



## **Terms of Use**

***EC Markets Financial Limited***

**August 2024**

## 1. INTRODUCTION

- (a) A reference in this Agreement to “EC Markets”, “we”, “us”, or “our” is a reference to **EC Markets Financial Limited**:
  - (i) ARBN 152 535 085 and AFSL 414198 (Australia); and
  - (ii) NZBN 9429031595070 and FSPR number: FSP197465 (New Zealand),(which operates under the registered Australia business name, EC Markets).
- (b) A reference in this Agreement to “you” or the “Client” is a reference to you, being the person in whose name a Trading Account is opened as a Client following completion of an Application Form.
- (c) You should read this Agreement carefully, including our Product Disclosure Statement (**PDS**) and, if you are based in Australia, our Financial Services Guide (**FSG**) and any other Regulated Documents we provide to you to ensure you understand the products and services which we offer.
- (d) When you access our website, you should not do so using a VPN (virtual private network). If you are based in Australia, you should be using our website at: [ecmarkets.com.au](http://ecmarkets.com.au). If you reside in New Zealand or the rest of the world, you should be using our website at: [ecmarkets.co.nz](http://ecmarkets.co.nz). Some differences apply across each website, in accordance with local regulatory requirements.
- (e) Our dealings with you pursuant to this Agreement are subject to any applicable Laws.
- (f) In this Agreement, capitalised words and expressions have their meaning in clause 23 (unless those words are defined elsewhere in the document).
- (g) We may vary this Agreement at any time by providing 2 Business Days' notice on our website, or by notifying you directly. If you use our services after the notice period has elapsed, then you agree to this Agreement as varied. If you do not accept this Agreement as varied, then you cannot use our services.
- (h) If any provision of this Agreement conflicts with either information published by us on our website from time to time, or statements in the nature of disclaimers or warnings published by us on our website from time to time, or documents published on or downloadable from the website from time to time which govern your use of our services, then those specific provisions will prevail to the extent of any inconsistency.

## 2. OPENING A TRADING ACCOUNT WITH US

- (a) This Agreement will come into effect when we accept your application and open a Trading Account in your name.
- (b) You must have a Trading Account before you can transact with us.

### 2.2 Minimum requirements

- (a) You may only become a Client of EC Markets, where you:
  - (i) are not a minor;

- (ii) pass the Client Qualification Assessment (which is a questionnaire available on our website which assesses a prospective Client's financial capacity, knowledge and experience to invest in the Financial Products).

### **2.3 Application Form**

- (a) To open a Trading Account with us, you are required to complete and submit an Application Form to EC Markets.
- (b) We generally accept a valid Application Form that is lodged with us, where the minimum requirements specified in clause 2.2 are satisfied. We are not obliged to accept any Application Form and may decline to do so.
- (c) You represent and warrant to us that the information provided to us in your Application Form is true, complete and accurate in all respects.

### **2.4 Authorised persons**

- (a) You may authorise another person to act on your behalf to give us instructions in connection with your Trading Account including to execute Transactions or to withdraw funds.
- (b) You represent and warrant to us that any authorised person, and (if you are a company) the person entering into this Agreement on your behalf, is duly authorised by you to give us instructions in connection with your Trading Account and has authorised you to give us their information in accordance with clause 2.4(c).
- (c) You must notify EC Markets either in your Application Form, or otherwise in writing, of any such authorisation, setting out the full name, telephone number, email address and signature of that person and any other information required by us to identify and verify the authorised person. If you have provided details to us of an authorised person, as part of your Application Form or otherwise, we are entitled to act on instructions from that person, or any person whom we believe to be that person, as instructions given by you, without further enquiry.
- (d) Any change or revocation of the authority of an authorised person is only effective upon receipt by us of a signed written notice of change or revocation from you.

### **2.5 Multiple Accounts and Joint Account Holders**

- (a) Unless you have specifically requested us to open separate Trading Accounts, you will be taken to have only one Trading Account.
- (b) If the Client is comprised of more than one person, as specified in the Application Form, then the Trading Account will be deemed to be held by the persons as joint tenants. The joint holding will only be deemed not to be held as joint tenants if there is a court determination that it is not held as joint tenants.
- (c) Each person is jointly and severally liable for the obligations under this Agreement, and we may act on the instructions of any one of those persons.

