   |           |
|------------|---|-----------|
| 15.5       | OUR LIMITING/CLOSING OF POSITIONS DOES NOT AFFECT MARGIN OBLIGATIONS..... | 23        |
| <b>16.</b> | <b>PAYMENTS .....</b>   | <b>23</b> |
| 16.1       | YOUR PAYMENTS MUST BE THE FULL AMOUNT .....                               | 23        |
| 16.2       | PAYMENTS WE OWE YOU AND YOU OWE TO US ARE OFFSET .....                    | 23        |
| 16.3       | PAYMENT OF AMOUNTS DUE TO US .....  | 23        |
| 16.4       | WITHDRAWING CREDIT FROM YOUR ACCOUNT .....                                | 23        |
| 16.5       | NO SECURITY INTERESTS CREATED.....  | 23        |
| 16.6       | PAYMENTS TRANSFERRED MUST HAVE FREE TITLE .....                           | 23        |
| <b>17.</b> | <b>DEFAULT.....</b>   | <b>23</b> |
| 17.1       | ACTIONS WE MAY TAKE IF YOU ARE IN DEFAULT .....                           | 23        |
| <b>18.</b> | <b>AMENDING THIS AGREEMENT .....</b>                                      | <b>24</b> |
| 18.1       | CURRENT VERSION OF AGREEMENT GOVERNS MARGIN CONTRACTS .....               | 24        |
| 18.2       | NOTICE OF CHANGES TO THIS AGREEMENT .....                                 | 24        |
| 18.3       | DATE VARIATIONS TO AGREEMENT TAKE EFFECT .....                            | 24        |
| 18.4       | TERMINATION OF AGREEMENT .....  | 24        |
| <b>19.</b> | <b>APPLICATION OF ACCOUNT FUNDS.....</b>                                  | <b>24</b> |
| 19.1       | OUR RIGHTS TO APPLY ACCOUNT FUNDS.....                                    | 24        |
| <b>20.</b> | <b>CEASING TO OFFER TO TRADE .....</b>                                    | <b>24</b> |
| 20.1       | OUR RIGHT TO CEASE TO TRADE IN MARGIN CONTRACTS.....                      | 24        |
| 20.2       | CLOSE OUT OF POSITIONS IF WE CEASE TO TRADE.....                          | 25        |
| <b>21.</b> | <b>TERMINATION .....</b>  | <b>25</b> |
| 21.1       | YOUR RIGHT TO TERMINATE .....   | 25        |
| 21.2       | OUR RIGHT TO TERMINATE .....  | 25        |
| 21.3       | TERMINATION WILL NOT AFFECT ACCRUED RIGHTS .....                          | 25        |
| 21.4       | CLOSE OUT OF MARGIN CONTRACTS ON TERMINATION OF AGREEMENT: .....          | 25        |
| <b>22.</b> | <b>LEGAL AND REGULATORY REQUIREMENTS.....</b>                             | <b>25</b> |
| 22.1       | OUR ACTIONS TO COMPLY WITH THE LAW.....                                   | 25        |
| 22.2       | YOU AGREE TO COMPLY WITH THE LAW .....                                    | 25        |
| <b>23.</b> | <b>LIMITATION OF LIABILITY AND INDEMNITY .....</b>                        | <b>25</b> |
| 23.1       | OUR LIABILITY IS LIMITED.....   | 25        |
| <b>24.</b> | <b>CLIENT MONEY .....</b>   | <b>26</b> |
| 24.1       | AUSTRALIAN CLIENT MONEY RULES AND AUTHORISED PERSONS.....                 | 26        |
| 24.2       | INVESTMENT OF MONEYS HELD .....   | 26        |
| 24.3       | TREATMENT OF INVESTMENT CAPITAL AND INTEREST.....                         | 26        |
| 24.4       | PROPERTY HELD ON TRUST .....  | 26        |
| 24.5       | YOU AUTHORISE US TO DEAL WITH YOUR ACCOUNT .....                          | 26        |
| <b>25.</b> | <b>WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS.....</b>                  | <b>26</b> |
| 25.1       | YOUR WARRANTIES ETC.....  | 27        |
| 25.2       | TRUSTEE OF A TRUST .....  | 27        |
| 25.3       | SUPERANNUATION FUNDS.....   | 27        |
| 25.4       | NOTIFICATION OF CHANGES.....  | 27        |
| 25.5       | ELECTRONIC SERVICES.....  | 28        |
| 25.6       | STATUTORY WARRANTIES:.....  | 28        |
| <b>26.</b> | <b>ELECTRONIC SERVICES.....</b>   | <b>28</b> |
| 26.1       | SCOPE .....   | 28        |
| 26.2       | ACCESS.....   | 28        |
| 26.3       | ACCESS REQUIREMENTS.....  | 28        |
| 26.4       | VIRUS DETECTION.....  | 28        |
| 26.5       | USE OF INFORMATION, DATA AND SOFTWARE .....                               | 28        |
| 26.6       | MAINTAINING STANDARDS.....  | 28        |

|                         |   |           |
|-------------------------|---|-----------|
| 26.7                    | <b>SYSTEM DEFECTS</b> .....   | 29        |
| 26.8                    | <b>INTELLECTUAL PROPERTY</b> .....                                    | 29        |
| 26.9                    | <b>LIABILITY AND INDEMNITY</b> .....                                  | 29        |
| 26.10                   | <b>SUSPENSION OR PERMANENT WITHDRAWAL WITH NOTICE</b> .....           | 29        |
| 26.11                   | <b>IMMEDIATE SUSPENSION OR PERMANENT WITHDRAWAL</b> .....             | 29        |
| 26.12                   | <b>EFFECTS OF TERMINATION</b> .....                                   | 29        |
| <b>27.</b>              | <b>FUNDING AND DIRECT DEBIT AUTHORISATION</b> .....                   | <b>30</b> |
| <b>28.</b>              | <b>FORCE MAJEURE</b> .....  | <b>30</b> |
| 28.1                    | FORCE MAJEURE EVENT .....   | 30        |
| 28.2                    | ACTIONS WE MAY TAKE .....   | 30        |
| 28.3                    | NOTIFICATION OF FORCE MAJEURE EVENT .....                             | 30        |
| 28.4                    | LIABILITY .....   | 30        |
| <b>29.</b>              | <b>DISPUTE RESOLUTION</b> .....                                       | <b>30</b> |
| 29.1                    | INFORMING US ABOUT DISPUTES .....                                     | 30        |
| 29.2                    | WHERE WE MAY COMMENCE LEGAL PROCEEDINGS .....                         | 31        |
| 29.3                    | INTERNAL COMPLAINTS HANDLING POLICY .....                             | 31        |
| <b>30.</b>              | <b>PRIVACY</b> .....  | <b>31</b> |
| <b>31.</b>              | <b>ILLEGALITY ETC.</b> .....  | <b>31</b> |
| <b>32.</b>              | <b>ASSIGNMENT AND DELEGATION</b> .....                                | <b>31</b> |
| <b>33.</b>              | <b>RIGHTS AND REMEDIES</b> .....                                      | <b>32</b> |
| <b>34.</b>              | <b>RIGHTS OF THIRD PARTIES</b> .....                                  | <b>32</b> |
| <b>35.</b>              | <b>DELAY, OMISSION AND WAIVER</b> .....                               | <b>32</b> |
| <b>36.</b>              | <b>GOVERNING LAW AND JURISDICTION</b> .....                           | <b>32</b> |
| 36.1                    | <b>LAW</b> .....  | 32        |
| 36.2                    | <b>JURISDICTION</b> .....   | 32        |
| <b>37.</b>              | <b>NOTICES</b> .....  | <b>32</b> |
| 37.1                    | <b>NOTICES MUST BE IN WRITING</b> .....                               | 32        |
| 37.2                    | <b>WHEN NOTICES ARE RECEIVED</b> .....                                | 32        |
| 37.3                    | <b>CHANGE OF NOTICE DETAILS</b> .....                                 | 32        |
| 37.4                    | <b>DEEMED NOTICE WHERE NOTICE SENT CONTACT DETAILS PROVIDED</b> ..... | 33        |
| <b>SCHEDULE 1</b> ..... |   | <b>34</b> |
| INTERPRETATION .....    |   | 34        |

## 1. CLIENT AGREEMENT

### 1.1 Introduction

This Agreement sets out the terms and conditions on which we deal with you in our “Margin Contracts”, which includes margin foreign exchange contracts (Margin FX Contracts), and Contracts for Difference (CFDs), as the case may require, and together with our Application Form, forms an enforceable and binding contract between you and us. This is one of the documents the basis of which you trade with us. Others are:

- (a) the current PDS;
- (b) the current FSG;
- (c) any additional terms and conditions issued by us in connection with provision of the Services we provide to you; and
- (d) the written confirmation of each transaction entered into by you (“the Confirmation”).

### 1.2 Interpretation

- (a) If there is any inconsistency between the Confirmation and this Agreement, the Confirmation will prevail.
- (b) The terms and expressions in this Agreement, which have defined meanings, and the rules of interpretation are set out in schedule 1.

### 1.3 Acknowledgements

You acknowledge that:

- (a) **Principal:** We act as principal in the administration of this Agreement and in entering into and performing the obligations under the financial instruments entered into under this Agreement. If you act on behalf of a principal, whether or not you identify that principal to us, we will not accept that principal as a “Client” (as defined in the Corporations Act), unless otherwise agreed in writing;
- (b) **Read Agreement:** You have read the whole of this Agreement and understand its terms and conditions and the nature of the financial instruments that we offer and the risks in trading in them, and further understand how they may affect your liability to us or our liability to you;
- (c) **PDS and FSG:** We have given you access to a PDS relating to the financial instruments and an FSG;
- (d) **No personal financial advice:** We do not provide any personal financial product advice to you and the entry into a financial instrument with you is not to be taken by you as a recommendation of or concurrence with the merits of the financial instrument or that the financial instrument is suitable for you. Our advice is general advice only.
- (e) **General financial advice:** We may provide information or general financial advice to you such that it will not take into account your particular needs, objectives and financial considerations. We will not give you advice about whether you should open, hold or close a financial instrument;
- (f) **All trades at your risk:** All trades will be made at your own risk and to the maximum extent permitted by law we will not in any way be liable for any claims, damages, losses (including consequential losses) or injuries suffered or incurred by you as a result of or arising out of:
  - (i) any misinformation of any information or general financial product advice provided by, or on behalf of, us relating to a transaction entered into or proposed to be entered into by you under this Agreement;
  - (ii) any information or general financial product advice provided by, or on behalf of, us in relation to any investments and instruments which you may deal in under this Agreement.

But this paragraph has no operation with respect to any fraud or dishonesty on our part;

- (g) **Reliance on your own judgment:** You must understand the risks of dealing in Margin Contracts and you must rely solely upon your own judgment in dealing with us. We are not under any responsibility or owe to you any duty of care to monitor your trades or to prevent you from trading beyond your means or ability, or otherwise to protect you;
- (h) **Margins:** It is your responsibility and obligation to monitor and pay Margins strictly in accordance with clause 11.

## 1.4 Application Form

You, by signing or submitting electronically the Application Form when you are applying to become our customer:

- (a) acknowledge to us that you have received or downloaded, and read and understood this Agreement and the current PDS;
- (b) agree that we will provide our products and Services to you on the terms and conditions of this Agreement.

## 1.5 Anti-money laundering legislation

You acknowledge that we may require further information from you from time to time to comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). By entering into this Agreement, opening an account and transacting with us, you undertake to provide us with all additional information and assistance that we may reasonably require to comply with the AML/CTF Act.

You also warrant that:

- (a) you are not aware and have no reason to suspect that:
  - (i) the moneys used to fund your transactions have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Australian law, international law or convention or by agreement; or
  - (ii) the proceeds of your investment will be used to finance any illegal activities; and
- (b) neither you nor your directors, in the case of a company, are a politically exposed person or organisation as the term is used in the Anti-Money Laundering and Counter-Terrorism Rules Instrument 2007 (No. 1).

## 1.6 Classification on Wholesale Clients

You will be classified and treated as a wholesale client once your application has been approved by ECN Trade. Please be aware that existing clients will be unable to become a sophisticated investor unless we offer a new product.

## 2. OUR OFFICE AND TRADING HOURS

### 2.1 Hours

Our office hours are 10:00AM to 18:00PM Monday to Friday.

### 2.2 Limited Trading Hours

We are under no obligation to quote prices or accept orders or instructions in respect of any Contract to which Limited Hours Trading applies during any time when the relevant underlying exchange or Market is closed for business. Please refer to the Product Schedule for more information.

## 3. ESTABLISHMENT OF ACCOUNT

### 3.1 Name

We will establish an account in your name.

### 3.2 Segregated bank account

All moneys deposited to the credit of that Account must be paid into a client segregated bank account established and maintained by us with our bank.

### 3.3 Split account

We may split your Account into different sub-accounts denominated in different currencies and references in this Agreement to your Account are to be taken to include reference to all sub-accounts or the relevant sub-account (as the case requires).

### 3.4 Naming of client

Where two or more natural persons and no other are named as the client, the account will be established in their names as joint tenants unless they specifically advise otherwise. In all other cases, the accounts will be established in the names as tenants in common.

## 4. INSTRUCTIONS

### 4.1 Details in PDS

We provide details in the PDS as to how you may place orders or give us oral or written instructions.

#### 4.2 **Account details**

Upon opening an account with us, you will be given an internet specific password, which must be declared, together with your account number, when you wish to access your Account. You will also be given an Account name, which must also be declared to access your Account in certain circumstances. You will be deemed to have authorised all trading under your Account number irrespective of whether the person using it for the purpose of trading is using it with your authority, unless the trade in question is not one that you in fact authorised directly or through a power of attorney; and

- (a) the person using the account number obtained it from us as a result of our negligence, or
- (b) we otherwise act negligently in accepting instructions on your Account.

#### 4.3 **By telephone or Email**

We do not accept telephone or email orders to execute any of our products.

#### 4.4 **Changing authorised persons**

You may, by written notice, change the persons who are authorised from those indicated on the Application Form; but we are not bound by any such variation until we actually receive written notice. We may act upon the oral or written orders or instructions of any Authorised Person, or any person who appears to us to be an Authorised Person, despite the fact that the person may not be authorised. For example, we are entitled to act on any orders or instructions transmitted using your user-name, account number, user ID or password.

#### 4.5 **Account security information**

You are required to keep all security information relating to your Account, including, but not limited to, any user name, account number, user ID and password, confidential and we do not have to establish the authority of anyone using these items. If you are aware or suspect that these items are no longer confidential, you should contact us as soon as practicable so that they may be changed. We will not be liable for any loss arising from your failure to notify us that your Account information is no longer confidential or secure.

#### 4.6 **Further instructions**

We may require instructions from you in respect of any Margin Contract or proposed Margin Contract and if we do, you must promptly provide us with that information. If you do not, we may in our absolute discretion take all such reasonable steps at your cost as we reasonably consider necessary or desirable for our or your protection. But this does not detract from your responsibility to keep yourself informed at all times as to the key dates and events affecting your Margin Contracts.

