

CMC Markets Stockbroking Limited  
Institutional Client (DVP Settlement)  
Terms and Conditions

5 October 2023

AFSL No. 246381 and ABN 69 081 002 851



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# Institutional Client (DVP Settlement) Terms and Conditions

These Terms and Conditions are provided on the basis that you qualify as a Wholesale Client. Accordingly, by trading with CMC Markets you agree that: (i) you accept your designation as a Wholesale Client, (ii) you agree to be bound by these **Terms and Conditions**; and (iii) you warrant and represent that you are a Wholesale Client each time you place an Order.

These Terms and Conditions come into effect when CMC Markets accepts your application to open a Trading Account in the name of the Client, either from the Client directly or from an Authorised Agent.

## Part A. General Terms and Conditions

### 1 Definitions

In these Terms and Conditions the following terms have the meanings set out below:

**Application Form** means the application form or application forms completed by the Client and given to CMC Markets, requesting that CMC Markets open one or more Trading Accounts.

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

**ASIC Rules** means the ASIC Market Integrity Rules (Securities Market) 2017, as applicable and as amended or replaced from time to time.

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

**ASX Clear** means ASX Clear Pty Ltd (ABN 48 001 314 503) or another clearing facility approved to clear Transactions.

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

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

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532) or another settlement facility approved to settle Transactions.

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

**Authorised Agent** means any person that is authorised as an authorised agent by the Client in the Application Form, or any other person notified by the Client to CMC Markets pursuant to clause 4.

**Authorised Agent Form** means a physical or electronic document in a form prescribed by CMC Markets from time to time, pursuant to which the Client authorises an Authorised Agent to operate the Client's Trading Account.

**Automated Order Processing** means the process by which the Client's Orders are registered in CMC Markets' systems, and if accepted for submission into the relevant Exchange System by CMC Markets, submitted as corresponding trading messages without being re-keyed by a designated trading representative (DTR) of CMC Markets.

**Business Day** means a day other than:

- (a) a Saturday, Sunday or any declared public holiday in New South Wales, Australia; or
- (b) any other day that the ASX (or its related bodies corporate) advise is not a business day or is a day that the ASX (or its related bodies corporate) is not open for business.

**Cboe** means Cboe Australia Pty Ltd (formerly known as 'Chi-X Australia Pty Ltd').

**Cboe Rules** means the operating rules, procedures, directions, requirements, customers, usages and practices of Cboe, as amended from time to time.

**CMC Markets, we or us** means CMC Markets Stockbroking Limited (ABN 69 081 002 851)

**Claim** means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Client or you** means the person or persons described as the client in the Application Form.

**Confirmation** means a trade confirmation issued by CMC Markets in respect of a Transaction.

**Corporations Act** means the *Corporations Act 2001 (Cth)* and any regulations made under it as amended and in force from time to time.

**Exchange** means ASX, Cboe or SSX.

**Exchange System** means any computer system utilised by ASX, Cboe, SSX, ASX Clear or ASX Settlement in connection with trading, matching, price reporting, clearing, settlement or registration.

**GST Law** has the same meaning as the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST** has the same meaning as in the GST Law except that it includes any related interest, penalties, fines or other changes which arise as a result of a default of the recipient.

**Intellectual Property Rights** means any and all:

- (a) intellectual property rights, including copyright and related rights, patents, utility models, trademarks, service marks, trade names, domain names, moral rights, trade secrets, rights to inventions, logos, rights in get-up, goodwill and the right to sue for passing off and unfair competition, rights in computer software (including to the source code and object code), inventions, semi-conductor topography rights, database rights, rights in databases, rights in designs, design rights, know-how and confidential information whether in software or otherwise and whether registered or unregistered;
- (b) applications for registration, and the right to apply for registration, renewal or extension of any of these rights, the rights to claim priority from any such rights; and
- (c) any and all other intellectual property and proprietary rights and equivalent forms of protection or of similar effect existing, now or in the future, anywhere in the world.

**Loss** in relation to a person means a damage, loss, cost, expense or liability incurred by the person, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, and includes any loss of profit and opportunity cost.

**Online Service** means the online trading and information service provided by CMC Markets to the Client and includes the Automated Order Processing facility.

**Order** means any Order placed by the Client with CMC Markets to purchase or sell or otherwise deal in a Transaction.

**Rules** mean the ASX Rules, the Cboe Rules, the SSX Rules, the ASIC Rules, the ASX Clear Rules and the ASX Settlement Operating Rules (as applicable).

**Security Information** means any of the Client's email address, logon code, password or trading PIN.

**Settlement Account** means a delivery versus payment (DvP) settlement facility with an authorised settlement participant, which may be used to settle the obligations of the Client arising out of Transactions made by or on behalf of the Client in connection with these Terms and Conditions.

**Settlement Date** in relation to a Transaction means the date specified on the relevant Confirmation, or if no date is specified, the date determined in accordance with the Rules.

**Settlement Time** in relation to a Transaction means the time on the Settlement Date specified on the relevant Confirmation, or if no time is specified, the time determined in accordance with the Rules.

**SSX** means the Sydney Stock Exchange (previously APX or Asia Pacific Stock Exchange).

**SSX Rules** means the business rules, procedures, directions, decisions, requirements, customs, usages and practices of SSX, as amended from time to time.

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**Trading Account** means the Client's trading account with CMC Markets.

