



# FINANCIAL PRODUCT TERMS

## **FXTRADING.COM FINANCIAL PRODUCT TERMS**

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Gleneagle Securities Pty Limited trading as FXTRADING.com (FXTRADING.com)

Company Number 40256,

Authorised dealer in securities

Date: 10 February 2020

# Financial Product Terms

## 1. Introduction

- 1.1. These terms govern your OTC Financial Products issued by FXTRADING.com.
- 1.2. If you choose to trade in an OTC Financial Product issued by FXTRADING.com, the OTC Financial Product will be on the terms in this document, including the terms in the Schedule to this document for the relevant OTC Financial Product.
- 1.3. The terms of this document, including the relevant Schedule for your OTC Financial Product, form part of the terms of your Account with FXTRADING.com. In relation to your Account, a reference to "Terms" includes the terms in this document (including the Schedules) which are applicable to you, as amended from time to time.
- 1.4. If, after opening an Account, you agree with FXTRADING.com that FXTRADING.com will provide access to a Financial Product or provide you with a financial service which you did not select in your Application Form, the relevant Schedule for the Financial Product or financial service will apply to your Account when FXTRADING.com agrees to provide the Financial Product or financial service to you.
- 1.5. A liability of FXTRADING.com accrues solely to that entity and is not a joint liability of any other related party of FXTRADING.com nor is any FXTRADING.com entity the agent, fiduciary, joint venturer or guarantor of any other FXTRADING.com related party.
- 1.6. These terms will apply to you in respect of your Account from the earlier of (a) the time FXTRADING.com accepts your application in the Application Form in respect of a particular Financial Product or financial service; (b) the time FXTRADING.com otherwise agrees to provide the Financial Product or financial service to you; or (c) the time you first place an Order in respect of a Financial Product with FXTRADING.com or otherwise instruct FXTRADING.com to provide the financial service to you.
- 1.7. You acknowledge and agree that you have read and understood all documentation provided to you by us including these terms and any product disclosure statement (PDS) in relation to any Financial Products which you request FXTRADING.com to make available to you in relation to your Account.
- 1.8. You acknowledge that we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these terms. By these terms we do not act in a fiduciary capacity and FXTRADING.com does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these terms except as expressly stated in these terms.
- 1.9. You acknowledge that FXTRADING.com does not provide personal financial advice merely by assessing your suitability to deal in OTC Financial Products or issuing OTC Financial Products to you. These Terms do not constitute personal financial advice, nor a recommendation or opinion that a particular Financial Product or service is appropriate for you.
- 1.10. FXTRADING.com has discretions under these terms which can affect your Transactions. You do not have any power to direct how we exercise our discretions. When exercising our discretions we will comply with our legal obligations as the holder of an Australian Financial Services Licence. We will have regard to our policies and to managing all risks (including financial, credit and legal risks) for ourselves and all of our clients, our obligations to our counterparties, market conditions and our reputation. We will try to act reasonably in exercising our discretions but we are not obliged to act in your best interests or to avoid or minimise a loss in your Account.

## 2. Interpretation

- 2.1. Unless the context otherwise requires, any expressions or phrases not otherwise defined within these terms have the meaning given to them in the Rules relevant to the Financial Product or financial service.
- 2.2. In these terms, unless otherwise indicated, the following words and expressions have the meaning set out below:

**Account** means an account held in your name or on your behalf with FXTRADING.com including all Trading Accounts and all Transactions recorded in them, for the purposes of these terms.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and Orders of a regulatory authority or a court, rules and procedures of a Financial Market or a CS Facility which apply to the relevant matter including for example, and without limitation, the Financial Products Law and regulations made pursuant to the Financial Products Law.

**Application Form** means the application form by which a person applies to become a client of FXTRADING.com and to open an Account.

**Authorised Person** means the person (if any) described as your authorised agent in the Application Form or another person properly notified by you to us.

**Base Rate** means the amount nominated by FXTRADING.com for this term from time to time, as notified to you (including through online services) or posted on its website.

**Business Day** means a weekday which is not a gazetted public holiday in Sydney.

**Claim** means any or all, actual or potential claim, action, complaint, suit, cause of action, arbitration, debt due, costs, claim, entitlement, allegation, demand in respect of damages and any other benefit verdict and judgment whether both at law or in equity or arising under the provisions of any statute, award or determination whether known at the date of these terms or not.

**Clearing Participant** means a participant of the relevant CS Facility which has the responsibility for clearing transactions.

**Client Moneys Trust Account** means an account (however named or styled) maintained by FXTRADING.com for the purposes of the Financial Products Law to hold client moneys.

**Close Out**, in relation to a Transaction, means discharging or satisfying the obligations of the parties under the Transaction and this includes:

- (a) by delivering the amount or value of the Underlying Security (including a dollar multiple of an index) required in accordance with the terms of the Transaction;
- (b) as a result of the matching up of the Transaction with a Transaction of the same kind under which you have assumed an offsetting opposite position; and
- (c) making adjustments for fees and charges.

**Closing Date** means the date on which the Transaction is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with these terms.

**Confirmation** means any confirmation of a Transaction issued by us or on our behalf to you and includes an electronically transmitted confirmation.

**Financial Products Law** means any Applicable Law (including regulations made under it), as amended from time to time relating to Financial Products.

**CS Facility** means a clearing and settlement facility, for the purposes of the Financial Products Law (which includes, for example, any clearing or settlement facility through which Transactions are cleared or settled), whether located in Australia or overseas.

**Default** has the meaning in clause 15.1 and, if applicable, as supplemented by a term in a Schedule.

**Derivatives** means derivatives for the purposes of the Financial Products Law.

**Exchange** means any exchange or market in which FXTRADING.com or its Hedge Counterparties, directly or indirectly, participate from time to time, whether directly or through agents or Market Participants, as the context permits or requires.

**Exchange System** means, in relation to a Financial Market or CS Facility the trading, clearing or settlement facility or system (or both) operated by or on behalf of the relevant Financial Market or CS Facility.

**Finance Charge** means a charge payable in accordance with clause 66. This may be referred to as an "interest charge" or "interest debit".

**Financial Market** means a financial market within the meaning of the Financial Products Law (which includes, for example, any market on which prices of Financial Products are quoted), whether located in Australia or overseas.

**Financial Product** means any financial product including a derivative and a foreign exchange contract.

**Foreign Exchange** means currency including Australian Dollars and foreign currency.

**forward purchase** and similar expressions mean the purchase of a currency (or other agreed security or commodity) at a Price agreed at the time of the purchase, which purchase is to be settled at a future time.

**Futures** has the same meaning as given in any rules governing the operation of any Exchange.

**Futures Contract** means a Futures Transaction which is regulated by an Exchange.

**Futures Transaction** means any Transaction, whether exchange traded or an OTC Transaction, to buy or sell a specific quantity of a described commodity at an agreed date in the future, whether or not it is physically settled or capable of being physically or cash settled and includes an option for such a transaction.

**FSG** means financial services guide.

**GST** means tax that is imposed as a goods and services tax under any Applicable Law.

**Hedge Counterparty**, when used in a Schedule, has the meaning given to the term in the relevant Schedule.

**Initial Margin** means the amount which you are required to pay to FXTRADING.com (depending on your Financial Product or financial service), as the initial Margin cover for any Transaction which you propose to enter into.

**Liquidated Value** has the meaning given in clause 4.2.

**Long Party** means the party to a Transaction (including a CFD) who is treated as having notionally bought the Underlying Security (or, in the case of an index CFD, a right in respect of payment arising from a change in the level of an index).

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Margin** means the balance of the amount of cash or other assets required to cover dealing through a Trading Account or other margin payment, by whatever terms they are described, and any like payments, required to be paid under these terms.

**Market Agreement** means an agreement entered into by FXTRADING.com with any other Market Participant (whether or not in writing).

**Market Participant** means:

- (a) in respect of any Transaction governed by Rules of an Exchange or trading participant or settlement participant or clearing participant as defined under the Rules of the relevant Exchange; and
- (b) in any other case, a person authorised or licensed to deal in Transactions (including to arrange Transactions, whether by trading platforms or otherwise), or an agent of such a person.

**On-line Service** means an on-line or other electronic service for supporting trading or ancillary services.

**Open Contract** means, in respect of an OTC Financial Product, a Transaction that has not expired or otherwise Closed Out.

**Open Transaction** means, at any time, a Transaction which has not been Closed Out or settled prior to the time agreed for settlement.

**Order** means any Order placed by you with us to purchase or sell or otherwise deal in Financial Products.

**OTC Financial Product** means a Financial Product which is an OTC Transaction.

**OTC Transaction** means a Transaction which is an over-the-counter contract (in contrast with an exchange-traded contract).

**Overall Balance** has the meaning given in clause 4.1.

**PDS** means a product disclosure statement.

**Price** means, in relation to a Transaction, the price or rate quoted by FXTRADING.com (as adjusted for any Transaction Fee or other fees and charges) and agreed to by you to express the value of the Underlying Securities the subject of that Transaction.

**Rules**, in relation to an Exchange, a Financial Market or a CS Facility, means their operating rules, procedures, customs and usages (as applicable from time to time).

**Settlement Time** means the time by which a Transaction must be settled, as set out in the Confirmation for the Transaction.

**Short Party** means the party to a Transaction (including a CFD) who is treated as having notionally sold the Underlying Security.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government agency, other than any imposed on overall net income.

**Term Currency** means, in Foreign Exchange Transactions, one party agrees to pay a specified amount of currency in one currency to purchase an amount of another currency.

**Terms** is defined in clause 1.3.

**Trading Account** means a sub-account (however named or styled) of the Account for a specific method of dealing. You may have several Trading Accounts within your Account. A

reference in these terms to a sub-account, or to a sub-account of the Account, is a reference to a Trading Account.

**Transaction** for these terms means any contract between you and FXTRADING.com as principal:

- (a) to pay, or to agree to pay, an amount calculated in respect of an Underlying Security in one currency against the settlement in another currency (or other agreed Underlying Security); and
- (b) in respect of which (other than in respect of Closing Out an Open Transaction as permitted under these terms) you have, or you are taken to have, agreed (whether orally, electronically or in writing) to:
  - (i) the Underlying Securities involved;
  - (ii) the amount of the currency (or other agreed Underlying Security or Derivative) to be purchased or sold by you;
  - (iii) the Price; and
  - (iv) the Settlement Time.

**Transaction Fee** means the fee or commission from time to time specified by FXTRADING.com to be the amount payable by you to FXTRADING.com in respect of each Transaction, which may include a point spread in respect of the buy and sell prices quoted by FXTRADING.com or a Transaction Fee payable to FXTRADING.com.

**Underlying Security** means any security, Financial Product, Foreign Exchange, commodity, index or other item (or any combination of one or more of those) the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an Exchange or other market facility. References in these terms to an Underlying Security which is a share or other similar equity financial product also apply when the Underlying Security is different, for example, a futures contract, an exchange traded option, a currency (or pairs of currencies) (with any necessary adaptation to the particular kind of Underlying Security).

**Underlying Security Price** means the market price of the security, Financial Product, Foreign Exchange, commodity (or other relevant thing) which is the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an exchange or other market facility, in any case as calculated by FXTRADING.com, having regard to the purposes of the calculation and the intent to make a reasonable determination in good faith but without having to consider the specific personal interests of any person.

**Unrealised Profit & Loss** has the meaning given in clause 4.5.

**Variation Margin** means an amount which you are required to deposit with FXTRADING.com or pay to FXTRADING.com (depending on your Financial Product or financial service), in either case as additional Margin cover. The Variation Margin liability may arise due to a change in the current marked-to-market value of the Derivative or other Open Transaction and the previous marked-to-market value of that Transaction, or because FXTRADING.com in its discretion calls for more Variation Margin.

**we, us, our** or **FXTRADING.com** means FXTRADING.com Pty Limited (Company Number 40256) and any of its successors or assignees.

**Withdrawable Funds** has the meaning given in clause 4.4.

**you** means the person or persons in whose name we open an Account (including any Authorised Person), following an application by that person or those persons.

- 2.3. Headings used in these terms are used for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except if the context makes it clear that a rule is not intended to apply.
- (a) A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
  - (b) A singular word includes the plural, and *vice versa*.
  - (c) A word which suggests one gender includes the other genders.
  - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (e) A reference to time is to local time in Sydney, New South Wales.
  - (f) Anything permitted to be done by FXTRADING.com in accordance with these terms may be done in its absolute discretion, and any opinion or view required to be formed by FXTRADING.com may be formed in its absolute discretion.
  - (g) For the avoidance of doubt, time will continue to run on days which are not Business Days.
- 2.4. If a specific provision in a Schedule is inconsistent with another provision in these terms, the specific provision prevails over the other provision to the extent of the inconsistency.

### **3. Account**

- 3.1. FXTRADING.com will establish one or more Accounts in respect of the Financial Products or financial services it provides to you. An Account may comprise one or more sub-accounts (each referred to as a Trading Account), including sub-accounts relevant to Financial Products or financial services provided by more than one FXTRADING.com entity. Transactions entered into by you pursuant to these terms will be recorded in the relevant Account or sub-account established by FXTRADING.com for that Financial Product or financial service. Unless you have specifically requested FXTRADING.com to open separate Accounts, you will be taken to have only one Account, with Transactions in respect of each Financial Product or financial service provided to you being recorded in a sub-account of that Account.
- 3.2. The calculations, reporting and administration may be performed by FXTRADING.com separately for each Account or sub-account, so that (without limitation):
- (a) Margin calculations may be managed and enforcement action may be taken for each Account or sub-account separately; and
  - (b) FXTRADING.com may at any time aggregate one or more Accounts or sub-accounts (for reporting or managing Margins or otherwise for the purposes of these terms), even if you cannot immediately access reports for aggregated Accounts or sub-accounts.
- 3.3. FXTRADING.com may set off any amount owing by you (including any negative balance in one or more Accounts or sub-accounts) against any amount FXTRADING.com owes you in any other Account or other sub-account, without notice. FXTRADING.com may choose, in its absolute discretion, which Financial Products, cash, or account balance or other property to apply to offset the debt. For the avoidance of doubt, this right of set off (and other rights of set off under these terms) apply in respect of rights and obligations across more than one Account or sub-account even if the FXTRADING.com entity in respect of those Accounts or sub-accounts are different. You agree that FXTRADING.com may apply the set off as among one or more Accounts including any sub-Accounts, before Default and on and following Default.
- 3.4. The Overall Balance of your Account or sub-account may reflect any such aggregation or set off any debt or other amount owing from time to time.
- 3.5. All Accounts and sub-accounts will be denominated in Australian dollars unless we agree with you that one or more Accounts or sub-accounts may be denominated in a foreign currency. You may only instruct FXTRADING.com to effect a Transaction denominated in another currency if you have established a relevant Account or sub-account denominated in that

currency. FXTRADING.com will not convert any Transaction or any Account or sub-account balance from one currency to another without an express instruction from you to do so.

