



## Terms and Conditions

Margin FX Contracts and Contracts for Difference

**Issuer:**  
Prospero Markets Pty Ltd  
ABN 11 145 048 577  
Australian Financial Services Licence No. 423034  
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## 1. INTRODUCTION

- 1.1 This Terms and Conditions is part of the agreement between Prospero Markets Pty Ltd (ABN 11 145 048 577) (Prospero Markets, **we, us, our** or **ourselves**) and you the client (**you, your** or **yourself**). It governs our dealings with you in the Products, being margin foreign exchange contracts (**Margin FX Contracts**) and contracts for difference (**CFDs**). These dealings include our financial services and the transactions we conduct with you.
- 1.2 The Agreements between us are constituted by the following documents:
- 1.2.1 Application Form;
  - 1.2.2 this Terms and Conditions (including any Schedules);
  - 1.2.3 any additional terms and conditions issued by us and notified to you and accepted by you, in connection with our dealings with you;
  - 1.2.4 our Product Disclosure Statement (PDS);
  - 1.2.5 our Financial Services Guide (FSG); and
  - 1.2.6 our Website and our Trading Platform.
- 1.3 By electronically submitting your Application Form on our Website, you acknowledge and agree that:
- 1.3.1 you have read and understood all documentation provided to you by us including this Terms and Conditions and the PDS in relation to any of the Products. You authorise us to open an Account for you;
  - 1.3.2 you have received, read and understood our FSG. Our FSG may change from time to time. A copy of the current FSG can be obtained on our Website or on request;
  - 1.3.3 all dealings in the Products and the performance by us of our obligations under the Agreements are subject to the Applicable Laws;
  - 1.3.4 we will not provide legal, tax legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with this Terms and Conditions. We do not act in a fiduciary capacity and we do not owe any fiduciary obligations to you in respect of our services provided to you in connection with this Terms and Conditions except as expressly stated in this Terms and Conditions; and
  - 1.3.5 you accept the terms and conditions of the Agreements.
- 1.4 When we open an Account for you, you will be bound by the Agreements in all your dealings with us. Contracts that arise out of the Contracts we conduct with you under the Agreements are legally binding and enforceable. This Terms and Conditions will come into effect on the earlier of:
- 1.4.1 The date this version is issued; and

1.4.2 when we accept your application and open your Account.

- 1.5 You must read this Terms and Conditions carefully in its entirety, as well as our PDS and FSG, and any other documents that we supply to you in connection with your Account.
- 1.6 If this Terms and Conditions or the PDS is provided to you in any language other than English, then please note that it is for information only and that the governing language of this Terms and Conditions, the PDS and of any dispute arising hereunder is English. Where a foreign language version contradicts the English version of this Terms and Conditions or the PDS, the English version will prevail.

## **2. DEALINGS WITH US**

### **2.1 Principal**

- 2.1.1 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 trades.
- 2.1.2 Unless we agree otherwise in writing, you will also deal with us as principal, and not as an agent or representative of another person. This means that unless we have otherwise agreed in writing, we will treat you as our Client for all purposes and you will be directly and personally responsible for performing your obligations under each Contract entered into by you, whether you are dealing with us directly or through an agent.
- 2.1.3 If you act on behalf of a principal, whether or not you identify that principal to us, such principal will not be a client of ours. We will accept no obligations to them and will only deal with you, unless we otherwise agree (on satisfaction of our requirements).
- 2.1.4 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. But, from time to time, we may require confirmation that the agent has authority to act on your behalf.
- 2.1.5 Dealing with you will be carried out by us on an execution-only basis unless otherwise agreed by us.

### **2.2 Financial Product Advice**

- 2.2.1 Any information or financial product advice that we give you is generic in nature and does not take into account your financial situation, needs or personal objectives. In particular, you acknowledge that we do not provide personal advice or give you advice about whether you should open, hold or close out a Contract. You must consider the appropriateness of entering into a Contract having regard to your own financial situation, needs or personal objectives and obtain your own independent financial advice.

- 2.2.2 Prospero Markets does not provide any advice to you on any tax related matters. Prospero Markets encourages you to obtain independent advice from your financial advisor, accountant and/or legal counsel with respect to tax implications of any the Products.

## 2.3 All Trades at Your Risk

- 2.3.1 You agree that we are under no obligation:

- (a) to satisfy ourselves as to the suitability of any Contract for you;
- (b) to monitor or advise you on the status of any trades;
- (c) to make Margin Calls; or
- (d) to close any open Positions unless the Aggregate Margin Close-Out Protection is triggered,

despite the fact that previously we may have taken action in relation to that trade or any other trades.

- 2.3.2 All trades will therefore be made at your own risk and to the maximum extent permitted by law, we will not in any way be liable for any claims, damages, Loss (including consequential losses) or injury suffered or incurred by you as a result of or arising out of:

- (a) any statement, information or communication provided by, or on behalf of, us relating to a trade entered into or proposed to be entered into by you under the Agreements; or
- (b) any statement, information or communication provided by, or on behalf of, us in relation to any financial product that you may deal in under the Agreements.

- 2.3.3 You will not be entitled to ask us to provide you with investment advice relating to a Contract or ask us to make any statement of opinion to encourage you to open a particular Contract. We may, in our absolute discretion, provide information:

- (a) in relation to any Contract about which you have enquired, particularly regarding procedures and risks attaching to that Contract; and
- (b) by way of factual market information, however, we will be under no obligation to disclose such information to you and in the event of us supplying such information it will not constitute personal advice. If, notwithstanding the fact that dealings between you and us are on an execution-only basis, a representative of ours makes a statement of opinion (whether in response to your request or otherwise) regarding any Product or Contract, you agree that it is not reasonable for you to, nor will you be entitled to, rely on such statement and that it will not constitute personal advice.

- 2.3.4 You must understand the risks of dealing in our Products and agree to rely solely upon your own judgement in dealing with us. We are not under any responsibility and have no duty of care to monitor your trades or to prevent you from trading beyond your means or ability or otherwise to protect you.
- 2.3.5 We will not, in the absence of fraud, wilful default or negligence be liable for any Loss (including, without limitation, indirect or consequential losses or loss of opportunity or profits arising from any failure by you to make any anticipated profits), costs, expenses or damages suffered by you arising from any inaccuracy or mistake in any information or advice, or unsuitability of any advice, given to you, including without limitation, information or advice relating to any of your Contracts with us.
- 2.3.6 Subject to our right to void or close out any Contract as set out in this Terms and Conditions, any Contract opened by you following such inaccuracy or mistake will nonetheless remain valid and binding in all respects on both you and us.
- 2.3.7 You acknowledge that information contained in the Product Schedule is indicative only and may, at the time when you open or close out a Contract, have become inaccurate. The more accurate details will be those displayed in your Account through the Trading Platform.

## 2.4 Product Disclosure Statement

- 2.4.1 If information contained in a PDS becomes inaccurate or out of date or if there occurs a material change in any of the matters specified in a PDS or if there occurs any significant event that affects the matters specified we will issue a supplementary PDS or a new PDS in accordance with the Applicable Laws.
- 2.4.2 You agree that, subject to the Applicable Laws, we may provide you with any such supplementary PDS or new PDS by publishing it on our Website(s). In addition, we may in our discretion, send any supplementary PDS or new PDS to you by email or by post at the relevant email address or postal address last notified by you to us.

## 2.5 Types of Account, Services and Products

- 2.5.1 We offer different types of Accounts with different characteristics and features. Depending on your knowledge and experience and the type of Contracts you generally enter into with us, some of these Account types may not be available to you. We reserve the right to convert your Account into a different Account type if, acting reasonably, we determine that a different type of Account is more appropriate for you. We also reserve the right to change the features and eligibility criteria of our Accounts at any time and we will provide prior notification of such changes on our Website, by email or on our Trading Platform.
- 2.5.2 From time to time, we may make additional services or specific types of Products available to you. Such additional services or Products may be subject to special conditions.

- 2.5.3 Our trading service is an on-line service and you specifically consent to the receipt of information about us, our services (including market information), our costs and charges, our notices, Confirmations and other documents in electronic form via email, the Website, the Trading Platform or other electronic means.

## 2.6 Margin Requirements

- 2.6.1 It is your responsibility and obligation to monitor and pay Margins strictly in accordance with clause 13. You should appreciate that Spreads, fees, funding and other charges will affect your trading net profits (if any) or increase your loss.

## 2.7 Underlying Instruments

- 2.7.1 You will not have any rights of ownership or otherwise in any Underlying Instrument as a result of a trade with us. This means you will not own or have any interest in the physical currency, Index, Commodity, or stock which is the subject of the Margin FX Contract or CFD.

## 2.8 Our Discretions

- 2.8.1 Various clauses of this Terms and Conditions confer discretions on us to act in circumstances that are set out in the relevant provision. We have discretions under this Terms and Conditions which can affect your Contracts. You do not have any power or right to direct how we exercise those discretions.
- 2.8.2 In exercising such discretions, we will act in accordance with the following:
- (a) We will have due regard to our commercial objectives, which include:
    - maintaining our reputation as a product issuer;
    - responding to market forces;
    - managing all forms of risks, including, but not limited to operational risk and market risk; and
    - complying with our legal obligations as a holder of an AFSL;
  - (b) we will act when necessary to protect our Position in relation to the trade or event; and
  - (c) we will take into account the circumstances existing at the time and required by the relevant provision.
- 2.8.3 We will try to act reasonably in exercising our discretion, but we are not obliged to act in your best interests or to avoid or minimise a Loss in your Account.

