



# Financial Product Service Terms

**FXTRADING.com – FINANCIAL PRODUCT SERVICE TERMS**

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

ABN 58 136 930 526, Australian Financial Services Licence No. 337 985

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Version 1

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## Schedules

# FXTRADING.com Financial Product Service Terms

## 1.1 INTRODUCTION

1.2 These terms govern your OTC Financial Product Account with Gleneagle Securities (Aust) Pty Limited trading as FXTRADING.com, ABN 58 136 930 526 AFSL 337985 (FXTRADING.com). The particular terms which apply to you will depend on the Financial Products or financial services provided to you by FXTRADING.com.

1.3 All of the Financial Products or financial services are subject to the general terms in this document and to the Schedules which apply to particular financial services you may receive or particular Financial Products you may transact from time to time. For the purposes of clause 1.1 of the Prime Account Agreement, the terms in this document prevail over any inconsistent other Term of your Prime Account Agreement except to the extent this document is not permitted by law to prevail over those other Terms or the prevailing term would be invalid or unenforceable.

1.4 In relation to your OTC Financial Product Account, a reference to "Terms" is a reference to the terms in this document (including the Schedules) which are applicable to you, as amended from time to time.

1.5 In order to establish your OTC Financial Product Account, you will need to complete and return to FXTRADING.com your completed Application Form (which will be provided to you on-line). FXTRADING.com may, in its absolute discretion, accept or decline to provide any one or more Financial Products or financial services that you have selected in your Application Form.

1.6 These Terms will apply to you in respect of your OTC Financial Product 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 OTC Financial Product Account. You authorise FXTRADING.com to open an OTC Financial Product Account for you.

1.8 You acknowledge that you have received, read and understood our Financial Services Guide (**FSG**). Our FSG may change from time to time. A copy of the current FSG can be obtained on our website or on request.

1.9 You acknowledge that all dealings in Financial Products and the performance by us of our obligations under these Terms are subject to the Applicable Laws.

1.10 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.

1.11 These Terms do not constitute personal financial advice, nor a recommendation or opinion that a particular Financial Product or service is appropriate for you.

1.12 A liability of FXTRADING.com accrues solely to that entity. FXTRADING.com is not the agent, fiduciary, joint venturer or guarantor of any other person.

1.13 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 OTC Financial Product 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:

**ABN** means Australian Business Number.

**Account** or **OTC Financial Product Account** means an account held in your name or for your benefit with FXTRADING.com including all Transactions recorded in them, for the purposes of these Terms.

**OTC Financial Product Account Value** means the current value of your OTC Financial Product Account which is calculated by FXTRADING.com by combining:

- (a) the equivalent balance of your OTC Financial Product Account in the Client Monies Trust Account;
- (b) the Realised/Unrealised Losses and Realised/Unrealised Profits;
- (c) indicative costs to Close (e.g., Transaction Fees, Finance Charges); and
- (d) the values of Transactions not yet booked (if any).

**ACN** means Australian Company Number.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and directions 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 Corporations Act and regulations made pursuant to the Corporations Act, ASIC Legislative Instruments and other instruments, ASIC Market Integrity Rules, the ASX Rules, the ASX Clear Operating Rules, the ASX

Settlement Operating Rules, and the ASX Clear (Futures) Operating Rules.

**Application Form** means the application form by which a person applies to become a Client of FXTRADING.com and to open an OTC Financial Product Account. It can be in electronic form.

**ARBN** means Australian Registered Body Number.

**ASIC** means Australian Securities and Investments Commission.

**ASIC Legislative Instrument** means an instrument issued by ASIC from time to time which is designated a "Legislative Instrument".

**ASIC Market Integrity Rules** means each of the ASIC/ASX Market Integrity Rules and the ASIC/ASX 24 Market Integrity Rules as amended from time to time.

**ASX** means ASX Limited (ABN 98 008 624 691).

**ASX 24** means Australian Securities Exchange Limited (ABN 83 000 943 377).

**ASX 24 Operating Rules** the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX 24, as amended from time to time.

**ASX Clear** means ASX Clear Pty Limited (ABN 48 001 314 503).

**ASX Clear Operating Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Clear, as amended from time to time.

**ASX Clear (Futures)** means ASX Clear (Futures) Pty Limited (ABN 91 050 615 864).

**ASX Clear (Futures) Operating Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Clear (Futures), as amended from time to time.

**ASX Rules** means the operating rules, procedures, directions, decisions requirements, customs, usages and practices of ASX and includes the ASX Operating Rules and ASX 24 Operating Rules, as amended from time to time.

**ASX Settlement** means ASX Settlement Pty Limited (ABN 49 008 504 532) or another clearing facility approved to clear securities and other Financial Product Transactions effected on the Exchanges operated by ASX.

**ASX Settlement Operating Rules** means the operating rules, procedures, directions, decisions requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

**AUD, Australian Dollars and \$A** means the lawful currency of the Commonwealth of Australia.

**Authorised Person** means the person (if any) described as your authorised agent in the Application Form or another person notified by you to us under clause 5.

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

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

**Calculation Time** means the time that FXTRADING.com performs the calculation for a Finance Charge Adjustment or a Finance Credit Adjustment, the time generally being 5:00 p.m. New York time (but any specific time will be advisable through the Trading Conditions).

**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**, in relation to a Facility, means the participant of the relevant CS Facility which has the responsibility for clearing the relevant Transactions in respect of that Facility.

**Client** means the person who is (or persons who are) recorded as having an OTC Financial Product Account.

**Client Moneys Trust Account** means an account (however named or styled) maintained by FXTRADING.com for the

purposes of the Corporations Act to hold client moneys.

**Close Out, Closed Out and Closing Out** in relation to a Transaction means discharging or satisfying the obligations of the Client and FXTRADING.com under the transaction and this includes matching up the Transaction with a Transaction of the same kind under which the Client has assumed an offsetting opposite position.

**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 to you and includes an electronically transmitted confirmation or a substantially continuously available account statement which contains the information which would be in a confirmation.

**Contract Size** means the standard volume per 1 Lot expressed either in ounces or number of contracts.

**Corporations Act** means the Corporations Act 2001 (Commonwealth) and regulations made under it, as amended from time to time.

**CS Facility** means a clearing and settlement facility, within the meaning of the Corporations Act (which includes, for example, any clearing or settlement facility through which Transactions are cleared or settled), whether located in Australia or elsewhere.

**Default** has the meaning in clause 25.1 and, if applicable, as supplemented by a term in a Schedule.

**Derivatives** means derivatives as defined in section 761D of the Corporations Act.

**Exchange** means each of the ASX 24 operated by the ASX, the Australian Securities Exchange operated by ASX, the Australian Clearing House operated by ASX Clearing Corporation Limited and any other exchange or market in which FXTRADING.com participates directly or indirectly, from time to time (e.g., but not limited to, by way of its Hedge Counterparties transacting on these exchanges or in those markets).

**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 13. This may be referred to as an “interest charge” or “interest debit” on the Online Service, the relevant PDS or elsewhere.

**Finance Charge Adjustment** and **Finance Credit Adjustment** mean the amount charged or credited (as applicable) to your OTC Financial Product Account by FXTRADING.com for Transactions. This may be referred to as an “interest charge adjustment”, “interest debit adjustment”, “interest credit adjustment” or any other applicable term on the Online Service, the relevant PDS or elsewhere.

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

**Financial Product** has the meaning given in part 7.1 division 3 of the Corporations Act (including, for the avoidance of doubt, any ASIC Legislative Instruments).

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

**Futures** has the same meaning as given in rules governing the operation of any Exchange relevant to an OTC Transaction.

**FSG** is defined in clause 1.8.

**FXTRADING.com** means Gleneagle Securities (Aust) Pty Limited trading as FXTRADING.com ABN 58 136 930 526; AFSL 337985.

**GST** means tax that is imposed as a goods and services tax under any of:

- (a) A New Tax System (Goods and Services Tax) Act 1999; or
- (b) any regulation made pursuant to the A New Tax System (Goods and Services Tax) Act 1999.

**Hedge Counterparty** means a person with whom FXTRADING.com enters into a hedge contract to hedge FXTRADING.com's

exposure to OTC Contracts or other Financial Products.

**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.

**JPY** means the lawful currency of Japan.

**Long Party** means the party to a Transaction (including an OTC Contract) who is treated as having notionally bought the Underlying Security (or, in the case of an index OTC Contract, 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.

**Lot** means the unit that represents the volume of a Transaction taking into consideration the Contract Size. It can be represented as a portion of a Lot subject to the minimum lot size, for example, 0.1 of a lot being referred to as a mini Lot or (0.01 of a Lot) being referred to as a micro Lot. For example 1 Lot in EUR/USD equals 100,000 EUR being the Term Currency unit and 0.1 Lot is therefore 10,000 units of Term Currency.

**Margin** means the amount of cash or other assets paid to FXTRADING.com and credited to your OTC Financial Product Account as Margin.

**Margin Closeout Level** means the minimum Margin Cover allowable before there might be automatic Close Out of all or some of your Open Positions.

**Margin Cover** means the amount of Margin available for margin trading on your OTC Financial Product Account. It is calculated by FXTRADING.com by subtracting from the OTC Financial Product Account Value: (i) the required Margin; and (ii) a percentage of the value of Open Positions.

**Online Service** is defined in clause 8.1. This may be referred to as an “Electronic Trading Platform” or as the actual name of the electronic trading platform in a PDS or on FXTRADING.com's website.

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

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

**OTC Contract** means a Financial Product, being a Derivative which derives its value from one or more Reference Assets. FXTRADING.com may notify you, from time to time, if the relevant Financial Product is to be classified by a particular name. Notification can be by way of PDS, email, posting to FXTRADING.com's website, the Online Service, OTC Financial Product Account statement or in any other way.

**OTC Financial Product Account** - see definition of "Account".

**OTC Transaction** means a Transaction which is an OTC Contract (in contrast with an exchange traded contract).

**PDS** is defined in clause 1.7.

**Pip Value** means the smallest increment by which a unit of currency, index level or a commodity contract changes and is quoted depending on the number of decimal places in which the currency or index is quoted. For example, in the case of a Foreign Exchange Transaction, a USD/JPY Foreign Exchange Transaction is quoted with only two decimal places.

**Prime Account Agreement** means your written agreement with us for the terms of our account services (other than as covered by these Terms), whether called "Prime Account Agreement" or known by other names or words.

**Price** means, in relation to a Transaction, the price or rate quoted by FXTRADING.com as finally determined when an Order is implemented.

**Realised/Unrealised Loss** means:

(a)(**realised loss**) – the amount by which the value of an Open Position on Close Out is less than the value of the Open Position when the Open Position was last valued or if the Open Position has never been valued previously, it is the value when the position was opened; and

(b)(**unrealised loss**) – the amount by which the value of an Open Position (not on Close Out) is less than the value of the Open Position when it was last re-valued or if the Open Position has never been valued previously, it is the value when the position was opened.

**Realised/Unrealised Profit** means:

(a)(**realised gain**) - the amount by which the value of an Open Position on Close Out is more than the value of the Open Position when the Open Position was last valued or if the Open Position has never been valued previously, the value when the position was opened; and

(b)(**unrealised gain**) – the amount by which the value of an Open Position (not on Close Out) is more than the value of the Open Position when it was last re-valued or if the Open Position has never been valued previously, the value when the position was opened.

**Rules**, in relation to a Financial Market or a CS Facility, means the operating rules, procedures, customs and usages of the of the Financial Market or CS Facility (as applicable).

**Security Information** means any of your email address, logon code, password or trading password.

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

**Short Party** means the party to a Transaction (including an OTC Contract) who is treated as having a financial outcome similar to having effectively 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.