#### 4.7 **Confirmation of instructions**

We may also, although we are not obliged to, require confirmation of any order or instruction:

- (a) if any instruction is to close an Account or remit money to you; or
- (b) otherwise, if it reasonably appears to us that confirmation is necessary or desirable.

#### 4.8 **Acknowledgement of Instructions**

Instructions may be acknowledged orally or in writing by us, as appropriate.

#### 4.9 **Internet Instructions**

Subject to clause 4.7 any order or instruction sent by you by internet will only be deemed to have been received, and will only then constitute a valid instruction and binding Margin Contract or CFD between you and us, when such order or instruction has been recorded as accepted and confirmed to you (see earlier).

#### 4.10 **Instruction not a Contract**

When you transmit an order or instruction to us, this does not automatically give rise to a binding Margin Contract or CFD between you and us because any order made by you is always subject to us accepting your offer and such order having been recorded as accepted and confirmed by us to you. You are responsible for inquiring of us if a confirmation is expected in relation to a transaction, but has not been received by you.

#### 4.11 **Correct designation**

It is your responsibility to ensure that moneys sent to us are correctly designated in all respects, including, where applicable, that the moneys are by way of Margin and to which of your Accounts they should be applied. We will



provide you from time to time with details of such arrangements as may apply to making payments to us, which may include permitting payments in different currencies as notified by us to you.

## **5. CONSENT TO RECORDING OF TELEPHONE CONVERSATIONS**

You consent to:

- (a) the electronic recording of your telephone discussions with us, with or without an automatic tone warning device; and
- (b) the use of recordings or transcripts from such recordings for any purpose, including, but not limited to, their use as evidence by either party in any dispute between you and us.

## **6. OPERATING YOUR ACCOUNT**

### **6.1 Charges and fees you pay**

You agree to pay the charges and fees and receive the benefits set out in this Agreement.

### **6.2 Overnight Financing for Share and Index CFDs**

Your account may be debited or credited Financing Charges held overnight in Share, Index CFDs.

#### **Interest paid / Charged to you**

No interest is paid or charged on client accounts.

### **6.3 Commission**

You understand that we do not receive commissions; with the exception of trades in Share CFDs where we may charge commission on each opening and closing of a Share CFD trade as advised to you on our Trading Platform. Commission is calculated as a percentage of the total Contract Value and is subject to a reasonable minimum commission amount which we determine at our discretion from time to time.

### **6.4 Timing of credits deductions or fees which you are to pay from your Account**

- (a) Any charges (including Financing Charges) will be deducted from your Account the day following the day on which the charges were incurred and Financing Benefits will be paid the day on which it was derived.
- (b) If a Position is closed at a loss, that loss will immediately be deducted from your Account and your available trading resources will be adjusted accordingly subject to clauses 6 and 9 of this Agreement .
- (c) If a Position is closed at a profit that profit will immediately be credited to your Account and your available trading resources will be adjusted accordingly subject to clauses 6 and 9 of this Agreement.

### **6.5 Incorrect crediting of Account**

- (a) Limitation of liability: Except In the case of our fraud, we do not accept responsibility for, nor are we liable for, any loss or damage suffered by you as a result of you trading on moneys deposited in or credited to your Account in error by, or upon behalf of us.
- (b) Permitted deductions: We are entitled at any time to deduct, without notice or recourse to you, any moneys deposited in, or credited to, your Account in error by, or on behalf of, us.

### **6.6 Certified documentation**

Should your total cumulative cash deposits equal or exceed AUD25,000 (or the equivalent in another currency) and you hold an account as an individual, whether held jointly or not, for which you have not yet supplied documentation as required, you may be required to provide us with the documents relevant to your account type; and

- (a) until such documents are provided to us if required, your Account may be placed on closing orders only and any outgoing payments from your Account could be restricted. If appropriate documents are not provided to us within 5 Business Days of your Total Equity equalling or exceeding AUD 25,000, we may close your Account with us; and
- (b) we reserve the right to require you to provide us with the documents relevant to your individual or joint names Account at any time.

### **6.7 Reporting to you**

- (a) **Confirmations:** In respect of each Contract entered into by us with you a Confirmation will appear in the Trading Platform. If the Confirmation does not appear you must contact us immediately and if you do not do so the details, or lack thereof, that we have recorded in relation to the Contract will be deemed to have

been accepted by you. The prices quoted on Confirmations sent to the Client will be net of any charges, which may not be separately identified. The Client agrees to receive Confirmations in this form.

- (b) **Monthly statement:** A monthly statement in respect of each Account, including any positions which you may have, will be provided to you via our Trading Platform where you will be able to view, download and print them, based on the Base Currency you have nominated.
- (c) **Daily statement:** If you have any open Positions, a daily statement in respect of each Account, including any positions which you may have, will be provided to you via our Trading Platform where you will be able to view, download and print them. We will report all currency balances on the Account in the Base Currency.
- (d) **Trading Platform:** You agree and acknowledge that:
  - (i) We will provide Confirmations, daily and monthly statements and other reports to you via our Trading Platform where you will be able to view, download and print them;
  - (ii) you authorise us to use the Trading Platform as the means of providing the Confirmations, daily statements, monthly statements and other reports we make.
  - (iii) you will access and use such Trading Platform to:
    - (A) receive the Confirmations, daily statements, monthly statements and other reports we provide;
    - (B) confirm all Contracts; and
    - (C) monitor your obligations under this Agreement;
- (e) **When reports are made available:** the Confirmations, daily statement, monthly statement or other report is made available to you as at the time the relevant document is posted by us on the Trading Platform.
- (f) **We may send reports by other means:** We may send Confirmations, daily statements, monthly statements and other reports that we provide, by email, post or by any other means, in addition to making them available using the Trading Platform.
- (g) **Errors:** You must verify the validity of each trade and each document generated by the ECN Trading Platform. Such documents will, in the absence of manifest error, be conclusive unless you notify us in writing to the contrary immediately in the case of a Confirmation or within 3 Business Days of realisation of error or receiving or generating a daily or monthly report.
- (h) **When you may object to the content of a report:** You agree that in the event that a Confirmation, daily statement, monthly statement or other report is provided to you in accordance with this clause 6.7, the time for objecting to the contents of a document under clause 6.7 is from the earlier of the date you generate the report under paragraph 6.7(g) (if applicable) and when the report is posted on the Trading Platform by us.

## 7. CORPORATE EVENTS

- (a) **Account adjustment for dividends**

Index CFDs are based on the underlying futures price, hence there is no adjustment to the Account for these events, they are accounted for in the overnight swap rate.
- (b) **Suspension and market disruption**

If, at any time:

  - (i) trading in any relevant Security on any exchange is limited or suspended; or
  - (ii) trading is limited or suspended on any exchange so as to restrict trading within any relevant Index such that we are prevented from determining the Contract Price of a Security or Index,

then the Contract Price of such Security or Index will be the Contract Price immediately preceding such limitation or suspension.
- (c) In relation to a Share CFD, Index CFD or Index Futures CFD we may close the Contract and determine a Closing Date and the Contract Value under clause 13 of this Agreement. We reserve the right at all times during the term of any such limitation or suspension to adjust the Contract Price of any affected Contract at our reasonable discretion but having regard to the then prevailing market conditions affecting trading as a whole or trading in the Security or Index.
- (d) If, in relation to any Security or Index on which a Margin Contract or CFD is based, the price of any relevant Security or the Index becomes exceptionally volatile as reasonably determined by us, we may by notice

inform you of an amendment to the Margin Percentage with respect to the Contract. Such amendment will also apply to any relevant Contract entered with you after such amendment.

- (e) If:
- (i) we are unable to hold, purchase or borrow any relevant Securities or our ability to hold, purchase or borrow such Securities becomes in our reasonable opinion at any time materially impaired or restricted for whatever reason; or
  - (ii) we reasonably believe that we can no longer perform our obligations under the Share CFD, Index CFD or Index Futures CFD on the same economic basis as that Underlying Instrument the terms of the Contract when the Contract was originally entered into, then
- we will give notice to you of that fact and will, at your request, provide you with reasonable evidence of such circumstances, although our determination will be conclusive.
- (f) At any time following our giving of notice to you under paragraph (e) in this clause, we may close the Share CFD, Index CFD or Index Futures CFD, and clause 12 of this Agreement will apply.
- (g) If any Security becomes subject to adjustment as the result of any event set out in paragraph (h) of this clause, we will determine the appropriate adjustment, if any, to be made to the Contract Price and/or the relevant Contract Quantity as we will reasonably consider appropriate to account for the diluting or concentrative effect of the adjustment or otherwise necessary to preserve the economic equivalent of the rights and obligations of the parties under the relevant Share CFD, Index CFD or Index Futures CFD immediately prior to such event. Such adjustment will be effective from the date determined by us.
- (h) The events to which paragraph (g) in this clause refers are the declaration by the issuer of the Security of the terms of any of the following:
- (i) subdivision, consolidation or reclassification of the Security, or a free distribution of shares or units, as the case requires, to existing holders by way of bonus, capitalisation or similar issue;
  - (ii) distribution to existing holders of the Security, other shares, units or securities granting the right to payment of dividends, distributions and/or proceeds of liquidation of the issuer equally or proportionately with such payments to holders of the Security, or securities, rights or warrants granting the right to a distribution of shares, units or securities or to purchase, subscribe, or receive shares, units or securities, in any case for payment (in cash or otherwise) at less than the prevailing market price per share, unit or security as determined by us;
  - (iii) any event in respect of the shares analogous to paragraph (h)(i) or (ii) above or otherwise having a diluting or concentrative effect on the market value of the Security.
- (i) If at any time a takeover bid is made, or a scheme of arrangement is proposed, in respect of a Security, then, subject always to your right to close the position, at any time prior to the closing date of such offer in the case of a CFD on a single Security, we may give notice to you of our intention to close any relevant CFD, in which case the provisions of such notice and clause (g) of this Agreement will apply.
- (j) If a company, whose Security forms the basis of a CFD on a single Security, goes into insolvency or is otherwise dissolved, we will close such CFD and the date of such insolvency or dissolution will be the Closing Date. The Contract Value of such CFD will be determined by us in good faith.
- (k) Any adjustment or amendment of the Contract Price and the Contract Quantity made by us under this paragraph clause, subject to paragraph (a), will be entered on the Account with effect immediately after Close of Business on such Business Day and will be conclusive and binding on you except in the case of manifest error.
- (l) No adjustments will be made in relation to any CFD in respect of any events occurring after the closing of such CFD.
- (m) Reference to any "takeover bid" in this clause 7 will have the meaning set out in such code or regulations as are applicable to takeovers and mergers (as amended from time to time).

## **8. OPENING A POSITION**

### **8.1 No rights in Underlying Instrument**

A Position does not entitle you to any rights in relation to the Underlying Instrument being traded and you will not be entitled to delivery of the Underlying Instrument; nor will you acquire any ownership or other such rights in relation to it.

### **8.2 Opening a position using our Trading Platform**

- (a) You will be able to open or close a Position and execute Limit Orders and Stop Loss Orders on a Position opened with us via our Trading Platform.
- (b) We will have no liability to you if any internet connection is lost with the result that you are unable to trade at any given price.
- (c) We do not warrant that the Trading Platform will always be available or accessible when the exchanges on which the underlying instruments in respect of which you have traded or wish to trade are open and we reserve the right to remove altogether or reduce the Trading Platform Service at any time for any purpose, without thereby incurring any liability to you.
- (d) If our computer records are at variance with your own records or recollection of your trading, the version of events recorded contemporaneously by our computer will prevail and our obligations to each other (including the obligation to pay any money) will be assessed and calculated on the basis that our contemporaneous computer records are correct and are conclusive evidence of the matters they record.

### 8.3 Telephone and Email Instructions

- (a) You may not request a quote to open or close Position or otherwise give trading instructions by telephone.
- (b) Where we suffer server or communications issues, you may submit Trades or instructions to open, close or modify a position by emailing support@ecntrade.com.au This privilege is granted only on verification of your registered email address with us and will not be instantaneous but will be back dated to the time the instruction was received.

### 8.4 Nature of quote

If you indicate that you wish to trade at the price quoted you will be deemed to be making an offer to trade at the quoted price on our platform which will subsequently confirm or reject that offer. No trade will be effective unless and until such Confirmation is given.

### 8.5 Formation of Contract

Your clicking 'buy' or 'sell' or accepting a quote to buy or sell indicating that you wish to trade on the terms and conditions indicated. This message will constitute an offer by you to buy or sell at the price and trade size chosen. If we accept the trade we will send you a message to this effect via the platform. Your trade will not have been placed and no contract will come into existence until we send this message to you. You must wait for this message to appear after sending a 'buy' or 'sell' message and should you not receive this within two minutes you must notify us as soon as possible. If you do not receive our Confirmation and you do not notify us as required, you will be deemed to have agreed only to the transactions recorded by us. Similarly, if you dispute the contents of any Confirmation sent by us to you, you must notify us as soon as possible upon receipt by telephone or email only; if you do not, the transactions recorded by us will be deemed to have been agreed by you.

### 8.6 Currency

All trades will be conducted in the currency appropriate to the Position and will be converted into your specified Base Currency at the current brokers rate and posted via the platform.

### 8.7 Base Currency payments

All payments made by you to us and by us to you will be in your specified Base Currency that is accepted by the broker unless otherwise agreed.

### 8.8 Position duration

With the exception of Index Future CFDs, and Commodity CFDs, a Position has no inherent limit to its duration and, subject to the payment of Margin and other relevant sums, can continue indefinitely. Any Position opened by you may be closed by us at the prevailing rate if there is an Event of Default, or in the case of a Share CFD the underlying instrument ceases to be traded for any reason referred to in this Agreement.

### 8.9 Opposing positions

- (a) You may run opposing positions in Margin FX Contracts in the same currency pair and a Position in a market where you have an opposing Position already opened. Both long and short positions will appear in your trade account and they will be treated as two open positions.
- (b) If you have more than one open Position in the same market, closing trades will apply to them on a first opened first closed basis, unless otherwise agreed by us.

- (c) You may run opposing positions in the same market. If you have more than one open Position in the same market, closing trades will apply to them on a first opened first closed basis, unless otherwise agreed by us.

#### 8.10 **Difference in buy and sell prices**

You understand there may be a wider difference between 'buy' and sell' prices you are quoted on closing a Position than when it was opened.

#### 8.11 **Profit and losses**

You further understand that a payment will pass between us equal to the difference in value expressed in your specified base currency between the opening price of all Positions and their closing prices. If you make a profit we must pay a sum to you equal to that profit. If you make a loss you must pay to us a sum equal to that loss.

