



## **TERMS AND CONDITIONS**

**BLACK BULL GROUP LIMITED**

**12 AUGUST 2020**

## TABLE OF CONTENTS.

|     |  |    |
|-----|--|----|
| 1.  | THE CLIENT SERVICES AGREEMENT .....                      | 3  |
| 2.  | DEFINITIONS AND INTERPRETATION .....                     | 3  |
| 3.  | OPENING A CLIENT PORTAL ACCOUNT AND TRADING ACCOUNT..... | 7  |
| 4.  | GENERAL PROVISIONS .....                                 | 8  |
| 5.  | GIVING INSTRUCTIONS .....                                | 10 |
| 6.  | CLIENT MONEY.....  | 11 |
| 7.  | FEES AND CHARGES ETC .....                               | 11 |
| 8.  | OPENING A TRADE .....                                    | 12 |
| 9.  | PRICING.....   | 14 |
| 10. | MARGIN.....  | 16 |
| 11. | CLOSING A CFD .....                                      | 18 |
| 12. | HOLDING COSTS .....                                      | 19 |
| 13. | CLIENT ORDERS .....                                      | 19 |
| 14. | EVENTS OF DEFAULT .....                                  | 20 |
| 15. | NETTING AND SETTING OFF .....                            | 22 |
| 16. | PAYMENTS.....  | 23 |
| 17. | AMENDMENT, REPLACEMENT AND TERMINATION .....             | 25 |
| 18. | OTHER CHANGES WE CAN MAKE .....                          | 26 |
| 19. | LEGAL AND REGULATORY REQUIREMENTS.....                   | 27 |
| 20. | LIMITATION OF LIABILITY .....                            | 27 |
| 21. | WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS .....       | 28 |
| 22. | SERVICES.....  | 29 |
| 23. | TRANSFER OF CLIENTS.....                                 | 31 |
| 24. | FORCE MAJEURE.....                                       | 32 |
| 25. | DISPUTE RESOLUTION .....                                 | 33 |
| 26. | PRIVACY .....  | 34 |
| 27. | NOTICES.....   | 35 |
| 28. | MISCELLANEOUS PROVISIONS .....                           | 36 |

# TERMS AND CONDITIONS

## 1. THE CLIENT SERVICES AGREEMENT

1.1 These Terms and Conditions are part of the Client Services Agreement between Black Bull Group Limited (FSP403326) (**BlackBull Markets, we, us or our**) and you the client (**you, your or yourself**).

1.2 **The Client Services Agreement is made up of:**

- a. your Application Form;
- b. these Terms and Conditions; and
- c. any additional terms and conditions we issue and notify to you and which you accept, in connection with our dealings with you.

1.3 By electronically submitting your Application Form on our Website, you accept and agree to be bound by the terms and conditions of the Client Services Agreement. However, the Client Services Agreement will not be binding on us until we have accepted your application by opening an Account for you.

1.4 Please read all parts of the Client Services Agreement carefully and, where necessary, seek professional advice. In these Terms and Conditions, without limitation, you should particularly read those terms which deal with Margin, our rights to Stop Out CFDs, and the termination of the Client Services Agreement and the closing of your Account.

1.5 You must also read and understand our current PDS, and be familiar with the Trading Platform, before trading in our CFDs.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In these Terms and Conditions, unless the context otherwise requires:

**Account** means your Client Portal Account or a Trading Account as the context requires.

**Additional Margin** means an amount in addition to Initial Margin you must deposit in your Account under clause 10.2 or otherwise under the Client Services Agreement.

**AML/CFT Act** means the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*.

**Applicable Laws** means all applicable statutes, regulations, rules, bylaws, standards, codes, Orders in Council, proclamations, notices, warrants, instruments and regulatory guidance, including any common law and equity, and any related, subsequent, superseding or replacement Laws, and includes the AML/CFT Act, the FMC Act and any Market Rules.

**Application** means the application and account opening process as specified by us from time to time, including all documents or information required to be provided to us.

**Associated Person** has the meaning given to it in the FMC Act.

**Authorised Person** means you and/or any person authorised by you, in a manner accepted by us, to give instructions under these Terms and Conditions.

**Base Currency** means the currency you have chosen (out of the currencies we have made available to you) as the currency you will use to make trade on the Trading Platform.

**BBG** means BBG Limited, a company incorporated under the Companies Act 1972 of the

Seychelles (Co.No.857010-1) which operates a derivatives trading service identical to BlackBull Markets.

**BBG Agreement** means the client services agreement of BBG setting out the terms and conditions of the services of BBG.

**Business Day** means a day on which registered banks are open for general banking business in Auckland (not being a Saturday, Sunday or public holiday in that place).

**CFD** means a contract between you and us for the taking of a Position in an Underlying Asset.

**Client Money** means the moneys our clients have deposited with us.

**Client Money Rules** means the rules for holding derivatives investment money and derivative investor property contained in the FMC Regulations.

**Client Portal Account** means your account to access the Trading Platform, tied to your verified identity.

**Close of Business** means 10:00 am New Zealand time, Saturday, or any other time(s) that we may publish on our Website.

**Closing Price** means the price per Contract Unit of a CFD on closing a Position, quoted by and accepted by us.

**Companies Act** means the *Companies Act 1993*.

**Confirmation** means a notification, which may be provided by us electronically, including via the Trading Platform or the internet, confirming entry into a CFD (or a trade in respect of a CFD).

**Contract Price** means the price per Contract Unit of a CFD, quoted by and accepted by us.

**Contract Quantity** means, in relation to a CFD, the number of Contract Units traded by you as stated in the Confirmation.

**Contract Unit** means the relevant unit for the type of CFD you wish to trade with us as specified in the Trading Platform from time to time.

**Contract Value** means the total value of the CFD as calculated by us in accordance with these Terms and Conditions.

**Event of Default** means an event described in clause 14.1.

**Exchange Rate** means the exchange rate we may offer to you from time to time having regard to the applicable prevailing Interbank Rates and our mark up, and which is available to you from us via the Service or on request.

**FMA** means the Financial Markets Authority.

**FMC Act** means the *Financial Markets Conduct Act 2013*.

**FMC Regulations** means the *Financial Markets Conduct Regulations 2014*.

**Force Majeure Event** has the meaning given to it in clause 24.

**Initial Margin** means an amount you must deposit in your Account under clause 10.1.

**Insolvent** means insolvent (or unable to pay debts as they fall due), bankrupt, in liquidation, receivership or statutory management, under administration or reconstruction, struck off or removed from any register of corporate entities, wound up, dissolved, subject to any assignment for the benefit of creditors or arrangement or compromise with creditors, or any equivalent status or subject to any equivalent process in any jurisdiction and **insolvency** has

the corresponding meaning.

**Interbank Rate** means the wholesale rate quoted between banks and other liquidity providers similar to but not the same as “LIBOR” or “Euribor”.

**Leverage** means such percentage as specified by us, and as amended by us under clause 10.4 from time to time.

**Licence** means the derivatives issuer licence issued to us by the FMA.

**Limit Order** means an order to buy or sell a CFD for the purpose of closing an Open Position (which for the avoidance of doubt is not guaranteed to execute on the Trading Platform).

**Limited Hours Trading** means the ability of the Client to trade CFDs (where available) during only such hours as any relevant exchange is open.

**Long or Long Position** means where a person opens a Position which will make money if the value of the Underlying Asset rises.

**Margin** means Initial Margin or Additional Margin, or both.

**Margin Requirement** means the amount of money that you must pay us and deposit with us for entering into a trade and/or maintaining an Open Position.

**Margin Warning** means a warning to you, that the level of your Margin is about to fall below our minimum Margin Requirements and your Open Positions will be closed automatically by our Trading Platform (i.e. a Stop Out) should the level of your Margin fall below our minimum Margin Requirements.

**Market Rules** means the rules, regulations, customs and practices from time to time of any exchange, licensed financial market, clearing house, licensed clearing and settlement facility, or other organisation or market involved in the conclusion, execution or settlement of a transaction or CFD and any exercise by such exchange, clearing house or other organisation or market of any power or authority conferred on it.

**Material Error** has the meaning in clause 9.6(a).

**Maximum Trading Size** means such maximum Contract Quantity or Contract Value as we may specify through our Service from time to time for any type of CFD.

**Minimum Trading Size** means such minimum Contract Quantity or Contract Value as we may specify through our Service from time to time for any type of CFD.

**Normal Lot Size** means the minimum and maximum Contract Quantity or Contract Value that we consider appropriate, having regard if appropriate, to the normal market size for which prices are available on any relevant exchange and for which we quote live price information.

**Open Position** means a Position which has not been closed.

**Opening Price** means, the price per Contract Unit of a CFD when a Position is opened, quoted by and accepted by us.

**Opening Value** means, in relation to a CFD, the total Contract Value as agreed between us and you at the time of the transaction as stated on the Confirmation or as determined in accordance with these Terms and Conditions.

**PDS** means our product disclosure statement, including any supplementary and replacement product disclosure statement.

**Position** means a Long or Short Position taken by a party to a CFD.

**Privacy Policy** means our privacy policy which is available on our Website.

**Related Company** has the meaning given to that term in the Companies Act 1993, section 2(3), and it includes BBG.

**Server Rollover** means the end of trading period calculated by reference to the close of the New York markets as determined by us.