### **3. USE OF OUR TRADING PLATFORM**

#### **3.1 Access**

- (a) Our Trading Platform is an online facility that allows you to enter into Transactions with us.
- (b) It is your responsibility to assess and understand how the Trading Platform operates before entering into any Transactions.
- (c) You may access and use the Trading Platform to:
  - (i) access your Trading Account;
  - (ii) submit Orders to us;
  - (iii) review your Transactions and Margin requirements;
  - (iv) receive Confirmations and other reports or notices that we make available to you by posting in the Platform; or
  - (v) monitor your obligations under the Agreements.

#### **3.2 Liability for use**

- (a) You alone are responsible for managing the risks associated with your transactions with us. By using our services, you agree that you are fully, solely and personally liable for:
  - (i) each Transaction made using our services through the Trading Account; and
  - (ii) all relevant fees, costs and charges incurred.
- (b) To the maximum extent permitted by law, we are not liable to you for any loss, expense, or liability that you suffer or incur because of any failure of the Trading Platform, data or service interruptions, transmission failure or delays or similar technical errors arising out of or in connection with the use, operation, performance and/or error or malfunction of the Trading Platform, other than as a result of our fraud, wilful default or negligence;
- (c) To the maximum extent permitted by law, we are not liable to you for any loss of profits or other losses you might suffer due to errors in quotes which are the result of our typing errors, feed errors or any incorrect perception of information that you enter into the system other than as a result of our fraud, wilful default or negligence. You agree to inform us of any such errors that you experience, as soon as possible;
- (d) You are responsible for all Orders and for the accuracy of all information sent via the Platform using your name, password or any other means of personal identification implemented to identify you;
- (e) You must keep all passwords secret and ensure that no one else has access to your Trading Account. You must notify us immediately if the security of your password is comprised.
- (f) Unless our Trading Platform or system was compromised, we are entitled to accept and you are liable to us for, Transactions and other instructions executed via your password even if you have not allowed your password to be used or your Trading Account is wrongfully accessed; and

- (g) Any Confirmation that we send or make available to you on the Trading Platform is our confirmation of a Transaction, regardless of whether the Trading Platform confirms that the Transaction is executed immediately when you send your instructions.
- (h) Except for Australian clients, we may use money from your Trading Account for authorised hedging activities as permitted under the FMC Regulations.

#### **4. YOUR TRADING ACCOUNT**

##### **4.1 Creating Positions**

- (a) A Transaction comes into existence when we have accepted, through the Trading Platform, your Order to enter into the Transaction.
- (b) We may accept your Order to enter into Transactions that create a new Position or increase an existing Position provided that:
  - (i) you are able to cover the Margin required for the Transaction through your available Account Equity and/or by depositing additional cleared funds and once those are allocated into your Trading Account;
  - (ii) there are no adverse market conditions or suspensions or trading halts in the Underlying Instrument that prevent us from executing your Order;
  - (iii) your Trading Account has not been terminated or suspended in accordance with this Agreement; and
  - (iv) we do not reasonably suspect that you are engaging in any manipulative trading practices as described in clause 4.7.
- (c) When you instruct us (via an Order) in respect of a Transaction, you are authorising us to transfer from your Trading Account, all monies required to execute the Order.

##### **4.2 Orders**

- (a) By placing an Order with us through our Trading Platform, you can:
  - (i) offer to enter into a new Position or increase an existing Position with us; or
  - (ii) ask us to Close Out any open Positions.
- (b) Before placing an Order, you are responsible for ensuring that:
  - (i) your Account Equity is equal to or more than the Margin that we require for your Order; and
  - (ii) you have sufficient Account Equity to meet your Margin Requirement for open Positions.
- (c) We can accept an Order from you in whole or in part, at our discretion. We do not provide any notice of acceptance. However, if we decide not to accept your Order, we may let you know.
- (d) If we accept your Order, we may send you a Confirmation. We can email Confirmations and other reports to you in addition to making them available to you within the Trading Platform. Once we accept your Order, it's binding on you.