- 3.6. You must maintain Margin in the currency of the relevant sub-account, even if FXTRADING.com converts that Margin into Australian dollars for the purposes of managing reports about your Accounts. The conversion for reporting will be at the rate determined by FXTRADING.com and that rate will not represent any actual conversion or agreed rate for actual conversion.
- 3.7. You must maintain Margin for Foreign Exchange Transactions in the Term Currency. If you do not have Margin in the Term Currency in your Account (or relevant sub-account) or your Account (or relevant sub-account) has a negative account balance in the Term Currency but you have sufficient funds in another currency (at the current market rate), FXTRADING.com may allow those other funds to be used to offset the required Margin. FXTRADING.com may withdraw that permission at any time, without reason or prior notice to you.
- 3.8. A client may be comprised of two or more persons. If the client is comprised of more than one person then the Account will be deemed to be held by the persons as joint tenants despite any actual or constructive notice to FXTRADING.com of any partnership or other agreement between the persons. The joint holding will be only be deemed not to be held as joint tenants if FXTRADING.com expressly agrees that in writing that the persons consisting the client hold the Account as tenants in common in equal shares or by a court determination of that it is not held as joint tenants.

#### **4. Calculations and Valuations**

- 4.1. The Overall Balance of an Account will be determined by FXTRADING.com on the basis of:
  - (a) Transactions, including rolled Transactions;
  - (b) Transaction Fees;
  - (c) Margin payments received and credited;
  - (d) Unrealised Profit & Loss;
  - (e) Finance Charges (including interest on any account balance, forward and rollover fees components); and
  - (f) any other fees and costs.
- 4.2. FXTRADING.com may from time to time calculate and report the Liquidated Value. The Liquidated Value is an indicative value of an Account calculated by FXTRADING.com for the Account. It takes into account (among other things, without limitation):
  - (a) Finance Charges (whether or not accrued and payable);
  - (b) an estimate of the cost of closing Transactions by termination or Close Out; and
  - (c) payment or credit to you to reduce your Margin cover.
- 4.3. The Liquidated Value may also be reported as the "cost to close" a Transaction, according to the type of Transaction or the method of dealing.
- 4.4. FXTRADING.com may from time to time calculate and report the Withdrawable Funds for an Account. The value of the Withdrawable Funds is the amount calculated by FXTRADING.com as the total amount of cash which would be paid to you (and debited from the cash balance of the Account) if requested. The amount is subject to final adjustment by FXTRADING.com at any time including immediately after payment of cash to you for appropriate reflection of the total value of the Account, including changes in value or level of Underlying Securities, interest rates, currency rates, and unposted (or unreported) but accrued Finance Charges or Transaction Charges. Withdrawable Funds may also be reported as the "cost to close" a Transaction, according to the method of dealing.
- 4.5. FXTRADING.com may from time to time calculate and report the Unrealised Profit & Loss for an Account (**Unrealised Profit & Loss**). Unrealised Profit & Loss is the indicative amount of net profit or loss of an Account calculated by FXTRADING.com (including by On-line Services) by reference to prevailing market prices and so:

- (a) may be adjusted by FXTRADING.com at any time without notice; and
  - (b) is not definitive and so does not assure you that the Transactions in that Account will have that value if actually terminated or sold at that particular time or at a later time.
- 4.6. Terms and expressions used in these terms for reporting and calculating amounts may differ from time to time from terms or expressions used in On-line Services usage or desk usage or market practice. You should have regard to the statements, Confirmations, guides and dealing practices used from time to time.
- 4.7. If the composition or calculation of an Underlying Security is adjusted by its issuer, regulator or sponsor, FXTRADING.com will make such adjustment to the Transaction at the time determined by FXTRADING.com which reasonably preserves the intended economic effect of the Transaction, but without being obliged to consider your particular circumstances or any adjustments made by any other Market Participant. FXTRADING.com need not give notice of the adjustment. If the Underlying Security becomes subject to a take-over bid, a take-over offer, scheme of arrangement or other mechanism for change in control, then FXTRADING.com may elect to Close Out the Transaction on a new Closing Date determined by FXTRADING.com.
- 4.8. For CFD Transactions, ordinarily the Long Party will be credited with an amount equal to the gross unfranked amount of any dividend payable to the Holder of the Underlying Security (as determined by FXTRADING.com) and the Short Party will be debited with an amount equal to the gross unfranked amount of any dividend payable to the Holder of the Underlying Security (as determined by FXTRADING.com).

## **5. ORDERS**

- 5.1. You may from time to time place Orders with us to enter into Transactions. Subject to these terms, we will execute your Orders (or will instruct third parties to execute your Orders) with you as principal.
- 5.2. We will use our reasonable endeavours to execute your instructions. Without limiting clause 13, we will not be responsible for delays or errors in the transmission or execution of your instructions (except to the extent that responsibility cannot be excluded by law).
- 5.3. We may refuse to accept an Order and we may place a limit on any Order or place other conditions on the receipt of instructions or Orders, in our absolute discretion and for any reason. We may at any time use, add and change filters within a trading system which prevent delivery of Orders or execution of Orders. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented by law or a direction from a regulatory authority from notifying you.
- 5.4. We may cancel or amend an Order:
- (a) if required by a relevant Financial Market or CS Facility or Applicable Law to do so or if a Hedge Counterparty is required to do so in respect of its hedge which corresponds with the Hedge Contract corresponding with your Transaction;
  - (b) in the event of an error;
  - (c) if we consider the cancellation appropriate, having regard to the desirability to maintain a fair and orderly market, our obligations as the holder of an Australian financial services licence or as a participant or user of the relevant Financial Market and our other legal and regulatory obligations; or
  - (d) if the Financial Product the subject of the Transaction has been subject to a trading halt on a Financial Market and you have not reconfirmed instructions.
- You acknowledge that an Exchange has a range of powers, including the power to cancel or amend a Transaction. This power can be exercised without your permission or our agreement.
- 5.5. We will make reasonable efforts to effect any instructions to cancel or amend Orders as quickly as possible. If, however, an Order is filled prior to a cancellation or amendment instruction being effected, you are obliged to accept the Transaction on the original terms prior to your amendment or cancellation instruction, unless the Transaction is itself cancelled or amended.

- 5.6. We may execute Orders for you even in circumstances if we or our associates:
- (a) hold a principal position or deal in the relevant Financial Products;
  - (b) provide similar services to other persons in relation to the relevant Financial Products;
  - (c) have material price sensitive information relating to the relevant Financial Products if the individuals processing your Order are prevented from knowing or taking into account such information (including, but not limited to, by reason of procedures known as "Chinese walls"); or
  - (d) have a potential conflict of interest or duties including, for example, a conflict of interest of which you are not aware and which we are unable to disclose to you.
- 5.7. Notwithstanding any rule of law or equity to the contrary, FXTRADING.com is not disqualified from contracting with any person and no contract, transaction or arrangement in which FXTRADING.com is in any way interested is avoided or rendered voidable by virtue of your agreement with us, a Transaction or any Market Agreement. FXTRADING.com is not liable to account to you for any profit realised by any such contract, transaction or arrangement in connection with these terms, a Transaction or a Market Agreement. FXTRADING.com is not required to make any disclosure to you concerning any such contract, transaction or arrangement.
- 5.8. We and our related bodies corporate may enter into Transactions with you as principal, whether in respect of Financial Products able to be traded on a Financial Market or in respect of over-the-counter Transactions such as Derivatives or Foreign Exchange related Transactions. If permitted by law and the Rules, we or an associate may take the opposite position in a Transaction with you. Your Orders may match opposite Orders of another person who is our client, and this may entitle us to receive commission from both sides of the Transaction. Similarly, if we deal as principal, then your Orders may match opposite Orders entered by us as principal or as agent for others and you authorise us to charge you commission in respect of your Transaction in those circumstances.
- 5.9. You are aware of and acknowledge the right of FXTRADING.com and its related bodies corporate, directors and employees, either on their own account or on behalf of other clients or persons, to deal in any Transaction or take the opposite position to you in Transactions, if permitted (or, if not expressly permitted, then if not prohibited) to do so by the Financial Products Law and the Rules.
- 5.10. Unless otherwise specified in these terms, all Orders will remain open until either cancelled by you or purged by the trading system or the On-line Service for the relevant Financial Market. An Order or unfilled part of an Order will be purged from the date of the Order entry or such earlier time as determined by FXTRADING.com without having to notify you of that. Once an Order has partially traded, only the remaining volume can be cancelled and you remain liable for the volume traded. We do not accept responsibility for reinstating lapsed Orders or for contacting you to seek new instructions.
- 5.11. If a security code or identifier changes, you are responsible for replacing all live and contingent Order codes with the new relevant security code or identifier. We will not be responsible for any live or contingent Orders with the incorrect security code or identifier.
- 5.12. You must not instruct us to submit an Order to enter into a Transaction which would breach or cause us or any other person to breach the Financial Products Law, the Rules or any other Applicable Laws including, without limitation, any law or the Rules in relation to:
- (a) market manipulation, false trading, market rigging, fictitious transactions, wash trading or matching of Orders;
  - (b) insider trading;
  - (c) short selling;
  - (d) creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
  - (e) misleading or deceptive conduct.

- 5.13. Your instructions to FXTRADING.com to enter into a Transaction, your Order to FXTRADING.com to enter into the Transaction and the Transaction remains valid and enforceable against you, without affecting your other liability to FXTRADING.com even if you (or your Authorised Person) are not authorised by your own rules (such as a corporate or trust constitution or an investment management agreement).
- 5.14. You agree not to make any Claim against FXTRADING.com for any Loss incurred or suffered by you which arises, directly or indirectly, whether reasonably foreseeable or not, in connection with the exercise of any power by an Exchange pursuant to the Exchange Rules (whether or not directly affecting a Hedge Contract corresponding with your Transaction).

## **6. Fees, charges and costs**

- 6.1. You must pay to us or as we direct:
- (a) a Transaction Fee, a spread on a rate, a Finance Charge or any or all of them, in respect of each Transaction in which FXTRADING.com acts as principal;
  - (b) any transaction charges imposed by FXTRADING.com and all transaction commission, charges, fees, Margins, premia, settlement and clearing fees and charges, charges imposed by any Exchange, interest, default charges and Taxes (including GST but excluding FXTRADING.com's income tax or penalty tax and levies) and any other amounts due under these terms on demand by FXTRADING.com in cleared funds or otherwise as required by these terms;
  - (c) any royalty or other fee which must be paid for the use of prices or information provided to you via access through the trading platform or otherwise by any Exchange;
  - (d) a monthly access charge for the use of the trading platform provided by FXTRADING.com, as specified by FXTRADING.com from time to time; and
  - (e) Finance Charges applicable to any Transaction, as specified by FXTRADING.com from time to time;
  - (f) any fees, Taxes, stamp duty or other charges as may from time to time be levied on or in connection with any Transactions entered into with you; and
  - (g) in respect of any unpaid amounts required to be paid under these terms including, (without limitation) any amounts due as a result of your failure to pay interest on all such amounts denominated in Australian dollars at the rate of Base Rate plus 4% per annum, such interest to accrue daily from the due date to the date of its payment in full.

Any amount, rate or formula which is to be specified by FXTRADING.com may be specified in a PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you. The amount of brokerage, Transaction Fees or other amounts payable by you to FXTRADING.com in respect of any Transaction will be set out in the Confirmation of that Transaction.

- 6.2. FXTRADING.com may receive commissions and other benefits from other parties in relation to Transactions FXTRADING.com enters into with you or in connection with other services provided to you including for example, commissions or benefits from the operator of any bank account or the issuer of various Financial Products. FXTRADING.com is entitled to retain such commissions and benefits.
- 6.3. If you have been referred to us or on behalf of a broker or other third party, that broker or third party may receive benefits in the form of a commission or rebate from us.
- 6.4. Unless otherwise agreed, any amounts payable by you under these terms are amounts exclusive of GST. You are required to pay the GST on the amount charged for the supply of the service, unless that is not permitted by law.
- 6.5. The amounts of the fees, commissions and charges referred to in clause 6.1 will be as notified from time to time in writing to you by FXTRADING.com.

- 6.6. You agree that FXTRADING.com may:
- (a) debit your Account (on a monthly or any other basis) or deduct from the Client Moneys Trust Account and pay itself, without further reference to you:
    - (i) all administration fees, including but not limited to fees associated with returned cheques, payment processing, Short Message Service (SMS), debt collection and telephone transcript copies from your Account with FXTRADING.com during the full term of these terms while you use such services; and
    - (ii) all fees, charges and royalties which you owe to FXTRADING.com;
  - (b) withdraw from the Client Moneys Trust Account and pay ourselves the amount of any the Transaction Fee you owe or the amount of Margin which you must pay to maintain the required Margin cover or to meet any Margin call made to you;
  - (c) withdraw from the Client Moneys Trust Account and pay ourselves the amount of any other amount reimbursable in accordance with these terms; and
  - (d) deduct from the Account any amount reimbursable in accordance with these terms.
- 6.7. You must reimburse FXTRADING.com for all fees (both direct and indirect) and expenses charged in connection with any Transaction (other than Tax on the income of FXTRADING.com) and for all costs and expenses incurred by FXTRADING.com in implementing these terms and in enforcing its rights under these terms (including its legal costs of external or internal legal advisers on a full indemnity basis).
- 6.8. The rolling of a Transaction to a forward date (regardless of whether the existing or new position is a spot or forward position) is a new Transaction. A Transaction Fee is payable in respect of each Transaction.
- 6.9. FXTRADING.com may charge a Finance Charge on an Account at any time chosen by FXTRADING.com, such as (without limitation):
- (a) either immediately at the time of entering into the Transaction;
  - (b) at day's end, or month's end;
  - (c) at a rollover of the Transaction;
  - (d) at end of the Transaction; or
  - (e) at any other time after entering into the Transaction.
- 6.10. You remain liable to pay the Finance Charge even though:
- (a) the charge may be called other things from time to time, even across different Accounts at the same time;
  - (b) the charge is not stated on a statement for an account or interim confirmation for a Transaction;
  - (c) the charges differ according to whether the Transaction was made offline or on-line;
  - (d) the charges differ according to the amount of the Account, regardless of the amount or value of the Account;
  - (e) different rates apply at the same time to other clients' accounts;
  - (f) the charge is applied at rollover but is not levied or enforced until termination of the Transaction;
  - (g) the Transaction is denominated in a currency other than Australian dollars or the Term Currency; and
  - (h) the rates will be as determined by FXTRADING.com in its absolute discretion.
- 6.11. The Finance Charge may be an amount owing by you to FXTRADING.com or, if applicable, by FXTRADING.com to you, in respect of a Transaction, and may be applied from day to day or at other times determined by FXTRADING.com. The rate payable by FXTRADING.com to you on a Finance Charge may be less than the rate for a Finance Charge payable by you to

FXTRADING.com. The net Finance Charges payable by you to FXTRADING.com will take into account the accumulated Finance Charges for a Transaction and the aggregate Finance Charges for an Account.