**Services** means any service provided by us in accordance with our Client Services Agreement, including offering clients access to information and trading facilities, via an internet service, a wireless application protocol service and/or an electronic order routing system and including relevant software provided by us to enable you to use our Trading Platform.

**Short or Short Position** means where a person opens a Position which will make money if the value of the Underlying Asset falls.

**Stop Loss Order** means an order to buy or sell a CFD for the purpose of closing a negative Open Position and pre-determining a profit or loss made on a trade (which for the avoidance of doubt is not guaranteed to execute on the Trading Platform for various reasons, including without limitation, Underlying Market factors).

**Stop Out** means the automatic closing of your Open Positions by our Trading Platform should the level of your Margin fall below our minimum Margin Requirements.

**Swap Benefit** means a benefit you may receive on executed CFDs held overnight and which is described further in clause 12.1.

**Swap Charge** means a charge you may have to pay where you have an executed CFD held overnight and which is described further in clause 12.1.

**Swap Rate** means the rate determined by us from time to time having regard to, among things, Interbank Rates.

**Total Equity** means the aggregate of the current cash balance in your Account, taking into account all your current realised profits and losses, and your current unrealised profits and losses.

**Total Margin** means the sum of the Margin Requirements for all of your Open Positions.

**Trading Account** means a MetaTrader 4 account with us, in a single Base Currency, tied to your verified identity for the purposes of any Applicable Laws.

**Trading Day** means any day of the week that the Trading Platform is available for your use.

**Trading Platform** means the MetaTrader 4 Trading Platform, or any substitute platform, which we make available to you by which you may trade with us online in our CFDs.

**Underlying Asset** means the underlying asset being the reference to which the value of a CFD is determined.

**Underlying Market** means the underlying market in which the Underlying Asset is traded.

**Website** means the internet address [www.blackbullmarkets.com](http://www.blackbullmarkets.com) and includes the Trading Platform as a downloadable application.

## 2.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

**Business Day:** anything required by these Terms and Conditions to be done on a day which is not a Business Day may be done effectually on the next Business Day.

**Clauses and schedules:** references to clauses and schedules (if any) are to clauses and schedules of these Terms and Conditions.

**Currency:** a reference to any monetary amount is to New Zealand Dollars, unless otherwise stated.

**Documents:** a reference to any document, including these Terms and Conditions, includes a reference to that document as amended or replaced from time to time.

**GST:** any amounts referred to in these Terms and Conditions or on our Website excludes GST unless otherwise stated.

**Headings:** headings appear as a matter of convenience and do not affect the construction of these Terms and Conditions.

**Including:** including and similar words do not imply any limitation.

**Persons:** a reference to a person includes a company, limited partnership, trust and also any body of persons, whether corporate or unincorporated and includes their representatives, executors and assigns.

**Singular, plurals and gender:** the singular includes the plural and vice versa, and words importing one gender include the other genders.

**Statutes and regulations:** a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations, and a reference to an enactment includes regulations made under that enactment.

**Adverse construction:** these Terms and Conditions may not be construed adversely to a party just because that party prepared, or procured the preparation of, these Terms and Conditions.

### **3. OPENING A CLIENT PORTAL ACCOUNT AND TRADING ACCOUNT**

#### **3.1 Opening**

After we accept the terms of your Application, we will open a Client Portal Account in your name, and you can open up to four Trading Accounts (or such other number we may permit from time to time) each in a separate Base Currency. You will be able to manage deposits or withdrawals on your Account. After we complete our requirements (including our obligations under the AML/CFT Act), you can commence trading on our Trading Platform using your Account. We reserve the right to reject an Application or refuse to open a Client Portal Account or a Trading Account for any reason whatsoever (subject to Applicable Laws).

#### **3.2 Account information**

You continuously undertake and warrant to us that any information provided to us is correct in its entirety and that you will immediately inform us of any material change to that information, including without limitation, any changes to your contact details, financial status or compliance with any Applicable Law.

#### **3.3 Two or more persons**

Where you are two or more persons in relation to a Client Portal Account or a Trading Account:

- a. the liability of each person will be joint and several;
- b. we may receive instructions from any one person who is, or appears to us to be, such a person, whether or not such person is an Authorised Person;
- c. any notice or other communication given by us to one person will be deemed to be notice to all persons in relation to the Account; and
- d. any Event of Default in respect of any one person will be an Event of Default in respect

of you.

### 3.4 **Account details**

- a. When you open a Client Portal Account and one or more Trading Accounts with us, you must create your own password and keep it secure, after which, we will provide you with a unique number representing each of your Trading Accounts (i.e. your Trading Account number).
- b. You will be deemed to have authorised all trading under your Trading Account number irrespective of whether the person using it for the purpose of trading is using it with your authority.

### 3.5 **Account security information**

You must keep all security information relating to the Account, including, but not limited to, any user name, user ID and password, confidential and we do not have to establish the authority of anyone using these items. You are responsible for all orders or instructions and for the accuracy of all information sent electronically using any such items. If you are aware or suspect that these items are no longer confidential, you should contact us as soon as possible so that they may be changed.

## 4. **GENERAL PROVISIONS**

### 4.1 **How we deal with you**

In our dealings with you, we will act as principal and not as agent on your behalf. Accordingly, we will be the counterparty to all of your CFDs.

### 4.2 **How you deal with us**

- a. Unless we agree otherwise in writing, you will also deal with us as principal, and not as an agent or representative of another person.
- b. If you wish to act on behalf of a principal, such principal will not be a client and we will only deal with you, unless we otherwise agree (and only subject to the satisfaction of our requirements including the completion of our obligations under the AML/CFT Act in respect of that principal).
- c. If you are a principal and wish to deal with us through your agent, you agree that we will be entitled to rely on any instructions given to us by the agent in relation to your Account (and only subject to the satisfaction of our requirements including the completion of our obligations under the AML/CFT Act in respect of that agent). But, from time to time, we may require confirmation that the agent has authority to act on your behalf.

### 4.3 **Our Services are execution only**

Our Services are “execution only” services. We do not give you advice about whether you should enter into any CFD or use any Services that we may provide to you. Any information or general financial advice that we give you (or which is available through the Website) does not take into account your financial situation, needs or personal objectives. Without limiting our obligations under our Licence and Applicable Law, you must consider the appropriateness of entering into a CFD having regard to your own financial situation, needs or personal objectives and obtain your own independent financial advice.

### 4.4 **You are responsible for your own dealing**

If you wish to enter into CFDs with us, you must understand the risks of dealing in CFDs and rely solely upon your own judgement in dealing with us. Except to the extent expressly



required by our Licence and Applicable Law, we are not responsible for your trading decisions, and we do not owe you any duty of care, to monitor your trades or to prevent you from trading beyond your means or ability or otherwise to protect you.

#### 4.5 **Margin**

It is your sole responsibility and obligation to monitor and deposit Margin at any time required by the Client Services Agreement.

#### 4.6 **Our Services are provided electronically**

Our Services are provided electronically. You consent to the receipt of documents or information in electronic form via email, website (including via the Trading Platform) or other electronic means.

#### 4.7 **Your internet connection**

You confirm that you have regular access to the internet and consent to us providing you with information about us and our Services (including market information), our costs and charges and our notices by email or by posting such information on our Website or via our Trading Platform. You acknowledge that in the event that you are unable for any reason whatsoever to place a trade or close a Position because of difficulties you may be having with our Trading Platform, you will immediately contact us using our live-chat service to close the Position (subject to our additional requirements beforehand).

#### 4.8 **Anti-Money Laundering legislation and other Applicable Laws**

- a. You acknowledge that we may require information from you from time to time to comply with the AML/CFT Act or any other Applicable Laws. You agree to provide us with all accurate information and assistance that we may at our discretion require to comply with the AML/CFT Act or any other Applicable Laws.
- b. We may pass on information collected from you and relating to transactions as required by the AML/CFT Act or other Applicable Laws and, subject to any Applicable Laws, are under no obligation to inform you we have done so. We may undertake all such anti-money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by us, and we reserve the right to take any action with regard thereto with no liability whatsoever therefore.
- c. You also warrant that:
  - i. you are not aware and have no reason to suspect that:
    - A. the moneys used to fund your transactions have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under any Applicable Laws, international law or convention or by agreement; or
    - B. the proceeds of your investment will be used to finance any illegal activities; and
  - ii. neither you nor, where you (the client) are not an individual, any of your directors, senior managers or individuals in any equivalent role (as applicable), are a "politically exposed person" as defined in the AML/CFT Act. If you may be a "politically exposed person", you must inform us of the criteria you fall under.

#### 4.9 **Our office and trading hours**

- a. Hours

Our office and trading hours are as set out on our Website from time to time.

b. **Limited Hours Trading**

We are under no obligation to quote prices or accept orders or instructions in respect of any CFD to which Limited Hours Trading applies during any time when the relevant Underlying Market is closed for business.

**5. GIVING INSTRUCTIONS**

**5.1 Initial Authorised Persons**

You may specify your initial Authorised Persons in your Application.