- (e) We cannot guarantee that Orders will be executed at the specific amount or stipulated time. If you ask us to cancel an Order and we do not receive your request until after we have accepted that Order, our acceptance of your Order is valid and binding.
- (f) You acknowledge that any action you take to modify or cancel an Order is ineffective unless:
  - (i) we have received a cancellation notice from you in a form that's acceptable to us; or
  - (ii) we have cancelled the Order on our Trading Platform.
- (g) The funds available in your Trading Account and size of your Account Equity will limit the size of the Positions you can open,

#### **4.3 Account Equity**

- (a) Your Account Equity will be updated by the Trading Platform in real time and is calculated as follows:
  - (i) your Cash balance; plus
  - (ii) your net unrealised profit or loss from open Positions connected to your Trading Account.
- (b) Your Account Equity is used to assess whether you have sufficient funds to cover the Margin Requirements for open Positions on your Trading Account.
- (c) Your available Account Equity is the amount (including any net unrealised profit or loss) that exceeds your Margin Requirement and is available for you to enter into new Transactions with us, provided that the amount available is sufficient to cover the Margin required for the new Transactions.
- (d) Positions may be denominated in a currency other than the base currency on your Trading Account. We may convert any amounts which relate to those Positions using the current exchange rate determined at our discretion.

#### **4.4 Cash balance**

- (a) The Cash balance in your Trading Account is calculated as follows:
  - (i) the sum of cleared payments received by us from you, amounts credited by us and any realised profits from your closed Positions; less
  - (ii) the sum of any realised losses from your closed Positions, deducted fees and accepted withdrawal payments which are yet to be processed by us.
- (b) Your available Cash balance is the cash component of your available Account Equity and is the amount that is available for you to withdraw at any given time in accordance with clause 5.

#### **4.5 Margin policy**

- (a) We ask that you always have sufficient Margin available to cover any losses you might incur. You acknowledge that it's your responsibility to be aware of the Margin Requirements and agree to maintain sufficient Account Equity to meet those requirements, at all times while your Positions are open. Details of trading sizes and Margin Requirements for each type of product that we offer are set out in the contract specifications on our Trading Platform. You can calculate the Margin

Requirements for your Positions from within the Trading Platform. It is your responsibility to proactively manage the status of your Trading Account.

- (b) Margin is posted automatically by the Trading Platform, unless you have insufficient funds in your Trading Account. We are not obliged to let you know when your Account Equity is low and may not be sufficient to cover the Margin Requirements. However, in an attempt to ensure you have sufficient warning, we may alert you by email and via 'notifications' in the Trading Platform when your Trading Account reaches a specific percentage or less of the required Margin.
- (c) If you do not have sufficient Account Equity in your Trading Account to cover the Margin Requirements for your Positions, then:
  - (i) your Order or Transaction might be rejected, cancelled or fail;
  - (ii) the Trading Platform may automatically and progressively Close Out your least profitable Positions; and/or
  - (iii) you must Close Out Positions and/or transfer the necessary additional money to us in cleared funds once they have been allocated to your account.
- (d) We may ask you (via a Margin Call) to transfer money to us to meet Margin Requirements, in which case you must transfer immediately to us sufficient funds to cover the Margin Call.
- (e) If you fail to comply with your obligation under clause 4.5(c)(iii) or 4.5(d), we may Close Out one or more Positions to reduce your exposure. We may cancel any Orders or Close Out one or more of your Positions or part of a Position at our sole discretion without being liable to you.
- (f) If we are not able to give you access to the Trading Platform to view your Trading Account because of circumstances outside of our control, we may attempt to contact you to ask you to deposit more money into your Trading Account to meet the Margin Requirements.
- (g) You acknowledge that in extreme circumstances where your Position is moving or has moved particularly quickly against you, we may not be able to contact you before exercising our rights to Close Out the relevant Position.

#### **4.6 Close Out of Positions**

- (a) Your open Positions may be Closed Out at your request or by us in certain circumstances.
- (b) You may Close Out Positions by submitting Orders through our Trading Platform that would trigger a Close Out.
- (c) We may Close Out Positions in the following circumstances:
  - (i) where your Margin Level is less than or equal to 50% of the required Margin to support your open Positions;
  - (ii) after 5 business days of being in Breach of your Margin Requirements;
  - (iii) where we have reason to suspect any illegal activity, including manipulative trading as described in clause 4.7, on or in connection with your Trading Account; or
  - (iv) during a force majeure event as described in clause 20, adverse market conditions, or suspensions or trading halts in the Underlying Instrument.

- (d) When a Position is Closed Out, your Margin Requirements will automatically be adjusted to reflect this change.