## 2.9 Application Form



By submitting the completed Application Form to us, you:

- 2.9.1 acknowledge to us that you have received or downloaded, and read and understood this Terms and Conditions, our current PDS and FSG; and
- 2.9.2 agree that we will provide our products and services to you on the terms and conditions of the Agreements.

## **2.10 Anti-Money Laundering Legislation and Know Your Client**

- 2.10.1 You acknowledge and agree that we may require information from you from time to time to comply with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and the Anti-Money Laundering and Counter-Terrorism Financing Rules 2007. By signing or submitting an Application Form, opening an Account or transacting with us, you undertake to provide us with all information and assistance that we may require to comply with the AML/CTF Laws.
- 2.10.2 We may pass on information collected from you and relating to transactions as required by the AML/ CTF Laws or other Applicable Laws and regulations and 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.
- 2.10.3 You also warrant that:
  - (a) you are not aware and have no reason to suspect that:
    - 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 Applicable Laws, international law or convention or by agreement; or
    - the proceeds of your investment will be used to finance any illegal activities; and
  - (b) neither you nor your directors, in the case of a company, are a politically exposed person as the term is used in the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1).
- 2.10.4 You further agree to provide all information (and complete any documents) that we are required to obtain in accordance with the Foreign Account Tax Compliance Act.

## **3. YOUR ACCOUNT**

### **3.1 Account Opening and Information**



- 3.1.1 After we accept your Application Form, we will open an Account in your name. We may split your Account into different sub-accounts denominated into different currencies. References in this Terms and Conditions to your Account are to be taken to include reference to any sub-account or sub-accounts, as the case requires. We reserve the right to refuse to open an Account for any reason whatsoever.
- 3.1.2 Unless you have specifically requested us to open separate Accounts, you will be taken to have only one Account, with Contracts in respect of each Product or financial service provided to you being recorded in that Account.
- 3.1.3 All your dealings (including Contracts) will be within your Account held with us, which may include several trading accounts within that Account.
- 3.1.4 You undertake and warrant to us that any information provided to us is correct and that you will immediately inform us of any material change to that information, including any changes to your contact details or financial status.
- 3.1.5 If there is a minimum balance to open an Account requirement applicable to your application, you must meet this requirement before we activate your Account. The applicable minimum balance to open an Account is set out on our Website and in our PDS.

### 3.2 Multiple Accounts

- 3.2.1 For the purpose of this Terms and Conditions, multiple Accounts means all Accounts or sub-Accounts held in your name(s).
- 3.2.2 Calculations, reporting and administration may be performed by us separately for each of your Accounts, so that (without limitation):
  - (a) Margin calculations may be managed and enforcement action may be taken for each Account separately; and
  - (b) Prospero Markets may at any time aggregate one or more Accounts (for reporting or managing Margins or otherwise for the purposes of this Terms and Conditions), even if you cannot immediately access reports for aggregated Accounts.
- 3.2.3 Prospero Markets may set off any amount owing by you (including any negative balance in one or more Accounts) against any amount Prospero Markets owes you in any other Account, without notice. Prospero Markets may choose, in its absolute discretion, which Contracts to apply to offset the debt. For the avoidance of doubt, this right of set off (and other rights of set off under this Terms and Conditions) apply in respect of rights and obligations across more than one Account. You agree that Prospero Markets may apply the set off as among one or more Accounts, before an Event of Default, on and following an Event of Default.

### 3.3 Client Money Trust Account

- 3.3.1 All moneys deposited by you to credit your Account is Client Money within the meaning of the Australian Client Money Rules, which are provisions of the Corporations Act, and will be held in a Client Money Trust Account in accordance with the Australian Client Money Rules.
- 3.3.2 Client Money is held on trust for the client entitled to it, or if the money is invested in accordance with the Australian Client Money Rules, the investment is held on trust, in accordance with the Agreements, for the party entitled to it. You are referred to clause 17 of this Terms and Conditions and our PDS for a description of the operation of the Australian Client Money Rules and how you are affected by them.

### 3.4 Two or More Persons

- 3.4.1 Where two or more natural persons and no others are named as the client, the Account will be established in their names as joint tenants unless they specifically request otherwise. The joint holding will only be deemed not to be held as joint tenants if there is a court determination that it is not held as joint tenants.
- 3.4.2 Where you are two or more persons in relation to one 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.

### 3.5 Account Details

- 3.5.1 Upon opening an Account with us, you will be given an Internet specific password, which must be entered, together with your Account number, when you wish to access your Account. You will also be given an Account name, which must also be entered to access your Account in certain circumstances.
- 3.5.2 You will be deemed to have authorised all trading under your Account number irrespective of whether the person using it for the purpose of trading is using it with your authority.
- 3.5.3 You are required to keep all security information relating to the Account confidential, including any username, Account number, user ID and password. We do not have to establish the authority of anyone using these details. You are responsible for all Orders or instructions and for the accuracy of all information sent electronically using any such details. If you are aware or suspect that these details are no longer confidential, you should contact us

as soon as possible so that they may be changed.

### 3.6 Base Currency

- 3.6.1 When you open an Account with us, you will nominate the currency for your Account and this currency will be the Base Currency of your Account.
- 3.6.2 All Contracts will be conducted in the currency appropriate to the Contracts and will be converted into Base Currency at the prevailing spot rate for the purposes of calculating the components of your Account summary.

### 3.7 Australian Dollars

- 3.7.1 All payments made by you to us and by us to you will be in Australian dollars unless otherwise agreed.

### 3.8 Legal Entity Identifier

- 3.8.1 If you are a non-individual, such as a corporation or a trust, you are required to have a legal entity identifier (**LEI**) to engage in OTC derivative trading (which includes Products).
- 3.8.2 You must provide Prospero Markets with your LEI in your Application Form. If you do not have a LEI, Prospero Markets may be able to assist you obtain one. Please follow the instructions on the Application Form to request our assistance. You agree that if you request Prospero Markets' assistance in obtaining a LEI, you authorise Prospero Markets to collect and use any information it requires from you to assist you apply for a LEI, and you also agree and authorise Prospero Markets to pass your information to a third party at Prospero Markets' discretion to assist with such application.

## 4. INSTRUCTIONS AND DEALING

### 4.1 Placing an Order

- 4.1.1 Your Account gives you access to the Trading Platform. All instructions to place an Order must be placed via the Trading Platform and phone. We do not accept any Orders and/or instructions via any other means unless we agree with you to do so in advance. We have no liability to you if any communication is interrupted before we receive an instruction from you to trade via the Trading Platform or phone.
- 4.1.2 We are entitled to act on any Orders or instructions transmitted using your username, Account number, user ID or password.
- 4.1.3 We are also entitled to act on any Orders or instructions given to us by phone by you or any Authorised Person(s).
- 4.1.4 Any Order or instruction sent by you via the Trading Platform or via phone will be deemed to have been received, and will only constitute a valid instruction and binding Contract between you and

us, when such Order or instruction has been recorded as accepted by us and a Confirmation is provided to you via the Trading Platform.

- 4.1.5 The transmission of an Order or instruction to us does not automatically give rise to a binding Contract between you and us. 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 contacting us if a Confirmation is expected in relation to a transaction but is not received by you.

## 4.2 Appointment of and Changing Authorised Persons

### Authorised Persons

- 4.2.1 Prospero Markets may accept your authorisation of another person (Authorised Person) to give instructions (including dealing instructions) on your behalf. You must notify Prospero Markets in your Application Form or otherwise in writing in a way permitted by Prospero Markets of any such authorisation, setting out the full name, telephone number, email address and signature of that person and any other information required by Prospero Markets to identify the Authorised Person.
- 4.2.2 Any change or revocation of such authority is only effective upon receipt by Prospero Markets of a signed written notice of change or revocation from you. We are only bound by any such variation upon written notice being received by us.
- 4.2.3 If another person is later appointed an Authorised Person, the notice must include the full name, telephone number, email address and specimen signature of that person and be verified by an Authorised Person and any other information required by Prospero Markets to identify the Authorised Person and, if you are a body corporate, by a director.

### Attorney (as a type of Authorised Persons)

- 4.2.4 You may appoint an attorney (under a power of attorney in the relevant jurisdiction) to give instructions and place orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under this Terms and Conditions. You must notify Prospero Markets in writing of any such appointment setting out the attorney's details. You must provide Prospero Markets with a written power of attorney. Prospero Markets may accept or reject this power of attorney.
- 4.2.5 Prospero Markets may allow you to authorise your Authorised Person or attorney to do anything which you are entitled to do under this Terms and Conditions, including on conditions determined by Prospero Markets.

### Instructions by an Authorised Person

- 4.2.6 For the purposes of this Terms and Conditions, any dealing

instructions placed by, and other instructions or directions given by, an Authorised Person (or which appear to us on the face of the dealing instructions or other instructions or directions to be placed or given by an Authorised Person) are taken to be your dealing instructions or directions.

4.2.7 You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person was:

- (a) outside their actual or ostensible authority; or
- (b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.

4.2.8 You agree not to make, and you release us from any liability to you under your right to make, any Claim against us for any Loss incurred or suffered by you which arise directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your Authorised Person (including your attorney).

### 4.3 Further Instructions and Communications

4.3.1 We may require further instructions from you in respect of any Contracts or proposed Contracts, 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. This does not detract from your responsibility to keep yourself informed at all times as to the key dates and events affecting your Contracts.