- 6.12. If Foreign Exchange Transactions are “rolled over” or “swapped”, you will be charged or will be entitled to receive a Finance Charge at the daily rollover rate determined by FXTRADING.com. The rollover rate is the interest rate differential between the two applicable currencies. The Finance Charge ordinarily is calculated and applied by way of being added to the Transaction amount (“forward points”) which will therefore vary depending on a number of factors including (but not limited to):
- (a) the currency pair you are trading;
  - (b) the applicable interest rates in the interbank markets according to the period of the rollover that is the interest rates offered for each currency pair (paid or earned);
  - (c) the size of the Transaction;
  - (d) the standard FXTRADING.com fees that may apply; and
  - (e) other factors, all as determined by FXTRADING.com in its absolute discretion.
- 6.13. The forward points can either be:
- (a) accumulated as an offset to your Account balance and will be directly debited or credited to your Account balance on settlement date; or
  - (b) reflected in the Price at which the Open Contract is rolled forward, that is, it is included in the Price (or rate at which the contract is rolled) and debited or credited to your Account balance on its settlement date.

## **7. CLIENT MONEYS**

- 7.1. FXTRADING.com must deal with any money and property which you pay or give to, or which is otherwise received by FXTRADING.com in connection with financial services provided by FXTRADING.com, in accordance with the Financial Products Law, Applicable Laws and Rules. For example, FXTRADING.com may be required to pay such moneys into a Client Moneys Trust Account which complies with the requirements of the Financial Products Law. You acknowledge that:
- (a) your moneys and the moneys of other clients of FXTRADING.com may be combined and deposited by FXTRADING.com in a Client Moneys Trust Account;
  - (b) all moneys credited to a Client Moneys Trust Account maintained by FXTRADING.com to comply with or for the purposes of the Financial Products Law may be used by FXTRADING.com for purposes unrelated to your Account to the extent permitted by the Financial Products Law. With respect to Transactions in Derivatives, FXTRADING.com is permitted by law to use any or all moneys to which you are otherwise entitled in any Client Moneys Trust Account maintained by FXTRADING.com to meet obligations incurred by FXTRADING.com in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in Derivatives by FXTRADING.com, including dealings on behalf of other clients of FXTRADING.com.
- 7.2. You authorise and direct FXTRADING.com to withdraw any or all moneys to which you are otherwise entitled in any Client Moneys Trust Account maintained by FXTRADING.com to meet any liability, obligation or other Loss which you owe to FXTRADING.com including to pay for your Financial Products (including payment for Margin).
- 7.3. You acknowledge that FXTRADING.com is entitled to be paid from those moneys to which you are otherwise entitled in any Client Moneys Trust Account maintained by FXTRADING.com an amount sufficient to meet any liability, obligation or other Loss which you owe to FXTRADING.com.
- 7.4. If you pay moneys into any Client Moneys Trust Account maintained by FXTRADING.com in anticipation of you creating and meeting any liability, obligation or other Loss which you will owe to FXTRADING.com including to pay for your Financial Products (including payment for

Margin) before that liability or obligation has arisen, by these terms you authorise and direct FXTRADING.com to withdraw those moneys to pay FXTRADING.com on the basis that the paid amount must be credited to your Account. Your payment into the Client Moneys Trust Account will be deemed to be subject to this direction unless you tell FXTRADING.com otherwise. You agree that these terms are a sufficient written direction for the purposes of authorising and directing FXTRADING.com to make the withdrawal on these terms, subject to any other written direction you give FXTRADING.com from time to time.

- 7.5. FXTRADING.com is not liable to you for the performance by the third party who receives the benefit of the payment of your funds. In particular, without limitation, FXTRADING.com is not obliged to enquire into:
- (a) the use of those funds by the third party;
  - (b) any persons to whom the third party pays all or any of these funds;
  - (c) the solvency of any of those persons;
  - (d) the compliance by any of those person with the Financial Products Law, Applicable Laws and Rules;
  - (e) whether any of those persons hold any part of these funds on any nominee, segregated account, trust or any other basis for your protection or security.
- 7.6. You agree that FXTRADING.com is entitled to all interest earned on moneys credited to a Client Moneys Trust Account unless you and FXTRADING.com have otherwise agreed in writing.
- 7.7. The proceeds of a Transaction or other moneys to which you are entitled under these terms and which is under the control of FXTRADING.com will be paid directly to you and not to any third party, unless you have otherwise instructed us to do so and we agree to that. You must provide relevant account details for payment instructions in respect of payments to be made by FXTRADING.com to you. Although FXTRADING.com will take reasonable steps to comply with your payment instructions, FXTRADING.com accepts no responsibility for any failure to comply with those instructions and, if such failure occurs, the relevant moneys will continue to be held by FXTRADING.com in accordance with the Financial Products Law and Applicable Laws.
- 7.8. All currency exchange risks regarding any payment instruction or any Order or Transaction entered into or arranged for you by FXTRADING.com is your responsibility. Any conversion from one currency to another required to be made for performing or executing any payment instruction, Order or Transaction may be effected by FXTRADING.com in the manner and at the time and at the exchange rates that FXTRADING.com, in its absolute discretion, decides.

## **8. Settlement of transactions**

- 8.1. The date and time for settlement of a Transaction is the date and time specified on the relevant Confirmations.
- 8.2. Before placing an Order with us to purchase Financial Products or to enter into a Transaction which requires you to pay an amount of money to settle the Transaction, you must, if required by FXTRADING.com, ensure FXTRADING.com is able to access cleared funds in a Client Moneys Trust Account or through a margin lending facility either provided by us or by another provider acceptable to us, sufficient to cover that amount, any fees (including our brokerage), Finance Charges, Transaction Fees and any other amounts required to meet your obligations in respect of the Order. If that requirement is imposed by FXTRADING.com, from the time of placing the Order you may not withdraw from the Client Moneys Trust Account money required to settle the Transaction and you acknowledge that we may take steps to ensure that does not happen. We are not required to issue to you any Financial Products until we have received payment in full for the relevant Transaction.
- 8.3. The proceeds of a Transaction to which you are entitled under these terms and which are under the control of FXTRADING.com will be paid in accordance with Applicable Laws and these Terms.
- 8.4. You authorise us:

- (a) to appropriate any credits, payments receipts or amounts to which you are entitled (including moneys to which you are otherwise entitled in any Client Moneys Trust Account); and
- (b) to set off those credits, payment, receipts or amounts against any amount due or owing by you to us.

## **9. Failure to Settle**

9.1. If you fail to make payment, deliver any documents, security holder information or property to us in accordance with the relevant Confirmation and these terms, we may do one or more of the following:

- (a) pass on to or charge you all costs incurred by us as a result of that failure;
- (b) charge an administration fee calculated by reference to the additional cost which we estimate has been or is reasonably likely to be incurred by us as a result of your failure to settle (even though we have not yet incurred that additional cost at the time of charging you for that);
- (c) charge interest at the Base Rate plus 4% per annum on any debit balances resulting from your failure to settle any Transaction;
- (d) charge interest at the Base Rate plus 4% per annum on any other amount you owe which is outstanding from time to time;
- (e) sell any Financial Product or other property at a time, manner and price on your behalf at your risk and expense and apply the proceeds to reduce your liability to us and to recover our costs in so acting;
- (f) sell any Financial Product or other property that we otherwise hold on your behalf at a time, manner and price on your behalf at your risk and expense and apply the proceeds to reduce your liability to us and to recover our costs in so acting;
- (g) apply any cash held by us or to which we have access, or payments received for or from you, whether held in a Client Moneys Trust Account or otherwise, to reduce your liability to us;
- (h) cancel any of your unexecuted Orders; and
- (i) exercise any other powers under these Terms.

9.2. Without limiting clause 13, you are responsible for and must indemnify us against all costs (including legal costs on a full indemnity basis), expenses, damages and Losses arising in connection with any failure by you to settle an executed Transaction including, but without limitation to, any consequential loss, brokerage, stamp duty, Taxes, penalties, interest and legal costs. You must pay or reimburse us any amount covered by the indemnity in this clause 9 immediately upon demand. We may deduct any of the amounts contemplated in this clause 9 (and any GST) from any sale proceeds or other amounts otherwise payable to you.

## **10. Cancellation of transactions**

10.1. Applicable Laws may give the operator of a Financial Market or CS Facility the power to cancel, amend or require the cancellation or amendment of a Transaction. If FXTRADING.com determines that affects the Hedge Contract corresponding with your OTC Financial Product, FXTRADING.com cancel or amend your OTC Financial Product without your permission.

10.2. You authorise us, and agree that we may, without your consent, cancel or amend (or request or agree to the cancellation or amendment of) any Transaction:

- (a) if a Financial Market or CS Facility exercises any power under their respective operating rules to cancel or amend (or require the cancellation or amendment of) a transaction that corresponds with your OTC Financial Product;
- (b) in the event of an error (if relevant, as defined in the Rules of the relevant Financial Market) or otherwise in circumstances required or contemplated in the Rules or by Applicable Laws; or

- (c) if we consider the cancellation appropriate, having regard to the desirability to maintain a fair and orderly market and our obligations as the holder of an Australian financial services licence or as a participant or user of the relevant Financial Market and our other legal and regulatory obligations.
- 10.3. Your obligations under these terms in relation to the settlement of a Transaction which is cancelled in accordance with this clause cease to apply in respect of that cancelled Transaction from the time it is cancelled (whether or not we or someone on our behalf has given you a Confirmation in respect of any affected Transaction).

## **11. MARGIN COVER**

- 11.1. You agree and acknowledge with each of the following:
- (a) Margin cover refers to the amount paid or payable to FXTRADING.com as it requires and which is credited to your Account (or to a Trading Account). The minimum amount of the Margin is determined by FXTRADING.com in its absolute discretion.
  - (b) A Margin payment is the amount you pay FXTRADING.com for crediting your Account (or Trading Account) as Margin cover.
  - (c) You must maintain at least the amount of Margin cover specified by or on behalf of FXTRADING.com from time to time, as required by FXTRADING.com, including those imposed by the requirements of On-line Services made available by FXTRADING.com to you, whether or not FXTRADING.com gives any notice to you to make those payments or you have actual notice of the required amount. The required amount of Margin cover can change continuously and can change automatically, including over the week-end or other non-trading days. Your obligation to maintain at least the required amount of Margin cover is continuous.
  - (d) You have an obligation to satisfy a Margin call (in addition to your obligation to maintain Margin cover) within the required time by any combination of Closing Out positions or making payments (or both) as accepted by FXTRADING.com, in its absolute discretion. The minimum amount of the Margin call will be determined by FXTRADING.com in its absolute discretion. The payments to be made towards satisfying a Margin call must be made, as specified by FXTRADING.com from time to time to a Client Moneys Trust Account and then dealt with in accordance with these terms.
  - (e) Margin calls may be made by any means of notice permitted by these terms, including by telephone call to you or your Authorised Person or by way of the On-line Service (even if you do not access your Account during the time the Margin call requires payment). You acknowledge that it is fundamental that you remain contactable by FXTRADING.com at all times by FXTRADING.com using the contact details you give FXTRADING.com from time to time and that your failure to be contactable or to receive notice of a Margin call at any contact address you give does not affect the validity of the Margin call or your obligation to satisfy it.
  - (f) If no other time is stipulated by FXTRADING.com for when you must satisfy the Margin call then you must comply within 24 hours of the Margin call being made, even if you have not received it or are actually aware of it and even if the time of making the Margin call or the time for satisfying it are outside of normal working hours of a Business Day. You acknowledge that Margin calls may be payable immediately if required by FXTRADING.com.
  - (g) If you fail to satisfy the Margin call by the required time, then FXTRADING.com may (without prejudice to any other rights or powers under these terms) in its absolute discretion, and without creating an obligation to do so, Close Out, without notice, all or some of your Transactions, whether or not those Transactions caused the need for more Margin cover.
  - (h) The time for your payment to maintain Margin cover and to satisfy any Margin call is of the essence.
  - (i) Your obligations to maintain Margin cover and to satisfy Margin calls arise at the time the Transaction is executed irrespective of the time any later Margin call is made.

- (j) It is solely your responsibility to monitor and to satisfy all Margin cover and Margin call obligations, whether or not a Margin call is notified to you.
- (k) A Margin payment is credited by FXTRADING.com at the time cleared funds have been received and credited to the account nominated by FXTRADING.com or such earlier time as allowed by FXTRADING.com, so a Margin cover requirement or a Margin call for a CFD or other OTC Transaction issued by FXTRADING.com is not satisfied unless and until your payment is received in cleared funds from the Client Moneys Trust Account as required by FXTRADING.com. Credit for the Margin payment in respect of any Financial Product issued to you by FXTRADING.com as principal to you means that you have paid FXTRADING.com and the cash balance of your Account is credited with that payment (so you do not have any beneficial interest in any funds paid to or for the account of FXTRADING.com).
- (l) Without limiting any other right of FXTRADING.com, in respect of any Financial Product issued to you by FXTRADING.com acting as principal to you, you authorise and direct, by these terms, that all of the funds which you deposit into the Client Moneys Trust Account be immediately withdrawn and paid to FXTRADING.com for its own account, towards satisfying your obligations to pay Transaction Fees, Finance Charges, to pay Margin to maintain Margin cover and to meet Margin calls and to pay all other amounts owing under these terms, even if:
  - (i) your payment (after deduction for Transaction Fees, Finance Charges and other amounts owing) is in an amount less than or more than the amount required to satisfy a Margin call or to maintain the total amount of required Margin cover;
  - (ii) more than one Margin call is made after your payment to a Client Moneys Trust Account;
  - (iii) the required amount of Margin cover reduces after your payment to a Client Moneys Trust Account;
  - (iv) there is any delay between the time you make the payment to the Client Moneys Trust Account and when FXTRADING.com makes the withdrawal;
  - (v) your purport to withdraw your authority and direction but you still have at that time an obligation to FXTRADING.com to maintain an amount of Margin cover or to satisfy a Margin call which has not been satisfied; or
  - (vi) you do not tell us your intended use of the Margin cover which will be directed to your Account after your payment or you change your mind after you tell us and you deal in Financial Products for a lesser value than you told us or you do not deal.