#### **4.7 Manipulative trading**

- (a) If we suspect that you have placed, or may be placing, Orders which may have manipulated, or be seeking to manipulate, our prices, our execution processes or the Platform, we may exercise our reasonable discretion to take any or more of the following actions, without your consent:
  - (i) withhold any funds that we suspect have been made from these activities;
  - (ii) treat some or all of the Transactions which we consider, acting reasonably, may have arisen from those Orders as void;
  - (iii) Close Out some or all of your Positions and collect any outstanding fees and charges payable to us;
  - (iv) close or suspend your Trading Account; or
  - (v) take any other action that we consider appropriate.
- (b) We may give you an opportunity to provide conclusive evidence to us that you have not engaged in such conduct, within 30 days of us giving you written notice under this clause 4.7.

#### **4.8 General**

- (a) If you and your Associates have more than one Trading Account, then we reserve the right to treat all such Trading Accounts as if they were under one account (of such of those Clients as we determine) and to limit the number of Trading Accounts maintained by you and your Associates.

### **5. WITHDRAWALS**

- (a) Subject to this clause, you have a right to withdraw some or all of your available Cash balance, provided that you complete and submit a valid Withdrawal Request. A minimum withdrawal amount may apply as recorded in our PDS.
- (b) When we process a Withdrawal Request, the amount you receive as a withdrawal will be net of any fees or charges we incur in respect of the withdrawal (such as bank fees and charges) and any fees or charges due and payable by you to us.
- (c) We may not allow you to withdraw funds from your Trading Account where:
  - (i) we have reason to suspect any illegal activity, including manipulative trading as described in clause 4.7, on your Trading Account; and
  - (ii) the withdrawal would cause your Account Equity to fall below the Margin Requirement; or
  - (iii) there are hedged positions on the account at the time of the withdrawal report
- (d) It should be noted some banks use intermediary banks that charge fees, which are your responsibility to pay.
- (e) Following the receipt of a valid Withdrawal Request, we will only refund the withdrawal proceeds via the payment method provided when funds were initially deposited into the Trading Account,



unless you have notified us of any changes to your payment details and we have verified the new payment details provided.

- (f) We will only make withdrawal payments to you and not to any third party.
- (g) You may be required to submit additional documentation, including identity verification documents or documents to verify a payment source, at any time as required by AML/CFT Laws and any other similar regulations applicable to us.

## **6. FEES AND CHARGES**

- (a) You owe us and must pay to us or as we direct any applicable fees and costs in connection with your Trading Account, as stipulated in Regulated Documents and/or on our website or Trading Platform.
- (b) We may notify you of new fees and costs, or any increases to existing fees and costs by giving 30 days' written notice.
- (c) You are not entitled to receive any interest on moneys held by us on your behalf.

## **7. PAYMENTS AND SET OFF**

- (a) You may deposit funds into your Trading Account at any time.
- (b) Deposits will only be accepted by a payment method (such as a bank account, credit cards or e-wallets) in the same name as the name given to establish your Trading Account. Under no circumstances will we accept any payments from a third party.
- (c) If we are not satisfied that you are the sender of the funds, we reserve the right to reject the funds and return them to the remitter.
- (d) You may be required to submit additional documentation, including identity verification documents or documents to verify a payment source, at any time as required by AML/CFT Laws and any other similar regulations applicable to us.
- (e) We may set off any payments owed to you (whether or not it is due) against any payments that you owe to us under this Agreement.

## **8. NO ADVICE**

- (a) You acknowledge and agree that:
  - (i) we are not authorised to provide you with personal financial advice;
  - (ii) to the extent that any information given by us (including through our sales staff, any promotional or marketing materials and in Regulated Documents) constitutes financial product advice, such advice constitutes general financial product advice only;
  - (iii) you have read the PDS and any other and if you are based in Australia, our FSG and any other Regulated Documents we provide to you to ensure you understand the products and services which we offer;

- (iv) any information which we give to you will not take into account your personal objectives, financial situation or needs; and
- (v) it is your responsibility (and not our responsibility) to ensure that any Transaction you enter into is appropriate, having regard to your personal objectives, financial situation and needs.

## **9. INDEMNITIES**

- (a) Subject to any applicable Law, you will indemnify us, and keep us indemnified on demand, in respect of all liabilities, losses or costs of any kind or nature whatsoever that may be incurred by us as a direct or indirect result of any failure by you to perform any of your obligations under this Agreement, in relation to any Transaction or in relation to any false information or declaration made either to us or to any third party.
- (b) You acknowledge that this indemnity extends to our legal and administrative costs and expenses incurred in respect of preparing for and taking any legal or investigatory action against you, or instructing any debt collection agency, to recover monies owed by you to us.
- (c) To the extent permitted by Law, you will indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, actions, proceedings, claims, damages or costs resulting from or arising out of any act or omission by any person obtaining access to your Trading Account.
- (d) For the purposes of this clause, all indemnities extend to our offices, employees, agents and sub-contractors.