4.3.2 Any notice or any other communication to be provided by Prospero Markets to you, including Account statements and Confirmations, may at Prospero Markets' discretion be sent to you in electronic form via e-mail or by display on the Trading Platform. You are obliged to provide Prospero Markets with an e-mail address for this purpose. An email is considered received by you when sent from Prospero Markets. Prospero Markets is not responsible for any delay, alteration, redirection or any other modification an email or other message may undergo after transmission from Prospero Markets. A message on your Account on the Trading Platform is considered received by you when Prospero Markets has placed the message on the Trading Platform. It is your responsibility to ensure that your software and hardware setup does not prevent you from receiving emails or accessing the Trading Platform.

4.3.3 You are obliged to verify the contents of any communication, notice, statement or document, from Prospero Markets whether sent electronically or in print. Such content shall in the absence of manifest error be deemed conclusive evidence, unless you notify Prospero Markets in writing to the contrary immediately after having received such communication, notice, statement or document.

4.3.4 In order to protect your and/or Prospero Markets' interests, you

shall promptly carry out any action, which Prospero Markets may reasonably request. If you do not carry out such an action promptly, Prospero Markets may at its sole discretion take such steps if allowed under this Terms and Conditions, at your cost, as Prospero Markets considers necessary or desirable for its own protection or the protection of you. This provision is similarly applicable in situations where Prospero Markets is unable to obtain contact with you.

- 4.3.5 Prospero Markets may (but is not obliged to) require confirmation in such form as Prospero Markets may reasonably request if an instruction is to close an Account or remit money due to you or if it appears to Prospero Markets that such confirmation is necessary or desirable.
- 4.3.6 You shall be able to communicate with Prospero Markets in English or any other language as Prospero Markets may permit from time to time.
- 4.3.7 We may also, although we are not obliged to, require 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.

#### 4.4 Use of the Trading Platform

- 4.4.1 The technical requirements, which your IT equipment, operating system, Internet connection etc., shall comply with, are described on the Trading Platform.
- 4.4.2 The right to use the Trading Platform is strictly personal, and you shall not allow any other parties to use your user ID and/or password.

#### 4.5 Reporting to You

- 4.5.1 **Confirmations:** A Confirmation will appear in the Trading Platform each time a Contract is entered into by us with you. You agree to receive Confirmations in this form. If the Confirmation does not appear on the Trading Platform within two (2) minutes you must contact us immediately. If you do not do so within twenty-four (24) hours, what we have recorded in relation to the Contract will be deemed to have been accepted by you. The prices quoted in the Confirmation will be net of any charges (excluding Commissions), which may not be separately identified.
- 4.5.2 **Daily statement:** We will not provide daily statements in respect of an Account.
- 4.5.3 **Trading Platform:** You agree and acknowledge that:
  - (a) Confirmations, monthly statements and other reports are



available to you via our Trading Platform;

- (b) you authorise us to use the Website, Trading Platform or email as the means of providing the Confirmations, Account statements and other reports we make;
- (c) you will access and use such Trading Platform, Website, and emails to:
  - receive the Confirmations, Account statements and other reports we provide;
  - verify all Contracts and Confirmations; and
  - monitor your obligations under the Agreement.
- (d) It is your responsibility to check the Trading Platform regularly for communication from us; we will not be responsible for communication that you do not receive if you fail to do so.

4.5.4 We may send Confirmations, Account statements and other reports that we provide, by post or by any other means.

4.5.5 You must verify the contents of each document you obtain from the Trading Platform. Such documents will, in the absence of Material Error, be conclusive unless you notify us in writing to the contrary immediately within twenty-four (24) hours of receipt in the case of a Confirmation or within three (3) Business Days of extracting an Account statement or any other reports.

4.5.6 You agree that in the event that a Confirmation, Account statement or other report is provided to you in accordance with this clause, the time for objecting to the contents of a document under this clause 4.5 is the earlier of either the date you receive the report and when the report is posted on the Trading Platform by us, subject to the timeframe in clause 4.5.5.

## 5. CONSENT TO RECORDING OF TELEPHONE CONVERSATIONS

5.1 You consent to:

- 5.1.1 the electronic recording of your telephone discussions with us, with or without making a disclosure to you each and every time you speak with a representative of Prospero Markets. These calls may be recorded with or without an audible tone; and
- 5.1.2 the recording and retention of all electronic communications with us, including but not limited to communications by email or through the Trading Platform, with or without any further warning to this effect during the communication; and
- 5.1.3 the use of recordings, transcripts or electronic communications from such recordings for any purpose, including, but not limited to, their



use as evidence by either party in any dispute between you and us, monitoring and training our staff, and monitoring compliance with regulatory and contractual obligations.

- 5.2 If there is a dispute between us and you, you have the right to listen to any recording of those conversations (if still available). Nothing in this Agreement obliges us to keep a recording or to notify you that we have eliminated a recording.

## **6. MARKET DISRUPTION**

- 6.1 Where there is a suspension or halt in the Underlying Market for an Underlying Instrument and we believe that we can no longer perform our obligations under the Contract on the same economic basis as that Underlying Instrument on the terms of the Contract when the Contract was originally entered into, then we will give notice to you of that fact and will, at your request, provide you with reasonable evidence of such circumstances, although our determination will be conclusive.
- 6.2 At any time following our giving of notice to you under this clause, we may halt trading and the use of Client Money in the Contract.

## **7. OPENING A TRADE**

### **7.1 Opening a Trade**

- 7.1.1 You will be able to open or close a Contract and execute Orders on a trade opened with us via our Trading Platform or via phone.
- 7.1.2 We will have no liability to you for any technical problems, including a loss of Internet connection, resulting in you being unable to trade at any given price.
- 7.1.3 We do not warrant that the Trading Platform will always be available or accessible when the exchanges on which the Underlying Instruments 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.
- 7.1.4 If our computer records are different to 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.

### **7.2 Minimum Trading Size and Maximum Trading Size**

- 7.2.1 The size of your Position must exceed or be equal to Minimum Trading Size and must not exceed the Maximum Trading Size. These are available on the Trading Platform and the Product Schedule on our Website, and you agree that the version on the Trading Platform is the most up to date version. We may change it

at any time.

### **7.3 Formation of Contract**

- 7.3.1 Your clicking 'buy' or 'sell' on the Trading Platform will send a message to us indicating that you wish to trade on the Product indicated. This message will constitute an offer by you to buy or sell at the price and trade size chosen. If we accept the trade, we will send you a Confirmation on the Trading Platform to this effect. Your trade will not have been placed and no Contract will come into existence until a Confirmation is generated on the Trading Platform. You must wait for the Confirmation to appear after clicking 'buy' or 'sell' and should you not receive the Confirmation within two (2) minutes you must notify us immediately.
- 7.3.2 If you do not receive a Confirmation and you do not notify us as required, you will be deemed to have agreed only to the transactions recorded by us. Similarly, if you dispute the contents of any Confirmation sent by us to you, you must notify us immediately upon receipt by email or telephone; if you do not, the transactions recorded by us will be deemed to have been agreed by you.
- 7.3.3 Subject to any other provision in this Terms and Conditions, each Contract opened by you will be binding on you notwithstanding that by opening the Contract you may have exceeded any credit or other limit applicable to you or in respect of your dealings with us.

### **7.4 Position Duration**

- 7.4.1 Other than for Excepted Contracts and subject to clause 8.2, a Position has no inherent limit to its duration and, subject to the payment of Margin and other relevant sums, can continue indefinitely. We may close any Position opened by you at the prevailing rate if there is an Event of Default or in accordance with clause 8.2.

### **7.5 Opposing Positions**

- 7.5.1 You may run opposing Positions in a Product. Both long and short Positions will appear in your Account and they will be treated as two open Contracts. However, we reserve the right to net the value of the opposing Positions.

### **7.6 Profit and Loss**

- 7.6.1 You further understand that a payment will pass between us equal to the difference in value expressed in the Base Currency between the opening price of all Positions and their Closing Prices. 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. CLOSING A CONTRACT**

### **8.1 When can a Contract be Closed**

- 8.1.1 A Contract may be closed out by selecting a Position in the Trading Platform and then closing it (on the Trading Platform by clicking the "Close" button for that Position).
- 8.1.2 We may exercise any of our rights under this Terms and Conditions to close a Position at any time.

## 8.2 Automatic Closure After Three Years

- 8.2.1 We reserve the right to close a Contract after three (3) years from the date the Contract was first entered into if it has not been rolled over according to the PDS.
- 8.2.2 It is your responsibility to be aware of the date and time a particular Contract will be closed.
- 8.2.3 This Terms and Conditions allow us a range of rights, in addition to clause 8.2.1, to close your open Positions. Where we exercise any of such rights, we will do so irrespective of the date on which the Position closes automatically under clause 8.2.1 of this Terms and Conditions.

## 8.3 Contract Price at Closing

- 8.3.1 Where:
  - (a) we exercise any of our rights under this Terms and Conditions to close a Contract; or
  - (b) a Contract closes automatically under clause 8.2.1 of this Terms and Conditions,we will determine the Contract Price at the time of closing in accordance with the current prices then being quoted by us.
- 8.3.2 A Contract will close at the Contract Value at the time of closing as calculated by us, which will equal:

### Contract Price x Contract Quantity

and as notified to you.