You understand and agree that FXTRADING.com may for the purposes of this clause make regular or specific withdrawals from the Client Moneys Trust Account into which your initial payment was deposited.

- (m) Your liability in respect of Margin requirements is not limited to the amount, if any, initially paid to FXTRADING.com for your Account. You are responsible to pay in cash any deficit owing to FXTRADING.com after Close Out of a Transaction and if you default in payment of such deficit, FXTRADING.com may pay the deficit out of the Account or realise any Financial Products held by FXTRADING.com (whether or not by sale on any Exchange and, if so, for whatever price and at whatever time is chosen by FXTRADING.com in its discretion) and apply the proceeds against that deficit and you are responsible for the full and prompt discharge of the deficit (which exceeds the value of the Account) by making payment in full to FXTRADING.com immediately that deficit arises.
- 11.2. FXTRADING.com and may make Margin calls more frequently than daily and you must fully and punctually comply with such calls.
- 11.1. FXTRADING.com may (without notice to you) Close Out, but will not be obliged to Close Out or to attempt to Close Out, some or all Open Transactions, at that time or any later time as FXTRADING.com determines (whether in its discretion or by automatic trading platform management) if:

- (n) on any day on which you have an Open Transaction, the value of the Account and any other Margin paid by you under these terms does not exceed the required Margin cover; or
- (o) you fail to make a Margin payment by the due date and time, which may be immediately the call is made; or
- (p) at any time, and from time to time, FXTRADING.com determines that the value of all of your Open Transactions (and not taking into account any cash balance in your Account) represents a substantial net unrealised loss to you such that, in FXTRADING.com' belief, the continued trading, or failure to Close Out, one or more of your Open Transactions will or is likely to materially prejudice your Account balance.

## **12. Settlement of Open Transactions**

- 12.1. If you want to Close Out an Open Transaction earlier than by other agreement with FXTRADING.com, you must instruct FXTRADING.com accordingly with at least two (2) Business Days' notice prior to the intended settlement date for Close Out of any Open Transaction, subject to the Rules, prevailing market conditions or as otherwise agreed with FXTRADING.com.
- 12.2. In respect of each Open Transaction, subject to:
- (a) prior Close Out of that Open Transaction; or
  - (b) the express agreement pursuant to clause 12.3 to settle that Open Transaction, FXTRADING.com is by these terms instructed:
    - (c) to vary the Open Transaction (in which case it will be deemed to be a new Transaction) so that its settlement date is deferred to a Business Day to be agreed between FXTRADING.com and you (and failing agreement by 5:00 p.m. on the Business Day immediately prior to the then applicable settlement date as agreed previously, it will be the following Business Day); and
    - (d) to Close Out the Open Transaction and enter into a new Transaction for the same Underlying Security and being the same bought or sold position except that the settlement date is to be one Business Day later and adjusted for any interest differential.
- 12.3. Subject to prior Close Out, no Transaction will be physically settled unless, in exceptional circumstances, FXTRADING.com in its sole discretion gives express prior permission to you to settle the Transaction by physical settlement of the Underlying Security (but in any case physical settlement of a Futures Transaction or a Commodities Transaction will not be permitted). If FXTRADING.com agrees to settle on that basis, then you must fully and punctually discharge all your obligations.

## **13. Limitation of liability, indemnities and payments**

- 13.1. Subject to those provisions of the Trade Practices Act 1974 (Commonwealth), the Australian Securities and Investments Commission Act 2001 (Commonwealth), the Financial Products Law, any other legislation and any other rights, duties or other obligations imposed or implied by law which cannot be excluded by agreement between the parties, to the extent each of the following is not prohibited by those laws:
- (a) we make no warranties either expressly or impliedly as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any services we provide under these terms including, without limitation, the On-line Service;
  - (b) FXTRADING.com excludes all liability in contract, tort or otherwise relating to or resulting from use of any services we provide under these terms and for any Loss incurred by you directly or indirectly, including without limitation as a result of or arising out of:
  - (c) any inaccuracy, error or delay in or omission from any information provided to you under these terms including the On-line Service;

- (i) any delays or failures or inaccuracies, or loss of access to, the provision of a Service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the On-line Service or in respect of the transmission of Orders or any other information;
  - (ii) any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific;
  - (iii) any government restriction, Exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to our On-line Service, theft, sabotage, war, earthquakes, strike, force majeure and, without limitation, any other conditions beyond our control;
- (d) FXTRADING.com is not liable in contract, tort (including negligence) or otherwise for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply of a Service including, without limitation the On-line Service;
- (e) FXTRADING.com makes no representations or warranties either express or implied that:
- (i) any Exchange System (or any part of it) or any service or any services performed in respect of it will meet your requirements or the requirements of any user; or
  - (ii) the operation of, or services performed in respect of, any Exchange System will be uninterrupted or error-free;
- (f) FXTRADING.com is not liable for any breach of a provision of any relevant legislation, negligence, injury, death, lost profits, loss of files data or use, economic loss, loss or reputation or losses or damages incidental or consequential to the operation of any Exchange System, except to the extent that it is caused by the negligence or dishonesty of FXTRADING.com or their employees, agents or representatives; and
- (g) FXTRADING.com' liability to you is in any event limited to:
- (i) in the case of goods, the replacement or repair of the goods; or
  - (ii) in the case of services, the re-supply of the services,

except in either case to the extent clause 14 applies.

13.2. To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep FXTRADING.com and its respective officers, employees, agents and representatives indemnified from and against all Claims arising out of:

- (a) any default, whether by your act or omission under these terms or any Order or Transaction;
- (b) any breach by you of any Applicable Law;
- (c) any representation or warranty made or given by you under these terms proving to be untrue or incorrect;
- (d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your clients, employees, agents or Authorised Persons, consultants or servants;
- (e) any failure of any of your computer or electronic systems or networks to perform, be available or successfully transmit data to FXTRADING.com, or any error or inadequacy in the data or information input into such systems or networks by you;
- (f) any delays in processing any Order including, for example (but not limited to), as a result of systems or market delays, or due to verification or filtering procedures or unauthorised processes, email delays or due to telephone call waiting time or adherence to internal policies and procedures;
- (g) anything lawfully done by FXTRADING.com in accordance with, pursuant or incidental to these terms;
- (h) any instruction, request or direction given by you;

- (i) by reason of FXTRADING.com complying with any direction, request or requirement of Applicable Law, any Financial Market or CS Facility, any government body or any regulatory body having jurisdiction over FXTRADING.com or any Hedge Counterparty;
- (j) arising from and in connection with or in any way related to FXTRADING.com in good faith accepting and acting on instructions received by facsimile transmission, email or by other means of any kind which are signed by or purported to be signed by you or any Authorised Person; or
- (k) any failure or delay by a Hedge Counterparty to meet its obligations to FXTRADING.com in respect of or in relation to (including by corresponding with) your Transactions and any payments made in respect of them,

except only to the extent attributable to the breach of these terms by FXTRADING.com or the gross negligence or fraud by FXTRADING.com.

- 13.3. If GST is payable on a taxable supply made by FXTRADING.com under, by reference to, or in connection with these terms, you must also pay the amount of GST payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to you to be GST inclusive.
- 13.4. You acknowledge that you are responsible for your own legal costs associated with entering into these terms and for all Taxes and expenses incurred by you in connection with these terms, including any Transaction made under it.
- 13.5. All payments by you under these terms are:
- (a) to be made without any set-off by you (unless it is the final payment owing after Closing Out all Transactions), counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of the Terms; and
  - (b) payable in any currency that FXTRADING.com may require or determine.
- 13.6. If:
- (a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or
  - (b) FXTRADING.com is required to pay any Tax (other than income tax) in respect of any payment made in relation to these terms at your request,

then you:

- (a) indemnify FXTRADING.com against the Tax; and
- (b) agree to pay to FXTRADING.com an additional amount to ensure FXTRADING.com receives a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount FXTRADING.com would have received had a deduction or withholding or payment of Tax not been made.

## **14. Hedge Counterparties – limitation of liability and other risks**

- 14.1. This clause 14 applies if any one or more of the following applies:
- (a) a Schedule states that this clause 14 applies;
  - (b) a PDS states that this clause 14 applies or otherwise gives you notice that limited recourse applies to the Financial Products covered by the PDS; and
  - (c) you are given notice in any other way that this clause 14 applies.

This limitation of FXTRADING.com' liability and your recourse apply despite any other provision of these terms or any other agreement, arrangement or understanding and extends to all liabilities and obligations of FXTRADING.com in any way connected with any representation,

warranty, conduct, omission, agreement or transaction related to the Terms and anything done or omitted to be done under them.

14.2. If this clause 14 applies, then to the maximum extent permitted by law in respect of your Financial Products, financial services, Orders or Transactions and all related obligations and liabilities of FXTRADING.com to you to which this clause 14 applies (FXTRADING.com Liability):

- (a) the FXTRADING.com Liability however arising is limited to paying to you an amount equal to the Recovery Amount; and
- (b) your recourse against FXTRADING.com is limited to seeking payment of the Recovery Amount.

This limitation of FXTRADING.com' liability and your recourse against FXTRADING.com apply despite any other provision of these terms or any other agreement, arrangement or understanding (written or not) and extends to all liabilities and obligations of FXTRADING.com in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Terms and anything done or omitted to be done under it.

14.3. The Recovery Amount is:

- (a) the amount that FXTRADING.com actually receives from, on behalf of or in respect of the Hedge Counterparty under the terms of or in respect of:
  - (i) an Order or Transaction made by you; or
  - (ii) any Order or Transaction made by FXTRADING.com with that Hedge Counterparty which, in FXTRADING.com' opinion, corresponds with your Order Transaction with FXTRADING.com,

and if FXTRADING.com receives only a proportion of the amount due to FXTRADING.com (whether for itself, as agent or in any other capacity) from, on behalf of or otherwise in respect of the Hedge Counterparty in respect of several clients or several Orders or Transactions, the Recovery Amount is limited to your *pro rata* portion (as determined by FXTRADING.com) of the amount actually received by FXTRADING.com);

- (b) less any amount actually paid to you in respect of termination of your Transaction with FXTRADING.com.

14.4. If:

- (a) this clause 14 applies;
- (b) you make a claim in any way, whether directly or in any court or dispute resolution forum (**your claim**) against FXTRADING.com to recover Loss or for any other compensation in relation to a Transaction, which Loss has arisen because or substantially due to a Hedge Counterparty failing to pay in full an amount to FXTRADING.com (**payment failure**) and FXTRADING.com relies on this clause 14 in respect of that payment failure); and
- (c) FXTRADING.com receives from the Hedge Counterparty an amount, or makes, or has made, a demand or claim against the Hedge Counterparty in respect of that payment failure (**FXTRADING.com claim**),

then subject to clause 14, FXTRADING.com holds the FXTRADING.com claim against the Hedge Counterparty for your benefit.

14.5. Nothing in this clause 14 affects your entitlement to moneys held by FXTRADING.com for you in a Client Moneys Trust Account. You are always entitled to require payment to you of any of those moneys to which you are entitled.

14.6. Nothing in this clause 14 obliges FXTRADING.com to make a demand or other claim of any kind against the Hedge Counterparty or any other person.

- 14.7. FXTRADING.com has no liability for taking or failing to take any action in relation to any actual or prospective FXTRADING.com claim. FXTRADING.com is not obliged to accept any direction from you or any other person with regard to how FXTRADING.com must conduct the FXTRADING.com claim or negotiate any settlement. FXTRADING.com may require a binding agreement to be fully indemnified, in a form satisfactory to it (including with or without security) in respect of accepting any such direction.
- 14.8. FXTRADING.com may conduct one or more claims (for example, in connection with these terms and the terms and conditions it has with other clients) or under one or several proceedings, as determined by FXTRADING.com.
- 14.9. FXTRADING.com may incur costs of preparing for and conducting any FXTRADING.com claim and defending cross-claims, including costs of legal services, experts and other agents and advisers, which costs may be apportioned by FXTRADING.com across several claims.
- 14.10. FXTRADING.com may make or accept any offer for settlement of a FXTRADING.com claim which it considers reasonable, including for any amount less than the amount claimed by FXTRADING.com.
- 14.11. FXTRADING.com may withhold from settlement of any FXTRADING.com claim proceeds such it amounts it determines to pay for, or to provide for payment for, costs incurred by FXTRADING.com in connection with the FXTRADING.com claim, including its estimate of costs of enforcing the judgments for the claim.
- 14.12. FXTRADING.com may apply the net proceeds of settlement of any FXTRADING.com claim proportionally to the balance of the unsatisfied amounts of all claims.
- 14.13. FXTRADING.com may make a determination not to prosecute any FXTRADING.com claim if it determines there are insufficient prospects of success and having regard to the estimate costs of prosecuting the claim.
- 14.14. Nothing in this clause 14:
- (a) limits your right to make a claim against FXTRADING.com for the full amount of liability which would have arisen but for this clause 14; however, the liability of FXTRADING.com to you and your recourse to FXTRADING.com or any assets or other property held on your behalf is limited by this clause 14;
  - (b) limits any party in obtaining an injunction or other order to restrain any breach of these terms by any party or obtaining declaratory relief.
- 14.15. If any of the other parts of this clause 14 would be void, invalid or unenforceable but for this clause 14.15, the limitation of liability of FXTRADING.com and your rights of recourse do not apply however, in that case the liability of FXTRADING.com to the client is limited to:
- (a) the supplying of the services again; or
  - (b) the payment of the cost of having the services supplied again.
- 14.16. The meaning and effect of this clause 14 are to be construed for the purposes of limiting the liability of FXTRADING.com to you and limiting your recourse against FXTRADING.com or any assets or other property held on your behalf, to the maximum extent permitted by law, so that FXTRADING.com is only liable to you to the extent provided by this clause and FXTRADING.com is not otherwise liable to you.
- 14.17. You agree that this limitation of liability under this clause 14 is a reasonable term having regard to the nature of the financial services and Financial Products offered and provided by FXTRADING.com to you, the benefits to you and the risks and benefits from Transactions using FXTRADING.com in the context of these terms and the protections given to you by FXTRADING.com from time to time for your moneys or for giving you other benefits in relation to the FXTRADING.com Liability (whether or not given by these terms).