## **10. LIMITATION OF LIABILITY**

- (a) To the maximum extent permitted by Law, EC Markets makes no, and disclaims all, representations or warranties of any kind, express or implied, as to the availability, operation and use of the services, EC Markets Content or software utilised by EC Markets, including warranties of performance, functionality, merchantability, fitness for a particular purpose, title, non-infringement and implied warranties arising from any course of dealing or course of performance. Any representation, warranty, condition or undertaking which (but for this clause) would be implied in this Agreement by law, is excluded to the fullest extent permitted by law.
- (b) Neither we, nor any of our related bodies corporate, officers, directors or employees are responsible or liable to you or any authorised person for any:
  - (i) loss arising as a result of any failure of any software, hardware, communication technology or other system, including the Trading Platform. It should be noted that some software used by EC Markets to provide the services to you, is not owned by us and is used by us under licence;
  - (ii) loss relating to the provision of data made available via the services we provide, including the Trading Platform, delays, disruptions, inaccuracies or the loss of data;
  - (iii) loss relating to your use of, or reliance upon any data provided to you via the services we provide, including the Trading Platform;
  - (iv) delay or failure by us to act on an Order or other instruction from you;

- (v) actions or inaction of third parties (including those which may be negligent or unauthorised) relating to the services we provide or the Trading Platform or any third-party content on our website(s);
  - (vi) loss relating to our termination of this Agreement, the closure of your Trading Account, and/or the Close out of any Positions in accordance with this Agreement, the PDS or any other relevant document; or
  - (vii) trading losses suffered by you in connection with your Trading Account.
- (c) Without limiting any other provision of this Agreement, you agree that the Company operates solely in Australia and New Zealand and not in any other jurisdiction. If you access our products or services from other jurisdictions, then you do so entirely at your own risk and are responsible for ensuring any use you make of our products or services is legal in your own jurisdiction. You represent and warrant that you have verified and determined that your use of our products or services does not violate any laws of your jurisdiction, and you indemnify us in respect of your use of our products or services. Our products and services are not available to citizens and residents of the United States of America or countries that are under UN Sanctions.
- (d) Nothing in these Terms is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.
- (e) Where we elect to make good any loss suffered by you, or we are obliged by law to do so, then the maximum amount that will be made good for any reason is the lesser of:
- (i) the actual sum of money that you deposited in your Trading Account for the purpose of trading that may have been the basis for any accumulated liability that you incur; and
  - (ii) to the extent that the loss is attributable to any act or omission on the part of our third parties under our provider contracts, to the amount which we recover from that service provider.
- (f) If you have any liability to us under this Agreement, then we may set-off that liability against any liability we have to you.

## 11. TAXATION

- (a) You will be responsible at all times for the payment of all Taxes due in connection with your Trading Account, and for providing the relevant tax authority with any information relating to your dealings with us under this Agreement.
- (b) You agree that any information we may provide to you in relation to the tax treatment of your dealings with us does not constitute tax advice, and it would not be reasonable for you to rely on this information without considering your personal circumstances.
- (c) Without derogating in any way from your sole, exclusive and personal obligation to pay taxes in your local jurisdiction, you unequivocally agree that we may deduct any taxes if we are required to do so by Law, and in that event, you release and indemnify us in respect of any claim or loss which may arise in consequence.

## 12. INTELLECTUAL PROPERTY

- (a) We and/or our licensors (as the case may be) will retain the intellectual property rights in the software and databases (including in your Trading Account) within the Trading Platform, and you will not in any circumstances, claim or assert any title, benefit or interest in them.
- (b) You receive no copyright, intellectual property rights or other rights in or to the Trading Platform or any of our other intellectual property (including our trademarks) and you are not permitted to use our intellectual property in any way, except as specifically set out in this Agreement.