## 8.4 Closure During Trading Day

- 8.4.1 Where a Contract has been closed out during a Trading Day, clause 8.3 of this Terms and Conditions will continue to apply to your long and short Positions in the particular Underlying Instrument until 24:00 on such Trading Day and will apply to the balance of your outstanding long or short Position (if any) in the relevant Underlying Instrument with effect immediately after 24:00 on such Trading Day.

## 8.5 Timing of Payments

- 8.5.1 Any payment due by either us or you under this clause 8 will be made by us adjusting the Account immediately.

## 9. PRICING AND QUOTES

### 9.1 Quotes

- 9.1.1 Upon your request and in accordance with this clause 9.1 we will quote a higher and lower figure for each Contract (i.e., the Bid Price and Ask Price). These figures will be either effectively based on comparable Bid and Ask prices in the Underlying Market, aggregate prices in the Underlying Markets if the Underlying Instrument trades on multiple Underlying Markets, or they will be our own Bid and Ask prices.
- 9.1.2 You acknowledge that our Spreads can widen significantly in certain circumstances and that they may not necessarily be the same size as any examples given on the Website or PDS and that there is no limit on how large they may be.
- 9.1.3 You acknowledge that when a Contract is closed out, the Spread may be wider or smaller than the Spread when the Contract was opened. You acknowledge that such figures will be set by us in our reasonable discretion. The Spread quoted by us will reflect our view of prevailing market conditions.
- 9.1.4 You acknowledge that our quotes for dealing in the Products are indicative only and so, are subject to the actual quote at the time of execution of your Contract. There is no assurance that the Contracts will actually be dealt with at the indicative quote, especially if you delay placing the Order.
- 9.1.5 We may at any time in our discretion without prior notice impose limits on our Products in respect of particular Underlying Instruments. Ordinarily, we would only do this if the market for the particular Underlying Instrument has become illiquid or its trading status has been suspended or there is some significant disruption to the markets, including the Trading Platform.
- 9.1.6 You should be aware that the market prices and other market data which you view through the Trading Platform or other facilities which you arrange yourself may not be current or may not exactly correspond with the prices for the Products offered or dealt by us.
- 9.1.7 If you access your Accounts and the Trading Platform outside of the hours when Orders may be accepted, you should be aware that the Orders may be processed at a later time when the relevant exchange or market is open to trading, by which time the market prices (and currency exchange values) might have changed significantly.
- 9.1.8 We may notify you of certain Products in respect of which we will not provide a quote, restrictions on the amount for which we will price, or other conditions that may apply to our quote, but any such notification (or failure to notify) will not be binding on us.
- 9.1.9 If we choose to provide a quote, we may provide it either verbally, by telephone or electronically via our Trading Platform or by such

other means as we may from time to time notify to you.

- 9.1.10 Our provision of a quote (whether by telephone, Trading Platform or otherwise) does not constitute an offer for you to open or close out a Transaction at those levels.
- 9.1.11 You can only enter into a Contract at the quote provided by us (including through the Trading Platform). We may, acting reasonably, accept or reject your Order at any time until the Contract has been executed or we have acknowledged that your Order has been withdrawn.
- 9.1.12 You should note that:
  - (a) 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;
  - (b) we, in our absolute discretion, may quote different prices to different Clients and trade at different prices with different Clients;
  - (c) the rights and obligations of you and us under Contracts are principally to make and receive such payments as are provided in this Terms and Conditions.

## 9.2 Choice to Deal

- 9.2.1 Except where:
  - (a) we exercise any of our rights to close out a Contract; or
  - (b) a Contract closes automatically;it is your responsibility to decide whether or not you wish to deal at those prices.
- 9.2.2 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.

## 10. ORDERS

### 10.1 Orders

- 10.1.1 You enter into a Contract with us by placing an Order and when that Order has been received and accepted by us. Our acceptance of an Order to open or close out a Contract, and thus the execution of the Contract, will be evidenced by a Confirmation.
- 10.1.2 Any delay or errors in the transmission of an Order or the execution of your instructions will not be our responsibility nor are we liable for them (except to the extent that responsibility cannot be excluded by law).

- 10.1.3 If we become aware that any of the factors set out in clause 10.1.4 (but we are not limited to only these factors) are not satisfied at the time you place an Order (in our reasonable opinion), we reserve the right to reject your Order. If we have already opened or closed out a Contract prior to becoming aware that a factor set out in clause 10.1.4 has not been satisfied (in our reasonable opinion) we may, in our absolute discretion, either treat such a Contract as void from the outset or close out the Contract at the prevailing price or take any other steps that we consider necessary (as determined by us).
- 10.1.4 The factors referred to in clause 10.1.3 include, but are not limited to, the following:
- (a) the relevant quote must be obtained from us;
  - (b) the relevant quote must not be expressed as being given on an “indicative only” or similar basis;
  - (c) if you obtain the Quote by telephone:
    - it must be given by a representative of Prospero Markets;
    - your Order must be given during the same telephone conversation in which you obtained the quote; and
    - our representative must have confirmed that the Order has been accepted by us;
  - (d) if you obtain the quote electronically via the Trading Platform, your Order and our acceptance of it, must be given while the quote is still valid;
  - (e) the quote must not be a Material Error;
  - (f) when you place an Order, the number of shares, contracts or other units in respect of which the Contract is to be opened must be neither smaller than the Minimum Trading Size nor larger than the Maximum Trading Size;
  - (g) when you offer to close out part but not all of a Contract, both the part of the Contract that you offer to close out and the part that would remain open (subject to our acceptance of the Order) must not be smaller than the Minimum Trading Size;
  - (h) a Force Majeure Event must not have occurred;
  - (i) when you offer to open a Contract an Event of Default must not have occurred, nor must you have acted in such a way as to trigger an Event of Default;
  - (j) when you offer to open or close out any Contract, the opening of the Contract must not result in you exceeding any credit or other limit placed on your dealings with us.

- 10.1.5 We may refuse to accept an Order (including but not limited to any Order that relates to black-box trading, scalping or any similar trading practices) and we may place a limit on any Order or place other conditions on the receipt of instructions or Orders, in our absolute discretion and for any reason.
- 10.1.6 We may at any time use, add and change filters within the Trading Platform which prevent delivery of Orders or execution of Orders. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented by law or a direction from a regulatory authority from notifying you.
- 10.1.7 We may cancel or amend an Order:
- (a) if required by the Applicable Laws to do so;
  - (b) in the event of an error (including a Material Error);
  - (c) if we consider the cancellation or amendment appropriate, having regard to the desirability to maintain a fair and orderly market, our obligations as the holder of an AFSL or as a participant or user of the relevant exchange and our other legal and regulatory obligations; or
  - (d) if the Underlying Instrument, the subject of the Contract has been subject to a trading halt on an exchange and you have not reconfirmed instructions.
- 10.1.8 We reserve the right to refuse an Order which is larger than the Maximum Trading Size. Our quote for a Contract equal to or greater than Maximum Trading Size is not guaranteed to be within any specific percentage of any Underlying Market or related market quotation and our acceptance of your Order may be subject to special conditions and requirements that we will notify you at the time we accept your Order.
- 10.1.9 We will make reasonable efforts to effect any instructions to cancel or amend Orders as quickly as possible. If, however, an Order is filled prior to a cancellation or amendment instruction being effected, you are obliged to accept the Contract on the original terms prior to your amendment or cancellation instruction, unless the Contract is itself cancelled or amended.
- 10.1.10 You acknowledge that we do not operate any discretionary accounts and we will, unless otherwise expressly provided by this Agreement, only act on your instructions.
- 10.1.11 Unless otherwise specified in this Terms and Conditions, all Orders will remain open until either cancelled by you or purged by the Trading Platform. We do not accept responsibility for reinstating lapsed Orders or for contacting you to seek new instructions.
- 10.1.12 You must not instruct us to submit an Order to enter into a Contract which would breach or cause us or any other person to breach any Applicable Laws including, without limitation, any law or the Rules



in relation to:

- (a) market manipulation, false trading, market rigging, fictitious transactions, black box trading, high frequency trading, scalping, wash trading or matching of Orders;
- (b) insider trading;
- (c) short selling;
- (d) creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
- (e) misleading or deceptive conduct.

10.1.13 Stop Loss Orders and Limit Orders are available on all instruments. We may refuse to accept any Stop Loss Orders or Limit Orders on any trade.

## 10.2 Margin Requirements to Fill Orders

10.2.1 An Order which involves an instruction to us to open a Contract above a certain price will not ordinarily be filled unless at the time when the price reaches the relevant limit and your Account contains sufficient trading resources to cover the Initial Margin for the trade which is to be opened.

10.2.2 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.

## 10.3 Our Right to Impose a Stop Loss Order

We may impose a Stop Loss Order on any of your open Positions where we believe such action is necessary or desirable to limit the losses on any of your Positions including, but without limitation where:

- 10.3.1 we have any reason whatsoever to think that you will not pay us money that is or may become due to us; or
- 10.3.2 you make any statement to us which we have reason to believe may not be true; or
- 10.3.3 you fail to do anything that you have undertaken to us that you will do; or
- 10.3.4 we are having difficulty in communicating with you and there are grounds for believing that this is because you have failed to take reasonable care to ensure that you are contactable by us at all times. Such grounds will arise if (whether or not in order to make a Margin Call) we dial all the phone numbers given by you to us but are unable to speak to you personally and:
  - (a) we leave a message on any message-taking facilities offered but we do not hear from you within thirty (30)

minutes of leaving the message (or, if we leave more than one, the first message we leave, although if we leave or attempt to leave a message, either with a person who offers to take a message or on an automated message-taking service but for any reason it does not reach you we will nonetheless be deemed to have left a message for you); or

- (b) no message-taking services are offered and we dial all the numbers given by you again after a period of not less than thirty (30) minutes and are still unable to speak with you at once.