**5.2 Changing Authorised Persons**

- a. You may, by written notice, request to change the persons who are authorised to use the Account from those specified in your Application. We may at our discretion refuse your request if to do so may result in us breaching any Applicable Law.
- b. We may act upon written orders or instructions (including electronic instructions) of any Authorised Person, or any person who appears to us to be an Authorised Person, despite the fact that the person may not be authorised. In particular, we are entitled to act on any orders or instructions transmitted using your user name, Account number, user ID or password.
- c. You agree to indemnify us against all losses, costs, expenses or damages which we may suffer or incur as a result of any error in any order or instruction given by an Authorised Person or as a result of our acting on any order or instruction of any Authorised Person or any person who appears to us to be an Authorised Person.

**5.3 Further instructions**

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

**5.4 Confirming instructions**

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

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

**5.5 Acknowledgement of instructions**

We may acknowledge instructions orally or in writing.

**5.6 Internet instructions**

Subject to clause 5.7, any order or instruction you send by internet will only be deemed to have been received, and will only then constitute a valid instruction and binding CFD between you and us, when it has been recorded as accepted and confirmed by us to you.

**5.7 Instruction not a contract**

When you transmit an order or instruction to us, this does not automatically give rise to a binding contract between you and us because any order made by you is always subject to us accepting your offer and such order having been recorded as accepted and confirmed by us to you. You are responsible for checking with us if a Confirmation is expected in relation to a

transaction, but has not been received by you.

#### **5.8 Correct designation for money**

You must ensure that moneys sent to us are correctly designated in all respects, including, where applicable, that the moneys are sent for the purposes of Margin and to which of your Trading Accounts they should be applied. We will provide you from time to time with details of such arrangements as may apply to making payments to us, which may include permitting payments in different currencies as notified by us to you. You are solely liable for any transaction costs associated with any payments to or withdrawals from your Account.

### **6. CLIENT MONEY**

#### **6.1 Client Money is held on trust**

We will hold all Client Money paid to us by you on trust for you in one or more segregated trust accounts with a New Zealand registered bank(s) in accordance with the Client Money Rules.

#### **6.2 Accounts are not separated**

You agree and acknowledge that individual Trading Accounts of our clients are not separated from each other within the trust account operated by us and that your moneys may be commingled with our other clients' Client Money, and that we will not be liable for the Insolvency or any act or omission of any bank holding the trust accounts.

#### **6.3 We may hold a buffer**

Where permitted by Applicable Laws, we may also hold a buffer of our own funds within the Client Money trust account.

#### **6.4 We may use Client Money for authorised hedging purposes**

Client Money may be used for authorised hedging purposes as defined in, and permitted under, the FMC Regulations.

### **7. FEES AND CHARGES ETC**

#### **7.1 Fees and charges etc**

You agree to pay to us or as we direct all:

- a. fees (including without limitation, any "spread" between a bid and ask price);
- b. charges;
- c. rates (including without limitation, Swap Rates);
- d. commissions; and
- e. other amounts,

set out from time to time in all parts of the Client Services Agreement, our Website and in the PDS.

#### **7.2 Timing of recognition of payments, deductions or fees**

- a. Any charges will be deducted from your Account the day following the day on which the charges were incurred and benefits will be paid the day on which it was derived (or any other day determined at our discretion).
- b. If a Position is closed at a loss, we will immediately recognise that loss in your Account and your trading resources available on your Account will be adjusted accordingly,

subject to the Client Services Agreement.

- c. If a Position is closed at a profit, we will immediately recognise that profit in your Account and your trading resources available on your Account will be adjusted accordingly, subject to the Client Services Agreement.

### **7.3 Incorrect recognition of payment on Account**

- a. Except in the case of our fraud, we do not accept responsibility, and we will not be liable for, any loss or damage, of any form, as a result of you trading on moneys deposited in or recognised in your Account in error by, or on behalf of, us.
- b. We may at any time deduct, without notice or recourse to you, any moneys deposited in, or recognised in, your Account in error by, or on behalf of, us.

### **7.4 Interest**

As further and partial consideration for our Services, you acknowledge and agree that we may retain interest earned on Client Money held on trust in our bank account for our sole benefit.

## **8. OPENING A TRADE**

### **8.1 Opening a trade using our Trading Platform**

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

### **8.2 Nature of quote**

A quote on our Trading Platform is an “invitation to treat” and not an “offer” to contract. If you indicate that you wish to trade at the price quoted you will be deemed to be making an “offer” to trade at the quoted price and our trader will be entitled to confirm or reject that offer. No trade will be effective unless and until such Confirmation is given.

### **8.3 Formation of contract**

By you clicking ‘buy’ or ‘sell’, you are deemed to send a message via the Trading Platform indicating that you wish to trade on the terms and conditions indicated. This message will constitute an “offer” by you to buy or sell a CFD at the price and trade size chosen.

### **8.4 Confirmations**

- a. If we accept the trade, we will send you a Confirmation to this effect. Your trade will not have been placed, and no contract between us and you will come into existence until we send a Confirmation to you.

- b. You must wait for a Confirmation to appear after sending a 'buy' or 'sell' message and if you do not receive this within two minutes you must notify us immediately to request that we provide a Confirmation.
- c. You acknowledge that a transaction only becomes valid when recorded and acknowledged by us.
- d. Similarly, if you dispute the contents of any Confirmation sent by us to you, you must notify us immediately; if you do not, you will be deemed to accept the contents of the Confirmation.

## 8.5 Statements and reporting

- a. After the end of a calendar month, we will send you a monthly statement in respect of your Account, provided you have traded in our products or have had an Open Position for that Account during that particular month.
- b. You will be able to you review your Account and any Positions at any time through the Trading Platform. Once you have entered at least one Open Position, we will provide you with daily statements in respect of your Account, which you may opt-out from receiving by notifying us in writing.
- c. You agree and acknowledge that:
  - i. we may provide any Confirmations, statements and other reports to you via our Trading Platform where you will be able to view, download and print them;
  - ii. you will access and use such Trading Platform to:
    - A. receive the Confirmations, statements and other reports we provide;
    - B. confirm all CFDs; and
    - C. monitor your obligations under the Client Services Agreement.
- d. Confirmations, statement or other report are made available to you as at the time the relevant document is posted by us on the Trading Platform.
- e. We may send Confirmations, statements and other reports that we provide, by email, post or by any other means, in addition to making them available using the Trading Platform.
- f. You must check the contents of each document received from us. Such documents will, in the absence of manifest error, be conclusive unless you notify us in writing to the contrary immediately in the case of a Confirmation or within three Business Days of receiving a monthly report.

## 8.6 Currency

All trades on the Trading Platform will be conducted in the Base Currency you've chosen. The contents of your Account summary and any reports sent to you summarising your Account, will be based in this Base Currency.

## 8.7 Transaction currencies

All payments made by you to us and by us to you will be in US dollars, NZ dollars, British pounds, Euros, Canadian dollars, Australian dollars, Singaporean dollars or Japanese yen according to your Trading Account's Base Currency, unless otherwise agreed between us in writing.

## 8.8 **Opposing Positions**

- a. We may permit you to run an opposing Position(s) in a CFD(s) in the same currency pair and a Position in an Underlying Market where you have an opposing Open Position. Both Long and Short Positions will appear in your Account and they will be treated as two Open Positions. When you choose to keep two opposing Open Positions they will be revalued and rolled as an individual Open Position until you choose to offset or match the two Positions.
- b. We may permit you to run an opposing Position(s) in the same Underlying Market and a Position in an Underlying Market where you have an opposing Open Position will automatically be deemed to be an instruction to close the earlier Position. If you have more than one Open Position in the same Underlying Market, closing trades will apply to them on a first opened first closed basis, unless otherwise agreed by us.

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

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

## 8.10 **Profit and losses**

When a Position is closed, you accept that a payment will pass between us equal to the difference in value expressed in your Account Base Currency between the Opening Price of that Position and the corresponding Closing Price. If you make a profit, we must pay a sum to you equal to that profit. If you make a loss you must pay to us a sum equal to that loss.

## 8.11 **No rights in Underlying Assets**

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

## 9. **PRICING**

### 9.1 **Quotes**

We will quote prices which provide an indication of the prices at which we are prepared to deal with you and which are calculated in accordance with clause 9.4 for CFDs. Please note that:

- a. we act under the Client Services Agreement as a principal, and accordingly, set the applicable price at which we are prepared to deal with you;
- b. prices that may be quoted or traded upon from time to time by third parties do not apply to trades and dealings between us and you;
- c. we may, in our absolute discretion, quote different prices to different Clients and trade at different prices with different Clients;
- d. neither you nor us:
  - i. acquire any interest in, or right to, acquire; and
  - ii. are obliged to sell, purchase, hold, deliver or receive any Underlying Asset;
- e. your and our rights and obligations under CFDs are principally to make and receive such payments as are provided in the Client Services Agreement and any CFD.

### 9.2 **Amended Quotes and CFDs outside the Normal Lot Size**

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

- i. provide an amended quote of the Contract Price originally quoted by our Trading Platform; and/or
  - ii. make the quote subject to special conditions and requirements;
- as we notify to you at the time we are considering the order.

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

### 9.3 **Minimum Trading Size, Maximum Trading Size**

The size of your CFD must exceed the Minimum Trading Size and must not exceed the Maximum Trading Size.

### 9.4 **Contract Unit**

The Contract Unit of a CFD will be one currency unit of the primary reference currency, one ounce of precious metal, or one of such other reference unit of the Underlying Asset (as determined by us from time to time).