### **13. PRIVACY**

- (a) You authorise us to collect your personal information from you or from other relevant sources including Government agencies, when we provide services to you under this Agreement.
- (b) You authorise us to collect, use (and disclose) any information we collect from you or from others, or such other relevant documents:
  - (i) to assess your application or other request for us to provide our services to you;
  - (ii) to provide our services to you in accordance with this Agreement including to maintain and operate your Trading Account;
  - (iii) for the purposes of complying with our obligations regarding your beneficial interests;
  - (iv) to allow us to communicate with third parties in connection with the matters contemplated by this Agreement, such as in connection with the Trading Account; and
  - (v) to ensure that legal and regulatory requirements under applicable Laws are met.
- (c) You agree that you have a continuing obligation to immediately notify us if any of your information that you have previously provided to us changes. We may require additional information from you to verify those changes.
- (d) You have the right to request and view any documentation we have collected from you (free of charge) and to correct any information if you think there are errors.
- (e) You do not have to provide your personal information to us but if you don't, we may not be able to assess your application or provide you services.
- (f) By using our services, you agree to our Privacy Statement and Cookies Policy available on our website.

### **14. TELEPHONE RECORDINGS**

- (a) You agree that we may record all telephone conversations that our representatives have with you on our behalf, and use or disclose those recordings, or transcripts from those recordings to any party (including any Regulator and/or court) in connection with any dispute or anticipated dispute between us and you, or in accordance with any applicable Laws. We will not provide a copy of any telephone recording to you (or any other person) unless required to do so at law.

### **15. NOTICE AND OTHER COMMUNICATIONS**

- (a) We may send any notice we are required to give under this Agreement, and any information we may wish to send to you in connection with your Trading Account, to you or any of your authorised persons. Such information may include marketing material that may be distributed in a variety of ways including by mail, email, SMS, telephone, messaging service, or online advertising.
- (b) You agree to receive all communications (such as documents (including Regulated Documents), notices, instructions and other communications we may send to you or any authorised person from time to time) in electronic format. Communications may be sent to you electronically, by posting the information on our website, our Trading Platform, or through e-mail at the email address specified in your Application Form or otherwise notified to us in writing.
- (c) Communications take effect from the time they are received unless a later time is specified in them.
- (d) You acknowledge and agree that:
  - (i) while we make all reasonable efforts to ensure EC Markets Content is accurate, to the extent permitted by law, we do not endorse, represent, warrant or guarantee the accuracy, correctness, timeliness, completeness or suitability of EC Markets Content;
  - (ii) no EC Markets' Content is intended to constitute, or should be construed as, a solicitation or any offer to buy an interest in any security or financial product and is not financial advice or a recommendation or promotion of any transaction, other financial product, investment manager, or trading or investment strategy;
  - (iii) you may use the EC Markets Content as you see fit, but you acknowledge and agree that you are solely responsible for how you use it; and
  - (iv) EC Markets does not, by providing the EC Markets Content or any other aspect of the services, provide any advice that is personal to you and EC Markets refers you to the general financial advice warning in clause 8 of this Agreement.

## **16. ASSIGNMENT**

- (a) You are not permitted to assign or otherwise deal with your rights under this Agreement or allow any interest in them to arise or be varied without our consent.
- (b) We may assign or otherwise deal with our rights under the Agreement without your consent. You agree that we may disclose any information or documents we consider necessary (including Confidential Information at our reasonable discretion) to help us exercise this right.

## **17. SEVERABILITY**

- (a) Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Agreement in the relevant jurisdiction to the extent of that illegality, unenforceability or invalidity, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

## **18. SUSPENSION AND TERMINATION**

### **18.1 Suspension**

- (a) We have a right to suspend any Transaction, the Trading Account or access to the Trading Platform, if any of the following events occur:
  - (i) a force majeure event as described in clause 20;
  - (ii) a trading halt in the underlying financial instrument; or
  - (iii) we have reason to suspect any illegal activity, including manipulative trading as described in clause 4.7, on your Trading Account.

### **18.2 Termination by you**

- (a) You may terminate this Agreement and close your Trading Account by providing us 3 Business Days written notice.
- (b) We will not process your request until such time all your open Positions have been Closed Out on the Trading Platform, and all amounts which you owe to us have been paid and you remain liable for all Transactions conducted on the Trading Platform until your termination request has been processed.