**Terms** is defined in clause 1.4 and see also clause 2.

**Trading Conditions** means the operating conditions for trading on the Online Service from time to time, including any Pricing,

leverage ratios, parameters for Orders, details of calculations of fees, charges and costs or limits to or features of Transactions.

**Transaction** 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 the same or another currency (or other agreed Underlying Security); and
- (b) in respect of which (other than in respect of Closing Out an Open Position as permitted under these Terms) you have, or you are taken to have, agreed (whether orally, electronically or in writing) to:
  - (i) the specification of the Underlying Securities involved;
  - (ii) the amount of Underlying Securities involved and, if applicable, the amount of the specified currency involved;
  - (iii) the Price;
  - (iv) Transaction Fee and Finance Charges; and
  - (v) any other features agreed by FXTRADING.com.

**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.

**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.

**USD** means United States dollar or the lawful currency of the United States of America.

**we, us or our** means Gleneagle Securities (Aust) Pty Limited trading as FXTRADING.com ABN 58 136 930 526 and its successors and assignees.

**Withdrawable Funds** means the amount of cash which would be paid to you from the OTC Financial Product Account if requested. There are Withdrawable Funds only if your OTC Financial Product Account balance is a positive amount. The amount of the Withdrawable Funds is the lesser of the cash balance of your OTC Financial Product Account and the Margin Cover. If your Margin Cover is not positive, there will be no Withdrawable Funds.

**you** means the Client, being the person or persons in whose name we open an OTC Financial Product Account (including any Authorised Person), following our acceptance of an application by that person or those persons.

2.3 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) Headings used in these Terms are used for convenience only, and do not affect interpretation.
- (b) 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.



- (c) A singular word includes the plural and *vice versa*.
- (d) A word which suggests one gender includes the other gender.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) A reference to time is to local time in Sydney, New South Wales, unless otherwise specified.
- (g) 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.
- (h) For the avoidance of doubt, time will continue to run on days which are not Business Days.
- (i) The English version of these Terms prevails over any other translated version of these Terms.

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. OTC FINANCIAL PRODUCT ACCOUNT**

3.1 FXTRADING.com will establish one or more OTC Financial Product Accounts in respect of the Financial Products or financial services it provides to you. Transactions entered into by you pursuant to these terms will be recorded in the relevant OTC Financial Product Account established by FXTRADING.com for that Financial Product or financial service. Unless you have specifically requested FXTRADING.com to open separate OTC Financial Product Accounts, you will be taken to have only one OTC Financial Product Account, with Transactions in respect of each Financial Product or financial service provided to you being recorded in that OTC Financial Product Account.

3.2 The calculations, reporting and administration may be performed by

FXTRADING.com separately for each OTC Financial Product Account, so that (without limitation):

- (a) Margin calculations may be managed and enforcement action may be taken for each OTC Financial Product Account separately; and
- (b) FXTRADING.com may at any time aggregate one or more OTC Financial Product Accounts (for reporting or managing Margins or otherwise for the purposes of these Terms), even if you cannot immediately access reports for aggregated OTC Financial Product Accounts.

3.3 FXTRADING.com may set off any amount owing by you (including any negative balance in one or more OTC Financial Product Accounts) against any amount FXTRADING.com owes you in any other OTC Financial Product Account, without notice. FXTRADING.com may choose, in its absolute discretion, which Financial Products, Transactions, 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 OTC Financial Product Account. You agree that FXTRADING.com may apply the set off as among one or more OTC Financial Product Accounts, before Default and on and following Default.

3.4 The OTC Financial Product Account Value may reflect any such aggregation or set off any debt or other amount owing from time to time.

3.5 All OTC Financial Product Accounts will be denominated in Australian Dollars unless we agree with you that one or more OTC Financial Product 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 OTC Financial Product Account denominated in that currency.

- 3.6 You must maintain Margin in the currency of the relevant OTC Financial Product Account, even if FXTRADING.com converts that Margin into Australian dollars for the purposes of managing reports about your OTC Financial Product 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 Australian Dollars (or any other foreign currency permitted by FXTRADING.com). If you do not have Margin in Australian Dollars in your OTC Financial Product Account (or any other foreign currency permitted by FXTRADING.com) or your OTC Financial Product Account has a negative account balance in Australian Dollars (or any other foreign currency permitted by FXTRADING.com) 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 You must, whenever required by FXTRADING.com and at your expense, take or defend all legal proceedings which FXTRADING.com determines in its discretion is appropriate for the protection of the OTC Financial Product Account (or any part of it) or money paid as Margin to it for itself, whether those proceedings are or might be reasonably be expected to be in the interests of FXTRADING.com, or your interests, or partly both.
- 3.9 A Client may be comprised of two or more persons. If the Client is comprised of more than one person then the OTC Financial Product 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 there is a court determination that it is not held as joint tenants.

#### **4. CALCULATIONS AND VALUATIONS**

- 4.1 FXTRADING.com may from time to time calculate and report the OTC Financial

Product Account Value for an OTC Financial Product Account.

- 4.2 FXTRADING.com may from time to time calculate and report the Withdrawable Funds for an OTC Financial Product Account.
- 4.3 FXTRADING.com may from time to time calculate and report the Realised/Unrealised Loss and Realised/Unrealised Profit for an OTC Financial Product Account.
- 4.4 Terms and expressions used in these Terms for reporting and calculating amounts may differ from time to time from terms or expressions used in Online Services usage or market practice. You should have regard to the statements, Confirmations, guides and dealing practices used from time to time.
- 4.5 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. 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.
- 4.6 For OTC Contract 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. APPOINTMENT AND AUTHORISED PERSONS**

- 5.1 FXTRADING.com may accept your authorisation of another person (**Authorised Person**) to give instructions and place Orders on your behalf. You must notify FXTRADING.com in your Application Form or otherwise in writing in a way

- permitted by FXTRADING.com of any such authorisation, setting out the full name, telephone number, fax number, email address and signature of that person and any other information required by FXTRADING.com to identify the Authorised Person.
- 5.2 Any change or revocation of such authority is only effective upon receipt by FXTRADING.com of a signed written notice of change or revocation from you. If another person is later appointed an Authorised Person, the notice must include the full name, telephone number, fax number, email address and specimen signature of that person and be verified by an Authorised Person and any other information required by FXTRADING.com to identify the Authorised Person and, if you are a body corporate, by a director.
- 5.3 You may appoint an attorney (under a power of attorney in the relevant jurisdiction) to give instructions and place orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under these Terms. You must notify FXTRADING.com in writing of any such appointment setting out the attorney's details. You must provide FXTRADING.com with a written power of attorney; FXTRADING.com may accept or reject this power of attorney.
- 5.4 FXTRADING.com may allow a Client which is a corporation or other legal entity to authorise a person (who is by that authorisation an Authorised Person) or an attorney to do anything which the Client is entitled to do under these Terms, including on conditions determined by FXTRADING.com.
- 5.5 FXTRADING.com may allow any other Client to authorise its Authorised Person or attorney to do anything which the Client is entitled to do under these Terms, including on conditions determined by FXTRADING.com.
- 5.6 For the purposes of these Terms, Orders placed by, and other instructions or directions given by, an Authorised Person (or which appear to us on the face of the Orders or other instructions or directions to be placed or given by an Authorised Person) are taken to be your Orders, instructions or directions.
- 5.7 You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person was:
- (a) outside their actual or ostensible authority; or
  - (b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.
- 5.8 You agree not to make, and you release us from any liability to you under your right to make, any Claim against us for any Loss incurred or suffered by you which arise directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your Authorised Person (including your attorney).
- 6. ORDERS**
- 6.1 You may from time to time place Orders with us to enter into Transactions. Subject to these Terms, we will execute your Orders with you as principal in accordance with your instructions.
- 6.2 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).
- 6.3 We may refuse to accept an Order (including but not limited to any Order that relates to black-box trading, scalping or any similar trading practices) 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.
- 6.4 We may cancel or amend an Order:
- (a) if required by Applicable Laws to do so;
  - (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 Exchanges have a range of powers, including the power to cancel or amend a Transaction. This power can be exercised without your permission or our agreement and so may give rise to us cancelling or amending an Order due to an Exchange exercising its powers even though your Transaction issued by us is an over the counter Transaction with no interest in any Financial Product the subject of the Transaction and even though we might not have fully or even partly hedged our Transaction with you.

6.5 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.

6.6 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.

6.7 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. 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 or a Transaction. FXTRADING.com is not required to make any disclosure to you concerning any such contract, transaction or arrangement.

6.8 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. When 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 or other benefits from both Transactions. Similarly, because we deal as principal, then your Orders may match opposite Orders entered by us as principal and you authorise us and consent to us charging you the Transaction Fees and Finance Charges in respect of the Transaction provided by these Terms.

6.9 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 Corporations Act, Applicable Laws and the Rules.

6.10 You acknowledge that we do not operate any discretionary accounts and we will, unless otherwise expressly provided by these Terms, only act on your instructions (including those given by your Authorised Person).

6.11 Unless otherwise specified in these Terms, all Orders will remain open until either cancelled by you or purged by the Online Service. We do not accept responsibility for reinstating lapsed Orders or for contacting you to seek new instructions.

6.12 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 (however they are described or named). We will not be responsible for any live or contingent Orders with the incorrect security code or identifier.

6.13 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 Corporations Act, 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, black box trading, scalping, 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.

6.14 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).

6.15 You agree not to make any Claim against FXTRADING.com for any Loss incurred or suffered by you which arises in connection with the exercise of any power by ASIC or by the ASX pursuant to the ASX Rules or by any other Exchange which directly or indirectly affects your Transaction, including by way of FXTRADING.com directly or indirectly, fully or partly hedging your Transaction (whether or not FXTRADING.com has given you a Confirmation in respect of any affected Transaction) except to the extent that the Loss incurred or suffered is caused by the negligence, fraud or breach of these Terms by FXTRADING.com.

## 7. ALLOCATION POLICY

7.1 FXTRADING.com will deal fairly and in due sequence with all client Orders having

regard to Australian regulatory requirements, market practices and FXTRADING.com's compliance policies and procedures.

7.2 To the extent that it is reasonably practicable to do so, FXTRADING.com will allocate all Transactions (including Transactions effected pursuant to Orders placed on FXTRADING.com's own account) in the sequence in which FXTRADING.com receives those Orders, subject to filters and compliance review and to any delay or technical faults connected with or arising through the use of the Online Service, an Exchange System or any other delay that is outside the control of FXTRADING.com.

## 8. ONLINE SERVICES

8.1 This clause contains provisions which, in addition to the other Terms, govern the use of any online or other electronic trading or any information service we provide or make available to you (including, without limitation, all software and communication links) under which you may:

- (a) place your Orders or transmit other instructions to FXTRADING.com or other persons;
- (b) enquire as to the availability or pricing or value of one or more Financial Products;
- (c) receive market data and other information in relation to one or more Financial Products; or
- (d) receive Confirmations, OTC Financial Product Account balances or other information in connection with your OTC Financial Product Account or Transactions.

In these Terms, we refer to such a service as an **Online Service**.

8.2 An Online Service may be a proprietary service provided by FXTRADING.com, or a service provided to you by a third party pursuant to an arrangement with FXTRADING.com (for example, by an Exchange or by a service provider). To the extent that the Online Service is provided to you by FXTRADING.com, we grant you a non-exclusive and non-transferable licence to use the Online Service subject to these Terms.