### 9.5 **Choosing to deal**

Except where we exercise any of our rights to close out a CFD, it is your responsibility to decide whether or not you wish to deal at those prices. If you decide to deal at the prices indicated by us, you may make an offer to us to deal at that price. We may choose, in our absolute discretion, whether to accept or reject any offer to deal made by you.

### 9.6 **Pricing errors**

- a. It is possible that errors, omissions or misquotes may occur in relation to pricing of CFDs, either through our fault or that of a third party, which mean the price is materially incorrect when taking into account market conditions and quotes in Underlying Assets which prevailed at the time (**Material Errors**). A Material Error may include an incorrect price, date, time or other characteristic of a CFD or any error or lack of clarity of any information.
- b. If a trade is based on a Material Error, we may without your consent:
  - i. amend the terms and conditions of the CFD to reflect what we consider to have been the fair price at the time the CFD was entered into and there had been no Material Error;
  - ii. close the trade and any Open Positions resulting from it;
  - iii. void the CFD from the outset; or
  - iv. refrain from taking action to amend or void the CFD.
- c. We will exercise the right in clause 9.6(b) in good faith and as soon as reasonably practicable after we become aware of the Material Error. To the extent practicable, we will give you prior notice of any action we take under this clause; but if it is not practicable we will give you notice as soon as practicable afterwards.

- d. In the absence of fraud on our part, we are not liable to you for any loss, cost, claim, demand, damage or expense, of any form, (including loss of profits or indirect or consequential losses), arising from or connected with the Material Error including where the Material Error arising from an information service on which we rely.
- e. In the event that a Material Error has occurred and we exercise our rights under clause 9.6(b), we may, without notice, adjust your Account or require that any moneys paid to you in relation to the CFD the subject of the Material Error be repaid to us as a debt due payable to us on demand.

#### 9.7 **Price, execution process and Trading Platform manipulation**

If we believe that you have manipulated our prices, our execution processes or our Trading Platform, we may in our sole and absolute discretion, without notice to you:

- a. enforce the trade(s) against you if it is a trade(s) which results in you owing money to us;
- b. treat some or all of your trades as void from the outset if they are trades which result in us owing money to you, unless you produce conclusive evidence within 30 days of us giving you notice under this clause that you have not committed any breach of warranty, misrepresentation or undertaking in these Terms and Conditions;
- c. withhold any funds suspected to have been derived from any such activities;
- d. make any resultant corrections or adjustments to your Account;
- e. close your Account; and/or
- f. take such other action as we consider appropriate.

### 10. **MARGIN**

#### 10.1 **Initial Margin**

To enter into a CFD that creates an Open Position you must deposit in your Account Initial Margin calculated as follows:

$$\text{Initial Margin requirement} = (\text{Quantity of Contract Units} \times \text{Contract Price}) \times \text{Leverage}$$

#### 10.2 **Your Margin Requirement and Additional Margin**

- a. In addition to Initial Margin, you have a continuing obligation in relation to Margin as set out below in respect of all Open Positions on your Account.
- b. You must ensure that at all times during which you have Open Positions, your Total Equity is at least the Margin that we require you to have paid to us for all of your Open Positions, such Margin required by us at all times (the **Margin Requirement**) for each Open Position being:

$$(\text{Quantity of Contract Units} \times \text{Contract Price}) \times \text{Leverage}$$

- c. If there is any shortfall between your Total Equity and your total Margin Requirement for all your Open Positions, you must immediately deposit Additional Margin so that there is no such shortfall. These funds are due and payable to us immediately on your Total Equity falling below your total Margin Requirement for all your Open Positions.

#### 10.3 **Exceptions**

The requirements imposed under clauses 10.1 to 10.2 will vary in the following circumstances:

- a. we have expressly advised you in writing that you have an Account type that allows for



longer payment periods for Margin, in which case you must pay Margin in accordance with the payment periods that we have advised you;

- b. we have expressly agreed to reduce or waive a part of the Margin that we would otherwise require you to pay us in respect of a trade; the period of waiver or reduction may be temporary and must be agreed in writing by us. Any such agreement will not restrict our right to seek further Margin in respect of the trade or Open Positions at any time thereafter;
- c. we agree otherwise in writing, in which case you will be required to comply with such terms and conditions as stated in such written agreement; or
- d. when you hold Open Positions in a CFD and you place one or more trades in the opposite direction in a CFD with the same Underlying Asset, your Margin Requirement for all Open Positions with the same Underlying Asset is the net aggregate of the Margin Requirements after all Long Positions and all Short Positions offset each other.

In the case of your continuous Margin obligation set out in clause 10.2, you will not be required to pay it if we have extended you a credit facility (which we may do so at our discretion), and you have sufficient credit to cover your Margin requirements. However, if at any time the credit facility is not sufficient to cover the Margin Requirement on your Open Positions you must immediately place additional funds in your Account in order to fully cover our Margin Requirements.

#### **10.4 Changing Leverage**

We may vary the Leverage at any time at your written request and in all circumstances, at our discretion, by giving you notice in accordance with clause 17.2. We may do this (for example) in response to or in anticipation of:

- a. changing volatility and/or liquidity in any Underlying Asset or in the financial markets generally;
- b. economic news; or
- c. any guidance or requirement issued by the FMA or any other regulator.

#### **10.5 Additional Margin where the Leverage changes**

You must pay any Additional Margin arising from an increase in the Leverage immediately.

#### **10.6 Failure to pay Margin**

Your failure to pay any Margin or comply with your obligations in connection with Margin as required under these Terms and Conditions will be regarded as an Event of Default for the purposes of clause 14.

#### **10.7 You must monitor Margin**

- a. Through the Service, you may have access to your Account and sufficient information to enable you to calculate the amount of any Margin required from you under these Terms and Conditions and the total amount of Margin due from you in the Base Currency using our Exchange Rate. It is your responsibility to ensure that you obtain all relevant information in respect of your Account, including all information in respect of your current Open Positions. We will not be responsible for any losses you may suffer or incur as a result of you not obtaining or requesting any such information.
- b. You must monitor at all times (including by checking on the Trading Platform) the amount of Margin deposited with us from time to time against the amount of any Margin currently required under this clause 10 and any Additional Margin that may be

necessary or desirable, having regard to such matters as:

- i. your Open Positions;
- ii. the volatility of any relevant Underlying Asset;
- iii. the volatility of the relevant market;
- iv. the volatility of the markets generally;
- v. any applicable exchange rate risk; and
- vi. the time it will take for you to remit sufficient cleared funds to us.

#### 10.8 **We can give a Margin Warning**

We may give a Margin Warning by doing any/all of the following:

- a. sending a message via the Trading Platform;
- b. emailing you; or
- c. calling you.

However, despite any other term of the Client Services Agreement, we are not obliged to keep you informed of your Account balance and our Margin Requirements by providing you with a Margin Warning.

#### 10.9 **Time allowance for forwarding Margin**

We are not obliged to allow you time to forward further funds to meet such Margin as is required under this clause 10 before exercising our rights (including to close out your Positions). However, where we, in our absolute discretion, do allow you time to meet your Margin Requirements, that permission will only be effective once it is confirmed in writing by us, and only to the extent specified in the written Confirmation given by us.

### 11. **CLOSING A CFD**

#### 11.1 **When can a CFD be closed?**

- a. A CFD may be closed out if:
- b. You give instructions to request to close a CFD by requesting to enter into an equal and opposite CFD:
  - i. A single open trade Position can be closed by choosing the close button on our Service. The CFD may be closed and offset by the opposite trade; or
  - ii. We may allow you to close a Position by opening an opposite Position but not offsetting the two trades. We may also allow you to request execution of an opposite trade and both Long and Short Positions will appear in your trade account or to request offset of the trades at a later time when you prefer.
- c. We may exercise any of our rights under these Terms and Conditions to close a CFD at any time.

#### 11.2 **We may close a CFD**

Where we exercise any of our rights under these Terms and Conditions to close a CFD, we will do so by entering into an equal and opposite CFD on the Account.

#### 11.3 **Contract Price at closing**

We will determine the Contract Price at the time of closing in accordance with the current

prices then being quoted by us while we exercise any of our rights under these Terms and Conditions to close a CFD.

#### 11.4 **Contract Value at closing**

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

$$\text{Contract Price} \times \text{Contract Quantity}$$

#### 11.5 **Timing of payments**

Any payment due by either us or you under this clause 11 in respect of dates on or after the date a Position is closed will be made by us adjusting the Account at Close of Business on such settlement date as we may determine in accordance with practice in the relevant Underlying Market and notify to you at the time of entering into the CFD.

### 12. **HOLDING COSTS**

#### 12.1 **Daily swaps of CFDs**

When you hold a Position or Positions in a CFD across Server Rollover they will be rolled to the next Business Day which will result in you paying a Swap Charge or receiving a Swap Benefit. The amount is ultimately determined by us, at our discretion, and it depends on our Swap Rate, being the rates at which you receive or pay interest on Positions that remain open across Server Rollover.

The operation of this clause 12.1 is subject to clauses 12.2, 12.3 and 12.4.