**Transaction** means a transaction to which any or all of the Rules apply.

**Wholesale Client** has the meaning given in sections 761G and 761GA of the Corporations Act.

**Website** means cmcmarkets.com.au.

## 2 Interpretation

2.1 The following rules apply when interpreting these Terms and Conditions:

- (a) Headings are for reference only and do not in any way affect the meaning of these Terms and Conditions.
- (b) Unless the context requires otherwise or a word is defined in these Terms and Conditions, words defined in the Corporations Act, or the Rules have the same meaning in these Terms and Conditions.
- (c) The single includes the plural and vice versa.
- (d) Unless the context otherwise requires, a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision.
- (e) Each part of these Terms and Conditions is severable from the balance of these Terms and Conditions and if any part of these Terms and Conditions is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of these Terms and Conditions.
- (f) No failure by CMC Markets to exercise, and no delay by CMC Markets in exercising, any right, power or remedy in connection with these Terms and Conditions 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.
- (g) These Terms and Conditions are not to be interpreted against CMC Markets' interests merely because CMC Markets proposed these provisions or because CMC Markets relies on a provision of these Terms and conditions to protect themselves.
- (h) Unless the context otherwise requires, expressions used to denote persons generally (such as "person", "someone", "third party" and "other party"), include body corporate as well as individual.

## 3 Rules and regulations

3.1 The Client and CMC Markets agree that the terms of their relationship in respect of Transactions (including these Terms and Conditions) and any dealings between them concerning Transactions are subject to, and that they are bound by, the Corporations Act and the Rules.

3.2 By opening a Trading Account with CMC Markets, the Client acknowledges:

- (a) that CMC Markets does not provide you with settlement services and is not the Client's CHESS Sponsor and the financial products subject to a Transaction will be settled by a separate legal entity; and
- (b) CMC Markets only owes obligations to and only has rights against the Client, under these Terms and Conditions. CMC Markets does not owe any obligations to and is not liable for any Loss to any other entity or person.

## 4 Appointment and Authorised Agents

4.1 The Client appoints CMC Markets as its agent for the purpose of executing Orders as instructed by or on behalf of the Client from time to time, clearing such Transactions, and to do all things necessary or

incidental to the execution, clearing or settlement of those Transactions, in accordance with these Terms and Conditions. The Client authorises CMC Markets to:

- (a) open one or more Trading Accounts for the Client as requested in the Application Form or otherwise in writing; and
- (b) act on the instruction of the Client or any person appointed as an Authorised Agent in accordance with this clause 4.

4.2 The Client may appoint an Authorised Agent to:

- (a) open or close one or more Trading Accounts for the Client; and
- (b) give instructions and place Orders with CMC Markets on the Client's behalf.

4.3 The Client must notify CMC Markets in the Application Form, an Authorised Agent Form, or otherwise in writing in a form acceptable to CMC Markets, of any such authorisation, setting out the name, and where the Authorised Agent is a specified natural person, the specimen signature of the relevant Authorised Agent.

4.4 If the Client appoints any Authorised Agent, the Client authorises:

- (a) CMC Markets to provide access to any Authorised Agent to personal information (which includes but is not limited to transaction data and account identifier data, related to, or in connection with, the Client's Trading Account and Settlement Account); and
- (b) any Authorised Agent to collect, use and disclose the information specified in clause 4.4(a) on behalf of the Client.

4.5 The Client may at any time, by notice to CMC Markets in a form acceptable to CMC Markets, revoke the appointment of an Authorised Agent.

4.6 CMC Markets may treat a communication given, or apparently given by an Authorised Agent, as having been given by the Client, and rely on that communication without further enquiry.

4.7 The Client is and remains solely liable and responsible for all acts and omissions of any of its Authorised Agents notwithstanding the act or omission of any such Authorised Agent was:

- (a) outside their actual or ostensible authority; or
- (b) in error, fraudulent, negligent, in breach of its fiduciary duties or criminal, but only to the extent CMC Markets was not actually aware such Authorised Agent was acting outside authority or aware of any fraud, negligence or breach.

4.8 The Client agrees not to make, and releases CMC Markets from any right the Client may have to make, any Claim against CMC Markets for any Loss incurred or suffered by the Client which may arise in connection with any act or omission by any Authorised Agent, but only to the extent that CMC Markets was not actually aware such Authorised Agent was acting outside authority or of any error, fraud, negligence or breach.

## 5 Instructions and Orders

5.1 The Client may from time to time place Orders with CMC Markets to enter into Transactions. Subject to these Terms and Conditions, CMC Markets will deal (or will instruct third parties to deal) on the Client's behalf in financial products in accordance with the Client's instructions or, where no specific instructions are provided, at the discretion of CMC Markets, acting reasonably, in accordance with applicable Rules and any applicable policies of CMC Markets.

5.2 CMC Markets will use its reasonable endeavours to execute or arrange the execution of the Client's instructions in accordance with CMC Markets' Best Execution Policy, available on the CMC Markets

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Website. Without limiting clause 24, CMC Markets will not be responsible for delays or errors in the transmission or execution of the Client's instructions (except to the extent that responsibility cannot be excluded by law).

- 5.3 CMC Markets may, acting reasonably, decline instructions provided by or on behalf of the Client at any time. CMC Markets is not required to provide a reason for declining any instructions.
- 5.4 The Client acknowledges that CMC Markets has no obligation to resubmit any Orders purged from any trading facility operated by an Exchange.
- 5.5 The Client acknowledges that unexecuted Orders in respect of some financial products (such as Warrants and Derivatives Products) may be purged by an Exchange at the end of the relevant Business Day.
- 5.6 The Client must not instruct CMC Markets to submit an Order or enter into a Transaction which would breach or cause CMC Markets to breach the Corporations Act, any other applicable laws or the Rules including, without limitation, any law or rules in relation to:
- market manipulation, false trading, market rigging, fictitious transactions, wash trading or matching of Orders;
  - insider trading;
  - short selling (including any requirement referred to in clause 12);
  - creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
  - misleading or deceptive conduct.
- 5.7 The Client undertakes to ensure that it does not knowingly give an Order that, if executed, will result in there being no change of beneficial ownership of the relevant financial product that is the subject of the Order.