### **18.3 Termination by us**

- (a) We may direct you to close your Trading Account by giving you written notice specifying the date by which you must entirely Close Out all open Positions. We may also:
  - (i) close any Trading Account with a zero-balance due to inactivity; and/or
  - (ii) Close Out some or all of your Positions in order to facilitate the charging of any fees, costs or amounts due by you to us under this Agreement.
- (b) Following a notice under clause 18.3(a) or 18.3(d), we will only close your Trading Account when all your open Positions have been entirely Closed Out on the Trading Platform.
- (c) We may in our discretion, terminate this Agreement with or without closing your Trading Account and we reserve the right to terminate this Agreement and withhold any funds in the Trading Account until any misconduct or other relevant breach is resolved.
- (d) Following the occurrence of one or more of the following events, we may by notice to you specify a liquidation date on which, if you have not already done so, we will Close out and liquidate your open Positions:
  - (i) we determine for any reason to discontinue (even on a temporary basis) the products or services offered under this Agreement;
  - (ii) you breach any of your obligations under this Agreement, including on the basis that you do not provide information to us when reasonably requested;
  - (iii) an Insolvency Event has occurred (in respect of you or us) or is likely to occur;
  - (iv) you die; or

- (v) a force majeure event as described in clause 20 has occurred and continues to occur for more than 5 Business Days.

#### **18.4 Consequences of Termination**

- (a) Where this Agreement is terminated and/or your Trading Account is closed, you will not be able to place any Orders with us. You may however have access to your Trading Account for the purposes of retrieving records only, for a reasonable period after termination.

#### **19. DISPUTE RESOLUTION**

- (a) We have internal and external resolution procedures in place to deal with any complaints or disputes which may arise between us and you. Please refer to our complaints handling procedures which can be found on our website.
- (b) You agree to give us an opportunity in the first instance to respond to your complaint through our internal dispute resolution procedures. If our response is not satisfactory, then you may refer your complaint to the relevant External Dispute Resolution Scheme of which we are a member, as specified in our Regulated Documents.
- (c) You acknowledge that our internal and external dispute resolution procedures do not prevent us from commencing proceedings in any other relevant jurisdiction for the enforcement of any complaint determination.

#### **20. FORCE MAJEURE**

- (a) We are not liable for any loss incurred by you or any authorised person, either directly or indirectly, as a result of any one or more of the following force majeure events:
  - (i) loss or damage by fire, storm, tempest, explosion, lightning, other weather events, earthquake or other act of God or civil commotion or other similar cause;
  - (ii) war, terrorism, revolution, insurrection, riot or invasion;
  - (iii) any strikes or industrial disputes affecting our ability to perform our obligations under the Agreement; or
  - (iv) any other events or circumstances that are beyond our control, and are not caused by our fraud, wilful default or negligence.
- (b) Where a force majeure event occurs, we will use reasonable endeavours to avoid any unnecessary interruption to the services available to you.
- (c) To the extent that any force majeure events cause a delay in the availability of our services, we may notify you as soon as practicable and where possible, about the nature and extent of the delay and the likely duration of the delay.

#### **21. GENERAL**

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

- (b) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

## **22. GOVERNING LAW**

- (a) If you reside in Australia, this Agreement is governed by the laws of New South Wales, and you submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) If you reside in New Zealand or the rest of the world, this Agreement is governed by the laws of New Zealand, and you submit to the non-exclusive jurisdiction of the courts of New Zealand.

## **23. INTERPRETATION AND DEFINITIONS**

### **(a) Rules for the interpretation of this Agreement**

In this Agreement and unless the context indicates a contrary intention:

- (i) headings are for convenience only and do not affect interpretation;
- (ii) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated) and that person's legal personal representatives, successors and permitted assigns. If any party consists of more than one person, this Agreement binds each of them jointly and severally;
- (iii) a reference to any agreement (including this Agreement) is a reference to that document as varied, novated, ratified or replaced from time to time;
- (iv) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it; a reference to any document published by any Regulator includes any modification of it or any document substituted for it;
- (v) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (vi) references to parties or clauses are references to parties and clauses of this Agreement;
- (vii) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (viii) the term "including" or "includes" does not confer any limitation;
- (ix) \$ and dollars means USD;
- (x) if the payment of any money or doing of any act falls on a day which is not a Business Day, that payment must be made or that act must be done on the next Business Day; and
- (xi) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

### **(b) Definitions**

Unless expressed or implied to the contrary, the following words used in this Agreement have the meaning set out below:



**Application Form** means the application form required to be completed in order to establish a Trading Account with us.

**Account Equity** means the total amount of your Cash balance and net unrealised profit or loss for all open Positions connected to your Trading Account.