#### 10.4 Informing you of Orders we Impose

- 10.4.1 As soon as reasonably practicable after imposing a Stop Loss Order we will attempt to inform you that this has occurred via the Trading Platform. We are under no obligation to take any other steps to inform you of the Stop Loss Order and a failure for any reason to inform you of the imposition of a Stop Loss order will not affect the validity or enforceability of that Stop Loss Order.

#### 10.5 Allocation Policy

- 10.5.1 Prospero Markets will deal fairly and in due sequence with all Orders having regard to Australian legislative and regulatory requirements, market practices and Prospero Markets' compliance policies and procedures.
- 10.5.2 To the extent that it is reasonably practicable to do so, Prospero Markets will allocate all Contracts (including Contracts effected pursuant to Orders placed on Prospero Markets' own account) in the sequence in which Prospero Markets receives those Orders, subject to filters and compliance review and to any delay or technical faults connected with or arising through the use of the Trading Platform or any other delay that is outside the control of Prospero Markets.

### 11. PRICE MANIPULATION, GAMING AND MARKET ABUSE

- 11.1 If we believe that you (including any Authorised Persons and Attorneys) have (or attempted to) manipulated our prices, our execution processes or our Trading Platform, or "gamed" or "attempted to "game" our Trading Platform or attempted some form of market abuse or market misconduct, we may in our sole and absolute discretion, without notice to you to do any one or more of the following (to the extent permitted by law):

- 11.1.1 enforce the trade(s) against you;
- 11.1.2 treat some of or all your trades as void from the inception;
- 11.1.3 withhold any funds suspected to have been derived from any such activities;
- 11.1.4 make any resultant corrections or adjustments to your Account;

- 11.1.5 suspend and/or close your Account;
- 11.1.6 terminate this Terms and Conditions; and/or
- 11.1.7 take such other action as we consider appropriate.

## 12. MATERIAL ERROR

- 12.1 It is possible that errors, omissions or misquotes (**Material Error**) may occur in relation to our Products, which by fault of either of us or any third party, is materially incorrect when taking into account market conditions and quotes in Underlying Instruments which prevailed at the time. A Material Error may include an incorrect price, date, time or other characteristic of a Product or any error or lack of clarity of any information.
- 12.2 In deciding whether an error is a Material Error we will act reasonably, and we may (but not obliged to) take into account any relevant factors including, without limitation, the state of the Underlying Market at the time of the Material Error or any error in, or lack of clarity of, any information source or pronouncement upon which we base our quoted prices. Any financial commitment that you have entered into or refrained from entering into in reliance on a Contract with us will not be taken into account in deciding whether or not there has been a Material Error.
- 12.3 If a trade is based on a Material Error, we reserve the right to do any of the following without your consent:
- 12.3.1 amend the terms and conditions of the Contract to reflect what we consider to have been the fair price at the time the Contract was entered into and there had been no Material Error;
  - 12.3.2 close the trade and any open Contracts resulting from it;
  - 12.3.3 void the Contract from the outset; or
  - 12.3.4 refrain from taking action to amend or void the Contract.
- 12.4 We will exercise the right in clause 12.3 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.
- 12.5 In the absence of fraud on our part, we are not liable to you for any Loss, cost, claim, demand or expense that you incur or suffer (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 or action (or omission) taken (or omitted) by as a result.
- 12.6 In the event that a Material Error has occurred and we exercise our rights under clause 12, we may, without notice, adjust your Account or require that any moneys paid to you in relation to the Contract the subject of the Material Error be repaid to us as a debt due payable to us on demand.

## 13. MARGIN

### 13.1 Margin Requirements

- 13.1.1 Before you acquire a Product from us, you will be required to provide us the Initial Margin for that Contract. The full value of the Initial Margin must be placed on your Account before a Contract is opened.
- 13.1.2 Owing to the volatility of the market, the amount of required Margin may change after a Contract has been opened, requiring a further payment for Margin known as the Variation Margin.
- 13.1.3 Prospero Markets' general Margin Requirement for different types of Products appear in the Product Schedule available on the Website, as amended from time to time, and may be supplied to you upon request. However, Prospero Markets reserves the right to determine specific Margin Requirement for individual Contracts and Clients.

### 13.2 Exceptions

Subject to the Applicable Laws, the requirements imposed under clause 13.1 will vary in the following circumstances:

- 13.2.1 we have expressly advised you in writing that you have an Account type that allows for longer payment periods in respect of Margin, in which case you must pay Margin in accordance with the payment periods advised to you;
- 13.2.2 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; and
- 13.2.3 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.

### 13.3 Changing Margin Percentage, Margin Call Level and Stop Out Level

- 13.3.1 We may vary the Margin Percentage, Margin Call Level and Stop Out Level at any time at our discretion, subject to the Aggregate Margin Close-Out Protection.
- 13.3.2 We will notify you of a change in the Margin Percentage, Margin Call Level and Stop Out Level on your Account on the Trading Platform, or by any other means including telephone, email, or by posting notice of increase on our Website. Any changes will take immediate effect, unless otherwise specified by us, on notice to you, including any deemed notice in accordance with clause 28 of this Terms and Conditions, and may apply to both existing and new Contracts.

### 13.4 Our Rights Where Your Net Equity is at or Below Stop Out Level

- 13.4.1 In addition to the requirements set out in clauses 13.1 to 13.3 and subject to the Aggregate Margin Close-Out Protection, if at any time a Stop Out Level is reached, whilst it is not an Event of Default, we **may (but are not obliged to)** close some or all of your open Contracts at our absolute discretion.
- 13.4.2 If at any time, the Aggregate Margin Close-Out Protection is triggered (i.e., your Net Equity is less than the Aggregate Close-Out Protection Amount), we **will and are required** by the Applicable Laws to, as soon as market conditions allow, terminate one or more of your open Contracts until your Net Equity is restored to or above the Aggregate Close-Out Protection Amount or all your open Contracts have been terminated.
- 13.4.3 We will not be responsible for any Loss you may suffer or incur in connection with any such closing of your open Positions or any lack of closing thereof.

### 13.5 You Must Pay Margin

- 13.5.1 You must pay to us such amounts by way of Margin as required under this Terms and Conditions, including but not limited to Margin as referred to in clauses 13.1 to 13.4.
- 13.5.2 Your failure to pay any Margin or comply with your obligations in connection with Margin Requirements under this Terms and Conditions will be regarded as an Event of Default for the purposes of clause 18.
- 13.5.3 Margin payment must be made in the form of cleared funds (on your Account with us) unless, by separate written agreement, we accept other assets from you as collateral for payments of Margin.
- 13.5.4 In addition, if you do not wish us to be able to exercise our rights under clause 13.4, you will ensure that at any time Net Equity is above the applicable Stop Out Level (and the Aggregate Close-Out Protection Amount).

### 13.6 You Must Monitor Margin

- 13.6.1 Notwithstanding any other terms of any document, we are not under any obligation to keep you informed of your Account balance, Margin Requirement or to make Margin Calls.
- 13.6.2 Through the Trading Platform you will have access to your Account and sufficient information to enable you to calculate the amount of any Margin Requirement due from you in the Base Currency under this 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 when placing any orders over the telephone, to request such information before placing any orders to open or close a Position), 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.

- 13.6.3 It is your responsibility to 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 the Total Margin Requirement under clause 13 of this Terms and Conditions and any additional Margin that may be necessary or desirable.

### 13.7 Margin Calls

- 13.7.1 Notwithstanding any other terms of any document, we are not under any obligation to keep you informed of your equity, Margin Cover and Margin Requirement by making a Margin Call.
- 13.7.2 You accept and agree that we may not be able to provide you on-line access through the Trading Platform to information on the Account. You accept and agree that we may not provide a Margin Call before exercising our rights (including to close your Positions) under this Terms and Conditions.
- 13.7.3 It is your responsibility to notify us of your contact details and of any changes in your contact details immediately, so that you can be contacted by us. You acknowledge that we are not liable for any Loss (including indirect or consequential loss), costs, expense or damages incurred or suffered by you as a consequence of your failure to do so.

### 13.8 Time Allowance for Forwarding Margin

- 13.8.1 We are not obliged to allow you time to forward further funds to meet such Margin Requirements under clause 13 before exercising our rights (including to close out your Positions) under this Agreement. 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 through a Confirmation.