## 6 Confirming Transactions

- 6.1 The client acknowledges that Transactions effected for the Client by CMC Markets are subject to:
- the directions, decisions and requirements of the Exchange operator on which the Transaction was executed and the Rules;
  - the customs and usages of the Exchange on which the Transaction was executed; and
  - the correction of errors and omissions.
- 6.2 On the basis that the Client is a Wholesale Client and has been notified of the matters set out in clause 6.1, CMC Markets is not obliged to give the Client a Confirmation in respect of any Transaction.
- 6.3 If CMC Markets does give the Client a Confirmation, the Client consents to receiving that Confirmation by electronic means. CMC Markets may accumulate and average the price of two or more Transactions in a single Confirmation. The Client is responsible for checking the accuracy of each Confirmation received from CMC Markets.
- 6.4 The Client must immediately notify CMC Markets if the Client becomes aware that there is an error in the Confirmation. If CMC Markets does not receive any such notification from the Client within 24 hours of providing such a Confirmation, the Client will be taken to have accepted the accuracy of the Confirmation.
- 6.5 CMC Markets may, at any time, reissue a Confirmation in order to correct any errors or omissions.

## 7 Cancellation of Orders and Transactions

- 7.1 CMC Markets may request, agree to or effect the cancellation of any Order or Transaction without the consent of the Client in circumstances where:
- CMC Markets considers the cancellation appropriate, having regard to its obligations as a participant of ASX, Cboe, SSX, ASX Clear or ASX Settlement or as the holder of an Australian Financial Services Licence or the desirability of maintaining a fair and orderly market;
  - ASX, Cboe, SSX, ASX Clear or ASX Settlement requests or directs that the Order or Transaction be cancelled,
  - the Rules require or contemplate that the Order or Transaction will be cancelled;
  - the security or other financial product the subject of the Order has been subject to a trading halt and the Client has not reconfirmed instructions;
  - CMC Markets reasonably believes there has been a clear error on the part of CMC Markets and/or the Client;
  - CMC Markets suspects on reasonable grounds that the Client has not complied or is unable to comply with any other term of these Terms and Conditions; or
  - reasonably required in order for CMC Markets to comply with its regulatory, legal or other obligations.
- 7.2 The obligations of the Client and CMC Markets under these Terms and Conditions in relation to the settlement of a Transaction which is cancelled in accordance with clause 7.1 cease to apply in respect of that cancelled Transaction from the time it is cancelled (whether or not CMC Markets has given the Client a Confirmation in respect of the Transaction).
- 7.3 The Client acknowledges that under the Rules applicable to an Exchange, the Exchange has a range of powers including the power to cancel or amend a Transaction. The Client agrees not to make, and releases CMC Markets from any right the Client may have to make, any Claim against CMC Markets for any Loss incurred or suffered by the Client which may arise in connection with the exercise of any power pursuant to any Rules (whether or not CMC Markets has given the Client a Confirmation in respect of the Transaction).

## 8 Brokerage, fees and commission arrangements

- 8.1 The Client must pay to CMC Markets:
- brokerage at such rates as CMC Markets may determine and notify the Client from time to time; and
  - any fees, taxes, stamp duty or other charges as may from time to time be levied on or in connection with any dealings in financial products entered into on the Client's behalf.
- The amount of brokerage payable by the Client to CMC Markets in respect of any Transaction will be set out in the Confirmation of that Transaction or as otherwise notified by CMC Markets to the Client.
- 8.2 The Client acknowledges that:
- CMC Markets may receive commissions and other benefits from other parties in relation to Transactions CMC Markets enters into on the Client's behalf including for example, commissions or benefits from the issuer of various financial products, such as Warrants. CMC Markets is entitled to retain such commissions and benefits;
  - if the Client has been referred to CMC Markets by another broker or other third party, that broker or third party may receive benefits in the form of a commission or rebate from CMC Markets; and
  - CMC Markets may receive commissions on Transactions between the Client and CMC Markets' other clients (from both parties) and from Transactions between the Client and CMC Markets as

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“Principal” (as defined in the ASIC Rules).

## 9 Settlement

9.1 The Client represents and warrants that before placing any Order with CMC Markets:

- (a) the Client will be in a position to pay for any financial product purchased, to enable settlement via the Settlement Account at the Settlement Date and Settlement Time; and
- (b) if an Order relates to the purchase of a partly paid security (as defined in the ASIC Rules), the Client has made arrangements to pay to CMC Markets a sufficient amount to cover any liability arising from all possible future calls in respect of the partly paid securities.

9.2 The Client agrees to comply with any settlement obligations in respect of any Transaction executed by or on behalf of the Client by making arrangements for a custodian or other participant of ASX Settlement to settle the trade on the Settlement Account via a DvP (delivery versus payment) basis through ASX Settlement (or such other means agreed with CMC Markets) by the Settlement Date applicable to the relevant transaction. The Client has no authority to extend that settlement date and time.

9.3 If the Client’s custodian fails to meet the settlement obligations required by CMC Markets, the Client shall meet those obligations directly by providing CMC Markets the full payment (in the case of purchases) or by the delivery of the relevant financial product (in the case of sales).