- 8.3 FXTRADING.com may refuse to accept or place any Order in its absolute discretion without having to provide a reason.
- 8.4 FXTRADING.com will not be responsible for confirming the receipt of instructions or verifying the authenticity of your instructions.
- 8.5 FXTRADING.com has no obligation to resubmit Orders purged from any Online Service.
- 8.6 You agree that:
- (a) you must not use the Online Service (or permit or procure any other person including any Authorised Person to use the Online Service) until the Security Information has been provided by us;
  - (b) the Security Information is confidential;
  - (c) you are responsible for maintaining the confidentiality and use of that Security Information at all times and must procure that any Authorised Person maintains the confidentiality of the Security Information;
  - (d) you will not permit, consent or allow any person (other than any Authorised Person in its capacity as your agent) to use the Security Information or to access or use the Online Service using that Security Information;
  - (e) you will not provide, disclose or make available the Security Information to any person (other than an Authorised Person in its capacity as your agent); and
  - (f) you must notify us immediately upon becoming aware of any unauthorised use of the Security Information or the Online Service.
- 8.7 You acknowledge and agree that:
- (a) you are only permitted to access and use the Online Service, using the Security Information;
  - (b) we are entitled to rely on all instructions given by, on behalf of, or apparently on your behalf, using the Security Information; despite any other provision of these Terms, we are not liable for any Loss caused by us acting on instructions or other communications using the Security Information;
  - (c) there may be delays in the processing, execution, amendment or cancellation of an Order entered through the Online Service and:
    - (i) an Order may be filled before an instruction for its amendment or cancellation is processed;
    - (ii) you remain liable to settle the original Order, until any relevant amendment or cancellation is effected; and
    - (iii) without limiting clause 24, FXTRADING.com will not be liable for any Loss incurred by you arising from any delay in the dissemination of market information or the processing of any Order or instruction to amend or cancel an Order;
  - (d) the execution of an Order placed through the Online Service may be delayed by filters or other electronic features of the electronic system;
  - (e) we are not responsible for the processing, execution or cancellation of any Orders submitted through the Online Service, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry or for any delays;
  - (f) any Online Service is provided on an "as is" basis and, except as required by law, we make no representations or warranties express or implied with respect to the Online Service;
  - (g) the speed of information provided through the Online Service is subject to a number of factors including, but not limited to, the speed of the user's internet connection, the user's settings, the number of concurrent users accessing the Online Service and the volume of information being received and sent by the Online Service;
  - (h) there are significant risks in trading through the Online Service because it is serviced by means of computer and telecommunications systems, even if generally accepted industry standards and practices are followed;

- (i) the features, components or terms of use of an Online Service may be changed by us or the provider of the Online Service without requiring an amendment to these Terms;
  - (j) you are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Online Service and for any communication service fees and charges incurred by you in accessing and using the Online Service;
  - (k) you are responsible for ensuring you have in place alternative arrangements for the execution of Orders or other services available through the Online Service, if the Online Service or any aspect of it ceases to be available or subject to failure (including, for example, arrangements for the use of telephone or facsimile);
  - (l) you must notify us immediately if you become aware of any inaccurate information being transmitted through the Online Service including, for example, inaccurate content as to Orders, Transactions or OTC Financial Product Account balances; and
  - (m) you must only use the Online Service for your own internal business and investment purposes.
- 8.8 You also agree to be bound by any terms and conditions of access and use which we or any third party provider of an Online Service may specify and notify to you, from time to time.
- 8.9 You are responsible for reading, understanding and complying with the details of the operational aspects of the Online Service. It is important that you read and understand any user manuals and operational procedures or rules relating to the relevant Online Service and which are made available either by FXTRADING.com or the provider of the Online Service. Further information on how to use and understand the Online Service can be obtained on our website.
- 8.10 Either you or your Authorised Person may place Orders with us using the Online Service. You authorise each person who is an Authorised Person from time to time to enter Orders using the Online Service in accordance with this document as your agent. You must provide us on request with a list of your Authorised Persons (containing their names and contact details) and any changes to the list.
- 8.11 You and each Authorised Person must satisfy any requirements (including without limitation requirements as to knowledge, training, testing, procedures and controls) notified by us to you from time to time and you are solely responsible for ensuring that an Authorised Person satisfies these requirements.
- 8.12 You are responsible for the consequences of any unauthorised disclosure or use of the Security Information, and for any actions or omissions by an Authorised Person.
- 8.13 We (or any third party providing the Online Service) may suspend, terminate or impose conditions on the use by you or any Authorised Person of the Online Service at any time without notice to you.
- 8.14 If you are uncertain as to whether your Order has been received, you must make all reasonable attempts to verify whether the Order has been received, approved and effected prior to taking further action. You agree to issue specific cancellation or amendment instructions with respect to an existing Order and not to attempt to effect changes by placing a second or duplicate Order. You will be solely responsible and liable for any duplicate instruction that you place.
- 8.15 You agree not to contest the validity or enforceability of any electronic communications between yourself (including your Authorised Person) and FXTRADING.com.
- 8.16 If a failure, interruption or malfunction of electronic communication between the parties prevents an Order from being placed, cancelled or amended then, without limiting clause 24, neither party is liable to the other party for any Loss caused then by that failure, interruption or malfunction.
- 8.17 You acknowledge that all market data and information in relation to trading, volumes and pricing for a Financial Market provided through any Online Service may be proprietary information of the relevant Exchange or Financial Market or another person and any display, dissemination or

other use of that information may be subject to restrictions imposed by the Financial Market or other person. You are responsible for complying with any such restrictions.

## 9. CONFIRMATIONS

9.1 We will, if required by Applicable Laws, give you a confirmation (**Confirmation**) in respect of each Transaction which FXTRADING.com enters into with you. You consent to receiving Confirmations by electronic means including, for example, through any Online Service. If our service provides Confirmations by accessing a substantially continuously available service, you consent to your Confirmations being available by those means instead of being sent to you.

9.2 You can agree with us, if permitted by Applicable Laws, not to give you a Confirmation or to provide Confirmations to an address or person nominated by you.

9.3 Each Confirmation given by us is subject to the Applicable Laws and the correction of errors and omissions. FXTRADING.com may, at any time, reissue a Confirmation in order to correct any errors or omissions.

9.4 You are responsible for promptly checking each Confirmation. You must immediately notify us if you become aware that there is an error in the Confirmation. We are entitled to assume that the Confirmation is correct unless you notify us of any error within 48 hours following us (or someone on our behalf) giving you the Confirmation or the Confirmation (or its equivalent) becoming available to you.

## 10. CLIENT ACKNOWLEDGMENTS

10.1 You, the Client, acknowledge and confirm to FXTRADING.com for FXTRADING.com's benefit in relying on the following:

- (a) you (or, if a corporate entity, your directors) 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 OTC Financial Product Account;

- (b) you have received, read and understood our Financial Services Guide (**FSG**);

- (c) all dealings in Financial Products and the performance by us of our obligations under these Terms are subject to Applicable Laws;

- (d) FXTRADING.com relies on your representation that at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between you and FXTRADING.com;

- (e) that trading in Transactions incurs a risk of loss as well as a potential for profit;

- (f) we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you;

- (g) by these Terms (including any Transaction made under it) we do not act in a fiduciary capacity in relation to you and FXTRADING.com does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms;

- (h) the Client must provide to FXTRADING.com on request such information regarding its financial and business affairs and identity, as FXTRADING.com may reasonably require;

- (i) that all Orders to be placed and all trading to be conducted under these Terms must be lawful;

- (j) in executing and complying with these Terms, the Client will not infringe any provisions of any other document or agreement to which the Client is a party;

- (k) the Client will take all reasonable steps to obtain and to communicate to FXTRADING.com all information, and will deliver or cause to be delivered to FXTRADING.com all documents with respect to dealings in the Financial Products



- which are requested by any person having the right to request such documents and information and the Client authorises FXTRADING.com to pass on or deliver all such information and documents to any such person;
- (l) the Client will indemnify and keep indemnified FXTRADING.com and each of its related bodies corporate and their respective directors, officers employees and agents from and against all sums of money, actions, proceedings, suits, Claims, complaints, demands, damages, costs, expenses and any other amounts whatever claimed against any of them;
- (m) FXTRADING.com is not required to act in accordance with your instructions if in FXTRADING.com's opinion to do so would or could constitute a breach by it or its agent or Hedge Counterparty of the Corporations Act or any other Applicable Laws;
- (n) dealings in the Transactions may create an obligation to make a payment to FXTRADING.com in accordance with these Terms;
- (o) FXTRADING.com acts as principal in respect of the Financial Products issued by FXTRADING.com;
- (p) subject to applicable legal or regulatory requirements, you consent to FXTRADING.com either knowingly or unknowingly taking the opposite side to the Client in relation to any of the Financial Products, without notice to the Client;
- (q) subject to applicable legal or regulatory requirements, the Client agrees and acknowledges that FXTRADING.com's directors, employees and associates (and their directors, employees) may and can deal on their own account in Transactions which may be the same as or differ from your Transactions;
- (r) FXTRADING.com may, in its sole discretion and without explanation, refuse to deal with or on behalf of the Client in relation to any Transaction (including Closing Out existing Open Positions held in the OTC Financial Product Account on behalf of the Client) or to limit the number of Open Positions of the Client or both;
- (s) if errors have occurred in the pricing of Transactions quoted by FXTRADING.com to the Client, FXTRADING.com may choose not to be bound by such Transactions (without further liability to the Client) if FXTRADING.com is able to substantiate to the Client that there was a material error at the time of the Transaction;
- (t) there are risks associated with using an internet-based deal execution trading system which include, but are not limited to, the failure of hardware, software, and internet connection and since FXTRADING.com does not control data flows, internet or power connection, routing via internet, configuration of your equipment or reliability of its connection, FXTRADING.com will not be responsible for communication failures, distortions or delays when trading (including processing payments)) via the internet;
- (u) reports to the Client on the execution of Confirmations by FXTRADING.com, and the content of such Confirmations being statements, unless otherwise objected to within 48 hours after communication to the Client, will be deemed to be conclusive proof of the accuracy of such contents and their execution in accordance with these Terms except only in the case of manifest error;
- (v) a notice issued by an authorised officer or agent of FXTRADING.com stating the amount of money due and

payable by the Client will be taken as conclusive evidence of notice except only in the case of manifest error;

- (w) Financial Products traded on the Online Service will not be settled by the physical or deliverable settlement of the Underlying Security on their Value Date - depending on the Financial Product, they are generally rolled or "swapped" indefinitely until Closed Out (see the relevant applicable Trading Conditions);
- (x) an Open Position must remain open for the minimum period of time as determined by FXTRADING.com and cannot be Closed Out by you during this period; and
- (y) the English version of these Terms prevails over any other translated version of these Terms.

10.2 All representations, warranties and acknowledgments given by you under these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Order with us;
- (b) each time you enter into a Transaction with us; and
- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your OTC Financial Product Account or any Transaction.