### 9. **PRICING**

#### 9.1 **Quotes**

We will quote prices which provide an indication of the prices at which we are prepared to deal with you and which are calculated in accordance with clause 9.8 for Margin FX Contracts and clauses 9.4, 9.5, 9.6 and 9.7 for CFDs. You should note that:

- (a) **Market maker:** we act under this Agreement as a market maker, and accordingly, set the applicable price at which we are prepared to deal with you;
- (b) **Other prices:** prices that may be quoted or traded upon from time to time by other market makers or third parties do not apply to trades and dealings between us and you; and
- (c) **Different prices:** we, in our absolute discretion, may quote different prices to different clients and trade at different prices with different clients;
- (d) **Underlying Instrument:** neither you nor us:
  - (i) acquire any interest in, or right to acquire any Underlying Instrument; and
  - (ii) is obliged to sell, purchase, hold, deliver or receive any Underlying Instrument;
- (e) **Make and receive payments:** the rights and obligations of you and us under Margin FX Contracts or CFDs are principally to make and receive such payments as are provided in this Agreement and any Margin Contract or CFD.

#### 9.2 **Amended Quotes and Margin Contracts outside the Normal Trading Size**

When you make a request to place an order, we may:

- (a) provide an amended quote of the Contract Price originally quoted by our Trading Platform; and/or
- (b) make the quote subject to special conditions and requirements;

as we consider fair and reasonable and as notified to you by us at the time of the order being considered by us. This may occur, for example, when you place an order outside the Normal Trading Size, or the aggregate of your order and all other orders for a Margin Contract or CFD is outside the Normal Trading Size, or to take account of any change in market conditions since the original quote. Such amended Contract Price will be determined by us as we consider fair and reasonable having regard to the applicable prices and costs of entering into a transaction of that size on the relevant market. You will not be obliged to proceed with any order for which special conditions and requirements are notified to you by us. For example, we may quote a revised price applicable to the proposed Margin Contract or CFD which you may, at your absolute discretion, accept or reject. The amended quote may no longer be available if there is any delay in acceptance.

#### 9.3 **Minimum Trading Size**

The size of your Margin FX Contracts or CFDs must equal or exceed the Minimum Trading Size.

#### 9.4 **Share CFDs and Index CFDs**

##### (a) **Contract Unit**

- (i) **Shares:** Where the Share CFD is based on a single Security, the Contract Unit will be one share (or other registered instrument) and we quote prices in the relevant currency per share.
- (ii) **Indices:** Where the Index CFD is based on an Index, the Contract Unit will be the points total of the relevant Index and we quote prices in the relevant currency of the Index at x currency units per point where x depends on the relevant currency and is specified in our Product Schedule on the website.

**(b) Our Pricing**

- (i) **Our Product Schedule:** we will only quote prices for Share CFDs on a single Security where such Security is included on the relevant ECN Trade Product Schedule, to which the following provisions apply:
- (A) The Securities contained on the relevant ECN Trade Product Schedule will be defined with reference to criteria displayed from time to time on our website.
  - (B) We may amend the criteria for any ECN Trade Product Schedule, such amendment to take effect immediately, save where it reduces the ECN Trade Product Schedule, in which case it will take effect not less than 7 days after such amendment is made.
  - (C) We may amend the list of Securities to which the criteria apply and which are contained on any ECN Trade Product Schedule with immediate effect by amending the list of Securities for which prices are quoted on our website. Such amendment will be made in accordance with, and as soon as reasonably practicable after, any amendment to the equivalent published list of the relevant exchange.
  - (D) It is your responsibility to monitor the equivalent published list of the relevant exchange and to assess the likelihood of the Securities which form the basis of your orders and open positions continuing to meet the criteria for the relevant ECN Trade Product Schedule.
  - (E) Where a Share CFD is based on a single Security and that Security is withdrawn from the ECN Trade Product Schedule under paragraph 9.4(b)(i)(B) of this Agreement, we will be entitled without prior reference to you, to close out the Share CFD with effect from close of trading on the relevant exchange on the last Business Day for which the Security was included in the relevant ECN Trade Product Schedule.
- (ii) **Traded Securities to which Limited Hours Trading applies:** The Contract Price of a Share CFD on a single exchange traded Security to which Limited Hours Trading applies will be a bid or offer price (whichever is applicable) calculated by us by applying our Spread to the current mid-market price of the relevant Security quoted on the relevant exchange.
- (iii) **Traded Securities to which Limited Hours Trading does not apply:** The Contract Price of a Share CFD on a single exchange-traded Security to which Limited Hours Trading does not apply will be a bid or offer price (whichever is applicable) calculated by us by applying our Spread to the market price determined by us to be fair and reasonable having regard to the current mid-market price of the relevant Security quoted on any relevant exchange or, if not available, any one or more of the following:
- (A) the most recent mid-market price of the relevant Security quoted on any relevant exchange;
  - (B) the current price of any Related Security quoted on any relevant exchange;
  - (C) price movements of any other Security or Related Security within the business sector in which the Security is classified;
  - (D) movements in the points total of any Related Index;
  - (E) any other matter reasonably considered by us to be appropriate, including but not limited to foreign exchange costs and tax considerations.

**(iv) Indices**

The Contract Price of an Index CFD will be a bid or offer price (whichever is applicable) calculated by us by applying our Spread to the market price determined by us to be fair and reasonable having regard to the current price of any Related Index Futures Contract and any other matter reasonably considered by us to be appropriate.

**9.5 Index Futures CFDs**

- (a) **Contract Units:** The Contract Unit of an Index Futures CFD will be the points total of the relevant Equities Index Futures Contract and our quoted prices in the relevant currency of the Equity Index Futures Contract at the relevant currency amount per index point.
- (b) **Our pricing:**
- (i) The Contract Price of an Index Futures CFD will be the bid or offer price (whichever is applicable) calculated by us by applying our Spread to the mid-market price of the relevant Equities Index Futures Contract on the relevant exchange.

- (ii) If the Specified Date of an Index Futures CFD is other than a date generally quoted in the market, we will calculate the relevant Exchange Rate from the available exchange prices for other value dates as we consider fair and reasonable.

#### 9.6 Bullion CFDs

(a) **Contract Unit:** The Contract Unit of a Bullion CFD will be one ounce of the relevant metal (gold or silver) and we quote prices in the customary currency of the relevant market per ounce.

(b) **Our pricing:**

The Contract Price of a Bullion CFD will be a bid or offer price (whichever is applicable) calculated by us by applying our Spread to the Interbank Rate.

#### 9.7 Commodity CFDs

(a) **Contract Unit:** The Contract Unit of a Commodity CFD will be 1 unit (e.g. one ounce, pound or barrel) according to the custom of the relevant market and we quote prices in the customary currency of the relevant market per unit.

If, in accordance with the custom of the relevant market, prices for a commodity are quoted in different currencies in different markets, you may request us to quote a price for the Commodity CFD in any of the customary currencies.

(b) **Our pricing:**

(i) The Contract Price of a Commodity CFD will be a bid or offer price (whichever is applicable) calculated by us by applying our Spread to the last traded price of the relevant Underlying Instrument (being a futures contract over a commodity) on the relevant exchange.

(ii) If, in accordance with the custom of the relevant market, prices for a Commodity are quoted in different currencies in different markets, you may request us to quote a price for the Commodity CFD in any of the customary currencies.

#### 9.8 Margin FX Contracts

(a) The Contract Unit of a Margin FX Contract will be one currency unit of the primary reference currency.

(b) Our pricing:

(i) The Contract Price of a Margin FX Contract will be a bid or offer price (whichever is applicable) calculated by us by applying our Spread to the Interbank Rate.

(ii) If the Specified Date of a Margin FX Contract is other than a date generally quoted in the market, we will calculate the interbank Rate from the available market prices for other value dates as we consider representative, fair and reasonable.

#### 9.9 Your choice to deal

Except where:

- (a) we exercise any of our rights to close out a Margin FX Contract or CFD; or
- (b) a Margin FX Contract or CFD closes automatically;

it is your responsibility to decide whether or not you wish to deal at those prices. If you decide to deal at the prices indicated by us, you may make an offer to us to deal at that price. We may choose, in our absolute discretion, whether to accept or reject any offer to deal made by you.

#### 9.10 Errors in prices

It is possible that errors may occur in the prices of Margin FX Contracts or CFDs quoted by us. In such circumstances, without prejudice to any rights we or you may have under statute or common law, neither of us will be bound by any Margin FX Contract or CFD which purports to have been made (whether or not confirmed by us) at a price which was, or ought reasonably to have been, known to either party to be materially incorrect at the time of the Margin FX Contract or CFD. The party asserting that the Margin FX Contract or CFD is avoided under this clause 9.10 must give notice to the other within three (3) Business Days of the relevant Margin FX Contract or CFD being entered into. If you give notice to us under this clause, we will determine in our sole discretion, acting fairly and reasonably, whether the price quoted was materially incorrect.

#### 9.11 Loss or damage

Except in the case of fraud, we do not accept any liability for any loss or damage suffered by you as a result of your reliance on a price which you knew, or ought reasonably to have known, to be materially incorrect.

**9.12 Change in Spread**

We will not be bound by any Margin FX Contract or CFD which is executed at a price which varies from our Spread at the time of execution as a result of you affecting, modifying or using our Electronic Service in such a way that it fails to show changes in our Spread that have occurred since you first placed the order or in any other way that results in the transaction being based on an abnormal price in relation to market or trading conditions. We will give you notice within a reasonable period not exceeding 10 Business Days after the order has been placed if the Margin FX Contract or CFD is avoided by us under this clause 9.12.

**10. MARGIN**

**10.1 Payment and maintenance of Margin**

You must provide to us and maintain on your Account at all times margin as follows:

**(a) Margin at time of transacting**

At the time of each transaction, you will have margin on the Account (Initial Margin) at least equivalent to:

**in the case of Share, Index, Bullion, Index Future CFDs and Margin FX Contracts**

Initial Margin requirement = (Quantity of Contract Units x Contract Price) x Margin Percentage

**in the case of Commodity CFDs**

Initial Margin requirement = (Margin Percentage x Contract Price/Minimum Point Increment) x Quantity of Contract

| Underlying Asset of CFD       | Required Initial Margin (as % of CFD's notional value) |
|-------------------------------|--|
| Major currency pair           | 3.33%  |
| Major stock market index      | 5%   |
| Minor currency pair           | 5%   |
| Gold                          | 5%   |
| Minor stock market index      | 10%  |
| Non-gold commodity            | 10%  |
| Crypto asset                  | 50%  |
| Other Assets not listed above | 20%  |

**(b) Margin while Positions open**

In addition to Initial Margin you must have in respect of all open positions on the Account in relation to Margin FX Contracts and CFDs where the current Contract Price will equal the bid or offer Contract Price then being quoted by us and calculated under clauses 9.4 to 9.8 of this Agreement. The amount of margin on the Account at any time will be determined as if such payments as are due under this clause 10 of this Agreement were calculated and deducted from the Account on an ongoing basis during the day based upon the current bid or offer Contract Price (as applicable) from time to time.

**11. YOUR OBLIGATION TO MONITOR AND PAY MARGIN**

**11.1 Your obligation to pay**

You must pay to us:



- (a) such sums by way of deposits or Margin as we may require under this Agreement, including but not limited to such Margin calculated by reference to this Agreement, the PDS, and in order to always maintain the Minimum Equity Balance;
- (b) such sums as may from time to time be due to us under a Margin Contract (including, without limitation, charges specified in our PDS from time to time) and such sums as may be required in or towards clearance of any debit balance on any Account;
- (c) such sums as we may from time to time require as security for your obligations to us; and
- (d) for the avoidance of doubt, the Margin calculation provisions in this Agreement in respect of Margin Contracts are cumulative. Your Margin requirement is the total of all such calculations.

We note that there are new initial margin requirements pursuant to the ASIC Product Intervention Order 2020/986. Please see clause 10.1 for more details.

#### 11.2 Collateral

We do not accept other forms of Collateral as per our regulatory obligations for Account Funding.

#### 11.3 You must monitor Margin

- (a) Through the Electronic Facility we will provide you with access to your Account and sufficient information to enable you to calculate the amount of any margin required by us under this Agreement and notify you of the total amount of Margin due from you in the Base Currency using our Exchange Rate.
- (b) It is your responsibility to monitor at all times the amount of Margin deposited with us from time to time against the amount of any Margin currently required under clauses 11.1 and 10.1 of this Agreement and any additional Margin that may be necessary or desirable, having regard to such matters as:
  - (i) your open Positions;
  - (ii) the volatility of any relevant Underlying Instrument;
  - (iii) the volatility of the relevant market;
  - (iv) the volatility of the markets generally;
  - (v) any applicable exchange rate risk; and
  - (vi) the time it will take for you to remit sufficient cleared funds to us.
- (c) **Changing Margin Percentage:** You agree and acknowledge that we may in our absolute discretion vary the Margin Percentage. The Margin Percentage, as varied, may apply to existing open Positions as well as new open Positions, at our absolute discretion.
- (d) **Timing of changes to Margin Percentage:** You agree and acknowledge that any variation of the Margin Percentage under paragraph 11.3(c) of this Agreement may take immediate effect on and from you being given oral or written notice of the variation in accordance with this Agreement.
- (e) **No obligation to make Margin Call:** Subject to paragraph 11.3(f) of this Agreement, you waive any right you may have to receive a margin demand, call or notice from us. We may (but are not required to) make a margin demand, call or notice. But this waiver is not at any time invalidated if a demand, call or notice is made or given by us to you at any time.
- (f) **No online access:** Where we are not able to provide you on-line access through the Electronic Facility to information on the Account due to circumstances that are reasonably within our control, we will use reasonable endeavors to make a margin demand. You accept that in extreme circumstances where your open Positions are moving or have moved particularly quickly against you, we may not provide a margin demand before exercising our rights to close out your Positions under this Agreement.

#### 11.4 When your liability to pay Margin accrues

You agree and acknowledge that:

- (a) **time:** your liability to pay Margin in relation to a Margin Contract or CFD accrues at the time the transaction takes place and continues to accrue throughout the term of the Margin Contract or CFD in respect of Margin that you must maintain from time to time in respect of the Margin Contract or CFD;
- (b) **liability accrues:** such liability accrues whether or not a Margin demand, call or notice is received from us, and if a Margin demand, call or notice is received, irrespective of the time the margin demand, call or notice is received; and

- (c) **no limitation of liability:** your liability in respect of Margin demands, calls and notices and any other amounts due and owing under this Agreement is not limited to the amount if any, deposited with us.

#### 11.5 **Time allowance for forwarding Margin**

We are not obliged to allow you time to forward further funds to meet such Margin as is required under this clause 11.5 before exercising our right to close out your Positions. However, where we, in our absolute discretion, do allow you time to meet your Margin requirements, that permission will only be effective once it is confirmed in writing by us, and only to the extent specified in the written notice given by us.

### 12. **CLOSING A MARGIN FX CONTRACT OR CFD**

#### 12.1 **When can a Margin FX Contract or CFD be closed?**

A Margin FX Contract or CFD may be closed out if:

- (a) You give instructions to close a Margin FX Contract or CFD and the underlying market is open
- (i) Single Position Closing: a single open trade Position can be closed by choosing the close button when you execute the trade online; or
- (b) We may exercise any of our rights under this Agreement to close a Margin FX Contract or CFD at any time before the Contract closes automatically under clause 12.2.