#### 12.2 **Entitlement**

If you are Long on a CFD that remains open across Server Rollover you may either receive a Swap Benefit or pay a Swap Charge, depending on the Underlying Asset you are Long, subject to clauses 12.3 and 12.4 and if you are Short on a CFD that remains open across Server Rollover you may either pay a Swap Charge or receive a Swap Benefit, depending on the currency you are Short on, subject to clauses 12.3 and 12.4.

#### 12.3 **Adjustment of Positions affected by Limited Hours Trading**

You acknowledge and agree that the application of Limited Hours Trading under these Terms and Conditions has the result that Open Positions will be marked to market after trading close on the primary exchange and your Margin Requirement will vary accordingly.

#### 12.4 **Settlement**

In relation to Swap Charges and Swap Benefits, they will be accrued in the swap value field of your open trade Position. In the event there are insufficient funds in your Account, any amount due to us because of the Swap Charges becomes a debt due and owing by you to us.

### 13. **CLIENT ORDERS**

#### 13.1 **Availability of orders**

You can add or modify limit, stop, trailing stop, and if done, can cancel the other orders on CFDs. Under certain conditions, we may refuse to accept these orders, including:

- a. if you do not have the required funds deposited in the client trading account; and
- b. in the case of any communication or technical failure as well as any incorrect reflection on the quotes feed (i.e. prices to freeze/stop updating or price spikes), we reserve the right not to execute an order or, where the order was executed, to change the Opening and/or Closing Price of a particular order or to cancel the said executed order.

## 13.2 Slippage

- a. Slippage is the difference between a requested price of a trade or pending order and the price at which the order was executed or filled. A gap in the markets is a break between prices on a chart that occurs when the price of a product makes a sharp move up or down with no trading occurring in between or when the Underlying Market closes at different rate to when it opens again.
- b. There are two common types of slippage:
  - i. when a market gaps, either over the weekend or after a news event (like payroll figures or interest rate decisions); and
  - ii. when a price is clicked on and has substantially changed in the time it took to get back to the executing bank or broker.
- c. For the benefit of our clients, we treat both slippage scenarios in the same way that they would be treated in the exchange-traded share or futures markets in that we slip our clients to a better price if the interbank market from which we obtain prices has moved in the client's favour, and similarly a worse price if the market has moved against them. The price differences reflect the slippage that we get from the aggregated price obtained from our hedging counterparties.

## 13.3 Liability for losses arising from orders

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

## 14. EVENTS OF DEFAULT

### 14.1 What constitutes an Event of Default?

The following constitute Events of Default, which upon their occurrence give us the right to take action in accordance with clause 14.2:

- a. you are Insolvent;
- b. you are an individual and you die or become of unsound mind;
- c. you fail to provide to us any Margin or other sum due under these Terms and Conditions in respect of any CFD, or the Margin held by us in respect of any Open Positions falls below our Margin Requirements;
- d. you are in breach of any obligation, warranty or representation made under these Terms and Conditions and/or any information provided to us in connection with these Terms and Conditions is or has become untrue or misleading;
- e. any fee due to us is not paid in accordance with these Terms and Conditions;
- f. whether or not any sums are currently due to us from you, where any cheque or other payment instrument has not been met on first expectation or is subsequently dishonoured or you have consistently failed to pay any amount owed to us in time;
- g. at any time or for any period deemed reasonable by us you are not contactable or you do not respond to any notice or correspondence from us;
- h. we believe it is prudent for us to take any or all of the actions described in clause 14.2 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- i. we consider that there are abnormal trading conditions;

- j. we consider it necessary for the protection of our rights under these Terms and Conditions;
- k. we are unable to make price in the CFD due to the unavailability of the relevant market information for reasons beyond our control;
- l. we consider that you may be in breach of any Applicable Law;
- m. we are so requested by the FMA or any other regulatory body or authority;
- n. the aggregate of your order and all other orders for a CFD is outside the Normal Lot Size; or
- o. we can no longer hedge your Position or we have a Position closed out by our counterparty.

#### 14.2 **What action may we take**

If an Event of Default occurs (or as otherwise set out in clause 14.3) we may take any or all of the following actions:

- a. immediately require payment of any amount you owe us, including Margin;
- b. terminate these Terms and Conditions;
- c. close all or any of your Open Positions;
- d. limit the size of your Open Positions either in monthly terms or a number of CFDs (net or gross);
- e. refuse orders to establish new Positions;
- f. exercise our rights of set off;
- g. change the Margin level at which we may close your Account;
- h. impose new Margin Requirements to your trading or Account;
- i. limit or withdraw the credit on your Account;
- j. suspend your Account and refuse to execute any trades;
- k. call on any guarantee in respect of your obligations;
- l. require you immediately to close out and settle the CFD in such a manner as we requested;
- m. enter into any transaction at such rates and times as we may determine in order to meet any obligation you may have incurred under a CFD;
- n. combine, close or consolidate any of the Accounts and offset any and/or amounts owed to, or by, us in such manner as we may in our absolute discretion determine; or
- o. retain any amount owed by us to you against any contingent liability of yours to us or so long as the contingency subsists.

#### 14.3 **Additional suspension and closing rights**

We may at our discretion close your Account on one day's notice in the event we form a reasonable belief that one or more of the circumstances directly below has occurred. If we rely on our rights under this clause, your Account will be suspended during the one day notice period and you will not be able to place trades other than those to close existing Open Positions. If you have not closed all the Open Positions within the one day's notice period, we

are entitled to take any action referred to in clause 14.2. For the purposes of this clause 14.3, the relevant circumstances are:

- a. the moneys used to fund your transactions have been or will be derived from or related to money laundering, terrorism financing or other illegal activities prohibited under any Applicable Laws, international law or convention or by agreement;
- b. the proceeds of your investment are used to finance any illegal activities, and/or
- c. your Authorised Person(s) is a politically exposed person as the term is used in the AML/CFT Act.

#### **14.4 Our rights to close or void**

Without limiting our right to take action under clauses 14.2 and 14.3, we may also close or void individual Open Positions and/or cancel any order where:

- a. we are in dispute with you in respect of an Open Position. In this case we can close all or part of the Open Position in order to minimize the amount in dispute; and/or
- b. there is a material breach of the Terms and Conditions in relation to the Open Position.

#### **14.5 Our rights to suspend Account**

Without limiting our right to take action under clauses 14.2, 14.3 and 14.4, we may in our discretion suspend your Account pending investigation for any reason. Whilst your Account is suspended you will be able to close your Open Positions but you will not be entitled to place new trades. Circumstances in which we may choose to exercise this right include but are not limited to the following:

- a. when we have grounds for believing that an Event of Default has occurred or may occur but believe that it is necessary to investigate circumstances with a view to confirming this;
- b. when we have grounds for believing that you do not have a sufficient understanding of the trades which you are placing or the risks involved;
- c. when we have not received within 10 days of a written request all information, which we believe that we require in connection with these Terms and Conditions; or
- d. we have reason to believe that there has been a breach in your Account share or that there has been a threat to your Account share.

#### **14.6 Conclude investigations**

If we have suspended your Account pending investigation, we will use reasonable endeavours to, but are not required to, conclude our investigation within five Business Days. When we conclude our investigation, we will inform you whether trading on your Account may resume or whether we will seek to take further action pursuant to these Terms and Conditions.

#### **14.7 Exercise of rights**

We may exercise our rights to close Open Positions under this clause 14 at any time after the relevant event has occurred and will do so on the basis of the next available price for the affected Open Position, as determined under clause 11.

### **15. NETTING AND SETTING OFF**

- a. The Client Services Agreement and all trades under it form part of a singular agreement between us and you, and we and you both acknowledge that we enter into the Client Services Agreement and any trades under it in reliance upon these being a singular

agreement.

- b. When Open Positions and/or your Account are closed under these Terms and Conditions, we may:
  - i. combine and consolidate your cash and any money we hold for you in all of the Accounts you may have with us; and
  - ii. set-off against each other the amounts referred to in A. and B. below:
    - A. any amounts that are payable by us to you, regardless of how and when payable, including your cash (if a credit balance) unrealised profits and any credit balance held on any Account even if any of these Accounts have been closed;
    - B. any amounts that are payable by you to us, regardless of how and when payable, including, unrealised losses, interest, costs, expenses, charges and any debit balance on any Account even if those Accounts have been closed.
- c. You are also entitled to require us to exercise the above rights in relation to your Accounts and/or Open Positions that have been closed.
- d. If the rights under clauses 15(b) or 15(c) are exercised, all the payment obligations will be consolidated into an obligation for you to pay the net sum to us or for us to pay a net sum to you.

## **16. PAYMENTS**

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

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

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

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

### **16.3 Payment of amounts due to us**

Unless otherwise provided in these Terms and Conditions, all amounts due to us will, at our option:

- a. be deducted from any funds held by us for you; or
- b. be paid by you in accordance with these Terms and Conditions.

### **16.4 Withdrawing money from your Account**

When your Account has a positive balance available, you may request us to effect payment by alternative means of the amount in credit of such amount as you may specify. However, we

may at our discretion withhold or delay from paying you the requested amount of the credit balance if:

- a. any overnight Position on your Account shows a notional loss;
- b. we consider that further amounts may be required to meet any current or future Margin Requirement on Open Positions due to Underlying Market conditions;
- c. if you have any contingent liability to us (or to any of our Associated Persons), in respect of any Account open with us;
- d. we determine that there is an unresolved dispute between us and you in connection with these Terms and Conditions or any CFD;
- e. we have reason to believe that paying you some or all of the amount requested may cause undue risk to us (including without limitation, financial risk), our other clients, our Services or our Trading Platform and in such circumstances we will pay the requested amount once we believe such a risk has dissipated; or
- f. we consider it necessary or desirable to withhold such amount to comply with our regulatory or legal obligations, and we will, subject to any Applicable Laws, notify you as soon as reasonably practicable if we decide to take such action.