## 11. FXTRADING.COM UNDERTAKINGS

- 11.1 FXTRADING.com will act honestly and exercise due care and diligence at all times in its performance of these Terms.
- 11.2 FXTRADING.com will use reasonable endeavours to execute your Orders, subject to these Terms.
- 11.3 Apart from any duties, undertakings, warranties or representations which are imposed or implied by law and which cannot be excluded, FXTRADING.com makes no undertaking, warranty or

representation in relation to any service or information provided or made available to you in connection with these Terms. To the full extent permitted by law, FXTRADING.com excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

## 12. FEATURES AND RISKS OF TRANSACTIONS

12.1 You acknowledge and understand that there are significant features and risks involved in Transactions, including:

- (a) the gearing or leverage involved in investing in Financial Products means that a small Initial Margin payment can potentially lead to large losses for you, including more than all of the Margin ever paid to FXTRADING.com;
- (b) the geared nature of Transactions also means that acquiring and holding them can carry greater risks than directly investing in the Underlying Security which might not be geared, or, if is geared, effectively involves gearing of an underlying geared contract;
- (c) a relatively small market movement can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you;
- (d) over the counter Transactions are derivatives not made on any Exchange so might be considered to involve a greater risk than an exchange-traded derivative since there is no exchange market on which to Close Out an Open Position – you are only able to open and close your positions with us;
- (e) markets outside of Australia might involve different risks to Australian markets, so the potential for profit or loss from Transactions relating to a non-Australian market or denominated in non-Australian

- currency will be affected by fluctuations in foreign exchange rates;
- (f) it is possible to incur a loss if, after your acquisition of an investment, exchange rates change to your detriment, even if the price of the Underlying Security to which the Transaction relates remains unchanged;
- (g) you may sustain a total loss of the Margin that you deposit with or pay to us to establish or maintain a position and if the market moves against you, you may be required to pay substantial additional Margin at short notice but if you fail to do so within the required time, your investment position may be liquidated at a loss to you and you will be liable for any remaining deficit in your OTC Financial Product Account;
- (h) you will be required to maintain the Margin Cover, which might mean you must pay more Margin, even though we do not give Margin calls and even if you are not contactable;
- (i) under some trading conditions it may be difficult or impossible to liquidate a position, such as (but not limited to) at times of rapid price movement if the price rises or falls in one trading session to such an extent that trading in the underlying market is suspended or restricted;
- (j) if you trade in denominated currencies other than the OTC Financial Product Account currency you may lose money or value of the investment due to exchange rate fluctuations and that these losses may be in addition to any losses on the value of the Underlying Security relevant to the Transactions;
- (k) gapping, whereby a market price falls or rises without the opportunity to trade, can result in significant losses even when a stop loss has been put on because it may not be possible to transact at the nominated price if the market has gapped;
- (l) in some circumstances the Underlying Security may be halted, suspended from trading or have their quotation for trading withdrawn from an Exchange, or an index may be suspended and these factors might affect the value of your Transaction relating to those Underlying Securities due to FXTRADING.com exercising its discretion to determine the fair value of them;
- (m) a market disruption may mean that you are unable to trade when desired or in the amounts and prices you desire, and you may suffer a loss as a result, including disruption due to government or regulatory decisions or announcements, the failure of a computer based trading or pricing system, fire or other exchange emergency or a regulatory body could declare an undesirable situation has developed in a particular currency, security or contract and suspend trading or adjust terms of prices or trading;
- (n) you may incur losses (including incurring fees and charges) that are caused by matters outside our control for example, a regulatory authority exercising its powers during a market emergency or other significant event may result in losses for the Client or a regulatory authority can suspend trading (for example in an Underlying Security) or alter the price at which a position is settled, which could also result in a loss to the Client; and
- (o) we have powers, and discretion to exercise those powers, without notice to you or giving you reasons, for cancelling Transactions or adjusting their prices or timing and, though we would exercise our powers in accordance with these Terms and our statutory duties, you may incur losses (including incurring

fees and charges) and lose investment opportunities as a result of our exercise of our powers.

- 12.2 No advice or recommendation is provided by FXTRADING.com in relation to your Transactions unless expressly stated otherwise.

### 13. FEES AND CHARGES

- 13.1 Any profit or loss net of any fees and charges (that is, the realised gain or loss) arising on Closing Out a Transaction will be credited or debited (as the case may be) against the OTC Financial Product Account Value, in the OTC Financial Product Account currency.

- 13.2 You owe us, and must pay to us or as we direct (in accordance with these Terms):

- (a) any Transaction charges including all Transaction commission, charges, fees, Margins, premia, settlement and clearing fees and charges, 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;
- (b) a Transaction Fee for each Financial Product or Transaction (as the case may be) being the fee from time to time specified by FXTRADING.com to be the amount payable by you to FXTRADING.com in respect of each such Transaction;
- (c) any royalty or other fee which must be paid for the use of prices or information provided to you via access through the Online Service or otherwise by any Exchange;
- (d) (if applicable) a monthly access charge for the use of the Online Service provided by FXTRADING.com, as specified by FXTRADING.com from time to time;
- (e) the Finance Charge calculated as disclosed in the PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you, such as on FXTRADING.com's website or the

Online Service, in the amount of the Finance Charge Adjustments from time to time;

- (f) Finance Charge Adjustments applicable to any Transaction or OTC Financial Product Account;
- (g) 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
- (h) 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 Base Rate then generally applicable for debit amounts on OTC Financial Product Accounts plus a rate of interest per annum as reasonably determined by FXTRADING.com (but so that the total rate does not exceed generally prevailing rates for personal unsecured loans in comparable amounts), such interest to accrue daily from and including the due date to and including the date of its payment in full.

*Guidance note: this is the rate of interest you pay if you default on making any payment to FXTRADING.com. It is not the rate for any Finance Charge Adjustment.*

- 13.3 We owe you and must pay you (in accordance with these Terms) Finance Credit Adjustments applicable to any Transaction or OTC Financial Product Account from time to time, calculated as disclosed in the PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you, such as on FXTRADING.com's website or the Online Service.

- 13.4 Any amount or rate or formula which is to be specified by FXTRADING.com may be specified by a PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you, such as on FXTRADING.com's website or the Online Service. The amount of any fees and charges or other amounts payable by you to FXTRADING.com in respect of any Transaction will be set out in the

Confirmation of that Transaction or the Online Service to the extent known at the time.

13.5 You agree that FXTRADING.com may, subject to Applicable Laws:

(a) debit your OTC Financial Product 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, credit card fees, Short Message Service (SMS), debt collection and telephone transcript copies from your OTC Financial Product 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 Transaction Fee, any administration fees, (including but not limited to credit card fees) you owe and the amount of Margin which you must pay to maintain the required Margin Cover;

(c) withdraw from the Client Moneys Trust Account and pay ourselves any moneys to which we are entitled in accordance with these Terms (such as, but not limited to, Realised/Unrealised Losses); and

(d) deduct from the OTC Financial Product Account any amount reimbursable to us in accordance with these Terms.

You agree that any delay in, or partial exercise of any of the above rights is not a waiver or abandonment of those powers.

13.6 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. FXTRADING.com is entitled to retain such commissions and benefits.

13.7 If you have been referred to us or on behalf of a another person, that person may receive benefits in the form of a commission, rebate or other payment or benefit from us.

13.8 Unless otherwise agreed, the terms of any amounts payable by you under these Terms are stated exclusive of GST. 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. FXTRADING.com will when required by law and as far as practicable state in Confirmations (or OTC Financial Product Account statements, if applicable) the amounts as GST-inclusive. FXTRADING.com will manage any credit granted to it for any GST refund, input credit or similar tax credit in accordance with its policy from time to time.

Owing to the complexity, delays and changes in laws and administration of such tax refunds and credits from time to time, FXTRADING.com is not obliged to provide credits or other benefits to each client if those benefits cannot reasonably be allocated to respective clients. FXTRADING.com endeavours to apply a policy for such adjustments by which it has no net benefit over time, having regard to the timing, nature and amounts of refunds and credits, the basis on which they are provided to FXTRADING.com and the direct and indirect costs to FXTRADING.com in providing the Online Service and relevant transactions through it. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have that meaning in this document.

13.9 The amounts of or basis of calculating the fees, commissions, charges and credits referred to in this clause 13 will be as notified from time to time in writing by FXTRADING.com, either by way of a PDS, posting on the Online Service (including by way of Transaction prices), notification to your contact address, posting to FXTRADING.com's website or as otherwise agreed with you or permitted by these Terms.

13.10 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:

- (c) indemnify FXTRADING.com against the Tax; and
- (d) 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.

13.11 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).

13.12 Open Positions will be charged a Finance Charge Adjustment or will be entitled to receive a Finance Credit Adjustment, depending on the Transaction chosen by you. These accrue (and so are calculated) on a second-by-second basis as determined by FXTRADING.com (unless otherwise notified by you). The accrued charges or credits will be applied to an OTC Financial Product Account at any time chosen by FXTRADING.com. This will usually be at the Calculation Time and at the end of Transaction, but it may also be (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; or
- (d) at any other time after entering into the Transaction.
- (e) The Online Service will display whichever of a Finance Charge Adjustment or Finance Credit Adjustment applies.

13.13 You remain liable to pay the Finance Charge Adjustment even though:

- (a) the charge may be called other things from time to time, even across different OTC Financial Product Accounts, different Financial Products or on the Online Service at the same time;
- (b) the charge is not stated on a statement for an OTC Financial Product Account or Confirmation for a Transaction;
- (c) the charges differ according to how the Transaction was made;
- (d) the charges differ according to the amount of the OTC Financial Product Account, regardless of the amount or value of the OTC Financial Product Account;
- (e) the rate is expressed or inferred to be an annual rate but is applied and calculated by the second or any other time interval proportional to the annual rate;
- (f) the Finance Charge Adjustment is first applied by way of posting the amount to the OTC Financial Product Account so that you become liable only for any net debit amount of the OTC Financial Product Account (or we owe you the net credit amount of the OTC Financial Product Account);
- (g) we may owe from time to time Finance Credit Adjustments (which are posted to the OTC Financial Product Account);
- (h) different rates apply at the same time to other clients' accounts;
- (i) the charge is applied at rollover but is not levied or enforced until termination of the Transaction;
- (j) the Transaction is denominated in a currency other than OTC Financial Product Account currency; and
- (k) the rates will be as determined by FXTRADING.com in its absolute discretion and you might not have prior notice of the current rate.

13.14 You acknowledge that you are responsible for your own legal costs associated with or arising from (at any time) entering into these Terms and for all Taxes and expenses

incurred by you in connection with these Terms, including any Transaction made under it.

13.15 All payments by you under these Terms are:

- (a) to be made without any set-off by you, 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 these Terms; and
- (b) payable in any currency that FXTRADING.com may reasonably require or determine.

13.16 FXTRADING.com notify you of any change in its fees and charges or other amounts payable by these Terms in accordance with Applicable Laws except rates (including, but not limited to, rates of the Finance Charge Adjustments and Finance Credit Adjustments) will change at any time, as available via the Online Service.

#### 14. HEDGE COUNTERPARTIES – RISKS AND LIMITATION OF LIABILITY

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's 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 (see clause 14.3); and
- (b) your recourse against FXTRADING.com is limited to seeking payment of the Recovery Amount (see clause 14.3).

This limitation of FXTRADING.com's 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's 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 **Error! Reference source not found.** 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 is considered 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.

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. CLIENT MONEYS AND TRUST ACCOUNT

15.1 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 Applicable Laws. For example, FXTRADING.com may be required to pay such moneys into the Client Moneys Trust Account which complies with the requirements of the Corporations Act and may be prohibited from using your moneys. If there is ever any inconsistency between these Terms and applicable laws, FXTRADING.com will always comply with Applicable Laws and not these terms and will not be liable to Client for that.

15.2 If FXTRADING.com pays your funds to another person at your request, FXTRADING.com is not liable to you for the performance by the other person 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 Corporations Act, 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.

15.3 You agree that FXTRADING.com is entitled to all interest earned on moneys credited to any Client Moneys Trust Account unless you and FXTRADING.com have otherwise agreed in writing.

15.4 The moneys to which you are entitled under these Terms and which are 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. 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 Corporations Act and Applicable Laws.