## 14. FEES AND CHARGES

### 14.1 You must pay us fees and charges

- 14.1.1 Any profit or loss net of any fees and charges (that is, the realised gain or loss) arising on closing out of a Contract will be credited or debited (as the case may be) against the Account value, in the Base Currency.
- 14.1.2 You owe us, and must pay to us or as we direct, subject to the Negative Balance Protection:
- (a) any transaction charges including all Commission, Swap and Rollover Charges, fees, Margins, premium, settlement and clearing fees and charges, interest, default charges and taxes (including GST but excluding our income tax or penalty tax and levies) and any other amounts due under the Agreements on demand by us in cleared funds or otherwise as required by this Agreement;



- (b) any Transaction Fees for each Product or Contract (as the case may be) being the fee from time to time specified by us to be the amount payable by you to us in respect of each such Contract;
  - (c) (if applicable) any royalty or other fee which must be paid for the use of prices or information provided to you via access through the Trading Platform or otherwise by any exchange;
  - (d) (if applicable) a monthly access charge for the use of the Trading Platform provided by us, as specified by us from time to time;
  - (e) Any Swap and/or Rollover Charges adjustments to any Contracts or Account;
  - (f) any fees, Taxes, stamp duty or other charges as may from time to time be levied on or in connection with any Contracts entered into with you; and
  - (g) in respect of any unpaid amounts required to be paid under the Agreements.
- 14.1.3 Any amount or rate or formula for Transaction Fees or any other fees which is to be specified by us may be specified by a PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you, such as on our Website or the Trading Platform. The amount of any fees and charges or other amounts payable by you to us in respect of any Contract will be set out in the Confirmation of that Contract or the Trading Platform to the extent known at the time.
- 14.1.4 Unless otherwise agreed, the terms of any amounts payable by you under the Agreements are stated exclusive of GST. If GST is payable on a taxable supply made by us under, by reference to, or in connection with the Agreements, you must also pay the amount of GST payable in respect of that taxable supply. We will when required by law and as far as practicable state in Confirmations (or Account statements, if applicable) the amounts as GST-inclusive. We will manage any credit granted to us for any GST refund, input credit or similar tax credit in accordance with its policy from time to time.
- 14.1.5 Owing to the complexity, delays and changes in laws and administration of such tax refunds and credits from time to time, we are not obliged to provide credits or other benefits to each client if those benefits cannot reasonably be allocated to respective clients. We endeavour to apply a policy for such adjustments by which it has no net benefit over time, having regard to the timing, nature and amounts of refunds and credits, the basis on which they are provided to us and the direct and indirect costs to us in providing the Trading Platform and relevant transactions through it. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have that meaning in this document.



14.1.6 The amounts of or basis of calculating the fees, Commissions, charges and credits referred to in this clause 14 will be as notified from time to time in writing by us, either by way of a PDS, posting on the Trading Platform (including by way of Contract Prices), notification to your contact address, posting to our Website or as otherwise agreed with you or permitted by this Agreements.

14.1.7 If:

- (a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or
- (b) We are required to pay any Tax (other than income tax) in respect of any payment made in relation to the Agreements at your request,

then you:

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

14.1.8 You must reimburse us for all fees (both direct and indirect) and expenses charged in connection with any Contract (other than Tax on the income of ours) and for all costs and expenses incurred by us in implementing the Agreements and in enforcing our rights under the Agreements (including its legal costs of external or internal legal advisers on a full indemnity basis).

14.1.9 You acknowledge that you are responsible for your own legal costs associated with or arising from (at any time) entering into the Agreements and for all Taxes and expenses incurred by you in connection with the Agreements.

#### **14.2 Timing of Credits, Deductions or Fees Which You are to Pay from Your Account**

14.2.1 Any charges will be deducted from your Account on the day the charges were incurred and any benefit will be paid on the day on which it was derived.

14.2.2 If a Position is closed at a loss, that loss will immediately be deducted from your Account and your Margin will be adjusted accordingly.

14.2.3 If a Position is closed at a profit that profit will immediately be credited to your Account and your Margin will be adjusted accordingly, subject to clauses 6 and 9 of this Terms and Conditions.

#### **14.3 Incorrect Crediting of Account**

- 14.3.1 **Limitation of liability:** Except in the case of our fraud, we do not accept responsibility for, nor are we liable for, any Loss or damage suffered by you as a result of you trading on moneys deposited in or credited to your Account in error by, or upon behalf of, us.
- 14.3.2 **Permitted deductions:** We are entitled at any time to deduct, without notice or recourse to you, any moneys deposited in, or credited to, your Account in error by, or on behalf of, us.

## 15. PAYMENTS, NETTING AND SET-OFF

### 15.1 Your Payments Must be the Full Amount

- 15.1.1 When you make any payment which is subject to any withholding or deduction under this Terms and Conditions, you must pay 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.
- 15.1.2 All payments by you under this Agreement are to be made without any set-off by you, counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of this Agreement.
- 15.1.3 Time is of the essence in respect of any payment obligation under this Agreement.

### 15.2 Payments We Owe You and You Owe to Us are Offset

- 15.2.1 If on any day, the same amounts are payable under this 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.
- 15.2.2 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.

### 15.3 Payment of Amounts Due to Us

- 15.3.1 You agree that we may:
- (a) debit your Account (on a daily or any other basis) or deduct from the Client Money Trust Account and pay itself, without further reference to you:
    - all administration fees, including but not limited to fees associated with returned cheques, payment processing, credit card fees, debt collection and

telephone transcript copies from your Account with us during the full term of this Terms and Conditions while you use such services; and

- all fees, charges and royalties which you owe to us;
- (b) withdraw from the Client Money Trust Account and pay ourselves the amount of any Transaction Fee, any administration fees, (including but not limited to credit card fees) you owe and the amount of Margin which you must pay to meet the Margin Requirements;
- (c) withdraw from the Client Money Trust Account and pay ourselves any moneys to which we are entitled in accordance with the Agreements (such as, but not limited to, realised losses); and
- (d) deduct from the Account any amount reimbursable in accordance with this Terms and Conditions. You agree that any delay in, or partial exercise of any of the above rights is not a waiver or abandonment of those powers.

15.3.2 When your Account is in credit, you may request that we effect payment by alternative means of the amount in credit of such amount as you may specify. However, we may at our discretion withhold from the 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 associates), in respect of any other Account open with us;
- (d) we determine that there is an unresolved dispute between us and you in connection with this Terms and Conditions or any Positions; or
- (e) we consider it necessary or desirable to withhold such amount to comply with our regulatory or legal obligations.

#### 15.4 Our Rights to Apply Account Funds

In order to discharge your obligations (actual or contingent) under this Terms and Conditions we may at any time without prior notice to you:

- 15.4.1 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;
- 15.4.2 combine or consolidate all or any of your Accounts with us;

- 15.4.3 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.

#### 15.5 No Security Interests Created

- 15.5.1 Nothing in this Terms and Conditions, unless expressly stated, is intended to create or does create in favour of either of you or us any mortgage, charge, lien, pledge or other security interest in any cash or other property transferred by one to the other under any Position.

#### 15.6 Payments and Transfers

- 15.6.1 We and you agree that all rights, title and interest to and in any payment which one party transfers to the other in respect of a Position under this Terms and Conditions vests in the recipient clear of any liens, charges, encumbrances or other interest of the transferor or any third party.
- 15.6.2 It is your responsibility to ensure that moneys sent to us are correctly designated in all respects, including, where applicable, that the moneys are applied to the correct Account.
- 15.6.3 You must ensure that:
- (a) all 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.
- 15.6.4 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 or expense incurred or suffered by you in connection with such non-acceptance or return, including because you are subsequently in default of your obligations to us.
- 15.6.5 For incoming transfers of currency, the funds are booked and will generally be available for trading on your Account without undue delay after Prospero Markets has received the funds, subject to the instruction being complete and correct. The funds will not be taken into account for purposes of your Margin Requirement before the funds are booked and are available on your Account.
- 15.6.6 When you transfer funds between two Accounts held with Prospero Markets, the funds will generally be available for trading on the receiving account on the day of the transfer.
- 15.6.7 Payments into your Account are deposited by Prospero Markets on the condition that Prospero Markets receives the amount in question. This shall apply irrespective of whether it has been explicitly stated in receipts or other notices of, or requests for,

payment.

- 15.6.8 You understand and accept that you must always supply Prospero Markets with complete and correct payment details when providing payment instructions. When providing payment instructions, you shall use the form provided by Prospero Markets. In the absence of the said information, Prospero Markets is not liable for the completion of the transfer, nor for any delays or extra costs arising from the absence of e.g. the IBAN number and/or BIC code.
- 15.6.9 You acknowledge that Prospero Markets cannot be held liable for the number of days passing between the transfer of funds by the sending bank until the funds are received by Prospero Markets and booked on your Account.
- 15.6.10 You acknowledge that Prospero Markets cannot be held liable for the number of days passing between the transfer of funds from Prospero Markets until the funds are booked on the account with the receiving bank.
- 15.6.11 You understand and accept that you are liable for any costs arising from any delays caused by and any errors made by the receiving financial institution or its intermediate financial institutions.
- 15.6.12 You acknowledge, understand and agree that certain exceptional market conditions, Force Majeure Events and similar events can cause the booking of funds to be delayed. Prospero Markets is not liable for such delays.
- 15.6.13 Electronic transfer requests received via the Trading Platform are generally processed within one Business Day.
- 15.6.14 If transfer requests are received in any other format other than described in clause 15.6.8, the transfer request will generally be processed within two (2) to five (5) Business Days.
- 15.6.15 You understand and accept that you are liable for and must carry all costs applied by other banks used for routing the funds to your account with the beneficiary bank.

## 15.7 Netting and Set-off

- 15.7.1 The Agreements and all trades under them form part of a singular agreement between you and us, and both parties acknowledge that we enter into the Agreements and any trades under them in reliance upon these being a singular agreement.
- 15.7.2 When open Positions and/or your Account are closed under the Agreements, we may:
  - (a) combine and consolidate your cash and any money we hold for you in all of the Accounts you may have with us; and

(b) set-off against each other the amounts referred to below:

- 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;
- any amounts that are payable by you to us, regardless of how and when payable, including, unrealised losses, interests, costs, expenses, charges and any debit balance on any Account even if those Accounts have been closed.

15.7.3 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.