#### **16.5 No security interests created**

Nothing in these Terms and Conditions is intended to create or does create in favour of either of us, any mortgage, charge, lien, pledge or other security interest in any cash or other property transferred by one to the other under any CFD.

#### **16.6 Payments transferred must have free title**

The parties agree that all rights, title and interest to and in any payment which one party transfers to the other in respect of a CFD under these Terms and Conditions vests in the recipient clear of any liens, charges, encumbrances or other interest of the transferor or any third party.

#### **16.7 Payments into an Account**

You must ensure that:

- a. payments into an Account are from you as the holder of the Account and not from any third party;
- b. without limiting the above, payments from an account are payments from your Account and not from any account of any third party.

16.8 You agree and acknowledge that we may refuse to accept or return any payment of money from any third party or from any account of any third party, and that we do not accept any liability or responsibility for any loss, cost, damage or expense, of any form, in connection with such non-acceptance or return, including because you are subsequently in default of your obligations to us.

#### **16.9 Permitted means of depositing money**

You may only deposit money to us by using any of the methods below and complying with the Client Services Agreement:

- a. electronic transfer from a bank account that is in the same name as your Trading Account and which has previously been verified by us;
- b. using a third party payment provider approved by us;



- c. using a credit card provider approved by us; or
- d. payment gateway providers approved by us.

#### 16.10 **Permitted means of withdrawing money**

You may only withdraw money from us by completing the steps required by our Services and complying with these Terms and Conditions.

### 17. **AMENDMENT, REPLACEMENT AND TERMINATION**

#### 17.1 **Current version of agreement governs CFDs**

Subject to clause 17.3, you agree that the version of these Terms and Conditions published on our website at the time of entering into a CFD governs that CFD.

#### 17.2 **Amending or replacing agreement**

We may amend or replace these Terms and Conditions by giving you seven days' prior written notice of the change(s) or the replacement. We will generally (but are not obliged to) make changes for the following reasons, including: making the provisions clearer or more favourable to you;

- a. reflecting legitimate increases or reductions in the cost of providing our Services;
- b. rectifying any mistakes that may be discovered;
- c. reflecting any changes in the Applicable Laws, or decisions by a court, ombudsman, regulator or similar body;
- d. reflecting changes in market conditions; and
- e. reflecting changes in the way we do business.

#### 17.3 **You may object**

If you object to any change or replacement, you must notify us within seven days of the date you are deemed to receive the notice under clause 27. Should the seven day notice period under clause 17.2 lapse, you will be immediately deemed to have accepted the change(s) or replacement in its entirety. Should you give us valid notice of your objection, the change or replacement proposed will not bind you, however we may at our discretion, immediately, close your Account and any Open Positions you may have (without your consent), require you to immediately close your Account as soon as reasonably practicable (which you must immediately give full effect to), restrict you from placing trades, orders and/or closing your Open Positions and then terminate these Terms and Conditions.

#### 17.4 **Application date**

Subject to clause 17.2, the amendments made under this clause 17 will apply, including to all Open Positions and unexecuted orders, from the effective date as stated by us of the changes specified in the notice.

#### 17.5 **Our right to terminate**

We may at our discretion terminate these Terms and Conditions and close your Account and any Position at any time by giving you 10 Business Days' written notice; this right is in addition to any other rights to terminate these Terms and Conditions or close your Account that we may have under these Terms and Conditions.

#### 17.6 **Your right to terminate**

You may also terminate these Terms and Conditions or close your Account at any time by giving

us one Business Day's prior written notice. Your Account will be closed as soon as reasonably practicable (normally within two Business Days) after we have received your notice of termination, all Open Positions are validly closed in their entirety, all orders cancelled, and all of your obligations are discharged, including our receipt of all amounts owed to us in connection with these Terms and Conditions (whether directly or indirectly).

#### **17.7 Reservation of powers and rights**

If either party provides notice to close your Account or terminate these Terms and Conditions under this clause 17:

- a. we reserve the right to refuse to allow you to enter into any further trades or orders which may lead to you holding further Open Positions; and
- b. if we have reason to believe closing your Account may cause any risk to us (including without limitation, financial risk), our other clients, our Services or our Trading Platform, we may at our discretion delay closing your Account or delay making any payment to you in accordance with these Terms and Conditions until we believe such a risk has dissipated.

#### **17.8 Outstanding amounts you owe us**

Any amounts payable to us in connection with these Terms and Conditions (whether directly or indirectly) shall be immediately paid to us in the event we close your Account and Open Positions in accordance with clause 17.8.

### **18. OTHER CHANGES WE CAN MAKE**

#### **18.1 Application of Account funds**

We may at any time without prior notice to you, in order to discharge your obligations (actual or contingent) under these Terms and Conditions:

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

#### **18.2 Our right to cease to trade in CFDs**

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

#### **18.3 We can close out Positions if we cease to trade**

- a. You agree to close out all Open Positions in relation to the CFD for the date specified in the notice given under clause 18.2 and we will endeavour to close out any remaining Open Positions on the date specified in the notice.
- b. If we exercise our right to close out your remaining Positions under the preceding clause, we will close out those Open Positions at the Closing Price for the CFD except where your Open Positions are outside the Normal Lot Size, in which case we will close those Positions at a price determined by us in accordance with market practice, but at our absolute discretion.

## **19. LEGAL AND REGULATORY REQUIREMENTS**

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

Despite any other provision of these Terms and Conditions, in providing the services in these Terms and Conditions, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure compliance with all Applicable Laws.

### **19.2 Our obligations under our Licence**

In order to comply with our Licence, we may:

- a. at any time, request any information or documents from you to determine your suitability for our Services (determined by us at our discretion); and
- b. deny your access to our Services or refuse to provide our Services to you for an indefinite period; or
- c. immediately terminate your Account and the Client Services Agreement,

if we have reason to believe that you do not have the ability to understand one or more of the types of CFDs available on our Trading Platform or any risks involved.

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

You must strictly comply with all Applicable Laws. If we have reason to believe you have breached, or facilitated the breach of, any law using our Services, we may terminate these Terms and Conditions immediately without notice.

## **20. LIMITATION OF LIABILITY**

### **20.1 Our liability is limited**

Subject to any Applicable Laws:

- a. our total liability is limited to the total amount of Client Money that we currently hold on trust for your benefit;
- b. we are not liable for any action we may take under Client Services Agreement;
- c. we are not liable for any claim, loss, expense, cost or liability, of any form, suffered or incurred by you, whether caused directly or indirectly by us or any third party except to the extent that such a loss, expense, cost or liability is suffered or incurred as a result of our gross negligence or wilful default; and
- d. our Services are only available on an “as is” basis and we do not warrant or guarantee its suitability to you or your purposes, its availability, its accuracy or its quality, in any respect.

### **20.2 Losses which are not reasonably foreseeable, indirect or consequential losses, and loss of profit**

We are not liable for any loss which is not reasonably foreseeable, nor for any indirect or consequential loss or loss of profit.

### **20.3 Third party content**

Although we have taken all reasonable steps to ensure the accuracy and completeness of any third party content available through the Services, they are provided on an “as is” or “if available” basis. We do not provide any warranties, undertakings, or representations (express or implied) as to such third party content to the full extent permitted by Applicable Law.

#### 20.4 **Application of limitations**

The limitations of liability in this clause 20 apply whether or not we or any of our employees or agents knew of the possibility of the claim being incurred.

#### 20.5 **You agree to indemnify us**

You agree continuously to indemnify us against all losses of any form (including without limitation, consequential losses), taxes, expenses, damages, charges, receipts, demands and expenses of any nature and on any account and liabilities present, future, contingent or otherwise and including legal fees on a full indemnity basis which may be suffered or incurred or brought against us or in connection with or caused by:

- a. your breach of the Client Services Agreement;
- b. us entering into any CFD;
- c. us taking any action under clause 14; and/or
- d. any representation or warranty given by you being incorrect, misleading or untrue, or any error in any order or instruction which is, or appears to be, from an Authorised Person, unless and to the extent only such is suffered or incurred as a result of our gross negligence or wilful default.

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

#### 21.1 **Your warranties**

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

- a. you are not subject to any law which prevents you from entering into, or being bound by, the Client Services Agreement or any CFD;
- b. you have obtained all necessary consents and have the authority to enter into the Client Services Agreement and any CFD;
- c. you are complying with all laws to which you are subject, and the obligations expressed to be assumed by you under the Client Services Agreement and any CFD are your legal, valid, binding and enforceable obligations;
- d. you are not Insolvent, and you are not aware of any circumstances that may lead to you becoming Insolvent;
- e. at all times the information provided by you to us, whether in the Application Form or otherwise, is and will be complete, accurate and not misleading; and
- f. you will not conduct any transactions, including trades, which contravene any laws or regulations, including in relation to insider trading, market manipulation or market abuse.