## **15. DEFAULT**

- 15.1. Each of the following constitutes a Default:
- (a) you breach these terms, whether by act or omission;
  - (b) you fail to pay, or provide security for, amounts payable by you to FXTRADING.com;
  - (c) you fail to pay the amounts due in respect of any Transaction entered into pursuant to these terms;
  - (d) you fail to perform any obligation arising pursuant to the exercise of an option contract or the settlement of a contract which arises pursuant to a Transaction;
  - (e) you fail to fulfil any settlement obligations in respect of a Transaction entered into pursuant to these terms;
  - (f) you fail to comply with any limit or restriction imposed on you by FXTRADING.com in connection with your Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities);
  - (g) a guarantee lodged by you, or lodged by a third party at your request, in favour of FXTRADING.com is withdrawn without FXTRADING.com's consent or becomes ineffective and other replacement security acceptable to FXTRADING.com is not provided;
  - (h) any security provided by you (to anyone) which is binding on your assets becomes enforceable and the holder of that security takes any step to enforce the security;
  - (i) any representation or warranty which you give under or pursuant to these terms is or becomes incorrect or misleading in any material way;
  - (j) FXTRADING.com determines that you may not be able to meet your obligations to FXTRADING.com in respect of one or more Transactions, including, without limitation strict compliance with any time limits for performance by you;
  - (k) you become insolvent or bankrupt;
  - (l) you enter into a composition or scheme of arrangement for the benefit of creditors;
  - (m) if you are a body corporate:
    - (i) you go into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or you or another person appoint a liquidator, receiver, administrator or official manager in respect of your assets;
    - (ii) a director has not given (a reasonable time after request by FXTRADING.com) a valid deed of guarantee and indemnity in respect of your obligations under these terms in favour of FXTRADING.com and in a form acceptable to FXTRADING.com; or
    - (iii) you have not notified FXTRADING.com of a change of any director within seven (7) days of the change taking effect;
  - (n) if you are acting on behalf of another person pursuant to authority provided by another person, the authority is varied in a way which (in FXTRADING.com's opinion) negatively impacts on your authority or legal or financial capacity to perform your obligations under these terms;
  - (o) if you are a trustee, the relevant fund or trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made which would result in there being, in FXTRADING.com's opinion, insufficient assets of the trust or fund to meet your liabilities under these terms or any Transaction;
  - (p) if you are a natural person, you die or become of unsound mind or if you or your estate is liable to be dealt with in any way under any law relating to mental health;
  - (q) you impose a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
  - (r) in the absence of making alternative arrangements, you are not immediately contactable by FXTRADING.com in order for FXTRADING.com to obtain instructions in relation to any of your Transactions; and

- (s) the occurrence of any other event referred to in a Schedule applicable to your Account as constituting a Default or which FXTRADING.com and you have agreed constitutes a Default.

15.2. If a Default occurs, FXTRADING.com may, in addition to any other rights which FXTRADING.com has or may have against you (including rights arising in other parts of the Terms), without giving prior notice to you, take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Transactions entered into pursuant to these terms and, without limitation, FXTRADING.com may:

- (a) cancel any outstanding Orders;
- (b) enter into one or more Transactions to effect the Close Out of one or more unsettled Transactions or open positions;
- (c) settle (or arrange to settle, if applicable) any Transaction which has not at the time of Default settled;
- (d) in the case of open positions which involve option contracts, exercise one or more of those option contracts or abandon any one or more option contracts not yet exercised;
- (e) cover in whole or in part open positions by entering into further Transactions;
- (f) take any other action a reasonably prudent broker, intermediary or principal might take in the circumstances to protect FXTRADING.com's personal obligation incurred when dealing with you;
- (g) sell (or arrange for the sale of) any or all of your property (including, but not limited to any property provided as security in favour of FXTRADING.com, any property that is held by FXTRADING.com or a nominee on your behalf), in accordance with these terms and apply the proceeds towards satisfaction of moneys owing by you to FXTRADING.com;
- (h) apply any money that you have deposited with, or which is held by, a CS Facility or FXTRADING.com, or in any Client Moneys Trust Account, and to which you are entitled, by way of set-off;
- (i) immediately, or at a later time, terminate these terms, one or more Schedules, one or more Accounts or sub-accounts, one or more Transactions or any combination of these;
- (j) realise or enforce any security or guarantee provided by you or in respect of your obligations to FXTRADING.com;
- (k) convert any or all amounts owing by you to FXTRADING.com or by FXTRADING.com to you in a foreign currency into Australian currency;
- (l) calculate any or all amounts owing by you to FXTRADING.com and declare such amount immediately due and payable; or
- (m) exercise any other rights conferred by Applicable Laws or these terms or perform any other obligations arising under Applicable Laws or these terms in respect of your Transactions.

In respect of any action which FXTRADING.com takes, or refrains from taking under this clause 15.2, you must account to FXTRADING.com as if FXTRADING.com took, or refrained from taking, the action on your instructions and, without limitation, you are liable for any deficiency and are entitled to any surplus which may result.

15.3. In exercising any right of sale of any property under clause 15.2, FXTRADING.com may sell (or arrange for the sale of) the property:

- (a) either by public auction, private treaty or tender;
- (b) for cash or on credit;
- (c) in one lot or in parcels;
- (d) with or without special conditions or stipulations as to title or time or mode of payment or purchase money or otherwise;

- (e) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security);
- (f) whether or not in conjunction with the sale of any property to any person; and
- (g) upon such other terms and conditions as FXTRADING.com may consider appropriate.

FXTRADING.com is not liable for any loss occasioned by a sale of the property.

- 15.4. Upon any sale purporting to be made in the exercise of the powers conferred by these terms or otherwise, no purchaser will be:
- (a) bound to ask whether any default has been made or otherwise as to the propriety or regularity of any sale; or
  - (b) affected by express notice that any such sale is unnecessary or improper.

Despite any irregularity or impropriety in any such sale, the sale will be deemed to be authorised by such powers, as regards the protection of the purchaser or other party to any such dealing or disposal, and will be valid accordingly.

- 15.5. Nothing in these terms limits your rights to claim a default by FXTRADING.com or for you to take any proper action you determine is appropriate to claim or to recover for any Loss arising from your claim. You agree that it is reasonable for you not have specific rights following default and specific events of default by FXTRADING.com in order to avoid all Transactions of all of FXTRADING.com' clients prematurely terminating, which could cause irrevocable loss to some or all clients and those losses could be irrevocably increased by such an automatic termination.

## **16. TERMINATION**

- 16.1. Without limiting clause 15.2, you and FXTRADING.com may each terminate these terms at any time by giving the other notice.
- 16.2. The termination of these terms does not affect outstanding obligations under these terms which remain undischarged at the time of termination, limitations of liability or recourse, indemnities provided for in these terms or any other clause of these terms which states or implies that they survive termination.
- 16.3. Each indemnity provided within these terms survives the termination of these terms.
- 16.4. You or FXTRADING.com may terminate a Schedule within these terms at any time and for any reason by giving notice to the other, without terminating another Schedule of these terms. Termination of a Schedule under this clause 16 does not affect outstanding obligations under these terms which are undischarged at the time of termination, either under the terminated Schedule or otherwise. Each indemnity in these terms survives the termination of any Schedule.
- 16.5. Upon termination of these terms (or a relevant Schedule under clause 16.4), and without limiting clause 15.2, this clause survives and FXTRADING.com may do one or more of the following:
- (a) cancel any outstanding Orders;
  - (b) enter into one or more Transactions to effect the Close Out of one or more unsettled Transactions or open positions (and, if FXTRADING.com has entered into a Transaction with you as principal, determine the value at which the Transaction or Transactions will be Closed Out);
  - (c) settle (or arrange to settle, if applicable) any Transaction which has not at the time of termination settled;
  - (d) exercise any other rights FXTRADING.com has under these terms;
  - (e) do, or refrain from doing, anything else which FXTRADING.com considers reasonable in the context of these terms (or any part of them) having been terminated.

## **17. General**

- 17.1. FXTRADING.com may from time to time delegate any or all of its obligations, powers and discretions to anyone or more or all of its employees. FXTRADING.com remains responsible for the acts or omissions of its employees. A delegation by FXTRADING.com under this clause need not be in writing.
- 17.2. The Terms and any relevant Application Form completed by you contain the entire understanding between you and FXTRADING.com concerning the provision of the Financial Products or financial services and services referred to in these terms, as later amended only in accordance with these terms.
- 17.3. We may vary these terms by giving you notice of any variation by any combination of: document in writing, by updating our website to show the revised version of these terms, by posting a message in the On-line Service or by electronic mail. The notice of variation is effective even if you are unaware of the notice. The minimum period of notice will be the lesser of:
- (a) any minimum period of notice required by the Rules;
  - (b) if no such minimum period is required by the Rules, then not less than two (2) Business Days' notice (unless paragraph (c) applies); and
  - (c) subject to paragraph (a), if we believe a variation is necessary to maintain or restore the security of any Accounts or of our systems or to comply with any legal or regulatory requirement, we may make the variation without prior notice and will notify you of the change as soon as practicable after the change.
- 17.4. Each part of these terms is severable from the balance of these terms and if any part of these terms is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of these terms.
- 17.5. No failure by us to exercise, and no delay by us in exercising, any right, power or remedy in connection with these terms will operate as a waiver of that right, power or remedy. No single or partial exercise of any right, power or remedy will preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.
- 17.6. These Terms are not to be interpreted against our interests merely because we proposed these terms or some provision in it or because we rely on a provision of these terms to protect our interests.
- 17.7. You may not assign or otherwise transfer any of your rights under these terms to another person without our prior written consent. FXTRADING.com may assign, novate or otherwise transfer any of its rights under these terms to another person without your prior written consent including, without limitation, in connection with a sale or transfer of all or part of our business to another person.

# Schedule 1

## FOREIGN EXCHANGE AND COMMODITIES TRANSACTIONS

### 1. Introduction

- 1.1 The following terms will apply to you, and you agree to be bound by them, each time you place an Order with FXTRADING.com to deal in a Foreign Exchange Transaction (as defined in clause 2).
- 1.2 In this Schedule a reference to FXTRADING.com is a reference to FXTRADING.com Pty Limited.
- 1.3 Clause 14 of the terms applies to this Schedule.

### 2. Interpretation

In this Schedule, the following terms have the following meanings:

**Authorised Person** means a person authorised pursuant to clause 5 to bind you under these terms.

**Bought Currency** means the currency to be received by you in exchange for the currency to be provided by you under a Position and in the case of an Option the currency to be received by you if it is exercised (and the amount of that currency may be nil).

**Bought Option** means an Option purchased by you pursuant to these terms.

**Call Option** means an option which gives its buyer the right, exercisable at any time until Expiry Date, but not the obligation, to require the seller of the Option to enter into with the buyer, a Position whereby the seller agrees to exchange a given amount of the Bought Currency for an amount of the Sold Currency, at the Strike Price of that option, for delivery on the Value Date of that Position.

**Deal** has the meaning given in the Financial Products Law.

**Excess Variation Margin** means the amount of your Variation Margin plus your Unrealised Profits minus your Unrealised Losses at that time.

**Expiry Date** means, in relation to each Option, is the last day upon which the Option may be exercised.

**Foreign Exchange Transaction** means a Transaction in respect of Foreign Exchange.

**Hedge Contract** means a contract between FXTRADING.com and a Hedge Counterparty on the same, or substantially similar, terms as the Foreign Exchange Transaction (including if one or more Foreign Exchange Transactions from you and other clients which in aggregate correspond with the Hedge Contract).

**Hedge Counterparty** means a Market Participant with whom FXTRADING.com enters into a Hedge Contract to hedge FXTRADING.com's exposure to a Foreign Exchange Transaction.

**Market Rate** means the rate of exchange which FXTRADING.com is quoted by a bank dealing in the interbank Foreign Exchange market.

**Option** means a Call Option or Put Option bought or sold pursuant to these terms.

**Position** means a margin Foreign Exchange Transaction entered into by you pursuant to these terms under which the parties agree to exchange an agreed amount of one currency for an agreed amount of another currency for settlement on the Value Date (and, for the avoidance of doubt, either agreed amount may be nil).

**Premium** is the price of an Option as notified by FXTRADING.com.

**Put Option** means an option which gives its buyer the right exercisable at any time until Expiry Date, but not the obligation, to require the seller of the Option to enter into with the buyer, a Position whereby the seller agrees to exchange a given amount of the Sold Currency for an amount of the Bought Currency at the Strike Price of that option, for delivery on the Value Date of that Position.

**Sold Currency** means in the case of a Position, the currency to be provided by you in exchange for the currency to be received by you, and in the case of an Option, the currency to be provided by you if it is exercised (the amount of that currency may be nil).

**Sold Option** means an Option sold by you pursuant to these terms.

**Spot Date** means the date on which a Position entered into for spot delivery falls due for settlement in accordance with prevailing conventions in the interbank market.

**Strike Price** means the rate of exchange at which an Option may be exercised.

**Trade Date** means the agreed date you place an order with FXTRADING.com for an FX Physical Delivery Transaction.

**Unusual Volatility** means, in respect of a Position or Option, such fluctuation in inter-day rates and intra-day rates as FXTRADING.com determines from time to time in its absolute discretion is unusual for the purposes of these terms.

**Value Date** means the date agreed at the time the relevant deal is entered in to, to be the date of settlement of that deal (specified in the deal confirmation) and in the case of a Position created on exercise of an Option, two Business Days after the Option is exercised or such other date agreed at that time.

**Variation Margin** means an amount deposited by you with FXTRADING.com including any increase or reduction on settlement of a Closed Out Position or Option.