15.7.4 If the right under clause 15.7 is 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. NEGATIVE BALANCE PROTECTION

16.1 Prospero Markets provides the Account and enters into all Contracts with you on the basis that your maximum potential loss would be limited to the value of your Account. This is referred to as, and described in the PDS as, "Negative Balance Protection". This means that you will not be liable to pay us for any shortfall in excess of the balance on your Account.

16.2 If you have multiple Accounts with us, we have a right of set off across all your Accounts. This means that the Negative Balance Protection is only available to you if the combined balance on all of your Accounts falls below zero.

16.3 You acknowledge and agree that this limit on your liability does not otherwise affect your liability under this Terms and Conditions (in particular clauses 21.2 and 18) or our right to exercise discretions and take necessary action as set out in these terms.

## 17. CLIENT MONEY

### 17.1 Australian Client Money Rules and Authorisations

17.1.1 All money paid to us by you or a person acting on your behalf, or which is received by us on behalf of you, will be held by us in one or more segregated trust accounts with an Australian ADI or an approved foreign bank. These moneys do not constitute a loan to us and are held on trust by us. You agree and acknowledge that individual Accounts of our clients are not separated from each other within the segregated trust accounts operated by us and that your moneys may be co-mingled with our other clients' moneys, and that we will not be liable for the insolvency or any act or omission of any ADI holding the trust accounts. Furthermore, you understand the



possible risks of this as explained in the PDS, that you have received or downloaded.

- 17.1.2 If property, other than money, is given to us by you or a person acting on your behalf, or for your benefit, it will be held by us on trust in accordance with the Australian Client Money Rules.
- 17.1.3 You acknowledge that from the time any funds withdrawn from the Client Money Trust Account in connection with your Contracts:
- (a) you lose the protections given to a Client Money Trust Account of that kind;
  - (b) you are an unsecured creditor of Prospero Markets for its obligations on your Contracts. This includes exposure as an unsecured creditor for payment to you of the Net Equity (if any) after closing all your open Positions;
  - (c) the funds are no longer held beneficially for you but they become funds belonging to Prospero Markets.
- 17.1.4 If you pay moneys into any Client Money Trust Account maintained by us in anticipation of you creating and meeting any liability or obligation including to pay for any Products (including payment for Margin), by this Agreement you authorise us to withdraw those moneys to pay us for any liability which later arises.
- 17.1.5 If there has been no movement on your Account after the date you become entitled to a transfer of your money held in such Account (notwithstanding any payments or receipts of interest or similar items) and we are unable to locate you despite having taken reasonable steps to do so, such money will be treated by us as unclaimed money and dealt with in accordance with the Applicable Laws.
- 17.1.6 You acknowledge that we will be under no obligation to pay interest on balances on your Account (and any fees we may take from such interest) and that you are therefore waiving and foregoing any entitlement to interest (and fees if any) under the Applicable Laws or otherwise.

## 17.2 Investments of Money Held

- 17.2.1 We may invest any of your money held in any segregated trust account in the kinds of investments as permitted by the Australian Client Money Rules and you irrevocably and unconditionally authorise us to undertake any such investment.
- 17.2.2 Unless otherwise agreed in writing with you:
- (a) we are solely entitled to any interest or earnings derived from your moneys being deposited in a segregated trust account or invested by us in accordance with the Australian Client Money Rules with such interest or earnings being payable to us from the relevant



segregated trust account or investment account, as the case requires as and when we determine;

- (b) upon realisation of an investment of your moneys, the initial capital invested must either be invested in another investment permitted by the Australian Client Money Rules or deposited by us into a segregated trust account operated in accordance with the Australian Client Money Rule;
- (c) in the event that the amount receive upon realisation of an investment of your moneys is less than the initial capital invested, we must pay an amount equal to the difference into a segregated trust account for your benefit, except where any such difference is the result of amounts paid out of the investment to us and/or any Associate of ours in accordance with the terms and conditions of this Terms and Conditions;
- (d) we will not charge a fee for investing your moneys in accordance with the Australian Client Money Rules.

## 18. ACTIONS WE MAY TAKE

### 18.1 What Constitutes an Event of Default

Any of the following events constitutes Events of Default, which upon their occurrence give us the right to take action in accordance with clause 18.2:

- 18.1.1 an Insolvency Event occurs in relation to you;
- 18.1.2 you are an individual and you die or become of unsound mind;
- 18.1.3 you fail to provide any Margin or other sum due under the Agreements in respect of any Positions, or the Margin held by us in respect of any open Positions falls below our Margin Requirements;
- 18.1.4 you are in breach of any obligation, warranty or representation made under this Terms and Conditions (whether by act or omission) and/or any information provided to us in connection with this Terms and Conditions is or has become untrue or misleading;
- 18.1.5 you knowingly take advantage of an incorrect price when dealing with us and a reasonable person in your position would have known the price offered was incorrect or we consider that you have, or have attempted to, manipulate the Trading Platform or any other system of ours in any way;
- 18.1.6 any fee or other payments due to us are not paid in accordance with the Agreements;
- 18.1.7 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;

- 18.1.8 at any time or for any period deemed unreasonable by us you are not contactable, or you do not respond to any notice or correspondence from us;
- 18.1.9 we reasonably believe it is prudent for us to take any or all of the actions described in clause 18.2 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- 18.1.10 we consider that there are abnormal trading conditions;
- 18.1.11 we consider it necessary for the protection of our rights under this Terms and Conditions;
- 18.1.12 we are unable to quote price in the Products due to the unavailability of the relevant market information for reasons beyond our control;
- 18.1.13 we consider that you may be in breach of or have failed to comply any Applicable Law;
- 18.1.14 we are so requested by ASIC or any other regulatory body or authority;
- 18.1.15 the aggregate of your Orders and a certain Order/Contract is outside the Normal Trading Size, or otherwise exceeding any credit or other limit placed on your dealings;
- 18.1.16 where we have not received, within ten (10) Business Days of a written request, all information which we have requested in connection with the Agreements;
- 18.1.17 any restriction on your Position size is, or is likely to be, exceeded;
- 18.1.18 where you are trustee of a trust, and without our consent, you cease to be sole trustee of the trust, or any step is taken to:
  - (a) remove you as trustee, or to appoint a substitute or additional trustee; or
  - (b) bring any part of the trust assets under the control of any court;
- 18.1.19 any of the following were to occur where you are trustee of a trust:
  - (a) any application or order is made in any court for:
    - accounts to be taken in respect of the trust; or
    - any property of the trust is to be brought into court or administered by the court under its control;
  - (b) the beneficiaries of the trust resolve to wind up the trust;
  - (c) you are required to wind up the trust under the Trust

Deed or applicable law;

- (d) the winding up of the trust commences for any other reason;
- (e) the trust is held, or is conceded by you, not to have been properly constituted;
- (f) you cease to be authorised under the Trust Deed or at law to own the trust assets in your name or to perform your obligations under this Terms and Conditions; or
- (g) you breach any of your obligations as trustee of the trust.

18.1.20 we reasonably believe that any one or more of the circumstances set out above is likely to happen or in any other circumstance where we reasonably believe that it is necessary or desirable to protect ourselves or all or any of our other clients.

## 18.2 What Action May We Take in an Event of Default

If an Event of Default occurs (or as otherwise set out in clause 18.3) we may take all or any of the following actions immediately or at any time at our sole discretion and without further notice to you:

- 18.2.1 immediately require payment of any amount due to us, including Margin;
- 18.2.2 terminate this Terms and Conditions;
- 18.2.3 close all or any of your open Positions;
- 18.2.4 limit the size of your open Positions either in monthly terms or a number of Positions (net or gross);
- 18.2.5 refuse orders to establish new Positions;
- 18.2.6 convert any ledger balances to the Base Currency of your Account;
- 18.2.7 exercise our rights of set off;
- 18.2.8 change the Margin Percentage;
- 18.2.9 impose new Margin Requirements to your trading or Account;
- 18.2.10 limit or withdraw the credit on your Account;
- 18.2.11 suspend your Account and refuse to execute any trades;
- 18.2.12 call on any guarantee in respect of your obligations;
- 18.2.13 require you immediately to close out and settle the Position in such a manner as we request;
- 18.2.14 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 Position;

- 18.2.15 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
- 18.2.16 retain any amount owed by us to you against any contingent liability of yours to us or so long as the contingency subsists.

### 18.3 Additional Suspension and Closing Rights

- 18.3.1 We may also close your Account, having given fourteen (14) days' written notice in the circumstances set out below:
  - (a) any litigation is commenced involving both you and us that places us in an adversarial position, and in view of the subject matter of or any issues in dispute in relation to that litigation we decide that we cannot continue to deal with you while the litigation is pending;
  - (b) where you have acted in an abusive manner toward our staff (for example by displaying what we consider to be discourtesy or the use of offensive or insulting language); or
  - (c) where we believe on reasonable grounds that you are unable to manage the risks that arise from your trades; or
  - (d) where we determine that you are no longer likely to fall within the target market of our Products and decide to cease our Services to you for this reason;
- 18.3.2 If we rely on our rights under this clause, your Account will be suspended during the fourteen (14) day notice period and you will not be able to place trades other than to close existing open Positions. If you have not closed all the open Positions within the fourteen (14) days' notice period we are entitled to take any action described in clause 18.2 of this Terms and Conditions.

### 18.4 Our Rights to Close or Void

Without limiting our right to take action under clauses 18.2 and 18.3, we may also close or void individual open Positions and/or cancel any Order where:

- 18.4.1 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 minimise the amount in dispute; and/or
- 18.4.2 there is a material breach by you of the Agreements in relation to the open Position.