15.5 When you pay moneys to FXTRADING.com in connection with a Transaction, you are also directing those moneys to be paid into a Client Moneys Trust Account and those moneys will remain in there until withdrawn by FXTRADING.com to pay you amounts to which you are entitled to receive or to pay for amounts to which FXTRADING.com is entitled.

15.6 If FXTRADING.com determines that your OTC Financial Product Account has been inactive for a reasonably long period, you authorise FXTRADING.com to withdraw any Withdrawal Funds from the Client Moneys Trust Account to be paid into your nominated bank account.

15.7 You acknowledge that from the time any funds withdrawn from the Client Moneys Trust Account in connection with your Transactions:

- (a) you lose the protections given to a Client Moneys Trust Account of that kind;
- (b) you are an unsecured creditor of FXTRADING.com for its obligations on your Transactions; this includes exposure as an unsecured creditor for payment to you of the net OTC Financial Product Account balance (if any) after closing all your Open Positions;
- (c) the funds are no longer held beneficially for you.

15.8 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, by these Terms you authorise and direct FXTRADING.com to withdraw those moneys to pay FXTRADING.com for any liability which later arises. Your payment into the Client Moneys Trust Account will be deemed to be subject to this direction unless you tell FXTRADING.com (in writing) otherwise. Despite your direction, you agree that FXTRADING.com need not immediately, or at any time, fully, withdraw all or any of your moneys from the Client Moneys Trust Account but FXTRADING.com will only do so in accordance with Applicable Law and its policies from time to time.

15.9 You acknowledge and agree that if there has been a Realised/Unrealised Profit on your OTC Financial Product Account after FXTRADING.com re-values your OTC Financial Product Account, FXTRADING.com will pay into or hold sufficient funds in the Client Moneys Trust Account and credit your balance in the Client Moneys Trust Account as Margin to reflect the adjustment for the Realised/Unrealised Profit so that those funds will be retained there for your benefit until dealt with in accordance with these Terms.

15.10 You acknowledge and agree that FXTRADING.com may revalue your OTC Financial Product Account at any time and from time to time but is not obliged to

revalue your OTC Financial Product Account on any particular frequency or at any particular time, so FXTRADING.com is not obliged to commit to determine whether there has been any Realised/Unrealised Profit or Realised/Unrealised Loss on your OTC Financial Product Account at any particular time or from time to time.

15.11 All currency exchange risks regarding any payment instruction or any Order or Transaction entered into by you with 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.

## 16. MARGIN COVER

16.1 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 (to protect against your realised or unrealised liabilities on Transactions) and which is credited to your OTC Financial Product Account. The minimum amount of the Margin Cover is determined by FXTRADING.com in its absolute discretion.
- (b) A Margin payment is the amount you pay FXTRADING.com for crediting your OTC Financial Product Account as Margin Cover.
- (c) The time for your payment to maintain Margin Cover is of the essence.
- (d) You must maintain at least the amount of Margin Cover required by FXTRADING.com 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.

- (e) You must ensure that for so long that you have an Open Position, the Margin Cover must always remain positive. If not, your Open Position may be Closed Out by FXTRADING.com without prior notice to you.
- (f) Your obligation to maintain Margin Cover arises at the time the Transaction is executed.
- (g) It is solely your responsibility to monitor and to satisfy all Margin Cover requirements.
- (h) A Margin payment is credited by FXTRADING.com at the time cleared funds have been received into the Client Moneys Trust Account and FXTRADING.com has applied the payment to your OTC Financial Product Account or such other time as allowed by FXTRADING.com, so a Margin Cover requirement for an OTC Contract or other OTC Transaction issued by FXTRADING.com is not satisfied unless and until your payment is received in cleared funds into the Client Moneys Trust Account and applied to your OTC Financial Product Account by FXTRADING.com.
- (i) Your liability in respect of Margin requirements is not limited to the amount, if any, initially paid to FXTRADING.com for your OTC Financial Product Account. You are responsible to pay 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 OTC Financial Product Account or realise any Financial Products held by FXTRADING.com and apply the amounts or proceeds against that deficit and you are responsible for the full and prompt discharge of the deficit (which exceeds the value of the OTC Financial Product Account) by making payment in full to FXTRADING.com immediately when that deficit arises.

16.2 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 Positions, at that time or any later

time as FXTRADING.com determines (whether in its discretion or by automatic trading platform management) if:

- (a) your OTC Financial Product Account Value falls below the Margin Closeout Level; or
- (b) you fail to maintain the required Margin Cover; or
- (c) at any time, and from time to time, FXTRADING.com determines that the value of all of your Open Positions (and not taking into account any cash balance in your OTC Financial Product Account) represents a substantial net unrealised loss to you such that, in FXTRADING.com's belief, the continued trading, or failure to Close Out, one or more of your Open Positions will or is likely to materially prejudice your OTC Financial Product Account Value.

## 17. ROLLING OVER OF OPEN POSITIONS

17.1 In respect of each Open Position, subject to:

- (a) prior Close Out of that Open Position;
- (b) any express terms of the Transaction; or
- (c) the express agreement of FXTRADING.com to settle that Open Position,

FXTRADING.com is by these Terms instructed:

- (d) to vary the Open Position (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 if there is no agreement by the Calculation Time on the Business Day immediately prior to the then applicable settlement date as agreed previously, it will be the following Business Day); and
- (e) to Close Out the Open Position 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.

## **18. INFORMATION AND ADVICE**

18.1 FXTRADING.com may provide (but is under no obligation to provide) you with information or data concerning interest rates, securities, Derivatives, foreign currency, property, other Financial Products or markets generally. If such information or data is provided, it is provided on the basis that FXTRADING.com believes the sources to be reliable but has not verified that information. You acknowledge that FXTRADING.com is not responsible for the accuracy, completeness or currency of any information or data provided (including the sequence of trades) and that if you rely on that information or data you do so at your own risk. You acknowledge that no information or data provided by FXTRADING.com to you takes into account your objectives, your financial needs or situation or your special circumstances.

18.2 When FXTRADING.com provides services to you (including agreeing to provide Financial Products or financial services, open an OTC Financial Product Account, issuing to you, or dealing with you, as principal) FXTRADING.com is not by these Terms or those acts providing, required to provide, or liable for, advice or recommendations in relation to the Financial Products, financial services, Orders or Transactions, except to the extent required by Applicable Laws.

18.3 You represent and warrant to FXTRADING.com on a continuing basis that under these Terms, to the extent permitted by law:

- (a) you are not relying on any communication (written or oral) from FXTRADING.com as financial services or other investment advice or as a recommendation to enter into, or vary or Close Out, any Transaction;
- (b) you will not consider or treat the information and explanations relating to the terms of a Transaction to be financial services or other advice on, or a recommendation to, enter into, any Transaction; and
- (c) you will not take any communication (written or oral) received from FXTRADING.com as an assurance or guarantee as to the expected results of any Transaction.

18.4 You acknowledge that you are responsible for all Orders you place, or choose not to place, with FXTRADING.com and it is your responsibility to obtain personal Financial Product advice (including legal, tax and financial advice) before making any investment or trading decision in respect of Financial Products.

18.5 To the extent that FXTRADING.com would be obliged (but for this clause) to give you a statement recording any advice to you, then to the extent permitted by Applicable Laws:

- (a) you consent to receiving any such written statement of advice after having been given the advice;
- (b) you consent to receiving any such written statement of advice after making the Transaction but within the period permitted by law; and
- (c) FXTRADING.com does not need to give you a statement of advice.

## **19. PRIVACY AND INFORMATION**

19.1 You authorise us to collect your personal information from you when we provide services to you under these Terms. You authorise us to use any information we collect from you or from others, or such other relevant documents:

- (a) to assess your request for us to provide our services to you;
- (b) to provide our services to you in accordance with these Terms;
- (c) for the purposes of complying with its obligations regarding your beneficial interests;
- (d) to allow FXTRADING.com to communicate with third parties in connection with the matters contemplated by these Terms, such as in connection with the OTC Financial Product Account; and
- (e) to ensure that legal and regulatory requirements under Applicable Laws are met.

19.2 You must notify us in writing when any of the information provided by you changes.

19.3 You authorise us to disclose personal information to:

- (a) our related bodies corporate, whether in Australia or elsewhere;

- (b) any clearing or settlement participant responsible for the clearing or settlement of your Transactions (if your OTC Transactions are ever cleared by a third party);
  - (c) our service providers (including marketing companies, data consultants and IT contractors);
  - (d) our agents, contractors, and external advisers;
  - (e) government and other regulatory bodies and authorities whether in Australia or elsewhere;
  - (f) payment system operators;
  - (g) other financial institutions and credit providers who provide services to you;
  - (h) on a confidential basis, a prospective purchaser of, joint venture partner of, or investor in, FXTRADING.com or a related body corporate or all or part of the business of FXTRADING.com or a related body corporate; and
  - (i) any other relevant person to the extent required by Applicable Laws.
- 19.4 You authorise FXTRADING.com to use and disclose the Tax file number which you provide to FXTRADING.com for all OTC Financial Product Accounts conducted by you with FXTRADING.com for the purposes of Transactions in accordance with any legal requirements.
- 19.5 You have a right to access any personal information that we hold about you. Sometimes there may be a reason why access will not be possible. If that is the case, you will be told why. To find out what kinds of personal information we may hold about you, or to request access to any personal information, please contact us.
- 19.6 You agree that your personal information can be used or disclosed by us as contemplated in these Terms. You agree to take all reasonable steps to deliver information or documentation to FXTRADING.com, or cause information or documentation to be delivered to FXTRADING.com concerning Transactions which are requested by a person having a right to request such information or documentation (including, without

limitation, ASIC,). You understand that if you do not provide any information requested by us or do not agree to us using your information as set out in this clause 19, we may not be able to provide our services to you.

- 19.7 You agree that we may make such enquiries as we think fit of any person, including your employer, bank or a credit agency, relating to your creditworthiness and disclose the result of those enquires and as a result of your disclosures to us (including your tax file number) to any credit rating agency or to any clearing or settlement participant responsible for the clearing or settlement of your Transactions for the purposes of our or that participant's risk assessment.
- 19.8 FXTRADING.com will comply with its obligations under the Privacy Act 1988 (Commonwealth) as amended from time to time, to the extent that they are relevant to these Terms.
- 19.9 You must, upon the request of FXTRADING.com, take all reasonable steps to deliver to FXTRADING.com all information and documentation relevant to trading in Financial Products.

## 20. DISPUTES

- 20.1 You agree to examine the terms of each Confirmation immediately upon receipt and you agree that the contents of a Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within 48 hours of issue of a written Confirmation you notify FXTRADING.com of any disputed detail in the Confirmation received by you.
- 20.2 Complaints (which do not include disputed details) must be referred to us in accordance with our policies and procedures from time to time for dispute resolution. Unresolved complaints will be referred to the Financial Ombudsman Service or an external dispute resolution scheme of which we are a participant.

## 21. TAPE RECORDINGS

- 21.1 You authorise FXTRADING.com to record any or all incoming and outgoing phone calls with you without making a disclosure to you of this nature each and every time you speak with a representative of FXTRADING.com. These calls may be recorded with or without an audible tone.

You agree that FXTRADING.com may use such recordings for the purposes of monitoring and training its staff, monitoring compliance with you and FXTRADING.com's respective regulatory and contractual obligations and resolving disputes. If there is a dispute between FXTRADING.com and you, you have the right to listen to any recording of those conversations (if still available). Nothing in these Terms obliges FXTRADING.com to keep a recording or to notify you that we have eliminated a recording.