## 10 Failure to settle or other breach

10.1 If the Client fails to settle any Transaction in accordance with the relevant Confirmation and these Terms and Conditions, if the Client fails to comply, or CMC Markets suspects on reasonable grounds that the Client is unable to comply with any other term of these Terms and Conditions, CMC Markets may do one or more of the following:

- (a) pass on to the Client all costs incurred as a result of that failure;
- (b) in the case of a sale of financial products by the Client, buy any financial products sold in Order to cover the settlement (with the Client being fully responsible for any Loss in connection with such purchase) and recover any costs in so acting from the Client and the Client acknowledges and agrees that CMC Markets may be obliged to do so under the Rules if the Client failed to settle the sale or ensure that the sale is settled by the fifth Business Day after the relevant sale Order was executed;
- (c) charge an administration fee calculated by reference to the additional cost which may be incurred by CMC Markets as a result of the Client’s failure to settle;
- (d) levy a default charge on the amount from time to time outstanding at a rate of up to the rate which CMC Markets would be required to pay on an overdraft facility with its then current bankers;
- (e) use its own securities or other financial products or obtain securities or other financial products from third parties (by an on-market purchase or otherwise) and use those securities or financial products to settle any sale executed by CMC Markets on behalf of the Client;
- (f) sell any securities or other financial products purchased on behalf of the Client at the risk and expense of the Client;
- (g) sell out any securities or other financial products otherwise held on behalf of the Client and apply the proceeds to reduce the Client’s liability to CMC Markets and to recover CMC Markets’ costs in so acting;
- (h) apply any cash held by CMC Markets or payments received for or from the Client, to reduce the Client’s liability to CMC Markets;

- (i) cancel any unexecuted Orders of the Client; or
- (j) close the Client’s Trading Account and/or terminate these Terms and Conditions by providing notice to the Client.

10.2 Without limiting clause 23, the Client is responsible for and indemnifies CMC Markets against all Losses arising in connection with any settlement failure referred to in clause 10.1 including, without limitation, brokerage, stamp duty, taxes, penalties, interest and legal costs (on a full indemnity basis).

10.3 The Client must pay or reimburse CMC Markets any amounts covered by the indemnity under clause 10.2 (together with any GST payable on those amounts) immediately upon demand. CMC Markets may deduct any of those amounts (and any GST) from any sale proceeds or other amounts otherwise payable to the Client.

## 11 No personal advice provided

11.1 The Client acknowledges that CMC Markets provides an execution and settlement only service and does not provide personal financial product advice.

11.2 The Client acknowledges that:

- (a) any material information made available or provided (whether in writing, electronically, orally, through Online Service or otherwise) to the Client, has not been prepared taking into account the particular investment objectives, financial situation or needs of the Client, is not personal financial product advice, and is not suitable to be relied upon by the Client as personal advice; and
- (b) it is the Client’s responsibility to obtain personal financial product advice before making any investment or trading decisions; and
- (c) no warranty or presentation is or has been made by or on behalf of CMC Markets as to the current or future accuracy, completeness or currency of that material or information.

## 12 Short selling and disclosures in respect of sale Orders

12.1 The Client acknowledges that:

- (a) CMC Markets does not endorse nor provide the facility for the Client to execute short sales of securities or other financial products unless otherwise agreed by CMC Markets and in accordance with applicable Rules; and
- (b) when placing an Order to sell financial products, the Client (or an Authorised Agent of the Trading Account) must provide CMC Markets with all relevant information as required by the Corporations Act, any other applicable laws or the Rules.

12.2 When the Client places a sell Order with CMC Markets, the Client must notify CMC Markets, whether the sale is a long sale or a covered short sale. For this purpose:

- (a) a long sale is a sale of financial products that the Client already owns at the time the Client places the sale Order (but does not include financial products which the Client has borrowed from a securities lender).
- (b) a covered short sale is a sale of financial products where the Client has, at the time of placing the sell Order, a legally binding commitment from a securities lender to lend the financial products to the Client.

12.3 The Client acknowledges that CMC Markets will not be permitted to execute a sale Order unless the Client has informed CMC Markets of the relevant category of sale in clause 12.2 to which the Order relates.

12.4 The Client agrees that, each time the Client places a sale Order and notifies CMC Markets of the relevant category of sale to which the sale Order relates, the Client will be taken to have warranted and



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represented to CMC Markets that the sale falls within the relevant category.

12.5 The Client also agrees that if the Client sells financial products as a result of the exercise of an exchange traded call option sold (written) by the Client or an exchange traded put option bought (taken) by the Client, the Client must inform CMC Markets whether or not the sale is a long sale; that is whether or not the Client has a presently exercisable and unconditional right to vest the financial products in the buyer of the securities at the time the relevant option is exercised. The Client must notify CMC Markets of this:

- (a) the Client requests CMC Markets to exercise the option – at the time the request is made; or
- (b) otherwise – as soon as practicable after the Client becomes aware that the option has been exercised.

## 13 Information, telephone recording and privacy

13.1 The Client authorises CMC Markets to record any telephone conversation between the Client and CMC Markets, with or without an audible tone warning device. The Client agrees that CMC Markets may use such recordings for the purposes of monitoring compliance with the Client's and CMC Markets' respective regulatory and contractual obligations and resolving disputes. If there is a dispute between CMC Markets and the Client, the Client has the right to listen to any recording of any conversation between CMC Markets and the Client. Nothing in these Terms and Conditions obliges CMC Markets to keep a recording longer than 90 days.