#### 12.2 **Automatic closure**

A Margin FX Contract or CFD will close automatically on the fifth yearly anniversary of the date on which the Contract was first entered into.

Due to margin close out protections rules pursuant to the Product Intervention Order 2020/986, we are also required to automatically close out any open CFDs if your net equity falls below 50% of the initial margin requirements outlined in clause 10.1(a). We are obliged to keep closing out CFDs until either your net equity is more than 50% of the minimum margin requirements, or until you have no more open CFDs.

#### 12.3 **Time limits for closing**

Details of the last day and time for closing out a Margin Contract or CFD, are available on request. It is your responsibility to be aware of the last day and time for closing out a particular Margin Contract or CFD,

#### 12.4 **Method of closing Margin Contracts by us**

We may exercise any of our rights under this Agreement to close a Margin Contract, irrespective of the date on which either Margin Contract closes, automatically under clause **Error! Reference source not found.** of this Agreement.

#### 12.5 **Contract Price at closing**

Where:

- (a) we exercise any of our rights under this Agreement to close a Margin Contract or CFD; or
- (b) a Margin FX Contract or CFD, closes automatically under clause 12.2 of this Agreement, we will determine the Contract Price at the time of closing in accordance with the current prices then being quoted by us, but except where the Margin FX Contract or CFD to be closed is outside the Normal Trading Size where our Spread used in calculating the Contract Price will not exceed 20% or one cent (or equivalent currency unit), whichever is the greater.

#### 12.6 **Contract Value at closing**

A Margin FX Contract or CFD will close at the Contract Value at the time of closing as calculated by us, which will equal:

Contract Price x Contract Quantity

and as notified to you.

#### 12.7 **Closure during Business Day**

Where a Margin FX Contract or CFD has been closed out during a Business Day, clauses 12.2 and 12.3 of this Agreement will continue to apply to your long and short positions in the particular Underlying Instrument until Close of Business on such Business Day and will apply to the balance of your outstanding long or short Position (if any) in the relevant Underlying Instrument with effect immediately after Close of Business on such Business Day.

#### 12.8 **Timing of payments**

Any payment due by either us or you under this clause 12 in respect of dates on or after the Closing Date will be made by us adjusting the Account at Close of Business on the Settlement Date.

#### 12.9 **Automatic closure: Margin FX Contracts and CFDs**

Subject to clauses 12.10 and 12.11, Margin FX Contracts and CFDs close automatically at Close of Business on each Business Day and are to be replaced by an equivalent Contract with effect immediately after Close of Business on that Business Day, and this will not affect the automatic closing of a Contract under clause 12.2, with effect that the 5 year period will run from the date on which the Contract was first entered into and when such Contract closes automatically under clause 12.2 will not be reopened in accordance with this clause 12.9.

#### 12.10 **Closure: long and short contract**

If you are long and/or short a Margin FX Contract or CFD, with effect immediately after Close of Business on the Closing Date, we will close the relevant long and short Positions and record in your Account the balance, if any, of your then outstanding long or short Position in the Contract, as appropriate. If there is more than one Contract in relation to the particular Underlying Instrument, or in the case of Index Future CFDs in relation to the Underlying Instrument with the same Specified Date, we may close out whatever Contract we consider appropriate.

#### 12.11 **Closure: two or more Margin Contracts**

Where you have two or more Margin Contracts:

- (a) which are in respect of the same Underlying Instrument; and
- (b) where you are in the Margin Contracts as either the Long Party or the Short Party; we will with effect immediately after Close of Business on each Business Day rollover such Margin Contracts with the same Margin Contract equivalent to the total of the Contract Quantities of each Margin Contract. The date on which such replacement Margin Contract will expire automatically under clause 12.2 will be the latest of the expiry dates of each of the original Margin Contracts.

### 13. **CLOSE OF BUSINESS ACCOUNTING**

#### 13.1 **When we account**

Commencing at Close of Business on the date of the transaction and at Close of Business on each subsequent Business Day during the terms of the Margin Contracts, (including the Closing Date), we will account under this clause 13.

#### 13.2 **Contract Value**

We will calculate the Contract Value, which will equal Contract Price x Contract Quantity.

#### 13.3 **Contract Value at close**

At the time of closing we will calculate the Contract Price in accordance with the following:

- (a) Share CFDs: the Contract Price of a Share CFD will equal the mid-market price of the relevant Security at the close of trading on the relevant exchange on such Business Day. But if the Contract Price is determined on a day on which the exchange on which the relevant Security has its primary listing is closed it will equal the mid-market price of the relevant Security at the close of trading on the preceding Business Day on which such exchange was open.
- (b) Index CFDs: the Contract Price of an Index CFD is the bid or offer price (whichever is applicable) calculated by us by applying our Spread to the market price determined by us to be fair and reasonable having regard to the current price of any Related Index Futures Contract and any other matter considered by us to be relevant.
- (c) Index Futures CFD: the Contract Price will be the mid-market price calculated in accordance with clause 9.5 (pricing)
- (d) Bullion CFDs: the Contract Price will be the mid price calculated in accordance with clause 9.6.
- (e) Commodity CFDs: the Contract Price will be mid price calculated in accordance with clause 9.7.
- (f) Margin FX Contracts: the Contract Price will be the mid price calculated in accordance with clause 9.8.

#### 13.4 **Valuation**

If on the date of the transaction:

- (a) the current Contract Value exceeds the Opening Value, the Short Party will pay to the Long Party such excess;

- (b) the Opening Value exceeds the current Contract Value, the Long Party will pay to the Short Party such excess.

If, on any Business Day during the term of the Margin FX Contract or CFD, (including the Closing Date):

- (c) the Contract Value exceeds the Contract Values on the preceding Business Day, the Short Party will pay to the Long Party such excess;
- (d) the closing Contract Value on the preceding Business Day exceeds the current Contract Value, the Long Party will pay to the Short Party such excess.

### 13.5 **Financing Charge: Share CFDs**

- (a) Where you are the Long Party in a Share CFD and interest is payable by you (Financing Charge) we will debit from the Account an amount equivalent to the overnight interest to the next Business Day equal to the Relevant Interest Rate plus the relevant Interest Percentage on the Contract Value. Such debit amount will accrue for each day or part day (taking the annual rate divided by 365 or 360 according to relevant market practice) up to and including the settlement date.
- (b) Where you are the Short Party in a Share CFD and interest is payable to you (Financing Benefit) we will credit to the Account an amount equivalent to overnight interest to the next Business Day equal to the Relevant Interest Rate minus the relevant Interest Percentage on the Contract Value. Such credit amount will accrue for each day or part day (taking the annual rate divided by 365 or 360 according to relevant market practice) up to and including the settlement date.

### 13.6 **Daily Rollover of Margin FX Contracts and CFDs** (other than Share CFDs & Excepted Contracts)

When you hold a Position or Positions overnight in a Margin FX contract or CFD (other than an Excepted Contract) they will be rolled to the next Business Day which will result in you paying a Rollover Charge or receiving a Rollover Benefit at the ECN Trade Rollover Rate and the amount depends on our Rollover Rate, being the rates at which you receive or pay interest on Positions that remain open overnight. (This is a varying rate dependent upon the applicable rate in the Interbank Markets for the currencies or Bullion, the duration of the rollover period, the size of the Position and the ECN Trade Spread that is applied at our discretion.).

The operation of this clause 13.6 is subject to clauses 13.8, 13.9, 13.10 and 13.11.

### 13.7 **Entitlement**

If you are long on a Margin FX Contract you may either receive a Rollover Benefit or pay a Rollover Charge, depending on the currency you are long, subject to clause 13.8 and if you are short on a Margin FX Contract you may either pay a Rollover Charge or receive a Rollover Benefit, depending on the currency you are short, subject to clause 13.8.

### 13.8 **Long Margin FX Contracts**

If you are long on a Margin FX Contract where the bought currency interest rates are higher than the sold currency interest rates you will receive interest at the Rollover Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the higher yielding currency. On the other hand, if you are long on a Margin FX Contract where the bought currency interest rates are lower than the sold currency interest rates then you will pay interest at the Rollover Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the lower yielding currency.

### 13.9 **Long Bullion CFDs**

If you have a long US dollars/short Bullion position and interest rates in the USA are higher than the Bullion Rollover Rate you will receive a Rollover Benefit at the ECN Trade Bullion Rollover Rate if you hold the position overnight and do not close it before settlement time. This is because you are holding the lower yielding asset.

### 13.10 **Short Margin FX Contracts**

If you are short on a Margin FX Contract where the sold currency interest rates are higher than the bought currency interest rates you will pay interest at the Rollover Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the lower yielding currency. On the other hand, if you are short on a Margin FX Contract where the sold currency interest rates are lower than the bought currency interest rates then you will receive interest at the Rollover Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the higher yielding currency.

### 13.11 **Short Bullion CFDs**

If you have a short Australian dollars/short Bullion position and interest rates in the USA are higher than the Bullion Rollover Rate you will pay a Rollover Charge at the ECN Trade Bullion Rollover Rate if you hold the position overnight and do not close it before settlement time. This is because you are holding the higher yielding asset.

#### 13.12 **Revaluation of positions affected by Limited Hours Trading**

You acknowledge that any reduction by the application of Limited Hours Trading under this Agreement has the result that open positions will be marked to market after close of trading on the primary exchange and your Margin requirement will vary accordingly. If you do not wish to accept this additional risk, you may close out any affected Contract at any time before the relevant underlying exchange or market is closed.

#### 13.13 **Settlement**

Payments will be settled by us each day by debiting or crediting your Account with the Rollover Benefit payable by us and the Rollover Charge payable by you. In the event that there are insufficient funds in your account, you acknowledge that any amount due under this clause is a debt due and owing by you to us.

#### 13.14 **When we make accounting payments**

Any payments due under this clause 13 will, subject to clause 16.2 of this Agreement, will be made by us adjusting the Account with effect immediately after Close of Business on the relevant Business Day.

### 14. **STOP LOSS ORDERS & LIMIT ORDERS**

#### 14.1 **Availability of Orders**

Stop Loss Orders and Limit Orders are only available on selected instruments. We may refuse to accept any Stop Loss Orders or Limit Orders on any Trade. Such orders as we do accept may be placed or (save in the case of a Stop Loss Order which we impose, see clause 14.4) cancelled at any time during the trading hours of the exchange on which the underlying instrument is traded. The price that Stop Loss Orders and Limit Orders can be placed will vary at our absolute discretion.

#### 14.2 **Margin requirements to fill orders**

An order which involves an instruction to us to open a Trade above a certain price will not ordinarily be filled unless at the time when the price reaches the relevant limit your Account contains sufficient trading resources to cover the initial Margin for the Trade which is to be opened. We may, however, at our discretion proceed to fill such an order notwithstanding that your account has insufficient trading resources to cover the initial Margin for the Trade which is to be opened. In such circumstances we reserve the right at any time after the opening of the Trade to require you to deposit cash in the amount of the required initial Margin for that Trade. Any such further cash deposits will be payable as Margin in accordance with the provisions of clause 10. A failure to make payment in the time and manner required will be an Event of Default. We reserve the right to refuse to open a Trade in accordance with a Limit Order if:

- (a) there has been an Event of Default; and
- (b) in any other circumstances where we would be entitled to close the Trade if it had already been opened.

#### 14.3 **Liability for losses arising from orders**

You will remain liable for any losses on your account which may be realised as the result of the filling of an order, regardless of the trading resources available on your account at the time the order was filled.

#### 14.4 **Our right to impose a Stop Loss Order**

We may impose a Stop Loss Order on any of your open trades where we believe such action is necessary or desirable to limit the losses on any of your positions including, but without limitation where:

- (a) we have any reason whatever to think that you will not pay us any money that is or may become due to us; or
- (b) you make any statement to us which we have reason to believe is or may not be true; or
- (c) you fail to do anything that you have undertaken to us that you will do; or
- (d) we are having difficulty in communicating with you and there are grounds for believing that this is because you have failed to take reasonable care to ensure that you are contactable by us at all times. Such grounds will arise if (whether or not in order to make a Margin Call) we dial all the telephone numbers given by you to us but are unable to speak to you personally and:
  - (i) we leave a message on any message-taking facilities offered but we do not hear from you within 30 minutes of leaving the message (or, if we leave more than one, the first message we leave,

although if we leave or attempt to leave a message, either with a person who offers to take a message or on an automated message-taking Service but for any reason it does not reach you we will nonetheless be deemed to have left a message for you); or

- (ii) no message-taking Services are offered and we dial all the numbers given by you again after a period of not less than 30 minutes and are still unable to speak with you at once.

#### 14.5 **Informing you of orders we impose**

We will, as soon as is reasonably practicable after imposing a Stop Loss Order, attempt to inform you of it by telephoning, text or emailing you on the contact details that you leave with us and;

- (a) informing you personally of the Stop Loss Order or if this is not possible by;
- (b) leaving a message if, and only if, there is an automated message-taking facility or a person who offers to take such a message for you. If a message is left, it will be deemed to have reached you whether or not it has in fact done so. We will also send written notification to you by post and/or email at the addresses that you have given to us. We are under no obligation to take any other steps to inform you of the Stop Loss Order and a failure for any reason to inform you of the imposition of a Stop Loss Order will not affect the validity or enforceability of that Stop Loss Order.

### 15. **OUR RIGHT TO LIMIT OR CLOSE YOUR POSITIONS**

#### 15.1 **Our right to limit or close your Positions**

We may, whether without prior demand, and in addition to any other right we may have under this Agreement:

- (a) close out all or part as we reasonably consider appropriate, your open Positions; or
  - (b) limit the size of your open Positions either in monetary terms or in number of Margin Contracts (net or gross); or
  - (c) refuse orders to establish new Positions;
- if:
- (d) we reasonably consider that there are abnormal trading conditions;
  - (e) we reasonably consider it necessary for the protection of our rights under this Agreement;
  - (f) we are unable to make prices in the Margin Contract due to the unavailability of the relevant market information for reasons beyond our control;
  - (g) we consider that you may be in breach of any Applicable Law;
  - (h) we are so requested by ASIC or any other regulatory body or authority;
  - (i) any of the circumstances set out in paragraphs (c) to (v) of the definition of Specified Event apply to you;
  - (j) you fail to provide any Margin, deposit or other sum due under this Agreement in respect of any Margin Contract; or
  - (k) Margin moneys held by us in respect of any open Positions which has been purchased on Margin fall below our Margin requirements;
  - (l) we exercise our right to vary this Agreement in accordance with clause 18;
  - (m) the aggregate of your order and all other orders for a Margin Contract is outside the Normal Trading Size;
  - (n) a Position Limit is or is likely to be exceeded; or
  - (o) your net equity falls below 50% of the initial margin requirements outlined in clause 10.1(a).

#### 15.2 **Rights not restricted by taking orders**

Our rights under paragraph 15.1(a) are not affected or restricted because we have accepted an order or orders which result in you exceeding a Position Limit.

#### 15.3 **Proceeds may offset amounts owing to us**

If we exercise our right to close out all or part of any open Position, we may apply any proceeds to payment of any amounts due to us by you, whether under this Agreement or otherwise.