#### 21.2 **Notification of changes**

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

#### 21.3 **Services**

- a. Subject to clause 21.4 all warranties, express and implied, as to the description, quality,

performance or fitness of the purposes for you of the Services or any component of such Services are disclaimed and excluded.

- b. We do not warrant or forecast that the Services or any component of any Services or any services performed in respect of any such Services will meet the requirements of any user, or that the operation of the Services will be uninterrupted or error-free, or that any services performed in respect of the Services will be uninterrupted or error-free.

#### 21.4 **Statutory warranties**

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

- a. if the breach relates to goods:
  - i. the replacement of the goods or the supply of equivalent or similar goods;
  - ii. the repair of the goods;
  - iii. the payment of the cost of repairing the goods or acquiring the relevant goods, or
  - iv. payment of the cost of having the goods repaired; or
- b. if the breach relates to services:
  - i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

## 22. **SERVICES**

### 22.1 **Scope**

This clause 22 applies to your use of Services.

### 22.2 **Access**

Once you have gone through the procedures associated with our Services or any Service provided by us, you will get access to such service, unless agreed otherwise or stated on our Website. Please consult our Website for more details on operating times. We may change our procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.

### 22.3 **Access requirements**

You will be solely responsible for ensuring you have sufficient information technology systems and internet access to enable you to use our Services.

### 22.4 **Virus detection**

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

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

In the event that you receive any data, information or software via our Services other than that which you are entitled to receive, you will immediately notify us and will not use, in any

way whatsoever, and destroy at our direction, such data, information or software.

## 22.6 **Maintaining standards**

When using our Services, you must:

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

## 22.7 **System defects**

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

## 22.8 **Intellectual Property**

All rights in patents, copyrights, design rights, trademarks and any other intellectual property rights (whether registered or unregistered) relating to the Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Services or any part or parts of them unless expressly permitted by us in writing, reverse compile or disassemble the Services, or purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Services made in accordance with any Applicable Laws are subject to the terms and conditions of our Client Services Agreement. You must ensure that all the licensors' trademarks and copyright and restricted rights notices are reproduced on these copies. You must maintain an up-to-date written record of the number of copies of the Services made by you. If we so request, you must as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the Services.

## 22.9 **Liability and indemnity**

Without prejudice to any other terms and conditions of these Terms and Conditions relating to the limitation of liability and provision of indemnities, the following clauses apply to our Services.

- a. We have no liability to you for any loss, damage or cost which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers or other system errors. You acknowledge that access to Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Services for this reason.
- b. Neither we nor any third party licensor or service provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with the Services.

- c. We have no liability to you (whether in contract, tort or otherwise, including negligence) in the event that any viruses, malware, worms, software bombs or similar items are introduced via the Services or any software provided by us to you in order to enable you to use the Services, so long as we have taken reasonable steps to prevent any such introduction.
- d. You must ensure that no computer viruses, malware, worms, software bombs or similar items are introduced into our computer system or network and will indemnify us on demand for any loss, damage or cost that we suffer arising as a result of any such introduction.
- e. We are not liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Service. You continuously indemnify us against all losses, liabilities, judgments, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using the Services by using your designated passwords, whether or not you authorised such use.
- f. We are not liable for any act taken by or on the instruction of a market, clearing house or regulatory body.

#### **22.10 Suspension or permanent withdrawal with notice**

We may indefinitely suspend or permanently withdraw our Services, by giving you 10 Business Day's written notice, unless it is not reasonably practicable for us, due to the circumstances, to give you any prior notice.

#### **22.11 Immediate suspension or permanent withdrawal**

We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use the Services, or any part of them, without notice, where we consider it necessary or advisable to do so, for example due to your non-compliance with the Applicable Laws, breach of any provisions of the Client Services Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of share. In addition, the use of our Services may be terminated automatically, upon the termination (for whatever reason) of:

- a. any licence granted to us that relates to the Services; or
- b. the Client Services Agreement.

#### **22.12 Effects of termination**

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

### **23. TRANSFER OF CLIENTS**

23.1 Where we are required or consider it desirable to do so (including for regulatory reasons), we may ask to transfer your client relationship to our Related Company, BBG. Where we decide to do this, we will ask for your prior written consent, under clause 23.1a below, to transfer by way of novation all of our rights and obligations under the Client Services Agreement and any CFDs we have entered with you, to BBG, in exchange for a single payment of NZ\$1.00 to you (which we may set off against any fees and charges you owe us). If you consent to this, and BBG confirms its agreement, the following terms will apply:

- a. subject to sub-clause 23.1c, your rights, obligations and liabilities under the Terms and Conditions and any CFDs will continue and remain unaffected;
- b. BBG is substituted for us under the Client Services Agreement and any CFDs as if it had

originally entered into the Client Services Agreement and any CFDs in place of us and all references in the Client Services Agreement to us are to be read and construed as if they were references to BBG;

- c. the terms of the Client Services Agreement will be amended and restated in the form of the BBG Agreement (in its entirety);
  - d. BBG may exercise all of our rights and it will perform and discharge all of our obligations under the Client Services Agreement (as amended and restated) and any CFDs;
  - e. you release and discharge us from all of our obligations under the Client Services Agreement and any CFDs, except in respect of any matter which arose before the transfer (including a breach of the Client Services Agreement); and
  - f. we may transfer all information (including personal information) we hold in connection to you and your Account, and your money held in our trust account, to BBG. You expressly consent to the transfer of your personal information outside New Zealand for this purpose.
- 23.2 Where we decide to do this under clause 23.1 above, we will give you at least 5 Business Days' notice requesting your prior written consent to and confirmation of the matters set out in clause 23.1 above. We will also provide you with the BBG Agreement for your consideration.
- 23.3 If we do not receive your written consent and confirmation under clause 23.2, we may immediately close any open positions you may have, restrict you from using the Trading Platform, charge and deduct any fees and charges we are entitled to receive under the Client Services Agreement whether or not they are due (which we will set off against any amounts we owe you), close your Account and terminate the Client Services Agreement.
- 23.4 We will both do all things and execute all documents reasonably required to give effect to this clause.
- 23.5 We both continuously warrant to each other that we have the power to agree to the transfer under clause 23.1 and perform any action required to give effect to this clause.
- 23.6 For the avoidance of doubt, the assignment under clause 23.1 does not prejudice or waive any rights, defences or counterclaims either of us may have against the other in relation to the Client Services Agreement and any CFDs and arising out of matters occurring before the transfer.

## **24. FORCE MAJEURE**

### **24.1 Force Majeure Event**

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

- a. where we are, in our opinion, unable to maintain an orderly market in our CFDs in respect of any one or more of the Underlying Assets as a result of the occurrence of any act, omission or event (including but not limited to any circumstance beyond our control such as strike, riot, civil unrest or failure of power supply, communications or other infrastructure);
- b. the suspension, closure, liquidation or abandonment of any relevant Underlying Market or Underlying Assets;
- c. the imposition of conditions, limits or special or unusual terms in the relevant markets or Underlying Assets;
- d. the imposition of conditions, limits or special or unusual terms on us by our hedging



counterparties;

- e. the excessive movement, volatility or loss of liquidity in the relevant markets or Underlying Assets; or
- f. where we anticipate that any of the circumstances set out in clauses 24.1(a) to (e) are about to occur.

#### **24.2 Actions we may take**

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

- a. alter normal trading times;
- b. alter the Leverage;
- c. amend or vary these Terms and Conditions and any transaction contemplated by these Terms and Conditions, including any CFD, insofar as it is impractical or impossible for us to comply with our obligations to you;
- d. close any or all open CFDs, cancel instructions and orders as we deem to be appropriate in the circumstances; or
- e. take or omit to take all such other actions as we deem to be appropriate in the circumstances having regard to the Positions of us, you and other customers.

#### **24.3 Notification of Force Majeure Event**

To the extent practicable, we will take reasonable steps to notify you of any action that we propose to take under clause 24.2 before we take such action. If it is not practicable to give you prior notice, we will notify you at the time promptly after taking any such action.

#### **24.4 Liability**

If we determine that a Force Majeure Event exists, we will not be liable for any failure, hindrance or delay in performing our obligations under these Terms and Conditions or for taking or omitting to take any action in accordance with clauses 24.2 or 24.3.

#### **24.5 Close Open Positions**

In some circumstances, we may be unable, after using all reasonable efforts, to acquire, substitute, maintain, unwind or dispose of any Underlying Asset we consider necessary to hedge or protect our exposure to Underlying Market risks and other risks arising from an Open Position. In such circumstances, we may close that Open Position at the Contract Price.

### **25. DISPUTE RESOLUTION**

#### **25.1 Informing us about disputes**

You should inform us immediately in writing if you have a concern, a complaint or a dispute relating to these Terms and Conditions, by emailing us about the situation to: [compliance@blackbullmarkets.com](mailto:compliance@blackbullmarkets.com) or posting it to BlackBull Markets, Level 22, 120 Albert Street, Auckland 1010, New Zealand.

Please outline the situation that has arisen and include the remedy that you are seeking. We investigate client concerns, complaints and disputes promptly and endeavour to work with you to resolve any issues which arise.