13.2 CMC Markets may use or disclose any information about the Client which is collected by CMC Markets from the Application Form, from the Client's financial services providers, or otherwise in accordance with an authority or consent given by the Client. Without limiting the above, the Client specifically acknowledges and agrees that CMC Markets may:

- (a) use the information to assess the application of the Client to open a Trading Account;
- (b) disclose the information to a third party, (including an overseas recipient or the operation of any Settlement Account), in connection with the opening of a Settlement Account or in connection with any other services provided or made available through the Client's Trading Account;
- (c) unless the Client otherwise indicates on the Application Form or at any later time in writing to CMC Markets, disclose (including to third parties) or use the information for marketing purposes; and
- (d) provide the information on a confidential basis to a prospective purchaser of, or investor in, CMC Markets or all or part of the business of CMC Markets;
- (e) disclose any Trading Account information:
  - (i) to any third parties that make available services to the Client or CMC Markets in connection with the Client's Trading Account, including, without limitation, any of the Client's Authorised Agents or any of the Client's financial services providers; and
  - (ii) to the extent required by law or the Rules, or otherwise required by a regulator.

13.3 The Client will take all reasonable steps to deliver information or documentation to CMC Markets, or cause information or documentation to be delivered to CMC Markets concerning Transactions which are requested by a person having a right to request such information or documentation (including, without limitation, ASIC, ASX, Cboe, SSX, ASX Clear or ASX Settlement). CMC Markets is authorised to produce the information or documentation to the person making the request.

13.4 CMC Markets agrees to comply with its obligations under the *Privacy Act 1988* (Cth) as amended from time to time, to the extent that they are relevant to these Terms and Conditions.

## 14 Anti-money laundering and counter-terrorism financing

14.1 The Client acknowledges that:

- (a) CMC Markets is subject to various anti-money laundering and counter-terrorism financing laws (**AML/CTF Laws**) which include among other things 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 services to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act; and
- (b) the AML/CTF Laws may prohibit CMC Markets from providing services to the Client as contemplated by these Terms and Conditions.

14.2 The Client agrees that:

- (a) CMC Markets is not required to accept or execute any Order, or take any other action or perform any obligation under, or in connection with, these Terms and Conditions if CMC Markets is not satisfied as to the Client's identity, or if CMC Markets suspects on reasonable grounds that by doing so, we may breach the AML/CTF Laws;
- (b) CMC Markets may delay, block or refuse to make any payment or refuse to release any funds that CMC Markets holds on the Client's account if CMC Markets believes on reasonable grounds that to do so may breach any law in Australia or of any other country including, without limitation, the AML/CTF Laws; and
- (c) CMC Markets will incur no liability to the Client for any Loss the Client suffers (including consequential loss) however caused by reason of any action taken or not taken by CMC Markets as contemplated in paragraph (a) or (b) above.

14.3 The Client agrees to provide all information and documents to CMC Markets which CMC Markets would reasonably require to comply with any law in Australia or of any other country, including any AML/CTF Laws and agrees that CMC Markets may disclose information which the Client provides to CMC Markets, or about Transactions the Client conducts, or seek to conduct, with CMC Markets where CMC Markets is required to do so by any such laws.

## 15 Representations and warranties

15.1 Each time the Client places an Order with CMC Markets, the Client represents and warrants that:

- (a) the Client is a Wholesale Client and is a holder of an Australian Financial Services Licence, and the Client agrees to provide to CMC Markets the necessary documentation confirming your status as Wholesale Client, at CMC Markets' reasonable request;
- (b) the Order is placed by the Client:
  - (i) as principal; or
  - (ii) if not, the Client has full power and authority (including meeting the relevant regulatory requirements) to place the Order for the person for whom the Orders is placed, and that person is another Wholesale Client; and
- (c) the Client will be the legal owner of the financial products a Client purchases or sells through CMC Markets.

15.2 The Client represents and warrants that at the time the Client completes the Application Form and at all times during the term of these Terms and Conditions:

- (a) the Client has read and understood all documentation provided by CMC Markets to the Client in relation to the services provided by CMC Markets, including, without limitation, any other legal

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document;

- (b) the Client is a person with whom CMC Markets is lawfully entitled to deal pursuant to any statute, law, rule or regulation applicable to these Terms and Conditions and that all dealings by the Client with CMC Markets or requested to be done by CMC Markets on the Client's behalf are and will be lawful;
- (c) all information supplied on the Application Form or otherwise to CMC Markets is true, complete and accurate in all respects and the Client will notify CMC Markets immediately of any change in any information supplied (including but not limited to any change in the Client's name, address, telephone number or email address);
- (d) the Client will rely upon the Client's own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Order with CMC Markets, and the Client assumes full responsibility for any Order placed with CMC Markets;
- (e) at all times the Client will be able to make payments and fulfil all commitments on the Client's part arising under these Terms and Conditions and under the conditions applicable to dealings between the Client and CMC Markets;
- (f) if the Client is acting as trustee of a trust or responsible entity of a managed investment scheme, the Client has authority to be bound by these Terms and Conditions as trustee or responsible entity, and agrees that it is liable under these Terms and Conditions both in its capacity as trustee or responsible entity and in its personal capacity;
- (g) if the Client is a corporation, the Client holds a valid company registration number in accordance with the legislative requirements in the Client's principal place of residence; and
- (h) the Client is solvent and none of your directors are currently the subject of bankruptcy proceedings.

15.3 Apart from any warranties and representations which are implied by law and cannot be excluded, CMC Markets makes no warranties in relation to any service or information provided or made available to the Client in connection with these Terms and Conditions. To the full extent permitted by law, CMC Markets excludes liability for all costs, expenses, damages and Losses arising in connection with such services or information, or these Terms and Conditions, except where such liability arises as a result of CMC Markets' negligence, fraud or wilful misconduct.