- 21.2 Recordings may be used to assess the performance of or to train FXTRADING.com's representatives, monitoring compliance with FXTRADING.com's respective regulatory and contractual obligations and resolving disputes.
- 21.3 FXTRADING.com is not obliged (unless Applicable Laws requires) to keep any transcripts or copies of any telephone recording or conversation nor to tell you when it disposes of the record.
- 21.4 Subject to clause 21.3, FXTRADING.com may upon request, provide copies of any telephone recording or transcript relating to your dealings to you in if there is a dispute or anticipated dispute with respect to such dealings. You agree to pay any reasonable cost associated with providing any such transcript or copy.

## **22. YOUR CAPACITY, REPRESENTATIONS AND WARRANTIES**

- 22.1 We provide services under these Terms on the basis that you undertake as primary obligor all obligations arising on the execution of Transactions which we enter into with you regardless of your legal capacity.
- 22.2 You represent and warrant to us that you are:
- (a) acting as principal;
  - (b) acting as an intermediary on another's behalf and you are specifically authorised to enter into Transactions on behalf of the other person and (if required) currently have all appropriate Australian financial services licence authorisations to do so; or

- (c) acting in accordance with the terms of a trust deed (if you are a trustee of a trust).

22.3 If you are constituted by more than one person (including, for example, if you are acting in a partnership or joint venture), then each person constituting you are jointly and severally liable for the obligations under these Terms, and we may act on the instructions of any one of those persons.

22.4 If you are a corporation, you represent and warrant that:

- (a) you hold a valid ACN, ABN or ARBN (as applicable) under the Corporations Act;
- (b) you have full corporate power to enter into, and perform your obligations under, these Terms; and
- (c) you have taken all necessary corporate action to authorise the performance of your obligations under these Terms, and these Terms constitute the legal, valid and binding obligations, enforceable against you.

22.5 If you are acting as a trustee of a trust, a responsible manager of a managed investment scheme, a trustee of a superannuation fund or an agent under an investment management agreement, the additional representations, warranties and undertakings set out in Error! Reference s ource not found. apply.

22.6 You represent and warrant that:

- (a) you have read and understood all documentation provided by FXTRADING.com to you in relation to the services provided by FXTRADING.com including, without limitation, any product disclosure statement;
- (b) you are a person with whom FXTRADING.com is lawfully entitled to deal pursuant to any Applicable Laws and that all dealings by you with FXTRADING.com or requested to be done by FXTRADING.com are and will be lawful under all Applicable Laws;
- (c) all information supplied on the Application Form or otherwise to FXTRADING.com is true, complete

and accurate in all respects and you will notify FXTRADING.com immediately of any change in any information supplied (including but not limited to any change in your name, address, telephone number, facsimile number or e-mail address);

- (d) you will rely upon your own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Order with FXTRADING.com and you assume full responsibility for any Order placed with FXTRADING.com;
- (e) you fully understand the relevant provisions of:
  - (i) the prohibition of false or misleading markets and other market manipulation as described in Applicable Laws and section 1041A of the Corporations Act;
  - (ii) the prohibition of insider trading as described in section 1043A of the Corporations Act;
  - (iii) the prohibition of false trading and market rigging as described in sections 1041B and 1041C of the Corporations Act;
  - (iv) the prohibition of misleading and deceptive conduct described in section 1041H of the Corporation Act; and
  - (v) Applicable Laws and the Corporations Act which stipulate the conditions upon which short selling is permitted on the ASX and the disclosure obligations imposed on short sellers;
- (f) at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between yourself and FXTRADING.com.

22.7 Apart from any warranties and representations which are implied by law and cannot be excluded, FXTRADING.com makes no warranties in relation to any service or information provided or made

available to you in connection with these Terms. To the full extent permitted by law, FXTRADING.com excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

22.8 All representations, warranties and acknowledgments given under this clause 22, Error! Reference source not found. or elsewhere in these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Order with us;
- (b) each time you enter into a Transaction with us; and
- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your OTC Financial Product Account or any Transaction.

## 23. ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING

23.1 You acknowledge that:

- (a) FXTRADING.com is subject to various anti-money laundering and counter-terrorism financing laws (**AML/CTF Laws**) which may prohibit us from offering services or entering into or conducting Transactions; and
- (b) the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.

23.2 You agree that:

- (a) FXTRADING.com is not required to take any action or perform any obligation under or in connection with these Terms if we are not satisfied as to your identity or if we suspect on reasonable grounds that

by doing so we may breach the AML/CTF Laws;

- (b) FXTRADING.com may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Australia or any other country, and we will incur no liability to you if we do so; and
- (c) FXTRADING.com will not incur any liability to you for any loss you suffer (including consequential loss) however caused by reason of any action taken or not taken by us as contemplated in paragraph (a) or (b) above.

23.3 You agree to provide all information and documents to FXTRADING.com which we reasonably require to comply with any law in Australia or any other country, including any AML/CTF Laws. You agree that FXTRADING.com may disclose information which you provide to us, or about Transactions you have with us or which you seek to conduct with us, if we are required to do so by any law or Rule in Australia or in any other country.

23.4 You represent and warrant to FXTRADING.com that the payment of moneys by us in accordance with this document, or any instructions given by you, will not breach any law in Australia or any other country.

## 24. LIMITATION OF LIABILITY, INDEMNITIES & PAYMENTS

24.1 Subject to those provisions of the Competition and Consumer Act 2010 (Commonwealth), the Australian Securities and Investments Commission Act 2001 (Commonwealth), the Corporations Act, 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 Online 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:

- (i) any inaccuracy, error or delay in or omission from any information provided to you under these Terms including the Online Service;

- (ii) 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 Online Service or in respect of the transmission of Orders or any other information;

- (iii) any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific;

- (iv) any government restriction, Exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to our Online Service, theft, sabotage, war, earthquakes, strike, force majeure and, without limitation, any other conditions beyond our control;

- (c) 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 Online Service;

- (d) 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;
- (e) 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
- (f) FXTRADING.com's 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 the extent clause applies and is not prohibited by Applicable Law from applying.
- 24.2 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 Laws;
- (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 Laws, 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,
- (l) except only to the extent attributable to the breach of these Terms by FXTRADING.com or the gross negligence or fraud by FXTRADING.com.
- 24.3 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. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have that meaning in these Terms.

24.4 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.

24.5 All payments by you under these Terms are:

- (a) to be made without any set-off by you, 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.

24.6 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:

- (c) indemnify FXTRADING.com against the Tax; and
- (d) 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.

## 25. DEFAULT

25.1 Each of the following constitutes a **Default**:

- (a) you breach these Terms, whether by act or omission (including, without limitation, giving us an Order in breach of clause 6.13);
- (b) a Transaction is entered into, or an Open Position is Closed Out, by you in any circumstances in which FXTRADING.com reasonably believes that conduct is, or could be considered to be, in breach of the Corporations Act, the Rules or any other Applicable Laws (not restricted to those circumstances described in clause 6.13 in respect of Orders), whether or not you are aware that the Transaction could breach those laws or rules;
- (c) you fail to pay, or to provide security for, amounts payable by you to FXTRADING.com;
- (d) you fail to pay the amounts due in respect of any Transaction entered into pursuant to these Terms;
- (e) you fail to perform any obligation arising pursuant to the settlement of a contract which arises pursuant to a Transaction;
- (f) you fail to fulfil any settlement obligations in respect of a Transaction entered into pursuant to these Terms;
- (g) you fail to comply with any limit or restriction imposed on you by FXTRADING.com in connection with your OTC Financial Product Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities);
- (h) a guarantee lodged by you, or lodged by a third party at your request (such as by a director of a Client) is withdrawn without the consent of FXTRADING.com or becomes ineffective and other replacement security acceptable to the beneficiary of the guarantee is not provided;
- (i) 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;
- (j) any representation or warranty which you give under or pursuant to these Terms is or becomes incorrect or misleading in any material way;
  - (k) FXTRADING.com determines that you are unable, or you might 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;
  - (l) you become insolvent or bankrupt;
  - (m) you enter into a composition or scheme of arrangement for the benefit of creditors;
  - (n) 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 requested 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;
  - (o) 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;
  - (p) if you are a trustee, the relevant trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made, or your rights of indemnification from trust assets or reimbursement is terminated, restricted or challenged, 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;
  - (q) 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;
  - (r) you challenge or deny the applicability of the express governing law of these Terms, the non-exclusive jurisdiction of courts as provided in these Terms;
  - (s) you impose a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
  - (t) 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
  - (u) the occurrence of any other event referred to in a Schedule applicable to your OTC Financial Product Account as constituting a Default or which FXTRADING.com and you have agreed constitutes a Default.
- 25.2 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) but subject to Applicable Law, 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 do any 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 any Open Positions;
- (c) settle any Transaction which has not at the time of Default settled;
- (d) in the case of Open Positions which involve Underlying Securities which are option contracts or an equivalent, deal with the Transaction by exercising one or more of those option contracts or abandon any one or more option contracts not yet exercised;
- (e) cancel a Transaction (whether or not it is an Open Position) and make consequential adjustments to your OTC Financial Product Account including reversing any previous Realised/Unrealised Profit or Realised/Unrealised Loss;
- (f) cover in whole or in part Open Positions by entering into further Transactions;
- (g) apply any money that you have deposited into a Client Moneys Trust Account and to which you are entitled to use or to be paid, by way of set-off or withdrawal and payment to us any amount you owe us;
- (h) immediately, or at a later time, terminate these Terms, one or more Schedules, one or more OTC Financial Product Accounts, one or more Transactions or any combination of these;
- (i) realise or enforce any security or guarantee provided in respect of your obligations to FXTRADING.com;
- (j) convert any or all amounts owing by you to FXTRADING.com or by FXTRADING.com to you in a foreign currency into Australian currency;
- (k) calculate any or all amounts owing by you to FXTRADING.com and declare such amount immediately due and payable; or
- (l) 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.

- (m) In respect of any action which FXTRADING.com takes, or refrains from taking under this clause 25.2, 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.

25.3 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. For example, we acknowledge that you may terminate these Terms if FXTRADING.com materially breaches these Terms. You agree that it is reasonable for you not to have specific rights following default and specific events of default by FXTRADING.com in order to avoid all Transactions of all of FXTRADING.com's 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.

## 26. NOTICES

26.1 Notices given by us may be sent to any address (including email address) specified in your application for an OTC Financial Product Account or later notified by you, or by posting the notice on our website or through any Online Service we provide to you. Unless otherwise specified in these Terms any notice given by us is taken to have been received or becomes effective on the Business Day following the transmission or posting of the notice, demand or Confirmation.

26.2 Notices given by you must be in writing and sent by post, or email to our postal address or email address specified by us in the PDS or on our website or as otherwise notified by us. A notice given by you is taken to have been given at the time it is actually received by us during business hours or, if after business hours, on the next Business Day during business hours.

26.3 If an OTC Financial Product Account is opened in the joint names of more than one person, each person agrees that we may discharge any obligation we have to give a

notice or a document to those persons under these Terms or Applicable Laws by giving notice to any one of those persons.

26.4 FXTRADING.com may give notice to you of any change in its Transaction Fees or any rates, fees charges or other amounts payable by these Terms in any manner permitted by these Terms, including by posting to FXTRADING.com's website or to Online Services or platform administration service. FXTRADING.com must give the minimum period of notice required by the Corporations Act.

26.5 If no minimum period is required or is not stated elsewhere in these Terms, notice of a change in Transaction Fees, charges or roles may be effective immediately FXTRADING.com first generally publishes the information of any variation on its website or through Online Service or platform administration service.