### 3. **Acknowledgements**

In these terms you acknowledge the following in favour of FXTRADING.com:

- (a) A Foreign Exchange Transaction is cash settled with no physical exchange of the Underlying Security.
- (b) There is no definitive term attached to a Foreign Exchange Transaction, such a contract will continue until the Closing Date.
- (c) Anything FXTRADING.com is permitted to do in accordance with this Schedule may be done in its absolute discretion, and any opinion or view required to be formed by FXTRADING.com may be formed in its absolute discretion.
- (d) A Position or Option may be Closed Out without a physical exchange of the Bought Currency for the Sold Currency and references in the definition of Position to an exchange of currency and settlement and in the definitions of Bought Currency and Sold Currency to amounts to be received by you or provided by you under a Position will be construed as if that Position were to be unwound by delivery.
- (e) Notwithstanding it has an agreed Value Date, each Position continues indefinitely until it is unwound by delivery or by being Closed Out and references in the definitions of Position and Value Date to settlement will be construed as if that Position were to be unwound by delivery.

#### 4. Entering into Positions and Options

- (a) On any Business Day you may request FXTRADING.com by telephone or otherwise to quote:
  - (i) the rate at which you may enter a Position and the Initial Margin required by nominating the amount; or
  - (ii) the Premium at which you may sell or buy an Option and (if applicable) the Initial Margin then required by nominating whether you wish to buy or sell, whether a Put Option or a Call Option is required, the amount and currency of either the Bought or the Sold Currency, the currency against which it is to be exchanged, the Strike Price and the Expiry Date.
- (b) Immediately upon receiving the quote, you may by telephone or otherwise instruct FXTRADING.com to arrange the entry into by you of a Position or Option equivalent to that for which the quote was sought. Receipt by FXTRADING.com of your instruction will constitute an offer by you to FXTRADING.com to enter into such a Position or Option.
- (c) FXTRADING.com is under no obligation to accept your offer to enter into a Position or Option, and without limitation, is not obliged to accept your offer to enter into a Position or Option:
  - (i) if you have exceeded or would exceed a limit applying to you as notified by FXTRADING.com; or
  - (ii) until FXTRADING.com has received the Initial Margin and the Premium required in respect of that Position or Option, in cleared funds.
- (d) The Initial Margin required in respect of a Position or Sold Option or the Premium required in respect of a Bought Option (if not already received from you by FXTRADING.com) will be payable when FXTRADING.com accepts your offer to enter into a Position or buy or sell an Option.
- (e) If FXTRADING.com accepts your offer to enter into a Position or Option, FXTRADING.com will issue to you a written confirmation of that Position or Option promptly after it has been entered into, in the form of a deal confirmation, but failure by FXTRADING.com to issue a confirmation will not prejudice or affect that Position or Option. FXTRADING.com will not have any liability as a result of a failure to issue a deal confirmation. If FXTRADING.com decides not to accept your offer to enter into a Position or Option, FXTRADING.com will advise you of that decision as soon as is practicable.
- (f) You undertake to examine the terms of each Confirmation immediately upon receipt and unless within 48 hours of issue of a written confirmation you notifies FXTRADING.com of any disputed detail in the confirmation, you agree that the contents of the confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal. Upon receipt within those 48 hours of written notice as to a disputed detail, FXTRADING.com will investigate the matters disputed and you will co-operate with FXTRADING.com in good faith to resolve the dispute. You must, notwithstanding any such dispute, continue to satisfy your obligation to pay Margin calls made by FXTRADING.com in respect of that Position or Option as if the details contained in the confirmation were correct and not the subject of dispute.
- (g) FXTRADING.com may, in its absolute discretion, limit the value of Positions or Options you may have outstanding under these terms:
  - (i) beyond which if you decide to enter into any further Positions or Options, you must seek and obtain credit approval from FXTRADING.com; and

- (ii) beyond which you may not enter into any further Positions or Options.
- (h) FXTRADING.com may vary this limit at any time by notice to you.
- (i) You may exercise an Option by notice to FXTRADING.com between the hours of 8:30 a.m. and 5:00 p.m. (Sydney time) on any Business Day until the Expiry Date for the Option. The exercise of an Option, subject to these terms, creates the rights and obligations that constitute a Position.
- (j) FXTRADING.com is under no obligation to accept the exercise of a Bought Option until FXTRADING.com has received the Premium and brokerage required in respect of the Option in cleared funds. If FXTRADING.com exercises a Sold Option, it will credit the Premium to your Account.
- (k) You undertake to advise FXTRADING.com of your intention to take delivery of the Bought Currency at the time you offer to enter into a Position or exercises an Option and you agree that if you fail to advise of such intention, FXTRADING.com may, in its absolute discretion, allow you to unwind that Position or Option on terms acceptable to FXTRADING.com. Any notice to take delivery is irrevocable.

**5. Interest charges on positions remaining open after value date**

- (a) FXTRADING.com is entitled to interest which will accrue on a daily basis and be payable daily by you in respect of a borrowing by you of the Sold Currency under a Position.
- (b) You are entitled to interest which will accrue on a daily basis and be payable daily by FXTRADING.com in respect of a borrowing by FXTRADING.com from you of the Bought Currency under a Position, from the Value Date of the Position until the date that the Position is unwound by delivery or by being Closed Out at FXTRADING.com' prevailing rates of interest.
- (c) Interest payments will be settled by FXTRADING.com on each day by debiting or crediting your Account with the daily interest rate differential between the amount of interest payable by you under the Position and the amount of interest payable by FXTRADING.com to you under the Position. In the event that there is insufficient Excess Variation Margin in your Account, you acknowledge that any amount due under this Schedule is a debt due and owing by you to FXTRADING.com.
- (d) In debiting or crediting interest to your Account, FXTRADING.com may charge or pay you interest at a rate different to the interest rate which FXTRADING.com is charged or paid on equivalent borrowings of foreign currency by a bank and may retain the difference.
- (e) The rates of interest applicable under this Schedule may be as agreed between you and FXTRADING.com from time to time and, in the absence of such agreement, will be a rate determined by FXTRADING.com in its absolute discretion.

**6. Delivery of Positions**

- (a) If you have specified that delivery is required in a notice accepted by FXTRADING.com, you must pay to FXTRADING.com on the Value Date the amount of the Sold Currency under the Position in cleared funds and following receipt by FXTRADING.com of the Sold Currency, FXTRADING.com will credit your Account the Bought Currency under the Position.

**7. Close Out of Positions and Options**

- (a) Unless you have previously given a notice which has been accepted by FXTRADING.com, you may at any time give FXTRADING.com notice of your request to have all or any of its Positions or Options Closed Out. Following receipt of such a notice FXTRADING.com

may at a time it chooses in its absolute discretion, enter into a matching and opposite Position or Option on your behalf. Without limiting its discretion FXTRADING.com acknowledges that this may occur as soon as practicable after the later of:

- (i) receipt from you of such notice; and
  - (ii) any time and date specified in such notice at which you request the Close Out to occur, FXTRADING.com will use its best endeavours to achieve such Close Out at the Market Rate for delivery on the later of the Value Date of the original Position and the Spot Date in respect of the matching Position.
- (b) The difference (if any) between the amount of the Bought Currency under the matching Position and the amount of the Sold Currency under the original Position or, in respect of an Option the difference between the Premium paid by you for the original or matching Option and the Premium received by you for the matching or original Option respectively, if positive, will be a "Realised Profit" and, if negative, will be a "Realised Loss".
  - (c) The Closing Out of a Position or Option in accordance with this Schedule will constitute a complete discharge of all obligations of FXTRADING.com and you will give or take delivery of any currency under that Position or Option and has the effect of immediately cancelling the Position or Option so that the only obligations that continue in respect of the Position or Option are those provided for under this Schedule.
  - (d) You acknowledge that if you give FXTRADING.com standing instructions to enter into a Position or Option when a particular price level is reached in the Foreign Exchange market the price at which the Position or Option is entered into might not be that exact price.

#### **8. Settlement of Closed Out Positions and Option**

- (a) When a Position or Option is Closed Out in accordance with this Schedule which:
  - (i) results in a Realised Profit, FXTRADING.com will credit your Account the Realised Profit; or
  - (ii) results in a Realised Loss, you must pay to FXTRADING.com the Realised Loss in such currency as FXTRADING.com may require in cleared funds within 24 hours of being advised of the amount so payable.
- (b) If there is then sufficient Excess Variation Margin any amount owing by you under this Schedule may be settled in whole or in part by debiting your Account with FXTRADING.com.
- (c) If you have requested payment of any money owed to you under this Schedule, FXTRADING.com will (at its discretion) deduct that money from your Account and pay it to you by cheque or in such other manner as may be agreed between FXTRADING.com and you.
- (d) FXTRADING.com may set off any money owed to you under this Schedule against any money owed by you in respect of a Foreign Exchange Transaction. If such a set-off is made, references in this Schedule to Realised Profit and Realised Loss will be read as including the net amount of Realised Profit or Realised Loss (as the case may be) remaining after the set-off.

## 9. Revaluations

FXTRADING.com may at any time, by reference to the Market Rate, revalue all Positions and Options. Such revaluation will be effected in the following manner:

- (a) for the purpose of this Schedule:
  - (i) an Option created by the sale by you to FXTRADING.com of a Call Option ("Sold Option") will be treated as a Position under which the amount and denomination of the currency specified in the Call Option will be regarded as that amount of currency sold at the Strike Price of the Call Option;
  - (ii) an Option created by the sale by you to FXTRADING.com of a Put Option ("Sold Option") will be treated as a Position under which the amount and denomination of the currency specified in the Put Option will be regarded as that amount of currency bought at the Strike Price of the Put Option; and
  - (iii) any other Option will be referred to as a "Bought Option";
- (b) in order to carry out a revaluation under this Schedule, FXTRADING.com will ascertain:
  - (i) in relation to each Position or Sold Option, the amount of the Sold Currency which could be purchased with the amount of the Bought Currency at the prevailing Market Rate; or
  - (ii) in relation to each Bought Option, the rate at which FXTRADING.com would repurchase the Option;
- (c) if the amount calculated in accordance with sub-clause 9(b):
  - (i) is greater than the amount of the Sold Currency under the Position or Sold Option or greater than the original Premium paid for a Bought Option, then the difference will represent an Unrealised Profit; and
  - (ii) is less than the amount of the Sold Currency under the Position or Sold Option or less than the original Premium paid for a Bought Option, then the difference represents an Unrealised Loss; and
- (d) the sum of each Unrealised Profit will be the "Unrealised Profits" and the sum of each Unrealised Loss will be the "Unrealised Losses".

## 10. Foreign Exchange Physical Delivery Terms

- (a) These FX Physical Delivery Terms apply to Foreign Exchange Transactions for physical delivery (**FX Physical Delivery Transactions**) and must be read and construed together with the remainder of this Schedule.
- (b) Some terms are defined in these FX Physical Delivery Terms. Any term not defined in these FX Physical Delivery Terms has the same meaning as contained in this Schedule.
- (c) FXTRADING.com enters into an FX Physical Delivery Transaction as principal with you.
- (d) You must, at the time of placing an order with FXTRADING.com, specify that physical delivery of the Bought Currency is required. If FXTRADING.com agrees to settlement by physical delivery, the agreed Foreign Exchange Transaction will be an FX Physical Delivery Transaction on these FX Physical Delivery Terms. It is unnecessary to identify the Foreign Exchange Transaction for this purpose formally or precisely in any particular way.
- (e) The exchange rate and the time for physical delivery of the Bought Currency must be agreed between you and FXTRADING.com. The exchange rate and the time for physical

delivery of the Bought Currency described in this Schedule will be stated in a Confirmation sent to the Client.

- (f) A reference in these FX Physical Delivery Terms to physical delivery is a reference to settlement by payment of the required amount of Bought Currency into a bank account as agreed by you and FXTRADING.com. The bank account for settlement will be the nominated trust account of FXTRADING.com unless otherwise agreed by you and FXTRADING.com.
- (g) Unless otherwise advised by FXTRADING.com, you must make all of its payments (**Client Moneys Trust Account Moneys**) for FX Physical Delivery Transactions, including any payment for Margin, into the nominated trust account of FXTRADING.com.
- (h) Unless otherwise advised by FXTRADING.com, the payments to be made by you as described in clause 10(g) must be made on or before the Trade Date.
- (i) If FXTRADING.com does not require full payment on the Trade Date, FXTRADING.com may require one or more payments for Margin. The time and the amount of each Margin payment is at the discretion of FXTRADING.com provided the total of all required Margin payments does not exceed the amount of Sold Currency which was agreed to be paid for the Bought Currency. It is confirmed that the Client Moneys Trust Account Moneys paid by you as Margin are beneficially held for you and may be dealt with in the same manner as Client Moneys Trust Account Moneys which were payment in full for a FX Physical Delivery Transaction.
- (j) FXTRADING.com will not withdraw Client Moneys Trust Account Moneys unless one or more of the following applies:
  - (i) the withdrawal is to pay costs, fees or other charges in respect of the FX Physical Delivery Transaction;
  - (ii) it has complied with its obligation to ensure physical delivery of the Bought Currency; or
  - (iii) it has notified (orally or in writing) you of the intended withdrawal prior to doing so and it may only apply that withdrawal as payment by you to FXTRADING.com (wholly or partly) for the FX Physical Delivery Transaction and FXTRADING.com will only do that in order to satisfy (wholly or partly, as the case may be) its payment obligations under a Hedge Contract with the corresponding Hedge Counterparty.
- (k) Each FX Physical Delivery Transaction is subject to the condition subsequent of settlement actually occurring. Despite agreeing to a Foreign Exchange Transaction, FXTRADING.com will not be liable in any way if settlement does not occur (regardless of the reason) other than to pay you or as you direct the Sold Currency (without any adjustment for the failure to settle).

# Schedule 2

## CONTRACTS FOR DIFFERENCE

### 1. Introduction

- 1.1 The following terms will apply to you, and you agree to be bound by them, each time you place an Order with FXTRADING.com to deal in a Contract for Difference (as defined in clause 2 of this Schedule).
- 1.2 In this Schedule a reference to FXTRADING.com is a reference to FXTRADING.com Pty Limited.
- 1.3 Clause 14 of the Terms applies to this Schedule.