#### 15.4 **Your acknowledgement**

You acknowledge that we may close out your positions and in what proportion that we decide in our absolute discretion, and including where your account to us is in deficit.

**15.5 Our limiting/closing of positions does not affect Margin obligations**

You must still, however, comply with your obligations to maintain the necessary Margin requirements under this Agreement. In the event that you continue to trade outside the necessary Margin requirements under this Agreement, you remain liable for the full debit balance on the Account arising from your trading.

**16. PAYMENTS**

**16.1 Your payments must be the full amount**

When you make any payment, which is subject to any withholding or deduction under this Agreement, you must pay to us an amount that ensures that the amount actually received by us is equal to the full amount we would have received had no withholding or deduction been made.

**16.2 Payments we owe you and you owe to us are offset**

- (a) If on any day, the same amounts are payable under this Agreement in respect of the same account by either you or us to the other in the same currency, then, on such date, each of our obligations to make payment to such amount will be automatically satisfied and discharged.
- (b) On the other hand, if the aggregate amount that is payable by one of us exceeds the aggregate amount that is payable by the other in the same currency, then the one who has to pay the larger amount must pay the excess to the other, and the obligations to make payment of each party will be satisfied and discharged.

**16.3 Payment of amounts due to us**

Unless otherwise provided in this Agreement, all amounts due to us will, at our option:

- (a) be deducted from any funds held by us for you; or
- (b) be paid by you in accordance with this Agreement.

**16.4 Withdrawing credit from your Account**

When your Account is in credit, you may request us to effect payment by means of the amount in credit of such amount as you may specify. But, we may at our discretion withhold from the amount of the credit balance if:

- (a) any overnight position on your Account shows a notional loss;
- (b) we reasonably consider that further amounts may be required to meet any current or future Margin requirement on open Positions due to underlying market conditions;
- (c) if you have any contingent liability to us (or to any of our associates), in respect of any other Account open with us;
- (d) we reasonably determine that there is an unresolved dispute between us and you in connection with this Agreement or any Margin Contract or CFD; or
- (e) we consider it necessary to withhold such an amount to comply with our regulatory or legal obligations, and we will, except where clause 16.4(e) applies, notify you as soon as reasonably practicable if we decide to take such action.

**16.5 No security interests created**

Nothing in this Agreement is intended to create or does create in favour of either of us any mortgage, charge, lien, pledge or other security interest in any cash or other property transferred by one to the other under any Margin Contract or CFD.

**16.6 Payments transferred must have free title**

Each of us agrees that all rights, title and interest to and in any payment which it transfers to the other in respect of a Margin Contract or CFD under this Agreement vests in the recipient clear of any liens, charges, encumbrances or other interest of the transferor or any third party.

**17. DEFAULT**

**17.1 Actions we may take if you are in default**

Upon the happening of a Specified Event, we may at our option, without prior notice to you and without being responsible for the consequences, take any of the following actions:

- (a) sell or charge in any way any or all of your assets and property which may from time to time be in our possession or control;
- (b) call on any guarantee in respect of your obligations;
- (c) require you immediately to close out and settle a Margin Contract or CFD in such manner as we may request;
- (d) enter into any transaction at such rates and times as we may determine in order to meet any obligations you may have incurred under a Margin Contract or CFD;
- (e) combine, close or consolidate any of the Accounts maintained by you and off-set any and all amounts owed to, or by, us in such manner as we may in our absolute discretion determine; or
- (f) retain any sum owed by us to you against any contingent liability of yours to us for so long as the contingency subsists.

## **18. AMENDING THIS AGREEMENT**

### **18.1 Current version of Agreement governs Margin Contracts**

You agree that the version of this Agreement published on our website at the time of entering into a Margin Contract governs that Margin Contract.

### **18.2 Notice of changes to this Agreement**

- (a) We may vary, update or replace this Agreement at any time by:
  - (i) written notice to you in accordance with clause 37 of this Agreement;
  - (ii) posting the notice on our website;
  - (iii) sending a written notice to you containing a link to the notice on our website; or
  - (iv) as otherwise permitted by Applicable Law.
- (b) Where the notice is posted on our website it is deemed to have been made available to you at the time it was so posted.

### **18.3 Date variations to Agreement take effect**

Any variation, updating or replacement of this Agreement will become effective on the date specified in the notice, which will normally be immediately after the notice is made available to you in accordance with clause 18.2 and such variation, updating or replacement will, where applicable, also amend the terms of any Contract that is open on the effective date;

### **18.4 Termination of Agreement**

You have the right to close out any of your open positions and or terminate this Agreement at any time in accordance with its terms.

## **19. APPLICATION OF ACCOUNT FUNDS**

### **19.1 Our rights to apply Account funds**

We may at any time without prior notice to you, in order to discharge your obligations (actual or contingent) under this Agreement:

- (a) apply all or part of any currency held by us in your Account and any currency held by us for the purpose of your dealings in such order or manner as we think fit, whether the liabilities are actual or contingent, primary or collateral, joint or several;
- (b) combine or consolidate all or any of your Accounts with us; and
- (c) convert at a commercial rate currency held by us in your Account into a currency or currencies in which payments are due from you to us and without us being responsible to you for any loss resulting from such conversion.

## **20. CEASING TO OFFER TO TRADE**

### **20.1 Our right to cease to trade in Margin Contracts**

We may at any time by written notice to you cease to offer to trade in any Margin Contract, specifying in the notice a date on which we will cease to offer to trade in the particular Margin Contract and such date being at least 7 days after the notice is sent.



## 20.2 **Close out of positions if we cease to trade**

- (a) You agree to close out all open positions in relation to the Margin Contract for the date specified in the notice and we will close out any remaining open Positions on the date specified in the notice with effect from the close of trading on the day.
- (b) If we exercise our right to close out your remaining positions under the preceding clause, we will close out those open Positions at the Closing Price for the Contract except where your open Positions are outside the Normal Trading Size, in which case we will close those Positions at a reasonable price determined by us in accordance with market practice, but at our absolute discretion.

## 21. **TERMINATION**

### 21.1 **Your right to terminate**

You may terminate this Agreement immediately by giving notice in writing to us.

### 21.2 **Our right to terminate**

We may terminate this Agreement immediately by giving notice in writing to you if a Specified Event or material breach of this Agreement occurs. Otherwise, we may terminate this Agreement at any time on giving 7 days' notice in writing to you.

### 21.3 **Termination will not affect accrued rights**

Termination will not affect any accrued rights and we may consolidate all Accounts held by you and deduct all amounts due to us from any Account, before transferring any credit balances on any Account to you.

### 21.4 **Close out of Margin Contracts on termination of Agreement:**

At any time after the termination of this Agreement, we may, without notice, close out any Margin Contract between you and us.

## 22. **LEGAL AND REGULATORY REQUIREMENTS**

### 22.1 **Our actions to comply with the law**

Despite any other provision of this Agreement, in providing the Services in this Agreement, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure compliance with all Applicable Laws.

### 22.2 **You agree to comply with the law**

You agree strictly to comply with all Applicable Laws. If we reasonably consider you have not so complied, we may terminate this Agreement immediately without notice.

## 23. **LIMITATION OF LIABILITY AND INDEMNITY**

### 23.1 **Our liability is limited**

We are not liable:

- (a) for any claim, damages, costs, charges, suits, demands and expenses of any nature and on any account (together "Loss") suffered or incurred by you, or brought against you as a result of or in connection with anything done by us under this Agreement unless and to the extent that such Loss is suffered or incurred or brought against us as a result of our gross negligence or wilful default;
- (b) for any consequential Loss or suffered by you whether arising from our negligence or otherwise;
- (c) for any Loss suffered or incurred by you as a result of any error in any order or instruction given by an Authorised Person or us acting on any order or instruction which is, or appears to be, from an Authorised Person; or
- (d) for any Loss incurred by you as a result of internet orders placed, internet orders given, or any other written communication made by you not being received by us, not being completed or being delayed.

### 23.2 **You agree to indemnify us**

You agree continuously to indemnify us against all losses (including consequential losses), taxes, expenses, damages, charges, receipts, demands and expenses of any nature and on any account and liabilities present, future, contingent or otherwise and including legal fees on a full indemnity basis which may be suffered or incurred or brought against us or in connection with or caused by:

- (a) your breach of this Agreement;
- (b) us entering into any Margin Contract;

- (c) us taking any action under clause 17 of this Agreement;
- (d) any representation or warranty given by you being incorrect, misleading or untrue, or any error in any order or instruction which is, or appears to be, from an Authorised Person,

unless and to the extent only such is suffered or incurred as a result of our gross negligence or wilful default.

### 23.3 **Survival of indemnity**

The indemnity in clause 23.2 survives termination of this Agreement and any Transaction under this Agreement.

## 24. **CLIENT MONEY**

### 24.1 **Australian Client Money Rules and Authorised Persons**

All money paid to us by you or a person acting on your behalf, or which is received by us on behalf of you, will be held by us in one or more segregated bank accounts. These moneys do not constitute a loan to us. You agree and acknowledge that individual Accounts of our clients are not separated from each other within the segregated trust accounts operated by us. Furthermore, you understand the possible risks of this as explained in the PDS that you have received and/or downloaded.

### 24.2 **Investment of moneys held**

We will not invest any of your money held in any named segregated bank trust account as per the Australian Client Money Rules and you irrevocably and unconditionally authorise us to hold your investments in a named segregated bank trust account.

### 24.3 **Treatment of investment capital and interest**

Unless otherwise agreed in writing with you:

- (a) we are solely entitled to any interest or earnings derived from your moneys being deposited in a segregated trust account in accordance with the Australian Client Money Rules with such interest or earnings being payable to us from the relevant segregated trust account;
- (b) the initial capital invested must as permitted by the Australian Client Money Rules be deposited by us into a named segregated trust account and operated in accordance with the Australian Client Money Rules;
- (c) we will not charge a fee for investing your moneys in accordance with the Australian Client Money Rules.

### 24.4 **Property held on trust**

If property, other than money, is given to us by you or a person acting on your behalf, or for your benefit, it must be held by us on trust in accordance with the Australian Client Money Rules.

### 24.5 **You authorise us to deal with your Account**

You irrevocably and unconditionally authorise us and/or any Associate of ours to:

- (a) withdraw, deduct or apply any amounts payable by you to us and/or any Associate of ours under this Agreement from your moneys held in any segregated trust account by us, including, without limitation making a payment for, or in connection with, the margining, adjusting or settling of dealings in Margin Contracts entered into by you or the payment of interest or charges to us, it being acknowledged and agreed by you that such amounts belong to us under this Agreement and may be used by us in our business from time to time, including for the payment of amounts to our counterparties;
- (b) pay, withdraw, deduct or apply any amounts from your moneys held in any segregated trust account or invested by us as permitted by the Australian Client Money Rules, it being acknowledged and agreed by you that any such amounts that belong to us may be used by us in our business from time to time, including for the payment of amounts to our counterparties;
- (c) deal with any property, other than money, given to us in accordance with the terms and conditions of this Agreement, including, without limitation:
  - (i) dealing with such property in connection with the margining, adjusting or settling of dealings in Margin Contracts entered into by you; or
  - (ii) selling or charging in any way any or all of your property which may from time to time be in the possession or control of us or any of our Associates following the happening of a Specified Event;
- (d) deal with any property, other than money, given to us as permitted by the Australian Client Money Rules.

## 25. **WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

### 25.1 Your warranties etc.

You undertake, warrant and represent to us, with the intention that the following undertakings, warranties and representations are repeated each time you provide instructions to us:

- (a) **legal disability:** you are not under any legal disability and are not subject to any law which prevents you from entering this Agreement or any Margin Contract;
- (b) **corporate authorisation:** if you are a company, you are empowered by, and have obtained, all necessary corporate or other authorities under your constitution and at law;
- (c) **consents:** you have obtained all necessary consents and have the authority to enter into this Agreement;
- (d) **compliance with laws:** you are complying with all laws to which you are subject;
- (e) **able to pay debts:** you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
- (f) **no liquidator etc.:** no liquidator, provisional liquidator, receiver, receiver and manager, trustee, controller, official manager, administrator or similar officer has been appointed in relation to your affairs and no application has been made for the appointment of any of these persons; and
- (g) **information accurate:** at all times the information provided by you to us will be complete, accurate and not misleading in any material respect.

### 25.2 Trustee of a Trust

Where you are the trustee of a trust, settlement or fund (including a superannuation fund) ("the Trust") you further undertake, warrant and represent to us, with the intention that these undertakings, warranties and representations are repeated each time you provide instructions to us:

- (a) **capacities:** you acknowledge and agree that you enter into this Agreement in your personal capacity and in your capacity as trustee of the Trust;
- (b) **sole trustee:** you are the sole trustee or trustees of the Trust and you have been validly appointed;
- (c) **trust validly created:** the Trust was validly created and is in existence at the date of your application and has been duly stamped (if required);
- (d) **solely constituted:** the Trust is solely constituted by the trust deed described in your Application and is as amended or substituted ("Trust Deed");
- (e) **right of indemnity:** you have the right of indemnity against the assets of the Trust under the Trust Deed and there has not, and will not be, any breach of trust or any other action that will prevent you from enforcing your rights under that indemnity;
- (f) **full authority:** you are empowered and have full authority under the Trust Deed to enter into this Agreement and to enter into the transactions contemplated by it;
- (g) **no actions:** there is no current or pending or threatened action or proceeding affecting the Trust or any of the Trust's assets before any court or body which draws or purports to draw into question or is likely to affect the legality, or validity, of your right of indemnity under the Trust Deed or of this Agreement or any Margin Contract or your ability to observe your obligations under it;
- (h) **ceasing to be trustee:** you will notify us immediately in writing if you cease for any reason to be the trustee of the Trust or the Trust is determined or ceases to exist;
- (i) **no distribution of capital or income:** you will not make any distribution of any income or capital or assets of the Trust that results in there being insufficient assets of the Trust to meet any of your liabilities under this Agreement.

### 25.3 Superannuation Funds

If you are the trustee of a superannuation fund you further undertake, warrant and represent to us, with the intention that it is repeated each time you provide us with instructions, that you have sought advice as the trustee of a superannuation fund dealing in Margin Contracts and are satisfied that in so doing you comply with all your fiduciary duties and obligations under the *Superannuation Industry (Supervision) Act 1993* and the regulations made under it, and that your dealings do not in any way breach that legislation.

### 25.4 Notification of changes

You undertake that throughout the term of this Agreement you will promptly notify us of any change to the details supplied by you in your Application Form and any material or anticipated change in your financial circumstances which may affect the basis upon which we do business with you.

#### 25.5 **Electronic Services**

- (a) Subject to clause 25.6, all warranties, express and implied, as to the description, quality, performance or fitness of the purposes for you of the Electronic Services or any component of such Electronic Services are disclaimed and excluded.
- (b) We do not warrant or forecast that the Electronic Services or any component of any Electronic Services or any Services performed in respect of any such Electronic Services will meet the requirements of any user, or that the operation of the Electronic Services will be uninterrupted or error-free, or that any Services performed in respect of the Electronic Services will be uninterrupted or error-free.