## 16 Principal trading by CMC Markets

- 16.1 CMC Markets and its related bodies corporate may enter into Transactions in securities and other financial products as "Principal" (as defined in the ASIC Rules). Where permitted by law, CMC Markets may take the opposite position in any such a Transaction with the Client, acting either for another client or on its own account.
- 16.2 The Client consents to CMC Markets and its related bodies entering into such Transactions with the Client. In relation to commission on such Transactions:
  - (a) CMC Markets is entitled to receive commission from both parties, where the Client's Order matches an existing Order placed by another client of CMC Markets; and
  - (b) the Client consents to CMC Markets charging the Client a commission, where the Client is a wholesale client (as defined in the Corporations Act) and the Client's Order matches an existing Order placed by CMC Markets as a principal trade.

## 17 Allocation policy

- 17.1 CMC Markets will deal with Orders in accordance with the allocation policy set out in this clause. CMC Markets reserves the right to amend the allocation policy at any time. CMC Markets may inform the Client of any updates to the policy from time to time and will

provide the Client with the current allocation policy at the Client's request.

17.2 CMC Markets will deal fairly and in due turn with all Client Orders and Orders placed on CMC Markets' own account having regard to any Australian regulatory requirements and market practices.

17.3 To the extent that it is reasonably practicable to do so, CMC Markets will allocate all Transactions (including Transactions effected pursuant to Orders placed on CMC Markets' own account) in the sequence in which CMC Markets receives those Orders, subject to any delay or technical faults connected with or arising through the use of CMC Markets' systems or any other delay that is outside the control of CMC Markets.

## 18 Variation

18.1 Subject to any minimum notice period required by law, CMC Markets may vary these Terms and Conditions by giving the Client and/or any of its Authorised Agents not less than ten (10) Business Days' notice of any variation, in writing, by:

- (a) **(email)** sending a weblink to the updated Terms and Conditions via electronic mail;
- (b) **(post)** sending notice of the updated Terms and Conditions via post;
- (c) **(platform notification)** publishing a notice of the updated Terms and Conditions on the platform; or
- (d) **(website)** updating its Website with the updated Terms and Conditions.

18.2 By continuing to deal with CMC Markets (or, with respect to a Client who has appointed an Authorised Agent in accordance with clause 4, by continuing to allow an Authorised Agent to deal with CMC Markets on the Client's behalf), the Client agrees to be bound by these Terms and Conditions (including any variations to these Terms and Conditions) that are made in accordance with clause 18.1.

18.3 If CMC Markets reasonably believes a variation is necessary to maintain or restore the security of any accounts or of its systems or to comply with any legal or regulatory requirement, CMC Markets may make the variation without notice.

## 19 Termination

- 19.1 Subject to the Rules, CMC Markets may terminate all or any part of these Terms and Conditions at any time and for any reason by giving reasonable notice to the Client, provided that CMC Markets may terminate all or any part of these Terms and Conditions immediately on shorter notice or without any notice where CMC Markets reasonably believes that it is necessary to protect CMC Markets' legitimate interests or it is reasonable in the circumstances to do so.
- 19.2 The Client may terminate all or any part of these Terms and Conditions at any time and for any reason by giving notice to CMC Markets.
- 19.3 Termination does not affect outstanding obligations under these Terms and Conditions which are undischarged at the time of termination. Each indemnity in these Terms and Conditions survives the termination of these Terms and Conditions.

## 20 Notices

- 20.1 Notices given by CMC Markets may be sent to the address or email address specified in the Application Form or later notified by the Client, or by posting the notice on its Website or on the platform. Any notice or Confirmation given by CMC Markets is taken to have been



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received on the Business Day following the transmission or posting of the notice, demand or Confirmation. Any notice or Confirmation given by CMC Markets to any Authorised Agent of the Client is taken to have been given to the Client.

20.2 Notices given by the Client must be in writing and sent by post to the address of CMC Markets specified in the Application Form or later notified by CMC Markets. A notice given by the Client is taken to have been given at the time it is actually received by CMC Markets.

## 21 GST

21.1 If GST is or will be payable on a supply made under or in connection with these Terms and Conditions, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided within 5 Business Days of receiving a written demand from the supplier.

21.2 If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, the supplier as appropriate:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 7 days written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to recipient within 28 days of becoming aware of the adjustment.

21.3 The right of the supplier to recover any amount in respect of GST on a supply under these Terms and Conditions is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.

21.4 Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under these Terms and Conditions must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit, and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

## 22 Non-Australian GST

22.1 In this clause 22, the expression Non-Australian GST means any goods and services tax, value added tax or similar transactional tax, however described, imposed on the supply of goods or services (however defined) under the law of any jurisdiction outside Australia, together with any related interest, penalties, fines or other charges which arise as a result of the default of the recipient of the relevant supply.

22.2 If any supply under or in connection with this Agreement gives rise to a liability to any non-Australian GST, clause 21 will apply mutatis mutandis to that supply.