We are a member of the Financial Services Complaints Limited Scheme (FSCL), which is an independent dispute resolution scheme approved by the Ministry of Consumer Affairs. If you

have made a complaint and it cannot be resolved, you may refer it to the FSCL subject to certain conditions. The FSCL will not charge a fee to investigate or resolve a complaint.

You can contact FSCL at:

FSCL, PO Box 5967, Wellington 6145;  
0800 347 257; or  
[complaints@fscl.org.nz](mailto:complaints@fscl.org.nz)

BlackBull to review this clause against existing 'Dispute Resolution' document <https://blackbullmarkets.com/wp-content/uploads/2019/05/Dispute-Resolution-December-2017.pdf>.

## 25.2 **Internal complaints handling policy**

We offer clients internal and external complaints resolution procedures. You should contact us for information on how complaints are handled internally.

## 26. **PRIVACY**

### 26.1 **Privacy Policy**

Before completing the Application Form, you should read our Privacy Policy carefully, a copy of which is available on our Website. The Privacy Policy explains how we collect your personal information and then how we maintain, use and disclose this information.

### 26.2 **Provision of our Services**

If you do not provide the information requested by us or agree to our information handling practices detailed in our Privacy Policy, we may not be able to, and are entitled to refuse to, provide our Services.

### 26.3 **Information security and disclosing information**

BlackBull Markets takes reasonable steps to protect your personal information from unauthorised access, modification or disclosure. We will only retain your personal information for so long as is required to fulfil the purpose that it was collected for (including for our compliance with any Applicable Law) as set out in our Privacy Policy.

We may disclose any information we collect from you in accordance with these Terms and Conditions or our Privacy Policy.

### 26.4 **Information updated**

BlackBull Markets requires you to notify us of any changes to your personal information. You have a responsibility to maintain your personal information up to date and ensure all the information we hold is accurate. Any inaccurate personal information may adversely affect your benefits during the course of our relationship with you.

### 26.5 **Credit and identity checks**

You consent to us, or our agents acting on our behalf, carrying our credit and identity checks, including money laundering, compliance, regulatory reporting and fraud prevention checks, as we may consider necessary or desirable, including references on your bank or any credit reference agency. You agree that any third party that we use for this purpose may share any information concerning you with us and other organisations.

### 26.6 **New products or services**

You authorise us to contact you by email, telephone or post to give you information about our new products or services and you consent to us using your details for this purpose for the

period that you have an account with us and after you have closed the account. However, if you do not wish to receive such information, you must advise us in writing.

#### 26.7 **Cookies and browsing**

A cookie is a small piece of data sent from a website and stored in a user's web browser while the user is browsing that website. The function of cookies we use is to collect statistical information when you visit our website. Our cookies will not access your personal information unless you provide it to us.

In addition, browsing history will be automatically recorded when you log in to BlackBull Markets' website. This is only statistical information collection. The information contains pages viewed, time online and documents downloaded, etc. The use of this information is aimed at assessing the effectiveness of the website and understanding your preference.

#### 26.8 **Pass personal data**

You authorise us to pass your personal information to our Associated Persons or third parties for the purpose of contacting you by email, telephone or post to give you information about products offered by that Associated Person or third party for the period you have an Account with us and after you have closed it. If you no longer wish to receive this information, you should advise us.

#### 26.9 **Other countries**

You acknowledge that it may be necessary for your personal information to be transferred to and held by third party service providers (including without limitation, web, email or network hosting services), some or all of whom are based in a jurisdiction other than New Zealand. You unconditionally consent to any such a transfer or storage of your personal information.

#### 26.10 **Access to information**

You may contact us at the address listed on the Website if you wish to request access to any personal information that we hold about you.

#### 26.11 **Recording**

We may record all conversations with you and monitor and maintain a record of all emails sent by or to us. The recordings or transcripts will be stored securely and prevented from unauthorised access or misuses. These recordings or transcripts may be used to resolve any dispute between you and us.

### 27. **NOTICES**

#### 27.1 **Notices must be in writing**

Subject to clause 27.2, any notice or other communication given or made under or in connection with the matters contemplated by these Terms and Conditions will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

- a. BlackBull Markets Limited

Office Address: Level 22, 120 Albert Street, Auckland, 1010, New Zealand  
Phone: +64 9 558 5142  
Email: support@blackbullmarkets.com

- b. You

The address and electronic mail address provided by you for this purpose.

#### 27.2 **Provision of notice**



A notice in writing can be provided personally or by hand, or by letter, email or through our Website or Service including the Trading Platform.

We may send notices to you at your last known home or email address, place of work, telephone, pager number or other contact details.

### 27.3 **When notices are received**

Any such notice will be deemed to have been received:

- a. if delivered personally or by hand, at the time of delivery;
- b. if posted within New Zealand, within three Business Days of posting;
- c. if posted outside of New Zealand, within ten Business Days of posting;
- d. if oral, whether by telephone or face to face, when actually given;
- e. if by leaving a message on a telephone answering machine or voice mail, when the message was left; and
- f. if posted on or provided through the Website or Service including the Trading Platform or if sent by electronic mail, on posting, providing or sending.

### 27.4 **Change of notice details**

You may alter the address (including email address) to which Confirmations, statements and other communications are issued to you, by written notice to us and we may notify you of a change to any of our details as stated above, provided in either case that such alteration will only be effective on the later of the date specified in the notice and the time of deemed service under clause 27.3.

### 27.5 **Deemed notice**

You agree and acknowledge that any Confirmations, statements, our latest PDS, and any other written notices will be deemed to have been properly given or made available if sent to the address (including electronic mail address) last notified to us by you or if posted on or provided through the Website including via the Trading Platform.

### 27.6 **Your responsibility to update contact details**

You agree and acknowledge that you are solely responsible for ensuring that we have your current address, telephone number, and electronic mail address.

## 28. **MISCELLANEOUS PROVISIONS**

### 28.1 **Consumer Guarantees Act 1993 and re-supply of our Services**

- a. You agree that where you acquire or hold yourself out as acquiring our Service, for the purpose of resupplying it in trade, the *Consumer Guarantees Act 1993* will not apply.
- b. We may request any information we may require to help us determine if any possible re-supply of our Service is not consistent or is in breach with any Applicable Laws.
- c. We may immediately close your Account and any Open Positions you may have (without your consent) and then terminate these Terms and Conditions if:
  - i. if we reasonably suspect that you are re-supplying our Service in a manner that is not consistent or is in breach with any Applicable Laws; or
  - ii. at our sole discretion, we are not satisfied with any aspect of the re-supply of our Service.

## 28.2 **Illegality etc**

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

## 28.3 **Severance**

If a provision of these Terms and Conditions, or a right or remedy of a party under these Terms and Conditions is invalid or unenforceable, it shall be read down or severed only to the extent of the invalidity or unenforceability and it shall not affect the validity or enforceability of the remaining provisions in these Terms and Conditions.

## 28.4 **Assignment and delegation**

The following provisions apply in relation to assignment and delegation:

- a. You may not assign or deal with any of your rights or delegate any of your obligations under these Terms and Conditions to any person without our prior written consent (which shall not be unreasonably withheld).
- b. You may not charge or create any security interest over any or all of their rights under these Terms and Conditions, including any rights to money or financial products held by us.
- c. Without prejudice to clause 28.4(a), we may assign or deal with our rights or delegate any of our obligations under these Terms and Conditions to any person on giving not less than seven Business Days' notice to you, subject to obtaining regulatory approval where, and to the extent that such approval is, required by law.
- d. If you are in default of any of your obligations under these Terms and Conditions, we will be entitled (without prejudice to any other rights it may have) at any time thereafter to assign to any person with immediate effect all or any of our rights in respect of moneys owing to us under these Terms and Conditions, as well as any security or other remedies available to us in respect of such moneys. If any such assignment is made, you will, if so required by us and the assignee, acknowledge in writing that assignment or dealing in relation to the relevant moneys owing by you.
- e. Despite anything to the contrary contained in these Terms and Conditions, we may disclose to any actual or potential delegate, assignee or other party as referred to in clause 28.3(c), such information relating to you and your relationship with us, as we see fit.

## 28.5 **Rights and remedies**

The rights and remedies contained in these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law.

## 28.6 **Rights of third parties**

Nothing in these Terms and Conditions is intended to confer on any person other than us or you any right to enforce any term of these Terms and Conditions pursuant to the relevant provisions in the Contract and Commercial Law Act 2017.

## 28.7 **Delay, omission and waiver**

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

- a. No delay or omission on our part in exercising any right, power or remedy provided by

law or under these Terms and Conditions, or partial or defective exercise thereof, will:

- i. impair or prevent further or other exercise of such right, power or remedy; or
  - ii. operate as a waiver of such right, power or remedy.
- b. No waiver of any breach of any term of these Terms and Conditions will (unless expressly agreed in writing and signed by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

#### **28.8 Survival**

The following clauses survive termination of these Terms and Conditions and any transaction under these Terms and Conditions: 6, 16, 17.7, 19, 20, 21, 22, 26 and 28.

#### **28.9 Governing law and jurisdiction**

- a. The Client Services Agreement, and each CFD between us and you, will be governed by and construed in accordance with the laws of New Zealand.
- b. You and we submit, for the benefit of us only, to the exclusive jurisdiction of the law of New Zealand. For the avoidance of doubt, this clause 28.9 will not prevent us from commencing proceedings in any other relevant jurisdiction.