#### 25.6 **Statutory Warranties:**

Where the Corporations Act, the ASIC Act or any other Applicable Law implies in this Agreement any term, condition or warranty, and makes void or prohibits excluding or modifying the application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty will be deemed to have been included in this Agreement. However, our liability for any breach of such term, condition or warranty will be limited, at our option, to any one or more of the following:

- (a) if the breach relates to Services:
  - (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.

### 26. **ELECTRONIC SERVICES**

#### 26.1 **Scope**

This clause 26 applies to your use of Electronic Services.

#### 26.2 **Access**

Upon completing the security procedures associated with an Electronic Service provided by us, you will be granted access to such Service, unless agreed otherwise or stated on our website. Please consult our website for more details on operating times. We may change our security procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.

#### 26.3 **Access requirements**

You will be responsible for providing the system to enable you to use an Electronic Service.

#### 26.4 **Virus detection**

You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.

#### 26.5 **Use of information, data and software**

In the event that you receive any data, information or software via the Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.

#### 26.6 **Maintaining standards**

When using the Electronic Service you must:

- (a) ensure that the system is maintained in good order and is suitable for use with such Electronic Service;
- (b) run such tests and provide such information to us as we shall reasonably consider necessary to establish that the system satisfies the requirements notified by us to you from time to time;
- (c) carry out virus checks on a regular basis;
- (d) inform us immediately of any unauthorised access to an Electronic Service or any unauthorised transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and
- (e) not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service.

## 26.7 System defects

In the event you become aware of a material defect, malfunction or virus in the system or in an Electronic Service, you will immediately notify us of such defect, malfunction or virus and cease all use of such Electronic Service until you have received permission from us to resume use.

## 26.8 Intellectual Property

All rights in patents, copyrights, design rights, trade-marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the Electronic Services, nor purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. You must ensure that all the licensors' trademarks, copyright and restricted rights notices are reproduced on these copies.

## 26.9 Liability and Indemnity

Without prejudice to any other terms and conditions of this Agreement relating to the limitation of liability and provision of indemnities, the following clauses apply to our Electronic Services.

- (a) **System errors:** We have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You acknowledge that access to Electronic Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Electronic Services for this reason.
- (b) **Delays:** Neither we nor any third-party software provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Electronic Service.
- (c) **Viruses from an Electronic Service:** We have no liability to you (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into the system via the Electronic Service or any software provided by us to you in order to enable you to use the Electronic Service, so long as we have taken reasonable steps to prevent any such introduction.
- (d) **Viruses from your System:** You must ensure that no computer viruses, worms, software bombs or similar items are accidentally or deliberately introduced into our computer system or network, and will indemnify us on demand for any loss that we suffer arising as a result of any such introduction.
- (e) **Unauthorised use:** We are not be liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Electronic Service. You continuously indemnify us against all losses, liabilities, judgments, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using the Electronic Service by using your designated passwords, whether or not you authorised such use.
- (f) **Markets:** We are not liable for any act taken by or on the instruction of a market, clearing house or regulatory body.

## 26.10 Suspension or permanent withdrawal with notice

We may suspend or permanently withdraw an Electronic Service by giving you 10 days' written notice, subject to our rights under clause 26.11.

## 26.11 Immediate suspension or permanent withdrawal

We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use the Electronic Service, or any part thereof, without notice, where we consider it necessary or advisable to do so, for example due to your non-compliance with the Applicable Laws, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of security. In addition, the use of an Electronic Service may be terminated automatically, upon the termination (for whatever reason) of (i) any licence granted to us that relates to the Electronic Service; or (ii) this Agreement.

## 26.12 Effects of termination

In the event of a termination of the use of the Electronic Service for any reason, upon request by us, you must, at our option, return to us or destroy all hardware, software and documentation that we have provided you in connection with such Electronic Service and any copies thereof.

## **27. FUNDING AND DIRECT DEBIT AUTHORISATION**

We do not accept direct debit authorisation. Funding details are supplied to you upon account opening. Any money deposited with ECN Trade will be segregated and held in Australia and invested under "Australian Client Money Rules".

Due to AML/CTF laws, ECN Trade cannot accept funds from third parties. All money deposited into your account must come from a bank account in the same name as your ECN Trade trading Account.

Please note:

There are no deposit fees applied on any domestic bank wire transfers.

We are not liable for any telegraphic transfer fees. Delays, costs, claims, expenses & damages arising from the errors made by the banking system or yourself, and all charges are to be borne by you.

## **28. FORCE MAJEURE**

### **28.1 Force Majeure Event**

We may in our reasonable opinion determine that an emergency or exceptional market condition exists ("a Force Majeure Event"), including but not limited to:

- (a) where we are, in our opinion, unable to maintain an orderly market in our Margin Contracts in respect of any one or more of the Underlying Instruments as a result of the occurrence of any act, omission or event (including but not limited to any circumstance beyond our control such as strike, riot, act of God, war, terrorism, natural disaster, civil unrest or failure of power supply, communications or other infrastructure);
- (b) the suspension, closure, liquidation or abandonment of any relevant market or Underlying Instruments;
- (c) the imposition of limits or special or unusual terms in the relevant markets or Underlying Instruments;
- (d) the excessive movement, volatility or loss of liquidity in the relevant markets or Underlying Instruments; or
- (e) where we reasonably anticipate that any of the circumstances set out in clause 28.1(a) to (d) of this Agreement are about to occur.

### **28.2 Actions we may take**

If we determine that a Force Majeure Event exists, then we may (without prejudice to any other rights under this Agreement and at our sole discretion) take any one or more of the following steps:

- (a) alter normal trading times;
- (b) alter the Margin Percentage;
- (c) amend or vary this Agreement and any transaction contemplated by this Agreement, including any Contract, insofar as it is impractical or impossible for us to comply with our obligations to you;
- (d) close any or all open Margin Contracts, cancel instructions and orders as we deem to be appropriate in the circumstances; or
- (e) take or omit to take all such other actions as we deem to be reasonably appropriate in the circumstances having regard to the positions of us, you and other customers.

### **28.3 Notification of Force Majeure Event**

We will inform you as soon as reasonably practicable if we determine that a Force Majeure Event exists.

### **28.4 Liability**

If we determine that a Force Majeure Event exists, we will not be liable to you for any failure, hindrance or delay in performing our obligations under this Agreement or for taking or omitting to take any action in accordance with clauses 28.2 or 28.3 of this Agreement.

## **29. DISPUTE RESOLUTION**

### **29.1 Informing us about disputes**

You should inform us immediately in writing of any dispute or difference whatsoever in *connection* with this Agreement. We will endeavour to investigate and resolve any dispute or difference in accordance with our internal complaints handling system.

#### **How disputes are dealt with**

In the event the dispute or difference is unable to be resolved by us to your satisfaction in accordance with our internal complaints handling system, you may refer the dispute or difference to the Australian Financial Complaints Authority (AFCA) for determination in accordance with their rules.

#### 29.2 **Where we may commence legal proceedings**

Clause 29.1 of this Agreement is for the benefit of us only, and it does not prevent us from commencing proceedings against you in any relevant jurisdiction, in addition to submitting any dispute or difference whatsoever with you in connection with this Agreement to arbitration in accordance with paragraph 29.1 **Error! Reference source not found.** of this Agreement.

#### 29.3 **Internal complaints handling policy**

You should contact us for information on how complaints are handled by us internally.

### 30. **PRIVACY**

You acknowledge the following provisions of this clause 30:

- (a) In order to provide you with foreign exchange Services under this Agreement, we need to collect personal information about you and obtain your agreement in relation to the handling of such personal information. If you do not provide the requested information or agree to the information handling practices detailed in this Agreement, we may be unable to provide foreign exchange Services to you.
- (b) We have systems and processes in place to address privacy requirements and can provide you with a Privacy Statement should you require further information about our information handling practices.
- (c) All requests for access to personal information, privacy concerns or queries should be directed to our Managing Director.
- (d) You authorise us to collect, use, store or otherwise process any personal information which enables us to provide and/or improve our services. This may, on occasion, require the disclosure of personal information to our related entities and services providers, and to organisations located in countries which do not have comparable laws to protect your information.
- (e) We may also use the personal information to market other services offered by us to you from time to time, unless you request otherwise, which you may do at any time.
- (f) We may also pass on personal relevant information to any person, firm or corporation that introduces or refers you to us.

### 31. **ILLEGALITY ETC.**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement under the law of that jurisdiction nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction will be in any way affected.

### 32. **ASSIGNMENT AND DELEGATION**

The following provisions apply in relation to assignment and delegation:

- (a) You may not assign any of your rights or delegate any of your obligations under this Agreement to any person without our prior written consent.
- (b) You may not change any or all of the rights under this Agreement, including any rights to deposits held by us.
- (c) Without prejudice to clause 32(a) of this Agreement, we may assign our rights or delegate any of our obligations under this Agreement to any person on giving not less than seven (7) Business Days' notice to you, subject to obtaining ASIC approval where, and to the extent that such approval is required by law.
- (d) If you are in default of any of your obligations under this Agreement, we will be entitled (without prejudice to any other rights it may have) at any time thereafter to assign to any person with immediate effect all or any of our rights in respect of moneys owing to it under this Agreement, as well as any security or other remedies available to it in respect of such moneys. If any such assignment is made, you will, if so required by us and the assignee, acknowledge in writing that the assignee has assumed our rights and obligations under this Agreement in relation to the relevant moneys owing by you.
- (e) Despite anything to the contrary contained in this Agreement, we may disclose to any actual or potential delegate or assignee as referred to in clause 32(c) of this Agreement, such information relating to you and your relationship with us, as we see fit.

### **33. RIGHTS AND REMEDIES**

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **34. RIGHTS OF THIRD PARTIES**

Nothing in this Agreement is intended to confer on any person other than us or you any right to enforce any term of this Agreement.

### **35. DELAY, OMISSION AND WAIVER**

The following provisions apply to any delay, omission and waiver:

- (a) No delay or omission on our part in exercising any right, power or remedy provided by law or under this Agreement, or partial or defective exercise thereof, will:
  - (i) impair or prevent further or other exercise of such right, power or remedy; or
  - (ii) operate as a waiver of such right, power or remedy.
- (b) No waiver of any breach of any term of this Agreement will (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

### **36. GOVERNING LAW AND JURISDICTION**

#### **36.1 Law**

This Agreement, and each Margin Contract between us and you will be governed by and construed in accordance with the law of New South Wales, Australia.

#### **36.2 Jurisdiction**

You submit, for the benefit of us only, to the exclusive jurisdiction of the courts of New South Wales, Australia. However, this clause 36.2 will not prevent us from commencing proceedings in any other relevant jurisdiction.

### **37. NOTICES**

#### **37.1 Notices must be in writing**

Subject to clause 37.2 and the PDS, any notice or other communication given or made under or in connection with the matters contemplated by this Agreement will, except where oral communication is expressly provided for, be in writing and will be sent to our Compliance Officer on the address below:

**(a) ECN Trade Pty Ltd**

Address: Citi Group Centre  
Suite 1301, Level 13  
2 Park Street, Sydney, 2000  
Australia  
Ph No.: 1300 733 452  
Email Address: support@ecntrade.com.au

**(b) You:** The address, phone number and electronic mail address provided by you for this purpose.

#### **37.2 When notices are received**

Any such notice will be deemed to have been received:

- (c) if delivered personally or by hand, at the time of delivery;
- (d) if posted, within 3 Business Days of posting;
- (e) if oral, whether by telephone or face to face, when actually given;
- (f) if by leaving a message on a telephone answering machine or voice mail, one hour after the message was left;
- (g) if sent by facsimile, one hour after completion of its transmission; and
- (h) if sent by electronic mail, one hour after sending.

#### **37.3 Change of notice details**

You may alter the address (including electronic mail address) to which Confirmations, statements and other communications are issued, by written notice to us and we may notify you of a change to any of its details as stated



above, provided in either case that such alteration will only be effective on the later of the date specified in the notice and the time of deemed service under clause 37.2 of this Agreement.

**37.4 Deemed notice where notice sent contact details provided**

You agree and acknowledge that any Confirmations, statements, supplementary PDS, and any other written notices will be deemed to have been properly given or made available if sent to the address (including electronic mail address) last notified to us by you.

**37.5 Your responsibility to update Identification and contact details**

You agree and acknowledge that you are solely responsible for ensuring that we have a copy of your current identification details and current address, telephone number, and electronic address.

## SCHEDULE 1

### INTERPRETATION

1. The defined terms used in this Agreement are capitalised and set out in this Schedule.
2. If there is any conflict between the terms of this Agreement and any Applicable Law, the Applicable Law will prevail provided that any Applicable Law relating to the provision of Margin demands will not apply.
3. In this Agreement any reference to a person includes bodies corporate, unincorporated associations, partnerships and individuals.
4. In this Agreement, all references to times of the day are to the time in Sydney, New South Wales, Australia, unless otherwise specified.
5. Headings and examples in this Agreement are for reference only and do not affect the construction of the Agreement.
6. In this Agreement any reference to any enactment includes references to any statutory modification or re-enactment of such enactment or to any regulation or order made under such enactment (or under such a modification or re-enactment).