## 23 Indemnity

23.1 To the fullest extent permitted by law, the Client releases, discharges

and indemnifies and agrees to keep CMC Markets and their respective officers, employees, agents and representatives indemnified from and against all sums of money, actions, proceedings, suits, claims, demands, Losses and any other amounts whatsoever arising out of:

- (a) any default, whether by the Client's act or omission under these Terms and Conditions or any Order or transaction (including any Transaction);
- (b) any breach by the Client of any applicable law including the Corporations Act and the Rules;
- (c) any representation or warranty made or given by the Client under these Terms and Conditions proving to be untrue or incorrect;
- (d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by the Client or by any client, employee, agent or Authorised Agent, consultant or servant of the Client;
- (e) any failure of any of the Client's (or any Authorised Agent) computer or electronic systems or networks to perform, be available or successfully transmit data to CMC markets, or any error or inadequacy in the data or information input into such systems or networks by the Client;
- (f) anything lawfully done by CMC Markets in accordance with, pursuant or incidental to these Terms and Conditions;
- (g) any instruction, request or direction given by the Client;
- (h) CMC Markets complying with any direction, request or requirement of the Rules or the Corporations Act or of ASIC, ASX, Cboe, SSX, ASX Clear or ASX Settlement or any other regulatory body having jurisdiction over CMC Markets; or
- (i) CMC Markets in good faith accepting and acting on instructions received which are signed by or purported to be signed by or on behalf of the Client or any Authorised Agent,

provided that this clause 23.1 shall not apply to any Losses to the extent caused by the negligence, fraud or wilful misconduct of CMC Markets or its officers, employees, agents or representatives.

## 24 Limitation of liability

24.1 Subject to those provisions of the *Competition and Consumer Act 2010* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth), and any other rights implied by law, which cannot be excluded by agreement between CMC Markets and the Client:

- (a) CMC Markets makes no representations or warranties either express or implied as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to the goods or services supplied under these Terms and Conditions including, without limitation, the Online Services (**Services**).
- (b) Except where liability arises as a result of CMC Markets' negligence, fraud or wilful misconduct, CMC Markets excludes all liability in contract, tort or otherwise relating to or resulting from use of a Service and for any Loss incurred by the Client 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 the Client in connection with a Service;
  - (ii) a Service to the Client 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 the Client's Orders or instructions or any other communications, for any reason;
  - (iii) any misinterpretation of the Client's Orders or instructions which are unclear, ambiguous, or not specific; or
  - (iv) any government restriction, Exchange or market ruling, suspension of trading computer or telephone failure,

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unlawful access to the Online Service, theft, sabotage, war, earthquakes, strikes, force majeure and without limitation, any other conditions beyond CMC Markets' control.

- (c) CMC Markets is not liable in contract, tort 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) CMC Markets 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 the requirements of the Client or any user; or
  - (ii) the operation of, or services performed in respect of, any Exchange System will be uninterrupted or error-free.
- (e) CMC Markets 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 of 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 CMC Markets or their employees, agents or representatives.
- (f) CMC Markets' liability shall in any event be 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.

## 25 Assignment

- 25.1 The Client consents to any assignment or novation by CMC Markets of any rights and obligations under these Terms and Conditions (or, if applicable, a part of these Terms and Conditions) and agrees that CMC Markets may affect any such assignment or novation provided that CMC Markets gives the Client written notice of at least 60 days prior to the assignment or novation taking effect.
- 25.2 The Client may not assign or novate any of their rights and obligations under these Terms and Conditions or any part of these Terms and Conditions without CMC Market's prior written consent.

## 26 Entire agreement

- 26.1 These Terms and Conditions and any relevant Application Form completed by the Client contain the entire understanding between the Client and CMC Markets concerning the provision of the services referred to in these Terms and Conditions.

## 27 Governing law and language

- 27.1 These Terms and Conditions are governed by the laws of the State of New South Wales and the Client submits to the jurisdiction of the Courts of that State in relation to any Claim or dispute arising out of the performance of these Terms and Conditions.
- 27.2 These Terms and Conditions and all communications under or in connection with these Terms and Conditions shall be in the English language. Any translation or language assistance provided shall be for convenience only and to the extent there is a conflict between the English version and any translation, the English version shall prevail.

## Part B. Online trading (including Automated Order Processing)

The terms and conditions in this Part B apply if CMC Markets allows the Client to use the Online Service. The Client is taken to have agreed to the terms and conditions in this Part B when the Client or an Authorised Agent next accesses the Online Service.

## 28 Security information

- 28.1 Before CMC Markets allows the Client access to the Online Service, CMC Markets will provide Security Information to the Client.
- 28.2 The Client agrees that:
  - (a) the Client must not use the Online Service (or permit or procure any other person to use the Online Service) until the Security Information has been provided by CMC Markets;
  - (b) the Security Information is confidential;
  - (c) the Client is responsible for the confidentiality and use of that Security Information at all times and must procure that any Authorised Agent maintains the confidentiality of the Security Information;
  - (d) the Client will not permit, consent or allow any person to use the Security Information or to access or use the Online Service using that Security Information;
  - (e) the Client will not provide, disclose or make available the Security Information to any person;
  - (f) the Client must notify CMC Markets immediately upon becoming aware of any unauthorised use of the Security Information or the Online Service; and
  - (g) the Client will:
    - (i) recognise the Intellectual Property Rights of CMC Markets, the Exchange and all data providers;
    - (ii) not remove any proprietary or copyright notices or labels on the Online Service;
    - (iii) not re-distribute, re-sell or sub-licence any content or data provided through the Online Service;
    - (iv) not use the data provided through the Online Service for any illegal purpose.
- 28.3 Unless otherwise indicated, the Online Service including the Website and all of its software, algorithms, design, text, content, data, arrangement, organisation, graphics, compilation, magnetic translation, digital conversion, equipment, and any and all other electronic, computer, technical and information communications technology devices and equipment, networks, servers, applications, codes (including source and object codes) and data centres which are contained in or relate to the Website, together with all technical documentation and information necessary for the use of any of the above (**Elements**) are protected under applicable Intellectual Property Rights and we and/or our licensors are the owner or the licensee (as applicable) of all such Intellectual Property Rights in the Website and the Elements. All such rights are hereby reserved. The posting of the Website and any Elements on the Website does not constitute a waiver of any right in the Website or such Elements. Except as expressly granted in these Terms and Conditions, you do not acquire any rights, title or interest in or to the Website or the Elements.