### 2. Interpretation

In this clause, the following terms have the following meanings:

**Adjustment Event** means, any event in respect of which FXTRADING.com considers in its absolute discretion an adjustment to the terms of a CFD is appropriate including, for example:

- (a) if the Reference Asset is a share, debenture, unit or other security (or depositary receipt of any kind in respect of any of them) – a bonus issue for combination of rights issued, rights issue, stock split, share or other capital consolidation, security reclassification or sub-division return of capital, buy back, special dividend (however legal constituted), *in specie* distribution, takeover, scheme of arrangement or similar event or other corporate action event in respect of the security, whether or not the event triggers an adjustment to any Exchange traded derivative of it,
- (b) a distribution to existing holders of additional shares or other securities or other Financial Products granting them the right to receive dividends or other proceeds equally and proportionately with payments made to holders of the underlying securities; or securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in money cash or money's worth) at less than the prevailing market price per share as determined by FXTRADING.com;
- (c) an event that has a dilutive or concentrative effect on the market value of the shares;
- (d) if the Reference Asset is an index, a substantial adjustment to the composition of the index outside its own terms allowing for adjustments or weightings; a failure to publish the index or a suspension or cancellation of the index; and
- (e) if the Reference Asset is a Derivative which is able to be traded on a Financial Market – any event in respect of which the operator of the Financial Market makes an adjustment to the terms of the Derivative.

**CFD** means a contract for one Contract for Difference.

**CFD Transaction** means a Transaction in respect of one or more CFDs.

**Close of Business** means the normal time of close of trading of the relevant Exchange.

**Close Out**, in relation to a CFD Transaction, means discharging or satisfying your obligations to FXTRADING.com under the CFD Transaction and this includes:

- (a) by delivering the amount or value of the Underlying Security (including a dollar multiple of an index) required in accordance with the terms of the CFD Transaction; or

- (b) as a result of the matching up of the CFD Transaction with a CFD Transaction of the same kind under which you have assumed an offsetting opposite position;
- (c) making adjustments for fees and charges.

**Closing Date** means the date on which the CFD Transaction is agreed to be Closed Out, or earlier, if actually or deemed to be Closed Out in accordance with the Terms or the Underlying Security expires according to its terms or the Rules governing its contract specifications.

**Closing Price** means the price of the CFD at the Closing Date.

**Closing Value** means the value determined by multiplying the number of CFDs by the value or level of the CFD's Underlying Security at the Closing Date.

**Contract for Difference** means a Financial Product, being a Derivative which derives its value from one or more Reference Assets and which FXTRADING.com has notified you constitutes a "Contract for Difference" for the purposes of this Schedule. Notification can be by way of PDS, email, posting to FXTRADING.com's website, the On-line Service, Account statement or in any other way.

**Contract Value** means the face value of the CFD, and is calculated by FXTRADING.com by multiplying the price (or, if an index, the level) of the relevant Underlying Security by the number of securities (or, if an index, multiplier) specified in the CFD.

**Hedge Contract** means a contract between FXTRADING.com and a Hedge Counterparty on the same, or substantially similar, terms as the CFD (including if one or more CFDs from you and other clients which in aggregate correspond with the Hedge Contract).

**Hedge Counterparty** means a Market Participant with whom FXTRADING.com enters into a Hedge Contract to hedge FXTRADING.com's exposure to a CFD. FXTRADING.com will from time to time on its website provide details of the Hedge Counterparty.

**Reference Asset** means an Underlying Security, as determined by FXTRADING.com and, in the case of a CFD Transaction, the Underlying Security specified in the Confirmation. The Reference Asset can refer to an index, in which cases, references in these terms will be applied with such changes as a necessary to reflect an index instead of a Financial Product.

**Underlying Futures Contract** means a Futures Contract which is the Underlying Security for a CFD.

### 3. Acknowledgements

In these terms you acknowledge the following in favour of FXTRADING.com:

- (a) CFD Transactions are cash settled with no physical exchange of the Underlying Security;
- (b) there is no definitive time to the life of a CFD, so such a contract will continue until the Closing Date (including when the Closing Date occurs by reason of the Underlying Security expiring).

### 4. Opening and closing CFD Transactions

- 4.1 All CFD Transactions are entered into between you and FXTRADING.com as principal. The acquisition of a CFD involves entering into, or opening, a CFD. The disposal of a CFD requires Closing Out an open CFD.
- 4.2 FXTRADING.com will from time to time state the prices or values at which it may enter into a CFD Transaction with you, either to open or to Close Out a CFD. If you wish to enter into a CFD Transaction you may submit an Order to FXTRADING.com (including by On-Line Service). FXTRADING.com is not bound to enter into any CFD Transaction with you and reserves the right to state another price or value at which it may deal with you.

- (a) You may request on any given Business Day FXTRADING.com to quote a price at which FXTRADING.com may be prepared to enter into a CFD. You agree to and acknowledge that a price quotation pursuant to this request does not constitute an offer to enter into a new or close an existing CFD.
  - (b) Upon receiving the quote from FXTRADING.com, you may offer to enter into a CFD with FXTRADING.com at the price quoted by FXTRADING.com.
  - (c) FXTRADING.com is not obliged to accept your offer to enter into a CFD and, without limitation, is not obliged to accept your offer to enter into a CFD:
    - (i) if you have exceeded or would exceed a pre-determined limit imposed on you under clause 4.2(g) below; or
    - (ii) until FXTRADING.com has received from you the Initial Margin required in the form of cleared funds to enter into the respective CFD.
  - (d) The Initial Margin required to enter into a CFD, if not already received from you, will be payable to FXTRADING.com upon acceptance by FXTRADING.com of your offer to enter into the CFD.
  - (e) If FXTRADING.com accepts your offer to enter into a CFD, FXTRADING.com will issue to you an electronic Confirmation of the CFD entered into shortly after it has been entered into. Failure by FXTRADING.com to issue a Confirmation will not prejudice or affect the relevant CFD. FXTRADING.com will not bear any liability whatever resulting from the failure to issue a Confirmation. FXTRADING.com will promptly advise you if FXTRADING.com decides not to accept your offer to enter into a CFD.
  - (f) You agree to examine the terms of each Confirmation immediately upon receipt and you agree that the contents of the Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within three (3) Business Days of issue of a written Confirmation you notify FXTRADING.com of any disputed detail in the Confirmation received by you. Upon receipt of written notice within the three (3) Business Day period of a disputed Transaction, FXTRADING.com will investigate the dispute and in co-operation with you must endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, you must continue to satisfy your obligations to maintain Margin cover and to pay Margin calls made by FXTRADING.com in respect of the CFD as if the Confirmation was correct and the details contained in the Confirmation were not the subject of dispute.
  - (g) In its absolute discretion, FXTRADING.com reserves the right to limit the value of CFDs you may have outstanding under these terms. If you wish to enter into any further CFDs, you must seek and obtain approval from FXTRADING.com, beyond which you may not enter into any further CFDs whatever.
  - (h) FXTRADING.com may vary the limit imposed at any time in its absolute discretion.
- 4.3 If FXTRADING.com enters into a CFD Transaction with you for the acquisition of one or more CFDs:
- (a) FXTRADING.com will give you a Confirmation in respect of the CFD Transaction setting out, among other things, the number of CFDs acquired and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the acquisition of the CFD; and
  - (b) you or FXTRADING.com (as applicable), must pay the relevant amount referred to in paragraph (a) by the time specified in the Confirmation.
- 4.4 If FXTRADING.com enters into a CFD Transaction with you for the disposal of one or more CFDs (by way of Closing Out that contract):

- (a) FXTRADING.com will give you a Confirmation in respect of the CFD Transaction setting out, among other things, the number of CFDs disposed of and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the disposal of the CFD; and
  - (b) you or FXTRADING.com (as applicable) must pay the relevant amount referred to in paragraph (a) by the time specified in the Confirmation, subject to clause 15.3 of this Schedule.
- 4.5 Any CFD Transaction is subject to the condition subsequent that FXTRADING.com is able to acquire the relevant Reference Asset or Hedge Contract as contemplated by clause 15.1. If FXTRADING.com determines that it is not able to satisfy the relevant condition on terms acceptable to FXTRADING.com, FXTRADING.com may terminate the CFD, in which case neither you nor FXTRADING.com will have any liability in respect of that CFD except to the extent FXTRADING.com has a liability to you expressly stated in these terms or by Applicable Law<sup>14</sup>.
- 4.6 All communications, notices, offers, statements and Orders for CFDs must be made by an On-line Service unless FXTRADING.com expressly agrees that they may be made by telephone or otherwise.

## 5. **Settlement of Difference**

- (a) After Close of Business on each Business Day over the term of an open CFD, FXTRADING.com will determine at Close of Business the Contract Value of the CFD.
- (b) If the Contract Value determined by FXTRADING.com in accordance with clause 5(a) above is higher than the Contract Value determined by FXTRADING.com in respect of the previous Close of Business, then the Short Party must pay to the Long Party the difference.
- (c) If the Contract Value determined by FXTRADING.com in accordance with clause 5(a) above is lower than the Contract Value determined by FXTRADING.com in respect of the previous Close of Business, then the Long Party must pay to the Short Party the difference.
- (d) In order to determine in accordance with clause 5(b) or 5(c) the Contract Value at Close of Business on the Business Day on which the CFD is entered into, the Contract Value will be determined by FXTRADING.com using the Underlying Security Price at which FXTRADING.com and you agreed to enter into the CFD.
- (e) If FXTRADING.com determines that the Contract Value of a CFD at Close of Business cannot be determined in accordance with clause 5(a) above for any reason, the Contract Value at Close of Business will be the value determined by FXTRADING.com in its sole discretion.
- (f) Without limiting clause 5(e), if at any time trading on an Exchange is suspended or halted in any Underlying Security, FXTRADING.com will, when determining the Contract Value, at its discretion consider (but is not limited to) the last traded price before the trading suspension or halt.

## 6. **Dividend Payment and Receipt**

- (a) If you are the Long Party to a CFD, and the issuer of the Reference Asset makes a cash distribution in respect of the Reference Asset (for example, a dividend in respect of a Reference Asset which is a security), FXTRADING.com will credit to your Account in respect of the CFD an equivalent amount (less any Taxes and costs) within a reasonable period following the date the cash distribution is paid in respect of the Reference Asset corresponding with your CFD being the amount that will be equal to the cash dividend payable to the holder of the Underlying Security multiplied by the quantity on the first Business Day following the ex-dividend date for the Underlying Security.

FXTRADING.com is not obliged to pay to you any amount under this clause (a) unless and until it receives that amount as the owner of the Reference Asset or an equivalent amount under the Hedge Contract acquired in respect of the CFD. Further, FXTRADING.com is not liable to pay to you any amount in excess of the amount (less any Taxes and costs) which FXTRADING.com itself receives either as the owner of the Reference Asset or pursuant to a Hedge Contract acquired in respect of the CFD.

- (b) If you are the Short Party to a CFD, FXTRADING.com will debit your (relevant) Account with an amount that will be equal to the cash dividend plus any imputation or franking credits payable to the holder of the Underlying Security multiplied by the quantity on the first Business Day following the *ex-dividend* date for the Underlying Security.

## 7. Closing out a CFD

- (a) At any time you may give FXTRADING.com notice of your intention to close any CFD (whether in whole or part) by specifying the Underlying Security and the quantity of CFDs that you wish to close.
- (b) Upon receipt of notice of intent to close a CFD, FXTRADING.com will use reasonable endeavours to provide a quote for the Closing Price and notify you of that quote (by telephone or otherwise). It is your obligation to notify FXTRADING.com as soon as possible as to whether you are willing to accept the Closing Price quote. If you accept the Closing Price quoted by FXTRADING.com, the CFD, or relevant portion of the CFD, will be closed on the Closing Date by issuing you with a CFD which is equal but opposite to the open CFD, or relevant portion of the CFD, to be closed.
- (c) If the Underlying Security for the CFD is on terms that provide for its redemption, exchange or termination and you do not give notice to FXTRADING.com of your intention to Close out the CFD or to roll it over on terms and by the time acceptable to FXTRADING.com (whether or not you have any prior notice of that), you will be deemed to have given notice to FXTRADING.com to Close Out that CFD at the Closing Price reasonably determined by FXTRADING.com. In this case, FXTRADING.com will Close Out the CFD as at the time determined by it.
- (d) At the Close of Business on the Closing Date, if there is a difference between the Closing Value and the Contract Value of the CFD (or portion of it closed under clause 7(b)) it must be accounted for in the following way:
  - (i) If the Closing Value is greater than the Contract Value, the Short Party must pay to the Long Party the difference; and
  - (ii) If the Closing Value is less than the Contract Value, the Long Party must pay to the Short Party the difference.
- (e) If the issuer whose security represents the Underlying Security on which all or part of a CFD is based becomes externally administered in accordance with the meaning in the Financial Products Law (or equivalent legislation), the CFD will be taken to have been Closed at that time. The Closing Price of the CFD will be determined by FXTRADING.com who may consider a number of factors it deems appropriate including, for example, the last traded price of the Underlying Security.
- (f) If the Underlying Security on which the CFD is based ceases to be listed for quotation on an Exchange, or is suspended from quotation for 5 consecutive Business Days, FXTRADING.com may, in its absolute discretion, without limiting clause 7(g) elect to terminate the relevant CFD. If FXTRADING.com elects to do so then:
  - (i) the Closing Date will be deemed to be the date which FXTRADING.com determines (**Early Closing Date**); and

- (ii) you will be treated as having given notice under clause 7(a) on the Early Closing Date.
- (g) If FXTRADING.com determines that the Closing Value of a CFD cannot be calculated on or with effect on the Closing Date for any reason, the Closing Value will be the value determined by FXTRADING.com in its sole discretion.
- (h) Without limiting clause 7(g), if at any time trading in the Underlying Security on an Exchange is suspended or halted at any time, FXTRADING.com will, in its absolute discretion in determining the Closing Value of a CFD, have regard to (but is not limited by) the last traded price before the suspension or halt.
- (i) All calculations made by FXTRADING.com in accordance with these terms in the absence of any manifest error will be binding on you.

## **8. Settlement of Positions**

- (a) Payments to be made to you with respect of any CFD must be made in accordance with this clause 8.
- (b) If a CFD is Closed Out in accordance with clause 7 above, or settlement for difference being made in accordance with clause 5 above:
  - (i) FXTRADING.com will credit to your (relevant) Account any amount payable by FXTRADING.com to you; or
  - (ii) subject to clause 8(c) below you must pay to FXTRADING.com any amount payable by you to FXTRADING.com in cleared funds in any such currency that FXTRADING.com may require immediately upon the payment request being made.
- (c) If there is any free equity in your Account, any amount owing by you in accordance with clause 8(b) above will be settled in whole or in part by debiting your Account with FXTRADING.com.
- (d) If you request payment of any money owed to you under this clause 8, FXTRADING.com will deduct the amount of the requested payment from your Account and pay you, electronically, by cheque or in any other manner as agreed. Money owed to you that has not been the subject of any payment request by you will remain in your Account.
- (e) FXTRADING.com may offset any money owed to you under these terms or any other agreement against any moneys owed by you under these terms or any other agreement.