### DEFINITIONS

In this Agreement the following terms and expressions have, unless the context otherwise requires, the following meanings:

|                                      |   |
|--------------------------------------|---|
| <b>ACCOUNT</b>                       | means an account you have with us;  |
| <b>AGREEMENT</b>                     | means this client agreement, as amended, varied, or replaced from time to time;   |
| <b>AML/CTF ACT</b>                   | means the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth) and all regulations, rules and instruments made under that Act;   |
| <b>APPLICABLE LAWS</b>               | means all: <ol style="list-style-type: none"><li>(a) applicable provisions of laws and regulations, including all relevant rules of government agencies, exchanges, trade and clearing associations and self-regulatory organisations, that apply to the parties, this Agreement and the transactions contemplated by this Agreement; and</li><li>(b) applicable Australian law; and</li><li>(c) applicable Market Rules.</li></ol> |
| <b>APPLICATION FORM</b>              | means the application form and account opening documentation, including documentation required to be returned for the purposes of complying with the AML/CTF Act, completed by you and submitted to us;   |
| <b>ASIC</b>                          | means the Australian Securities and Investment Commission;  |
| <b>ASIC ACT</b>                      | means the <i>Australian Securities and Investment Commission Act 2001</i> (Cth);  |
| <b>ASSOCIATE</b>                     | means: <ol style="list-style-type: none"><li>(a) a person who is an officer, employee, agent, representative or associate of a party;</li><li>(b) a Related Body Corporate of a party; or</li><li>(c) a person who is an officer, employee, agent, representative or associate of a Related Body Corporate of a party.</li></ol>  |
| <b>AUSTRALIAN CLIENT MONEY RULES</b> | means the provisions in Part 7.8 of the Corporations Act and the Corporations Regulations made under those provisions that specify the  |

manner in which financial services licensees are to deal with client moneys and property as modified by ASIC for ECN Trade;

|                          |  |
|--------------------------|--|
| <b>AUSTRALIAN LAW</b>    | means all laws, procedures, standards and codes of practice that apply in relation to the parties, this Agreement and the transactions contemplated by this Agreement, including the Corporations Act, the ASIC Act, ASIC Policy and the <i>Privacy Act 1998</i> (Cth);  |
| <b>AUTHORISED PERSON</b> | means you and/or any person authorised by you to give instructions to us under this Agreement;   |
| <b>BASE CURRENCY</b>     | means Australian Dollars or the currency as agreed under clause 8.7 of this Agreement;   |
| <b>BULLION</b>           | means gold or silver;  |
| <b>BULLION CFD</b>       | A CFD whose value fluctuates by reference to the fluctuations in the Underlying Instrument which relate to gold or silver.   |
| <b>BUSINESS DAY</b>      | means: <ul style="list-style-type: none"><li>(a) any day other than a Saturday, Sunday or public holiday on which banks are open for business in Sydney, New South Wales, Australia;</li><li>(b) in the case of services relating to spots on a Security, basket or Index to which Limited Hours Trading applies, any day on which the exchange on which the relevant Security or each constituent Security has its primary listing, or the exchange on which the Index operates, whichever is applicable, is open for trading, and will exclude any day on which all trading on the relevant exchange is closed or suspended;</li><li>(c) in the case of services relating to spots on a Security, Basket or Index to which Limited Hours Trading does not apply, any day on which any relevant exchange is open for trading.</li></ul> |
| <b>CASH DIVIDEND</b>     | The cash dividend or distribution declared only and does not include any Franking Credits attached to a dividend or distribution.  |
| <b>CFDS</b>              | the contracts for difference that we offer to its clients from time to time under this PDS and the terms and conditions of the Client Agreement.   |
| <b>CLOSE OF BUSINESS</b> | 22.00 Greenwich Mean Time (21.00 during daylight saving);  |
| <b>CLOSING PRICE</b>     | means the price determined by us, from time to time, having regard to the last traded or mid close price and our Spread as may be appropriate for the Underlying Instrument;   |
| <b>COMMODITY</b>         | means hard or soft Commodities traded on the world's future exchanges such as but not limited to, oil, gas, precious metals, wheat or soya beans;  |
| <b>COMMODITY CFD</b>     | a CFD whose value fluctuates by reference to the fluctuations in the value of an Underlying Instrument relating to a Commodity;  |
| <b>CONFIRMATION</b>      | means a form of notification, which may be provided by us electronically, including via the internet, requiring access by the Client, confirming entry into a Contract;  |

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| <b>CONTRACT</b>                      | means any contract, whether oral or written, including any derivative, option, future, contract for difference or other transaction relating to such financial products entered into by us with you or any back to back agreement which we may enter into to enable us to enter into or fulfil our obligations under such contract; |
| <b>CONTRACT PRICE</b>                | means the price per Contract Unit of the Underlying Instrument, quoted from time to time by us and which is calculated under clause 9 of this Agreement;  |
| <b>CONTRACT QUANTITY</b>             | means: <ul style="list-style-type: none"> <li>(a) in relation to a Margin FX Contract or CFD, the number of Contract Units as the case may be, traded by you as stated in the order and Confirmation window and subsequently, the trade statement</li> </ul>  |
| <b>CONTRACT UNIT</b>                 | means the Minimum Trading Size for the type of Margin Contract you wish to trade with us as set out in clause 9;  |
| <b>CONTRACT VALUE</b>                | means the total value of the Margin Contract as calculated by us in accordance with the terms of this Agreement;  |
| <b>CORPORATE ACTION</b>              | includes, but is not limited to bonus issues, reconstructions, rights issues and stock splits in respect of an Underlying Instrument;   |
| <b>CORPORATIONS ACT</b>              | means the <i>Corporations Act 2001</i> (Cth);   |
| <b>ECN TRADE PRODUCT SCHEDULE</b>    | The list of Margin Contracts, CFDs and Securities we hold ourselves out from time to time as willing to quote a price, as amended by us from time to time. The Product Schedule is available at <a href="http://www.ecntrade.com.au">www.ecntrade.com.au</a> .  |
| <b>ELECTRONIC SERVICE</b>            | means a service provided by us, for example an internet trading service offering clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system and including relevant software provided by us to enable you to use an electronic trading service;          |
| <b>EQUITY INDEX FUTURES CONTRACT</b> | means a futures contract over an equity index;  |
| <b>EVENT OF DEFAULT</b>              | means the happening of a Specified Event;   |
| <b>EXCEPTED CONTRACT</b>             | an Index Future CFD or a Commodity CFD;   |
| <b>EXCHANGE RATE</b>                 | means the exchange rate we may reasonably offer to you from time to time having regard to the applicable prevailing Interbank Rates and our Spread, and which is available to you from us via the Electronic Services or on request;  |
| <b>EXPIRY DATE</b>                   | the day on which the Margin Contract or CFD expires;  |
| <b>FINANCING BENEFIT</b>             | the amount that you receive on Share and Index CFD positions that remain open overnight, calculated using the Financing Rate;   |

|                                     |  |
|-------------------------------------|--|
| <b>FINANCING CHARGE</b>             | the amount that you pay on Share or Index CFD positions that remain open overnight, calculated using the Financing Rate;   |
| <b>FINANCING RATE</b>               | our rate at which you pay or receive interest on Share or Index CFD positions that remain open overnight, based on the Relevant Interest Rate plus or minus the interest percentages we determine are reasonable from time to time and which are advised to you on our website or by request;                        |
| <b>FORCE MAJEURE EVENT</b>          | has the meaning given to it in clause 28 of this Agreement;  |
| <b>FRANKING CREDIT</b>              | means any tax, franking or imputation credit which is attached to a dividend or distribution paid to a person. Franking credits represent the person's allocation of tax paid that has been paid by the entity that is paying the dividend or distribution to the person. They are also known as imputation credits. |
| <b>FSG</b>                          | means our relevant financial services guide, including any supplementary and replacement financial services guide;   |
| <b>INDEX</b>                        | means the market index on which a CFD is based;  |
| <b>INDEX CFD</b>                    | A CFD whose value fluctuates by reference to the fluctuations in the value of an Underlying Instrument, which will relate to a share index.  |
| <b>INDEX FUTURES CFD</b>            | A CFD whose value fluctuates by reference to the fluctuations in the value of an Underlying Instrument, which is an Equity Index Futures Contract.   |
| <b>INSOLVENCY EVENT</b>             | The appointment of a receiver, receiver and manager, administrator, trustee or inspector, or other person with similar powers in respect of a company or over all or any part of that company's assets;  |
| <b>INTERBANK RATE</b>               | means, the mid interbank rate calculated by us with reference to the bid and offer prices for the Underlying Instrument most recently quoted by any one or more third party banks;   |
| <b>INTEREST QUALIFICATION LEVEL</b> | means the interest qualification level as specified in the PDS;  |
| <b>LIMIT ORDER</b>                  | has the meaning given to it in clause 12.3 of the PDS;   |
| <b>LIMITED HOURS TRADING</b>        | means the ability of the Client to trade Margin Contracts and (where available) as are designated by us from time to time under this Agreement only during such hours as the relevant exchange is open;  |
| <b>LONG PARTY</b>                   | means, in relation to a Margin Contract or CFD, the party that has notionally bought the relevant Underlying Instrument;   |
| <b>MARGIN</b>                       | means the amount that you must have in your Account to enter into a Margin Contract or CFD with us;  |
| <b>MARGIN CONTRACT</b>              | means any Contract, whether oral or written or concluded electronically entered into between you and us and includes Margin FX Contracts;  |
| <b>MARGIN FX CONTRACT</b>           | means a Contract between you and us for the taking of spot Position in a foreign currency as described in the PDS;   |

|                                       |   |
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| <b>MARGIN FX OPTION</b>               | means a Contract between you and us for the taking of an option to enter into a Margin FX Contract, as described in the PDS;  |
| <b>MARGIN PERCENTAGE</b>              | means, such percentage of the Contract Value as specified by us as described in the current PDS, and as amended by us under clause 11.3 of this Agreement from time to time;  |
| <b>MARKET RULES</b>                   | means the rules, regulations, customs and practices from time to time of any exchange, licensed financial market, clearing house, licensed clearing and settlement facility, or other organisation or market involved in the conclusion, execution or settlement of a transaction or Contract and any exercise by such exchange, clearing house or other organisation or market of any power or authority conferred on it;                        |
| <b>MINIMUM POINT INCREMENT</b>        | this is the minimum possible price change between two successive transaction prices permitted by us;  |
| <b>MINIMUM TOTAL EQUITY BALANCE</b>   | means such minimum Total Equity balance in your Account (as amended from time to time) described in clause 18.3 of the current PDS;   |
| <b>MINIMUM TRADING SIZE</b>           | means such minimum Contract Quantity or Contract Value as we may specify on our website from time to time for any type of Margin Contract or CFD;   |
| <b>NORMAL TRADING SIZE</b>            | means the minimum and maximum Contract Quantity or Contract Value that we reasonably consider appropriate, having regard if appropriate, to the normal market size for which prices are available on any relevant exchange and for which we quote live price information;   |
| <b>OPENING VALUE</b>                  | means in relation to a Contract, the total Contract Value as agreed between us and you at the time of the transaction as stated on the Confirmation or as determined in accordance with the terms of this Agreement and which, in the case of an Option, will be the premium for the instrument;  |
| <b>PDS</b>                            | means our product disclosure statement, including a supplementary and replacement product disclosure statement;   |
| <b>POSITION</b>                       | means the long or short position you have taken in your Margin Contract or CFD with us;   |
| <b>POSITION LIMIT</b>                 | means the limits, if any, imposed by us under clause 15.1;  |
| <b>RELATED BODY CORPORATE</b>         | has the meaning as in the Corporations Act, with any necessary modifications for companies incorporated outside Australia;  |
| <b>RELATED INDEX FUTURES CONTRACT</b> | means: <ul style="list-style-type: none"> <li>(a) in relation to an Index CFD, any index futures contract providing a return with reference to fluctuations in the points total of the same index; and</li> <li>(b) in relation to any other CFD, such other index futures contract of which fluctuations in the value are, in our reasonable opinion likely to be indicative of potential fluctuations in the value of such Contract;</li> </ul> |
| <b>RELATED SECURITY</b>               | means, in relation to a Security, any instrument traded on any exchange relating to the same company and of which any fluctuations in the value are, in our reasonable opinion, likely to be indicative of potential fluctuations in the value of the relevant Security, including but not limited to depository receipts;  |

|                               |  |
|-------------------------------|--|
| <b>RELEVANT INTEREST RATE</b> | means such applicable interest rate as we may reasonably select from time to time which is appropriate to the currency of the outstanding amount or the Underlying Instruments (as applicable) as detailed on the daily statement.   |
| <b>ROLLOVER BENEFIT</b>       | means a benefit you may receive on short Margin FX Contracts and CFDs held overnight and which is described in clause 13.5 of this Agreement;  |
| <b>ROLLOVER CHARGE</b>        | means a charge you may have to pay where you have a long FX Position held overnight and which is described in clause 13.5 of this Agreement;   |
| <b>ROLLOVER RATE</b>          | means the rate determined by us, from time to time, having regard to Interbank Rates;  |
| <b>SECURITY</b>               | means the share, unit or other registered instrument of a company or managed investment scheme traded on any exchange on which a Share CFD is based and will include the constituent shares, units or other registered instruments of a Basket;  |
| <b>SERVICES</b>               | means the services provided by us under this Agreement;  |
| <b>SETTLEMENT DATE</b>        | means such settlement date following the Closing Date as we may reasonably determine in accordance with practice in the relevant market and notify to you at the time of entering into the Contract;   |
| <b>SHARE CFDS</b>             | A CFD whose value fluctuates by reference to the fluctuations in the value of a security of a company that issues the shares.  |
| <b>SHORT PARTY</b>            | means, in relation to a Margin Contract or CFD, the party that has sold a Margin Contract or CFD in opening a Margin Contract or CFD position.   |
| <b>SPECIFIED DATE</b>         | means in relation to a contract, the future date with reference to which the contract was entered into;  |
| <b>SPECIFIED EVENT</b>        | means any of the following: <ul style="list-style-type: none"> <li>(a) you fail to make any payment or fail to do any other act or thing required by clause 11;</li> <li>(b) you die or become of unsound mind;</li> <li>(c) you fail to provide assets for delivery, or take delivery of assets, under any Margin Contract or CFD on the first due date;</li> <li>(d) an order is made that a corporate client be wound up;</li> <li>(e) an application is made to a court for an order: <ul style="list-style-type: none"> <li>(i) that a corporate client be wound up;</li> <li>(ii) appointing a liquidator or provisional liquidator for a corporate client;</li> </ul> </li> <li>(f) a liquidator, provisional liquidator or controller is appointed to a corporate client;</li> <li>(g) a resolution is passed to appoint an administrator to a corporate client;</li> <li>(h) you enter into a deed of company arrangement or propose a reorganisation, moratorium or other administration involving all or any of your creditors;</li> <li>(i) a corporate client is dissolved or wound up in any other way;</li> </ul> |

- (j) you are or state that you are unable to pay your debts as and when they fall due;
- (k) you are or state that you are insolvent;
- (l) you seek or obtain protection from any of your creditors under any legislation;
- (m) you become insolvent or commit an act of bankruptcy or your estate comes within the law dealing with bankrupts;
- (n) a bankruptcy petition is presented in respect of you or, if a partnership, in respect of one or more of the partners, or if a company, a receiver, trustee, administrative receiver or similar officer is appointed;
- (o) if execution is levied against your business or your property and is not removed, released, lifted, discharged or discontinued within 28 days;
- (p) you seek a moratorium or propose any arrangement or compromise with your creditors;
- (q) any other event having substantially the same legal effect as the events specified in paragraphs (d) to (p) above;
- (r) any security created by any mortgagee or charge becomes enforceable against you and the mortgagee or chargee takes steps to enforce the security or charge;
- (s) any indebtedness of you or any of your Related Corporations becomes immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity by reason of your default or the default of any of your subsidiaries, or you or any of your subsidiaries fail to discharge any indebtedness on its due date;
- (t) you fail fully to comply with any obligations under this Agreement or any Margin Contract or CFD;
- (u) any of the representations or warranties given by you are, or become, untrue;
- (v) we reasonably consider it necessary for our own protection or the protection of our Associates.

**SPREAD** means the difference in the bid and offer prices of a Margin Contract or CFD quoted from time to time by us and, where appropriate, expressed as a percentage of the relevant price;

**STOP LOSS ORDER** has the meaning given to it in clause 12.1 of the PDS;

**TOTAL EQUITY** means the aggregate of the current cash balance in your Account and your current unrealised profits and losses;

**TRADING PLATFORM** means the Trading Platform in the Electronic Service we make available to you by which you may trade with us online in our Margin FX Contracts and Margin Commodity Contracts;

**UNDERLYING INSTRUMENT** means the underlying currency or asset with reference to which the value of a Margin Contract or CFD is determined as set out in this Agreement;

**WE/US** means ECN Trade Pty Ltd (ACN 127 631 145);



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## Account Application

Before you fill this application, make sure you have had access to, reviewed and understand the full set of ECN Trade Pty Ltd legal documents including this Client Agreement, PDS and FSG.