**AML/CFT Laws** or mean the anti-money laundering and counter terrorism financing laws applicable in Australia and New Zealand.

**Associate** means:

- A. any person associated with a Client or Client applicant who is an 'Associate', 'Related Entity' or 'Relative', as those terms are defined in the Corporations Act 2001 (Cth) or a 'Relative' or 'Related Company' as those terms are defined in the Companies Act 1993 (NZ); and
- B. any person dealing with us on behalf of a Client or Client applicant, including as contemplated by clause 2.4.

**Business Day** means a day other than a Saturday, Sunday or public holiday on which banks are open for general banking business in the jurisdictions of Australia and New Zealand.

**Cash balance** means the total amount of money recorded in your Trading Account and includes money held in our Client Money Account for your benefit.

**CFD** means contract for difference.

**Client** means the person (or entity) who has Trading Account with us.

**Client Money Account** means the account maintained by EC Markets for holding client funds that are separate to EC Markets' own funds.

**Close Out** means a Transaction that has the effect of closing a Position on your Trading Account, entirely or partially.

**Corporations Act** means the Corporations Act 2001 (Cth) (applicable to Australian investors).

**Confidential Information** means all information provided by a party to the other party, or received by a party in relation to this Agreement, other than information which is in the public domain (except as a result of a breach of this Agreement or another confidentiality obligation or agreement by the other party) or comes to the other party other than in relation to this Agreement through a third party who is under no obligation of confidentiality (except where this is as a result of a breach of this Agreement or another confidentiality obligation or agreement by the third party). For the avoidance of doubt, any and all intellectual property rights of a party are deemed to be Confidential Information.

**Confirmation** means a message that we send you via the Trading Platform to confirm the execution of your Order.

**Financial Product** has the meaning given under applicable Law and it includes the CFD products, and any other financial products issued by EC Markets from time to time.

**FMC Regulations** means the Financial Markets Conduct Regulations 2014 (applicable to NZ investors).

**EC Markets Content** means any information, statements, data and representations made by or on behalf of EC Markets Financial Limited including analytical tools such as market data, exchange rates, news, headlines, graphs, links to other websites, newsletters, social media content, and third parties' information that we reproduce or authorise.

**Insolvency Event** means any of the following:

- A. a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable Law;
- B. an application or order is made for the winding up or dissolution, or a resolution is passed, or any steps are taken to pass a resolution for the winding up or dissolution of a person;
- C. an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the applicable Law is appointed in respect of a corporation, or any action is taken to appoint such a person, and the action is not stayed, withdrawn or dismissed within seven days; and
- D. a receiver or receiver and manager is appointed in respect of any property of a corporation.

**Law** means the legal and regulatory requirements in Australia and New Zealand.

**Margin** means the amount required to create a new Position or increase an existing Position which is expressed as a set value or percentage of the value of the CFD (and any changes to margin which we may determine after the Position is opened).

**Margin Call** means a demand for additional funds to be deposited in your Trading Account to meet your Margin Requirement if your Account Equity has fallen below this amount.

**Margin Level** means the ratio of your Account equity to the Margin Requirement of your open Positions indicated as a percentage.

**Margin Requirement** means aggregate Margin for all open Positions which is required to be held in Account Equity to support your open Positions.

**Orders mean** an instruction that is given by you in relation to one or more of your Positions.

**Position means** a position that arises from the execution of a Transaction that has not been Closed Out.

**Regulated Documents** means the documents or disclosures regulated in Australia and New Zealand, and in Australia includes the Product Disclosure Statement (PDS) and Financial Services Guide (FSG).

**Regulator** means the relevant regulatory body in Australia or New Zealand and includes the Australian Securities and Investments Commission (ASIC) and the Financial Market Authority (FMA).

**Trading Platform** means the online trading platform provided by EC Markets which may be known as the MetaTrader 4 Platform or its successors.

**Trading Account** means the trading account that you have with EC Markets through which you can place orders to acquire and dispose of CFDs.

**Transaction** means the entry into, modification or adjustment of, or closure of any CFD between you and us.

**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. Taxes include GST but exclude EC Market's income tax or penalty tax and levies.

**Underlying Instrument** means underlying financial asset (such a share, index, commodity, currency, crypto currency or futures contract) whose value determines the value of the derivative product (such as a CFD).

**Withdrawal Request** means the online request which must be submitted through the Client Area located on our website.