## **27. APPOINTMENT OF FXTRADING.COM AS ATTORNEY**

27.1 In consideration of FXTRADING.com entering into the agreement on these Terms, you irrevocably appoint FXTRADING.com and each director, secretary and principal executive officer and each employee (which employee's title of office includes the word "Manager" or "Head") of FXTRADING.com and any other authorised representative of FXTRADING.com (including an authorised representative of a related body corporate of FXTRADING.com) severally as your attorney at any time and from time to time following a Default, to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of these Terms, and in particular, without limitation, in connection with, or incidental to, the exercise of any of the rights and powers of FXTRADING.com under these Terms. Those powers may be exercised in the interests of FXTRADING.com notwithstanding any conflict with the interests of FXTRADING.com. This appointment survives termination of these Terms.

## **28. TERMINATION**

28.1 Without limiting clause 25.2, you and FXTRADING.com may each terminate these Terms at any time by giving the other notice.

28.2 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.

28.3 Each indemnity provided within these Terms survives the termination of these Terms.

28.4 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 28 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.

28.5 Upon termination of these Terms (or a relevant Schedule under clause 28.4), and without limiting clause 25.2, 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 determine the value at which the Transaction or Transactions will be Closed Out);
- (c) settle any Transaction which has not at the time of termination settled;
- (d) exercise any other rights FXTRADING.com has under these Terms; or
- (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.

## **29. GENERAL**

29.1 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 or any other authorised representative of FXTRADING.com (or a related body corporate of FXTRADING.com). FXTRADING.com remains responsible for

the acts or omissions of its employees and any authorised representative of FXTRADING.com (including an authorised representative of a related body corporate of FXTRADING.com). A delegation by FXTRADING.com under this clause need not be in writing.

- 29.2 Complaints or disputes must be referred to us in accordance with our procedures from time to time for handling disputes. Unresolved complaints or disputes may be referred by you to the Financial Ombudsman Service or any other independent dispute resolution scheme of which we are a participant.
- 29.3 It is acknowledged that FXTRADING.com is not a market intermediary of ASX or of any other Exchange.
- 29.4 These 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 any other services referred to in or provided under these Terms, as later amended only in accordance with these Terms.
- 29.5 These Terms are governed by and construed in accordance with the laws in force in New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.
- 29.6 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 Online 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 OTC Financial Product 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.

- 29.7 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.
- 29.8 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.
- 29.9 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.
- 29.10 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.
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# Schedule 1

## FOREIGN EXCHANGE 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 of this Schedule 3).
- 1.2 Any term not defined in this Schedule has the same meaning given to it in clause 2 of the Terms.
- 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.

**Base Currency** is the first currency quoted in a currency pair, for example in the quote AUD/USD, the AUD is the Base Currency. This may have another similar name on the Online Service, FXTRADING.com's website or in a PDS.

**Deal** has the meaning given in the Corporations Act.

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

**Market Rate** means the rate of exchange which FXTRADING.com determines in its discretion is its prevailing rate of exchange. FXTRADING.com is not obliged to obtain quotes or to derive it directly or indirectly from quoted prices by a bank dealing in the interbank foreign exchange market nor is FXTRADING.com obliged to substantiate its determination.

**Position** means a 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 cash settlement (not physical delivery) on the Value Date (and, for the avoidance of doubt, either agreed amount may be nil).

**Term Currency** is the second currency quoted in a currency pair, for example in the quote AUD/USD, the USD is the Term Currency. This

may have another similar name on the Online Service, FXTRADING.com's website or in a PDS.

**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 Confirmation).

### 3. Acknowledgements

In these Terms you acknowledge and agree to the following in favour of FXTRADING.com (and FXTRADING.com is bound by the following):

- (a) A Foreign Exchange Transaction has enforceable terms for payment by you to us or us to you even though each Foreign Exchange Transaction is required by these Terms to be cash settled (or netted) with no physical exchange of the Underlying Security.
- (b) each Foreign Exchange Transaction is required by these Terms and is expected by you and us to be disposed of by being Closed Out and the Realised/Unrealised Profit or Realised/Unrealised Loss arising from that, posted to your OTC Financial Product Account in full settlement of your respective obligations in relation to those Foreign Exchange Transactions;
- (c) the following prevail in the order listed below such that if the higher ranking obligations are for any reason held by a court to be unenforceable, invalid or otherwise incapable of being applied, then the next ranking obligations apply:
- (i) first, the settlement of Foreign Exchange Transactions by way of Closing Out those Foreign Exchange Transactions and applying the resulting Realised/Unrealised Profit or Realised/Unrealised Loss (as the case may be) to your OTC Financial Product Account, in full settlement of our respective obligations in relation to those Foreign Exchange Transactions;

- (ii) secondly, the settlement obligations of each Foreign Exchange Transaction are set off so that only the single net amount of the difference arising from that set-off is the only amount owing as between us and the amount is applied to your OTC Financial Product Account (as a credit or debit amount, as the case requires) in full settlement;
  - (iii) thirdly, the respective settlement amounts owing by you and us on each Foreign Exchange Transaction are applied to your OTC Financial Product Account (as a credit or debit amount, as the case requires) in full settlement);
  - (iv) fourthly, each payment obligation on each Foreign Exchange Transaction is applied to your OTC Financial Product Account (as a credit or debit amount, as the case requires) in full settlement); and
  - (v) fifthly, each payment obligation on each Foreign Exchange Transaction accrues and is enforceable on and from termination of the Foreign Exchange Transaction.
- (d) There is no definitive term attached to a Foreign Exchange Transaction, such a contract will continue until the Closing Date.
  - (e) 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.
  - (f) A Position may be Closed Out without a physical exchange of the Base Currency for the Term Currency and references in the definition of Position to an exchange of currency and settlement and in the definitions of Base Currency and Term 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.
  - (g) 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

- (a) On any Business Day you may request FXTRADING.com by the Online Service 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 amount and currency of either the Base Currency or the Term Currency, the currency against which it is to be exchanged.
- (b) Immediately upon receiving the quote, you may by the Online Service or otherwise instruct FXTRADING.com to arrange the entry into by you of a Position 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.
- (c) FXTRADING.com is under no obligation to accept your offer to enter into a Position, and without limitation, is not obliged to accept your offer to enter into a Position:
  - (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 required in respect of that Position into the Client Moneys Trust Account (or your OTC Financial Product Account has sufficient Margin Cover), in cleared funds.
- (d) The Initial Margin required in respect of a Position will be payable prior to FXTRADING.com accepting your offer to enter into a Position.
- (e) If FXTRADING.com accepts your offer to enter into a Position, FXTRADING.com may issue to you a written confirmation (or it may publish a written Confirmation available to you in your Online Service) of that



Position promptly after it has been entered into, in the form of a deal confirmation, but failure by FXTRADING.com to issue or to publish a confirmation will not prejudice or affect that Position. FXTRADING.com will not have any liability as a result of a failure to issue or to publish a deal confirmation. If FXTRADING.com decides not to accept your offer to enter into a Position, FXTRADING.com will advise you of that decision as soon as is practicable, subject to Trading Conditions.

(f) You undertake to examine the terms of each Confirmation immediately upon receipt (or publication) and unless within 48 hours of issue of a confirmation you notify 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 that 48 hours of written notice as to a disputed detail, FXTRADING.com will investigate the matters disputed and you must co-operate with FXTRADING.com in good faith to resolve the dispute. You must, notwithstanding any such dispute, continue to satisfy your obligation to maintain Margin Cover in respect of that Position 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 you may have outstanding under these Terms:

- (i) beyond which if you decide to enter into any further Positions, you must seek and obtain credit approval from FXTRADING.com; and
- (ii) beyond which you may not enter into any further Positions.

(h) FXTRADING.com may vary this limit at any time by notice to you.

## 5. Close Out of Positions

(a) Without affecting clause 6 of the Terms (regarding Orders), FXTRADING.com may from time to time permit you to give

FXTRADING.com notice of your request to have all or any of your Positions Closed Out. FXTRADING.com, from time to time, may set limits and conditions on accepting your notice (whether or not it complies with the requirements for an Order). Following receipt of such a notice FXTRADING.com may at a time it chooses in its absolute discretion, enter into a matching opposite Position to Close Out those Transactions. Without limiting FXTRADING.com's discretion you acknowledge 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.

(b) The difference (if any) between the amount of the Base Currency under the matching Position and the amount of the Term Currency under the original Position if positive, will be a "Realised Profit" and, if negative, will be a "Realised Loss".

(c) The Closing Out of a Position in accordance with this Schedule will constitute a complete discharge of all obligations of FXTRADING.com and has the effect of immediately cancelling the Position so that the only obligations that continue in respect of the Position are those provided for under this Schedule.

(d) You acknowledge that if you give FXTRADING.com standing instructions to enter into a Position when a particular price level is reached, then the price at which the Position is entered into might not be that exact price.

## 6. Settlement of Closed Out Positions

(a) When a Position is Closed Out in accordance with this Schedule which:

- (i) results in a Realised Profit, FXTRADING.com will credit your OTC Financial Product Account in an equivalent amount to the Realised Profit; or
- (ii) results in a Realised Loss, FXTRADING.com will deduct the

amount of the Realised Loss from the funds you have paid into the Client Money Trust Account (or if that is insufficient, debit the amount from your OTC Financial Product Account).

- (b) If there is then sufficient Margin any amount owing by you under this Schedule may be settled in whole or in part by debiting your OTC Financial Product 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 OTC Financial Product Account and pay it to you electronically 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.

- (c) the sum of each Unrealised Profit will be the "Unrealised Profits" and the sum of each Unrealised Loss will be the "Unrealised Losses".

## 7. Revaluations

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

- (a) In order to carry out a revaluation under this Schedule, FXTRADING.com will ascertain in relation to each Position, the amount of the Term Currency which could be purchased with the amount of the Base Currency at the Market Rate.
- (b) If the amount calculated in accordance with sub-clause 7(a):
  - (i) is greater than the amount of the Term Currency under the Position, then the difference will represent an Unrealised Profit; and
  - (ii) is less than the amount of the Term Currency under the Position, then the difference represents an Unrealised Loss; and

# 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 4).

1.2 Any term not defined in this Schedule has the same meaning given to it in clause 2 of the Terms.

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 Contract for Difference 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.

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

**Close Out**, in relation to an OTC Transaction, means discharging or satisfying your obligations to FXTRADING.com under the OTC 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 OTC Transaction; or
- (b) as a result of the matching up of the OTC Transaction with an OTC 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 OTC 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 Contract for Difference at the Closing Date.

**Closing Value** means the value determined by FXTRADING.com by multiplying the number of Contracts for Difference by the price (or, if an index, the level) of the Contract for Difference at the Closing Date.

**Contract for Difference** means a Financial Product, being a Derivative which derives its value from one or more Reference Assets, which may also be called a “CFD” or “FXTRADING.com CFD” on the Online Service or in a PDS.

**Contract Value** means the face value of the Contract for Difference, and is calculated by FXTRADING.com by multiplying the applicable price (or, if an index, the level) of the Contract for Difference by the number of Contracts for Difference.