We hereby grant you a personal, non-exclusive, royalty-free revocable and non-transferable licence, to access and make use of the Website for the limited purpose of trading in accordance with these Terms and Conditions. No other rights are granted in respect of the Website. In the event you do or attempt to do any of the prohibited matters set out in this section or we reasonably suspect that you have done or attempted to do any of these prohibited matters, the terms of this licence and these Terms and Conditions shall be automatically revoked and you shall have no further rights in or to the Website or any of the Elements.

You must not:
  - (a) copy, reproduce, translate, duplicate, or use, or permit any other person to copy, reproduce, translate, duplicate or use, the Website except as expressly provided for in these Terms and Conditions;
  - (b) create or develop any hyperlink or other form of internet weblink

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to the Website except with our express prior written consent;

- (c) modify, adapt, alter, translate, enhance, reverse engineer, decompile, decode, disassemble or reverse assemble (except and solely to the extent an applicable law expressly and specifically prohibits such restrictions), or create derivative works of the Website or any of the Elements (or cause or permit any of the foregoing);
- (d) modify, adapt or alter the operation of the Website in any way (other than as intended by these Terms and Conditions);
- (e) carry out any data collection, or use data mining, screen-scraping, optical recognition software, image makers, robots or any other similar or like data gathering and extraction tools on the Website or the Elements;
- (f) use any software, algorithm, robot, applications, tools, codes or computer or electronic devices or equipment on the Website for non-human and/or high frequency trading;
- (g) make use of the Website or any of the Elements for automated purposes;
- (h) knowingly introduce any software viruses, trojans, worms, logic bombs, time bombs, "back doors" or back door devices, "drop dead devices", malware, or any other material, software or code which:
  - (i) is or is likely to be malicious or technologically harmful, destructive, or disabling or anything analogous to the foregoing to the Website or any of the Elements;
  - (ii) damages, disrupts, impairs, erases or adversely affects the normal operation of the Website or any of the Elements;
  - (iii) assists in or enables theft or alteration of data or content from the Website or any of the Elements; or
  - (iv) provides unauthorised access to the Website or any of the Elements.
- (i) permit or cause unauthorised access or attempt to gain unauthorised access to the Website or any of the Elements, including the server on which the Website or any of the Elements is stored or any server, computer or database connected to the Website or any of the Elements;
- (j) attack the Website via a denial-of-service attack or a distributed denial-of-service attack; or
- (k) do, or permit, any act or thing (or omit to do any act or thing) analogous to any of the foregoing,

We will not be liable for any Loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Website or to your downloading of any material posted on it, or on any Website linked to it.

- 28.4 The Client is responsible to CMC Markets for the consequences of any unauthorised disclosure or use of the Security Information.

## 29 Online trading rules

- 29.1 A Client is only permitted to access the Online Service using the Security Information.
- 29.2 CMC Markets is entitled to rely on all instructions given by, on behalf of, or apparently on behalf of, the Client using the Security Information. Despite any other provision of this Agreement, CMC Markets is not liable for any Loss caused by CMC Markets acting on instructions or other communications using the Security Information.
- 29.3 CMC Markets may at any time withdraw or restrict the Client's or any Authorised Agent's access to the Online Service if it is reasonable in

the circumstances to do so.

## 30 Additional trading rules for Automated Order Processing

- 30.1 The Client may place Orders through the Automated Order Processing facility which is part of the functionality of the Online Service. The Client is solely responsible for placing Orders and for all errors made in placing Orders through the Automated Order Processing facility.
- 30.2 An order placed through the Automated Order Processing facility will only be taken to have been authorised by CMC Markets at the time CMC Markets accepts the Order for Automated Order Processing, and not before that time.
- 30.3 If the Client wishes to amend or cancel an Order placed through the Automated Order Processing facility, it must give CMC Markets specific instructions for the amendment or cancellation of that Order.
- 30.4 If an Order has been partially filled before it is cancelled, the Client is responsible for settling that part of the Order which has been filled.

## 31 Electronic Communications

- 31.1 The Client agrees that electronic communications between the Client and CMC Markets will be considered valid and enforceable, and that CMC Markets will retain records of such communications. However, nothing in these Terms and Conditions prevents the Client from raising a genuine dispute in relation to the validity or enforceability of electronic communications, provided that such dispute is made in good faith and in compliance with applicable laws.
- 31.2 If a failure, interruption or malfunction of electronic communication between the parties prevents an Order from being placed, cancelled or amended, without limiting clause 24 neither party shall be liable to the other party for any Loss caused by that failure, interruption or malfunction.
- 31.3 The Client acknowledges that, in using the Online Service:
- (a) there may be delays in the dissemination of market information or in processing an order or instruction to amend or cancel an Order;
  - (b) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed;
  - (c) the Client remains liable for the original Order until any relevant amendment or cancellation is effected in the trading facility of the Exchange; and
  - (d) without limiting clause 24, CMC Markets will not be liable for any Loss incurred by the Client arising from any delay in the dissemination of market information or the processing of any Order or instruction to amend or cancel an Order.
- 31.4 The Client acknowledges that 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.
- 31.5 Orders placed through the Online Service will be executed at the market price available on the Exchange (subject to any limit specified in the Order). The Client acknowledges that:
- (a) the market price may move and be different from the price at which the security or other financial product was trading when the Order was placed by the Client through the Online Service; and
  - (b) CMC Markets is not liable for any Loss incurred by the Client by reason of any such movement in market price.

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