### ACCOUNT INFORMATION

Base Currency                      AUD                       USD

### ACCOUNT HOLDER

|                                     |   |               |   |
|-------------------------------------|---|---------------|---|
| Client Name 1                       | <input type="text"/>  | Client Name 2 | <input type="text"/>  |
| Gender                              | Male <input type="checkbox"/> Female <input type="checkbox"/> | Gender        | Male <input type="checkbox"/> Female <input type="checkbox"/> |
| Date of Birth                       | <input type="text"/>  | Date of Birth | <input type="text"/>  |
| Nationality                         | <input type="text"/>  | Nationality   | <input type="text"/>  |
| ID Number                           | <input type="text"/>  | ID Number     | <input type="text"/>  |
| Mobile Phone                        | <input type="text"/>  | Mobile phone  | <input type="text"/>  |
| Email                               | <input type="text"/>  | Email         | <input type="text"/>  |
| Client1 Current Residential Address | <input type="text"/>  |               |   |
| Client2 Current Residential Address | <input type="text"/>  |               |   |

We will keep your details under our privacy policy. Make sure your contact is accurate and update your contact details with us from time to time.

### FINANCIAL DECLARATION

|                   |                      |
|-------------------|----------------------|
| Bank Account Name | <input type="text"/> |
| BSB Code          | <input type="text"/> |
| Account Number    | <input type="text"/> |

We are requesting this information to comply with our obligations to verify client suitability and AML/CTF assessment processes.

**Total Annual Income**

- <\$50,000
- \$50,001-\$80,000
- \$80,001-\$180,000
- \$180,001-\$500,000
- \$500,001-\$1000, 000
- >\$1,000, 000

**Source of your trading capital**

- Employment
- Savings
- Investment
- Legacy income
- Other (please specify) \_\_\_\_\_

**Risk capital**

- <\$50,000
- \$50,001-\$80,000
- \$80,001-\$180,000
- \$180,001-\$500,000
- \$500,001-\$1000, 000
- >\$1,000, 000

**Purpose of this trading**

- Diversified investment
- Gaining Experience
- Speculation
- Hedging
- Long term capital growth

**Employment details:**

- Self-employed (please specify) Company name: \_\_\_\_\_ occupation: \_\_\_\_\_
- Employed (please specify) Company name: \_\_\_\_\_ occupation: \_\_\_\_\_
- Retired
- Unemployed

|          |
|----------|
| Referral |
|----------|

How did you hear about ECN trade?

- Web Search     Online Ad     Friend     Print Ad
- Introducing Broker     Other (please specify) \_\_\_\_\_

## CLIENT ELIGIBILITY

Before opening a live CFDs, FX and Commodities account with ECN Trade Pty Ltd we are required to ensure prospective clients understand the complex nature of derivative trading and the trading platforms used to trade them. Clients should read the PDS carefully and be aware that trading derivatives may not be suitable for all investors; please ensure that you fully understand the risks involved.

ECN Trade Pty Ltd adheres to strict guidelines set out by ASIC in Regulatory Guide 227 (RG227), with best practice guidance we need to ascertain that new clients meet a certain level of experience and knowledge in trading Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities.

### SECTION 1:

#### About you

Do you have any formal experience or qualifications relevant to the understanding of our products?

- Yes a relevant investment experience
- Yes a relevant qualification
- Yes a relevant education
- No

Your personal self-learning experience has involved which of the following (Click all that apply)

- Attended any educational seminars on Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities
- Researched information about the foreign exchange and/or commodity markets
- Utilised any Demonstration services from our / any brokers
- Had relevant work experience that provides you with an understanding of the fundamental risks involved in trading over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities

Please provide us with an idea of your trading frequency over the past 2 -3 years

- Frequently (daily)
- Regularly (weekly)
- Occasionally (monthly)
- Rarely or Never (yearly)

Please confirm that you are fully aware of the following (Click all that apply):

- I am aware that trading Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities may not be suitable for all investors
- I understand that I do not have any rights to ownership of the underlying instrument referenced in Over-the-Counter (OTC) derivatives
- I understand the risks involved in trading Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities and I also understand that they are not suitable to all investors
- Derivatives are geared investments and that it is possible to lose more than my initial deposit

### SECTION 2:

#### General knowledge

Which of the following statements is TRUE about trading on the ECN Trade platform?

- Spread can vary depending on political, market or other external conditions
- You can access the ECN Trade platform via enabled devices such as iPhone, Android and Windows systems
- ECN Trade doesn't charge client service fee or account management fee
- ECN Trade doesn't take physical cash deposits nor third party payments from clients

Which of the following statements is **NOT** true about derivatives?

- The price of a derivative is set and controlled by ASIC
- The price of a derivative is derived from an underlying reference instrument
- The price of a derivative fluctuates as the price of the underlying reference instrument changes
- When trading a derivative you are not buying or selling the underlying asset

What is **NOT** an appropriate research tool for Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities traders?

- Wall Street Journal
- Business Day (Sydney Morning Herald)
- Cosmopolitan
- Your Trading Edge

### **Platforms and Technology**

What knowledge of the **ECN Trade Pty Ltd** trading platform should you have prior to opening and trading on a live account?

- ECN Trade Pty Ltd** provides access to a demonstration account that all potential clients can practice trading strategies and platform functionality before committing to a live account
- I don't need any prior knowledge all Over-the-Counter (OTC) derivatives platforms are the same
- ECN Trade demonstration account and support is free of charge
- The ECN Trade price displayed may be vary slightly from Demonstration to live accounts

What products are **NOT** available to trade on my ECN Trade Pty Ltd platform?

- Margin foreign exchange
- CFDs
- Property
- Commodities

What is correct about the Pending orders we offer

- Buy limit/ sell limit/ buy stop/sell stop/ are not pending orders
- ECN trade doesn't accept if not else order
- The Pending order placement distance may be wider when market effecting news events occur, i.e. Non-Farm Payroll
- A pending order might not be triggered due to market volatility which can lead to spread widening or market gapping

### **Risk Management**

What is correct about the Stop loss order we offer?

- Stop loss orders needs be certain distance from market price
- Stop loss order might be triggered on different prices due to market volatility or gapping
- Stop loss order is a useful tool to manage positions and trading risk
- Stop loss order might not be triggered due to external factors leading to spread widening

Which of the following is true about trading Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities?

- They are complex products
- They carry a higher degree of risk than traditional investments such as buying shares
- You should not be trading Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities without understanding the risks involved
- All of the above

Complete this sentence: When trading Over-the-Counter (OTC) derivatives such as CFDs, FX and Commodities I can ..... ?

- ... Might lose all my investment
- ... Lose the value of my account
- ... Lose the balance in my account plus additional funds that I would have to cover the Margin Call
- ... Lead my account into negative but I don't need do anything. ECN Trade will adjust the balance to zero.

### CFDs

When you buy a share CFD you can vote at the annual general meeting?

- Yes
- No
- Maybe
- Depends on the particular share

When purchasing CFDs, what is the typical waiting period for the delivery of underlying asset?

- One month
- One week
- CFDs do not entitle the buyer or seller any right to the underlying asset
- None of the above

### Leverage, Margins & Volatility

What is true in regards to leverage?

- Used with various financial instruments, to increase the potential return of an investment
- Leverage can be created through options, futures, margin lending and CFDs
- Leverage magnifies both gains *and* losses
- ECN Trade may adjust leverage and margin requirements when certain Geo-Political or high market volatility events occur to assist in your risk management requirements

On my **ECN Trade Pty Ltd** account when am I in margin call?

- When I have 200% of the margin required in my account to hold my open positions
- When I have 150% of the margin required in my account to hold my open positions
- When I have 120% of the margin required in my account to hold my open positions
- When I have 100% of the margin required in my account to hold my open positions

On my **ECN Trade Pty Ltd** account when is my position at stop out level?

- If my Equity goes into negative and I owe more funds to the broker.
- When net Equity goes below 50% of Margin requirement my position will be closed until net equity rises above 50%
- No such thing as stop out level.
- If the position moves more than 1%.

I confirm by signing or submitting electronically the Application, I have had access to, reviewed and understand the full set of ECN Trade Pty Ltd legal documents including this Client Agreement, PDS and FSG.

I/We understand the risks of electronic Foreign Exchange margin trading and the terms we deal with ECN Trade Pty Ltd and ourselves. I/We fully understand ECN Trade do not provide or allow managed discretionary account services on my account. I am the only person to trade on my account.

Are you or your principals a politically exposed person/s?

I/We declare the above information in this Client Agreement is true and correct.

Applicant 1 signature:

Applicant 2 signature:

Applicant printed name:

Applicant printed name:

Dated:

Dated:

ECN Trade account manager signature:

Dated:

# ANNEXURE 1

## IDENTIFICATION

The *Anti-Money Laundering & Counter Terrorism Financing Act 2006* requires the information in this Part to be collected and verified by ECN Trade for EACH Client. Please ensure that all photocopies of identification documents provided to ECN Trade are clear and legible.

|                                    |  |
|------------------------------------|--|
| <p><b>Individual Applicant</b></p> | <ul style="list-style-type: none"> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card.</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement no more than 3 months old.</li> </ul>  |
| <p><b>Joint Applicant</b></p>      | <ul style="list-style-type: none"> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card.</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement no more than 3 months old</li> </ul>   |
| <p><b>Company</b></p>              | <ul style="list-style-type: none"> <li>• Proof of existence of the Company such as Certificate of Incorporation, Articles, Constitution, Government issued business number or license, Certificate of good standing or an offer document (if a wholesale investor type)</li> <li>• Proof of principle place of business of the Company such as a utility bill, a bank statement, brokerage statement, mortgage agreement or rental statement/agreement no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Sole Director/Director 1</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for Sole Director/Director 1, no more than 3 months old.</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Director 2</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement for Director 2, no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for each other identified Director (min 2 x Directors for a multi director company)</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for each other identified Director (min 2 x Directors for a multi director company), no more than 3 months old</li> </ul> |

|   |  |
|---|--|
| <p><b>Partnership</b></p>   | <ul style="list-style-type: none"> <li>• Proof of existence of the Partnership such as Certificate of Incorporation, Articles, Constitution, Government issued business number or license or a Certificate of good standing.</li> <li>• Proof of principle place of business of the Partnership such as a utility bill, a bank statement, brokerage statement, mortgage agreement or rental statement/agreement.</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Principal Partner 1.</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for Principal Partner 1, no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Principal Partner 2.</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement for Principal Partner 2, no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for each other identified Principal Partner (min 2 x Principal Partners for a multi Principal Partnership).</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for each other identified Principal Partner (min 2 x Principal Partners for a multi Principal Partnership), no more than 3 months old</li> </ul> |
| <p><b>Trusts or Self Managed Super Funds (SMSFs)</b></p> <p><b>Individual Trustee</b></p>                 | <ul style="list-style-type: none"> <li>• Proof of existence of the Trust such as Certificate of Incorporation, Trust Deed or a Certificate of good standing.</li> <li>• Proof of principle place of business of the Trust such as a utility bill, a bank statement, brokerage statement, mortgage agreement or rental statement/agreement, no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for the Individual Trustee.</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for the individual Trustee, no more than 3 months old</li> </ul>   |
| <p><b>Trusts or Self Managed Super Funds (SMSFs)</b></p> <p><b>Joint/Multiple Individual Trustees</b></p> | <ul style="list-style-type: none"> <li>• Proof of existence of the Trust such as Certificate of Incorporation, Trust Deed or Certificate of good standing.</li> <li>• Proof of principle place of business of the Trust such as a utility bill, a bank statement, brokerage statement, mortgage agreement or rental statement/agreement no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Trustee 1.</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for Trustee 1, no more than 3 months old</li> </ul>  |

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Trustee 2, no more than 3 months old</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for Trustee 2.</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for each other identified Trustee, no more than 3 months old</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for each other identified Trustee, no more than 3 months old</li> </ul>  |
| <p><b>Trusts or Self Managed Super Funds (SMSFs)</b></p> <p><b>Corporate Trustee</b></p> | <ul style="list-style-type: none"> <li>• Proof of existence of the Trust such as Certificate of Incorporation, Trust Deed or Certificate of good standing. Certified copy of the Trust deed or a suitable extract.</li> <li>• Proof of principle place of business of the Trust such as a utility bill, a bank statement, brokerage statement, mortgage agreement or rental statement/agreement no more than 3 months old</li> <li>• Proof of existence of the Trustee Company such as Certificate of Incorporation, Articles, Constitution, Government issued business number or license, Certificate of good standing or an offer document (if a wholesale investor type)</li> <li>• Proof of principle place of business of the Trustee Company such as a utility bill, a bank statement, brokerage statement, mortgage agreement or rental statement/agreement no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Sole Director/Director 1 of the Trustee Company no more than 3 months old.</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for Sole Director/Director 1 of the Trustee Company no more than 3 months old</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for Director 2 of the Trustee company no more than 3 months old</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement for Director 2 of the Trustee Company no more than 3 months old.</li> <li>• Certified copy of photographic identity document such as a passport, driver's license, national ID card for each other identified Director (min 2 x Directors for a multi director company) of the Trustee Company no more than 3 months old</li> <li>• Certified copy of proof of residential address such as a utility bill, a bank statement, brokerage statement, residential mortgage agreement or rental statement/agreement for each other identified Director (min 2 x Directors for a multi director company) of the Trustee Company no more than 3 months old.</li> </ul> |



## ANNEXURE 2

### PERSONS WHO CAN CERTIFY A DOCUMENT UNDER THE AML/CTF ACT and AML/CTF Rules Instrument 2007 (No 1):

1. A person who, under the law in force in a State or Territory, is currently licensed or registered to as a:
  - Pharmacist
  - Medical practitioner
  - Optometrist
  - Dentist
  - Legal practitioner
  - Chiropractor
  - Physiotherapist
  - Nurse
  - Psychologist
  - Veterinary surgeon
  - Patent attorney
  - Trademarks attorney
2. A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner. A person that is a:
  - Police officer
  - Bank officer with 2 or more continuous years of service
  - Justice of the Peace
  - Clerk of a court
  - Credit union officer with 2 or more years of continuous service
  - Building society officer with 2 or more years of continuous service
  - Finance company officer with 2 or more years of continuous service
  - Teacher employed on a full-time basis at a school or tertiary education institution
  - Permanent employee of the Australian Postal Corporation with 2 or more years of continuous service who is employed in an office supplying postal services to the public
  - Sheriff or Sheriff's officer
  - Member of the Parliament of the Commonwealth, or the Parliament of a State, or a Territory legislature, or a local government authority of a State or Territory
  - Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
  - Judge of a court
  - Magistrate
3. An officer with, or authorised representative of, the holder of an Australian Financial Services License, having 2 or more years of continuous service with one or more licensees.