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

**OTC Transaction** means a Transaction in respect of one or more Contracts for Difference.

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

### 3. Acknowledgements

In these Terms you acknowledge and agree to the following in favour of FXTRADING.com (and FXTRADING.com is bound by the following):

- (a) OTC Transactions have enforceable terms for payment by you to us or us to you even though each OTC Transaction is required by these Terms to be cash settled (or netted) with no physical exchange of the Underlying Security;
- (b) each OTC Transaction is required by these Terms and is expected by you and us to be disposed of by being Closed Out and the Realised/Unrealised Profit or Realised/Unrealised Loss arising from that, posted to your OTC Financial Product Account in full settlement of

your respective obligations in relation to those OTC Transactions;

- (c) the following prevail in the order listed below such that if the higher ranking obligations are for any reason held by a court to be unenforceable, invalid or otherwise incapable of being applied, then the next ranking obligations apply:

- (i) first, the settlement of OTC Transactions by way of Closing Out those OTC Transactions and applying the resulting Realised/Unrealised Profit or Realised/Unrealised Loss (as the case may be) to your OTC Financial Product Account, in full settlement of our respective obligations in relation to those OTC Transactions;

- (ii) secondly, the settlement obligations of each OTC Transaction are set off so that only the single net amount of the difference arising from that set-off is the only amount owing as between us and the amount is applied to your OTC Financial Product Account (as a credit or debit amount, as the case requires) in full settlement;

- (iii) thirdly, the respective settlement amounts owing by you and us on each OTC Transaction are applied to your OTC Financial Product Account (as a credit or debit amount, as the case requires) in full settlement;

- (iv) fourthly, each payment obligation on each OTC Transaction is applied to your OTC Financial Product Account (as a credit or debit amount, as the case requires) in full settlement; and

- (v) fifthly, each payment obligation on each OTC Transaction accrues and is enforceable on and from termination of the OTC Transaction; and

- (d) there might be no definitive time to the life of a Contract for Difference, 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 OTC Transactions**

- 4.1 All OTC Transactions are entered into between you and FXTRADING.com as principal. The acquisition of a Contract for Difference involves entering into, or opening, a Contract for Difference. The disposal of a Contract for Difference requires Closing Out an open OTC Contract.
- 4.2 FXTRADING.com will from time to time state the prices or values at which it may enter into an OTC Transaction with you, either to open or to Close Out an OTC Transaction. If you wish to enter into an OTC Transaction you may submit an Order to FXTRADING.com (including by Online Service). FXTRADING.com is not bound to enter into any OTC Transaction with you and reserves the right to state another price or value at which it may deal with you.
- 4.3 You may request on any given Business Day FXTRADING.com to quote a price at which FXTRADING.com may be prepared to enter into an OTC Transaction. 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 OTC Transaction.
- 4.4 Upon receiving the quote from FXTRADING.com, you may offer to enter into an OTC Transaction with FXTRADING.com at the price quoted by FXTRADING.com.
- 4.5 FXTRADING.com is not obliged to accept your offer to enter into an OTC Transaction and, without limitation, is not obliged to accept your offer to enter into an OTC Transaction:
- (a) if you have exceeded or would exceed a pre-determined limit imposed on you under clause 4.9 below; or
  - (b) until FXTRADING.com has received from you the Initial Margin required in the form of cleared funds or your OTC Financial Product Account has sufficient Margin Cover to enter into the respective OTC Transaction.
- 4.6 The Initial Margin required to enter into an OTC Transaction (or the amount of required Margin Cover), if not already received from you, will be payable to FXTRADING.com upon acceptance by FXTRADING.com of your offer to enter into the OTC Transaction.

- 4.7 If FXTRADING.com accepts your offer to enter into an OTC Transaction, FXTRADING.com will issue to you an electronic Confirmation of the OTC Transaction entered into shortly after it has been entered into. Failure by FXTRADING.com to issue a Confirmation will not prejudice or affect the relevant OTC Transaction. 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 an OTC Transaction.
- 4.8 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 48 hours 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 48 hours 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 in respect of the Contract for Difference as if the Confirmation was correct and the details contained in the Confirmation were not the subject of dispute.
- 4.9 In its absolute discretion, FXTRADING.com may limit the value of Contracts for Difference you may have outstanding under these Terms. If you wish to enter into any further Contracts for Difference, you must seek and obtain approval from FXTRADING.com, beyond which you may not enter into any further OTC Transactions whatsoever.
- 4.10 FXTRADING.com may vary the limit imposed at any time in its absolute discretion.
- 4.11 If FXTRADING.com enters into an OTC Transaction with you for the acquisition of one or more Contracts for Difference:
- (a) FXTRADING.com will issue to you a Confirmation in respect of the OTC Transaction setting out, among other things, the number of Contracts for Difference acquired and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the acquisition of the Contract for Difference; 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.

4.12 If FXTRADING.com enters into an OTC Transaction with you for the disposal of one or more Contracts for Difference (by way of Closing Out that contract):

(a) FXTRADING.com will issue to you a Confirmation in respect of the OTC Transaction setting out, among other things, the number of Contracts for Difference 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 Contract for Difference; 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 or Trading Conditions, subject to this Schedule.

4.13 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 14.1 of this Schedule. 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 under clause 14.

4.14 All communications, notices, offers, statements and Orders for Contracts for Difference must be made by an Online Service unless FXTRADING.com expressly agrees that they may be made by telephone or otherwise.

## 5. Settlement of Difference

(a) FXTRADING.com may determine the Contract Value of the OTC Transaction as at any time and from time to time (including, without limitation, as at the Close of Business on each Business Day or the Calculation Time or each second during all or any part of each Business Day).

(b) If the Contract Value determined by FXTRADING.com in accordance with clause 5(a) **above is** higher than the Contract Value previously determined

by FXTRADING.com, 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 previously determined by FXTRADING.com, then the Long Party must pay to the Short Party the difference.

(d) In order to determine the Contract Value on which the OTC Transaction is entered into, the Contract Value will be determined by FXTRADING.com taking into account the Underlying Security Price at which FXTRADING.com and you agreed to enter into the OTC Transaction.

(e) If FXTRADING.com determines that the Contract Value of a Contract for Difference 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(a) 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 the issuer of the Reference Asset makes a dividend in respect of the Reference Asset, FXTRADING.com has discretion whether to make an adjustment for an amount of the weighted proportion of the dividend, being an amount to be credited to your OTC Financial Product Account in respect of your long positions and debited from short positions. If FXTRADING.com makes the adjustment, 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 ordinarily 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).

## 7. Closing out a Contract for Difference

- (a) At any time you may give FXTRADING.com notice of your intention to close any Contract for Difference (whether in whole or part) by specifying the Underlying Security and the quantity of Contracts for Difference that you wish to close. This must be done by you placing an Order for OTC Transactions which, if accepted, would Close Out the Contracts for Difference that you wish to close.
- (b) Upon receipt of notice of intent to close a Contract for Difference (by way of receiving your Order for Contracts for Difference), FXTRADING.com will use reasonable endeavours to provide a quote for the Closing Price (by way of indicating prices for Contracts for Difference which would, if agreed to, Close Out your open Contracts for Difference) and notify you of that quote (by the Online Service 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 Contract for Difference, or relevant portion of the Contract for Difference, will be closed by issuing you with a Contract for Difference which is equal but opposite to the open Contract for Difference, or relevant portion of the Contract for Difference, to be closed.
- (c) If the Underlying Security for the Contract for Difference 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 Contract for Difference 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 Contract for Difference at the Closing Price reasonably determined by FXTRADING.com. In this case, FXTRADING.com will Close Out the

Contract for Difference as at the time it determines.

- (d) At the Close Out, subject to clauses 3 and 8 of this Schedule 4, if there is a difference between the Closing Value and the Contract Value of the Contract for Difference (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 an OTC Transaction is based becomes externally administered in accordance with the meaning in the Corporations Act (or equivalent legislation), the OTC Transaction will be taken to have been Closed at that time. The Closing Price of the OTC Transaction 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 OTC Transaction 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 Contract for Difference Transaction. 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 an OTC Transaction 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 an OTC Transaction, 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 OTC Transaction must be made in accordance with this clause 8.
- (b) If an OTC Transaction 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) OTC Financial Product 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 surplus Margin in your OTC Financial Product Account, any amount owing by you in accordance with clause 8(b) above will be settled in whole or in part by debiting your OTC Financial Product 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 OTC Financial Product Account and pay you, electronically 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 OTC Financial Product 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 OTC Transaction 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 OTC Transaction 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's intention to Close Out the OTC Transaction, 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's intention to Close Out the OTC Transaction. 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 Corporations Act 2001.

## 10. Margin Requirements

- (a) This clause 10 supplements clause 16 of the Terms and only prevails over it to the extent of any inconsistency.
- (b) Prior to entering into an OTC Transaction with FXTRADING.com you acknowledge that FXTRADING.com requires you to pay cleared funds into the Client Moneys Trust Account as an Initial Margin and to maintain the minimum Margin Cover determined by FXTRADING.com in its absolute discretion from time to time. The Margin Cover requirements may be determined automatically by an Online 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) A Margin payment is credited by FXTRADING.com at the time cleared funds have been received into the Client Moneys Trust Account and applied by FXTRADING.com to your OTC Financial Product Account or such other time as allowed by FXTRADING.com so a Margin Cover requirement is not satisfied until your payment is received in cleared funds into the Client Moneys Trust Account and applied to your OTC Financial Product Account by FXTRADING.com.
- (d) You have an absolute obligation to maintain the amount of Margin Cover required by FXTRADING.com from time to time. Your failure to maintain the required Margin Cover is automatically a Default.
- (e) The Initial Margin requirement applicable in respect of any OTC Transaction may be increased by FXTRADING.com in its absolute discretion in respect of the time for payment and the amount of it. If there is 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 by paying FXTRADING.com cleared funds into the Client Moneys Trust Account.
- (g) Without affecting your obligation to maintain the required amount of Margin Cover, if FXTRADING.com requires additional funds from you to maintain the required Margin Cover you must maintain the Margin Cover by the time required by FXTRADING.com, which could be immediately.
- (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 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, you acknowledge and agree that FXTRADING.com may refuse any request by you to enter into any further Contract for Difference 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 OTC Financial Product Account will not constitute a debt due by FXTRADING.com to you. Subject to you meeting all Margin Cover requirements, 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 OTC Financial Product Account.
- (l) You acknowledge that your liability with respect to maintaining Margin Cover 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 for your benefit by FXTRADING.com in any OTC Financial Product Account, or funds in any Client Moneys Trust Account, to satisfy partially or fully any liability you have to maintain Margin Cover.
- (m) FXTRADING.com will have sole, absolute and unfettered discretion, as to the exercise of any power or right under this clause 10, including, without limitation, the calling of Margin.
- (n) Any power or right exercised by FXTRADING.com under this clause 10 will be binding upon you.
- (o) Any reference to time under this clause 10 includes weekends and public holidays.

## 11. 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 14 terminate these Terms;
  - (ii) Close Out all or any open OTC Transaction 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 11(d) treat all or any open OTC Transaction as having been terminated by you;
- (iv) terminate any agreement or account whatever you have or may have with FXTRADING.com;
- (v) if there are insufficient funds in your OTC Financial Product 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 OTC Financial Product 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, the Client Moneys Trust Account or by selling securities lodged by you with FXTRADING.com or 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 or the Client Moneys Trust Account, 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 11 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 11(a)(ii), you authorise FXTRADING.com to Close Out the OTC Transactions, 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 an OTC Transaction as having been terminated by you and FXTRADING.com exercises its rights in accordance with clause 11(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 OTC Financial Product Account an amount equal to the amount which would have been payable by you to FXTRADING.com had the OTC Transaction 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 11 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.

## 12. 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 Contracts for Difference 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 Contracts for Difference in accordance with clause 11(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.

## 13. Hedge Counterparty arrangements

13.1 You acknowledge that if you acquire a Contract for Difference, you have no right to, or interest in, the Reference Asset or any Hedge Contract.

13.2 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 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 obligation 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.

## 14. Termination of a Contract for Difference

14.1 You acknowledge that FXTRADING.com may terminate a Contract for Difference (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 five (5) 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 Contract for Difference 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.

- 14.2 If FXTRADING.com terminates a Contract for Difference under clause 14.1 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.