## **9. Adjustment Events**

- (a) If the Underlying Security on which a CFD is quoted is subject to an Adjustment Event or possible Adjustment Event, FXTRADING.com will determine the adjustment, if any, that will be made to the Contract Value of that Underlying Security, the related quantity (or both) that would have placed the parties in substantially the same economic position they would have been in had the event not occurred. FXTRADING.com will notify you as soon as practicable of the adjustment. In the absence of any manifest error any adjustment determined will be deemed to be conclusive and binding on you.
- (b) FXTRADING.com may give you an opportunity to elect to participate in an adjustment to the CFD which corresponds with the Adjustment Event, but FXTRADING.com is not obliged to give you that opportunity, or give reasonable notice of it or make its terms correspond exactly with the Adjustment Event, nor is FXTRADING.com obliged to accept in part or at all any election you make to participate. Any adjustment will take effect at the time determined by FXTRADING.com.

- (c) If the Underlying Security is subject to a take-over offer or similar event, FXTRADING.com may at any time prior to the closing date of the offer provide you notice of FXTRADING.com' intention to Close the CFD, in accordance with clause 7, with the Closing Price being the price notified to you by FXTRADING.com.
- (d) If at any time an Adjustment Event occurs and it is not reasonably practicable as determined by FXTRADING.com in its absolute discretion to make an adjustment in accordance with clause 9(a) above, then without limiting 9(a) above, FXTRADING.com may at any time after the Adjustment Event give you notice of FXTRADING.com' intention to Close Out the CFD. If this occurs you will be taken to have been provided with Closing Notice in accordance with clause 7 above, with the Closing Price being the price notified to you by FXTRADING.com.
- (e) References to "offer", "take-over" and "closing date" in this clause 9(a) above will have the same meaning given to them in the Financial Products Law 2001.

#### **10. Interest on Open CFD positions**

- (a) Finance Charges:
  - (i) when you are a Long Party under a CFD, FXTRADING.com charges you a Finance Charge by interest payments which accrue on a daily basis and are payable to FXTRADING.com daily by you; and
  - (ii) when you are a Short Party under a CFD, you may be entitled to receive interest payments (which is a credit of a Finance Charge in your favour) which will accrue on a daily basis and are payable to you by FXTRADING.com daily, from the date the CFD is entered into until the Closing Date.

at the interest rate and on the terms referred to in accordance with clause 10(e) below.

- (b) Each day FXTRADING.com will make interest payments by debiting or crediting your Account with the interest rate differential between the Finance Charges (being the amount of interest payable by you under the Finance Charges and the amount of interest payable by FXTRADING.com to you as a credit of Finance Charges). If you have insufficient free equity in your Account such that there is a net Finance Charge payable by you, under this clause you acknowledge that any such amount is a debt owed by you to FXTRADING.com.
- (c) When debiting or crediting amounts of interest to your Account, FXTRADING.com may charge or pay you interest at different rates and at rates that are different from the rates which FXTRADING.com is charged or is paid on equivalent borrowings from its bank or any other client or counterparty, including Prime Counterparties.
- (d) FXTRADING.com will retain the difference between the amount FXTRADING.com may charge or pay you and the amount FXTRADING.com may charge or paid on equivalent or similar borrowings with its bank or counterparty.
- (e) The interest rate applicable under this clause is the Base Rate. The basis for charging you the Finance Charge or crediting you the Finance Charge will be as notified to you from time to time, including by a PDS or tot the extent permitted, by email to you or posting the information on FXTRADING.com' website or on the On-line Service which is accessible by you.

#### **11. Margin Requirements**

- (a) This clause 11 supplements clause 11 in the main terms of this document and only prevails over it to the extent of any inconsistency.

- (b) Prior to entering into a CFD with FXTRADING.com you acknowledge that FXTRADING.com requires you to pay cleared funds as an Initial Margin and to maintain the minimum total Margin determined by FXTRADING.com in its absolute discretion from time to time. The Margin cover requirements may be determined automatically by an On-line Service. The required Margin cover may change at any time, including outside of trading hours and without prior notice to you. The amount of Initial Margin required by FXTRADING.com and the time at which it is required will be at the absolute discretion of FXTRADING.com. FXTRADING.com is not obliged to permit any offset of any Initial Margin required by FXTRADING.com.
- (c) All of your payments for Margin (after withdrawal from any Client Moneys Trust Account) are received and held by FXTRADING.com absolutely for its benefit (and not on any deposit held on trust for you). At the time your payment is credited to the benefit of FXTRADING.com in cleared funds, FXTRADING.com will credit your Account with the payment of the Margin by applying it to the cash balance of the Account (or Trading Account which you nominate).
- (d) You have an absolute obligation to maintain the amount of Margin cover required by FXTRADING.com from time to time, even if FXTRADING.com also calls for more Initial Margin or Variation Margin. Your failure to maintain the required margin cover is automatically a Default.
- (e) The Initial Margin requirement applicable in respect of any CFD may be increased by FXTRADING.com in its absolute discretion in respect of the time for payment and the amount of it. In the event of such an increase FXTRADING.com may require that you pay FXTRADING.com additional cleared funds equal to such an increase.
- (f) Without affecting your obligation to maintain the required amount of Margin cover, at any time in the discretion of FXTRADING.com you may be required by FXTRADING.com to pay additional Margin (**Variation Margin**) by paying FXTRADING.com cleared funds equal to the amount FXTRADING.com may determine in its absolute discretion.
- (g) Without affecting your obligation to maintain the required amount of Margin cover, if FXTRADING.com requires additional funds from you to pay Variation Margin (sometimes referred to as "calling for more Margin") or making a Margin call you must pay the amount called by FXTRADING.com by the time required by FXTRADING.com, which could be immediately. If no time is specified, the time specified for payment of a Variation Margin is within 24 hours of the Margin call being made, whether or not you actually receive notice of the Margin call. Failure to pay a Variation Margin will result in you being taken to be in Default under these terms. FXTRADING.com may require payment within a shorter time period (for example, without limitation, when there is Unusual Volatility).
- (h) Your payment into a Client Moneys Trust Account will not satisfy your obligation to make payment to FXTRADING.com in cleared funds, even if FXTRADING.com temporarily waives reliance on this term. The payment obligation is not satisfied unless and cleared funds are received for the benefit of FXTRADING.com.
- (i) In all respects, time is of the essence for all of your payment obligations to FXTRADING.com.
- (j) If FXTRADING.com increases the required Margin cover or makes a call for more Margin, you acknowledge and agree that FXTRADING.com may refuse any request by you to enter into any further CFD positions until FXTRADING.com has confirmed the receipt of the payment for more Margin in the form of cleared funds.
- (k) Any net positive amount of Margin credited to your Account will not constitute a debt due by FXTRADING.com to you. Subject to you meeting all Margin cover requirements and all Margin calls, you are entitled to be paid by FXTRADING.com an amount equal to

the Withdrawable Funds and, on being paid, there will be a corresponding reduction in the balance of your Account.

- (l) You acknowledge that your liability with respect to maintaining Margin cover or to pay calls for more Margin (if any) is not limited to the amount you initially or later pay FXTRADING.com. You authorise FXTRADING.com to withdraw or otherwise apply funds or Financial Products held on your behalf by FXTRADING.com in any Account, or funds in any Client Money's Trust Account, to satisfy partially or fully any liability you have to maintain Margin cover or to pay a Margin Call.
- (m) FXTRADING.com will have sole, absolute and unfettered discretion, as to the exercise of any power or right under this clause 11, including, without limitation, the calling of Margin.
- (n) Any power or right exercised by FXTRADING.com under this clause 11, including, without limitation, the calling of Margin, will be binding upon you.
- (o) Any reference to time under this clause 11 includes weekends and public holidays.

## **12. Actions Following a Default**

- (a) Upon or after any Default occurs, FXTRADING.com, without prejudice to any other rights it may have under these terms, has the right and power in its sole absolute and unfettered discretion and without necessity to give prior or any notice to you to do any one or more of the following:
  - (i) in accordance with clause 16 terminate these terms;
  - (ii) Close Out all or any open CFD positions you may have as if you had given a Closing Notice to FXTRADING.com and had accepted the Closing Price determined by FXTRADING.com in accordance with clause 7;
  - (iii) in accordance with clause 12(d) treat all or any open CFD positions as having been terminated by you;
  - (iv) terminate any agreement or account whatever you have or may have with FXTRADING.com;
  - (v) in the event of there being insufficient funds in your Account to satisfy amounts owing to FXTRADING.com (including to maintain the Margin cover), FXTRADING.com may cancel any outstanding Orders in order to close your Account;
  - (vi) satisfy obligations that you have to FXTRADING.com out of any property belonging to you including, money or security in FXTRADING.com's custody or control including, without limitation, setting off obligations such that security transferred as collateral is not required to be returned but instead the value of them (as determined by FXTRADING.com) is applied in calculation of the set-off of obligations and to enforce any asset or security held by FXTRADING.com in such manner as it sees fit at your risk and expense;
  - (vii) transfer from your other accounts with FXTRADING.com, if any, such funds as may be required for that purpose to satisfy any obligation you may have to FXTRADING.com; and
  - (viii) exercise any power or right that FXTRADING.com may have in accordance with these terms or in law or equity or take any other form of action as the holder of an Australian financial services licence (AFSL) may be required to take.

- (b) FXTRADING.com does not forgo any of the rights outlined in this clause 12 incurred as a result of a delay in the exercise of such rights. If FXTRADING.com does not exercise any of its rights, it reserves the right to do so at any time in the future.
- (c) If FXTRADING.com exercises its rights under clause 12(a)(ii) or 13 (or both), you authorise FXTRADING.com to Close Out the CFDs, at your risk and expense as if you had given notice on the date that FXTRADING.com exercises its right, in accordance with clause 7.
- (d) If FXTRADING.com treats a CFD as having been terminated by you and FXTRADING.com exercises its rights in accordance with clause 12(a)(iii), FXTRADING.com will calculate the amount owing by you or by FXTRADING.com as if you had been given a Closing Notice and you had accepted the Closing Price determined by FXTRADING.com in accordance with clause 7. FXTRADING.com may debit from your Account an amount equal to the amount which would have been payable by you to FXTRADING.com had the CFD been closed at the Closing Price. It is agreed that this amount represents a reasonable pre-estimate of the damages incurred by FXTRADING.com.
- (e) Any action taken by FXTRADING.com in accordance with this clause 12 does not limit any other provision of these terms and is without prejudice to any other rights which FXTRADING.com may have to any other remedy or damages.

### **13. Position Closures**

If any amounts payable by you to FXTRADING.com in accordance with a CFD entered into under these terms exceed 50% of the Margin cover required with respect to that CFD, FXTRADING.com will Close Out the CFD in accordance as if that event were a Default. This closure will occur in accordance with clause 12(c).

### **14. Illegality**

If any event occurs which has the effect of making or declaring it unlawful or impracticable for FXTRADING.com to offer or to maintain CFDs to you in accordance with the terms outlined in these terms, FXTRADING.com may immediately terminate these terms by providing you written notice of that. A termination of these terms will also result in the closure of all CFDs in accordance with clause 12(c) as if it were a Default. Any such termination will not relieve you of any obligations you may have to FXTRADING.com in accordance with these terms prior to its termination.

For this clause, events include any change in law, regulation, treaty, order, official directive or ruling or in their interpretation or application by any governmental authority or agent, and the introduction, implementation, operation or taking effect of, any law, regulation, treaty, order or official directive or ruling.

### **15. Hedge Counterparty arrangements**

- 15.1 In respect of each CFD entered into between you and FXTRADING.com, FXTRADING.com will use its best endeavours either to acquire the relevant Reference Asset or enter into a Hedge Contract with a Hedge Counterparty on terms that FXTRADING.com determines reasonably corresponds with your CFD.
- 15.2 When you dispose of a CFD, FXTRADING.com will try to dispose of the relevant Reference Asset or Close Out a corresponding Hedge Contract with the Hedge Counterparty, whichever is applicable.

- 15.3 Subject to clause 14 of the Terms, FXTRADING.com is only liable to pay to you an amount under the terms of or in respect of a CFD to the extent that FXTRADING.com itself receives an equivalent amount under the terms of or in respect of the Reference Asset or the Hedge Contract acquired in respect of the CFD. To the extent that the Hedge Counterparty fails to meet some or all of its obligations to FXTRADING.com in respect of a corresponding Hedge Contract (including, for example, any obligation to make a payment or to return Margins paid by FXTRADING.com in respect of the Hedge Contract), you release FXTRADING.com from its corresponding obligations to you in respect of the CFD to the same extent.
- 15.4 You acknowledge that if you acquire a CFD, you have no right to, or interest in, the Reference Asset or any Hedge Contract except only to the extent provided by these terms.

**16. Termination of a CFD Contract**

- 16.1 You acknowledge that FXTRADING.com may terminate a CFD (apart from any other right to terminate) if:
- (a) the Reference Asset ceases to be able to be traded on a relevant market or is subject to a trading suspension or trading halt for a period of more than two (2) Business Days;
  - (b) an Adjustment Event occurs and FXTRADING.com determines that it is not reasonably practicable to make an adjustment to the terms of a CFD under this Schedule;
  - (c) the relevant Hedge Contract, or FXTRADING.com's rights under the relevant Hedge Contract or in respect of the relevant Reference Asset, are Closed Out, suspended or terminated by the Hedge Counterparty (which may occur automatically under the terms of any agreement between FXTRADING.com and the Hedge Counterparty); or
  - (d) FXTRADING.com considers, acting reasonably, that the Hedge Counterparty or issuer of the Reference Asset may not be able to meet its obligations to FXTRADING.com under the terms of the Hedge Contract or Reference Asset or other contracts between FXTRADING.com and the issuer of the Reference Asset or the Hedge Counterparty.
- 16.2 If FXTRADING.com terminates a CFD under clause 16.1 or otherwise, FXTRADING.com will determine a termination value, payable by FXTRADING.com to you or by you to FXTRADING.com, which FXTRADING.com considers appropriate, acting reasonably, and having regard to the circumstances of termination, the value (if any) of the Reference Asset and the position as between FXTRADING.com and the Hedge Counterparty in respect of the Hedge Contract. The termination will take effect at the time determined by FXTRADING.com.