### 18.5 Our Rights to Suspend Account

- 18.5.1 Without limiting our rights under clauses 18.2, 18.3 and 18.4, we may in our discretion suspend your Account pending investigation for any reason. While 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 to believe that you do not have sufficient understanding of the trades you are placing or the risks involved;
- (c) when we issue you with a written request for information and within ten (10) Business Days of the request we have not received all information which we believe that we require in connection with this Terms and Conditions; or
- (d) we have reason to believe that there has been a breach in your Account or that there has been a threat to your Account.

18.5.2 If we have suspended your Account pending an investigation, we will use reasonable endeavours to conclude our investigation within five (5) Business Days. When we conclude our investigation, we will inform you whether trading on your Account may resume or whether we intend to take further action pursuant to this Terms and Conditions.

## 18.6 Compliance with the Law

18.6.1 Despite any provisions of this Terms and Conditions, in providing the services under this Terms and Conditions, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure services provided under this Terms and Conditions are in compliance with all Applicable Laws.

18.6.2 You agree strictly to comply with all Applicable Laws. If we consider you have not so complied, we may terminate this Terms and Conditions immediately without notice, regardless of whether there has been an Event of Default.

## 19. AMENDMENT AND TERMINATION

### 19.1 Current Version of Agreements Governs Our Products

19.1.1 You agree that the version of the Agreements published on our Website or otherwise notified to you at the time of entering into a Contract govern that Contract.

### 19.2 Amending our Agreement

19.2.1 We may amend, change, revise, add, modify or replace this Terms and Conditions by giving fourteen (14) days' written notice of the changes. When any amendments to the Terms and Conditions are

made, we will email you the most updated Terms and Conditions. If at any time you would like to receive the latest copy of the Terms and Conditions, please email us.

- 19.2.2 If you object to any changes, you must notify us within fourteen (14) days of the date the notice is deemed to be received under clause 28. If you do not do so, you will be deemed to have accepted the changes. If you give us notice that you object, then the changes will not bind you; but we may require you to (and you must) close your Account as soon as reasonably practicable and/or be restricted from placing trades and/or Orders and/or close your open Positions.
- 19.2.3 Subject to clause 19.2.2, the amendments made under this clause 19 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.
- 19.2.4 You understand that this Terms and Conditions cannot be modified by you via any verbal statements or written amendments without written acceptance or confirmation by us.

### 19.3 Termination

- 19.3.1 We may terminate this Terms and Conditions and close your Account and any Position at any time by giving you fourteen (14) days' written notice. This right is in addition to any other rights to terminate this Terms and Conditions or close your Account that we may have under this Terms and Conditions.
- 19.3.2 You may also terminate this Terms and Conditions or close your Account at any time by giving us fourteen (14) days' written notice. Your Account will be closed as soon as reasonably practicable within the fourteen (14) days.
- 19.3.3 We may terminate this Terms and Conditions and close your Account and any Positions without notice if there is an Event of Default as described in clause 18;
- 19.3.4 Either party may terminate this Terms and Conditions with immediate effect by notice in writing to the other party on the occurrence of any or all of the following events:
  - (a) if the other party commits a breach of its obligations under this Terms and Conditions and if capable of remedy, it fails to remedy the breach within five (5) Business Days' notice in writing requiring it to do so; or
  - (b) if the other party enters into an Insolvency Event.
- 19.3.5 We may also terminate this Terms and Conditions with immediate effect by notice in writing to you if:
  - (a) You are persistently in default in the performance or observance of any obligation arising under this Terms and Conditions;

- (b) You assign this Terms and Conditions in breach of clause 29.2;
  - (c) You or any of your Associates do or say anything which may objectively be considered to be harmful to our reputation or interests or which may objectively be considered likely to lead any person to reduce their level of business with us;
  - (d) You or any of your Associates are charged with any criminal offence which in our reasonable opinion will bring us, any of our clients or our Associates into disrepute;
  - (e) You or any of your Associates are charged or investigated by a Governmental Agency in respect of any dealing in securities or derivatives;
  - (f) You consistently breach the Margin Requirement for an extended period of time (in our reasonable opinion);
  - (g) You engage in toxic trading (in our reasonable opinion), such as time latency; or
  - (h) any of the representations or warranties given by you in this Terms and Conditions are, or become, untrue.
  - (i) if there is an Event of Default as described in clause 18;
- 19.3.6 Nothing in this clause 19.3 affects our other rights in this Terms and Conditions. Further, each indemnity provided by you in this Terms and Conditions survives termination.
- 19.3.7 On termination of this Terms and Conditions, without restricting any of our other rights in this Agreement, we may do one or more of the following:
- (a) close your Account;
  - (b) settle any Contract which has not at the time of termination settled;
  - (c) enter into one or more Contracts to effect the close out of one or more unsettled or open Contracts (and determine the value at which the Contract or Contracts will be closed out);
  - (d) cancel any Orders;
  - (e) do or refrain from doing anything which we consider appropriate in the circumstances; and
  - (f) exercise any of our other rights in this Terms and Conditions.
- 19.3.8 Further to clause 19.3.4, if you or we provide notice to close your Account or terminate this Terms and Conditions under this clause 19, 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.

## **20. CEASING TO OFFER TO TRADE**

- 20.1 We may at any time by written notice to you cease to offer to trade in any Products, specifying in the notice a date on which we will cease to offer to trade in the particular Product.
- 20.2 You agree to close out all open Positions for the date specified in the notice, and we will close out any remaining open Positions on the date specified in the notice with effect from the close of trading on that day.
- 20.3 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 Contract except where your open Positions are outside the Normal Trading 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.

## **21. LIMITATION OF LIABILITY AND INDEMNITY**

### **21.1 Limitation of Liability**

21.1.1 Subject to any laws restricting us from limiting our liability, and to the maximum extent permitted by those laws, we are not liable for:

- (a) any Material Error which may occur;
- (b) any error or inaccuracy in, or unsuitability of, or omission from the Agreements, or any other information provided by us, whether negligent or otherwise;
- (c) any Loss or claim suffered or incurred by you in respect of our Trading Platform due to the unavailability of the Trading Platform, system and data errors, delays, inaccuracies, errors or omissions in data provided to you, software or computer viruses or the unauthorised use of the Trading Platform at any time;
- (d) any delays or failures or inaccuracies, or loss of access to, the provision of a service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Trading Platform or in respect of the transmission of Orders or any other information;
- (e) any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific;
- (f) any inability by you to open or close out a Contract;
- (g) any delay or failure by us to act on an Order or instruction received by telephone from you;
- (h) any action we may take under this Terms and Conditions, so long as we act within the terms of its provisions and in particular act reasonably where required to do so;

- (i) anything which is beyond our control and the effect of which is beyond our control to avoid;
  - (j) any government restriction, exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to our Trading Platform, theft, sabotage, war, earthquakes, strike, Force Majeure Event and, without limitation, any other conditions beyond our control;
  - (k) any claim, Loss, expense, cost or liability suffered or incurred by you (claims) 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
  - (l) you not falling within the stated target market of our Products.
- 21.1.2 Unless we are prohibited from excluding such liability by law (for example, for Losses relating to death or personal injury or caused by our fraud), we will not be liable for any direct, indirect, special, incidental, punitive or consequential damages (including, without limitation, loss of business, loss of profits, failure to avoid a loss, loss of data, loss or corruption of data, loss of goodwill or reputation) caused by any act or omission of ours under this Agreement.
- 21.1.3 Regardless of whether we, our employees or agents, knew of the possibility of the claim being incurred the limitations of liability in this clause 21 shall apply.

## 21.2 Indemnities

- 21.2.1 Subject to the Applicable Laws, you agree to continuously indemnify us, and keep us indemnified on demand, in respect of all Losses (including 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 and administrative costs 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 this Terms and Conditions;
  - (b) us entering into any Positions with you;
  - (c) us taking any action under clause 18 of this Terms and Conditions;
  - (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.
- 21.2.2 To the extent permitted by law, you will indemnify, protect and hold us harmless from and against all Loss, liabilities, judgements, suits,

actions, proceedings, claims, damages or costs resulting from or arising out of any act or omission by any person obtaining access to your Account whether or not you authorised such access.

21.2.3 To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep Prospero Markets and its respective officers, employees, agents and representatives indemnified from and against all claims arising out of:

- (a) any default, whether by your act or omission under this Terms and Conditions or any Order or Contract;
- (b) any breach by you of any Applicable Laws;
- (c) any representation or warranty made or given by you under this Terms and Conditions proving to be untrue or incorrect;
- (d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your clients, employees, agents or Authorised Persons, consultants or servants;
- (e) any failure of any of your computer or electronic systems or networks to perform, be available or successfully transmit data to Prospero Markets, or any error or inadequacy in the data or information input into such systems or networks by you;
- (f) any delays in processing any Order including, for example (but not limited to), as a result of systems or market delays, or due to verification or filtering procedures or unauthorised processes, email delays or due to telephone call waiting time or adherence to internal policies and procedures;
- (g) anything lawfully done by us in accordance with, pursuant or incidental to this Terms and Conditions;
- (h) any instruction, request or direction given by you;
- (i) by reason of Prospero Markets complying with any direction, request or requirement of any Applicable Laws or any Underlying Market, any government body or any regulatory body having jurisdiction over Prospero Markets or any hedge counterparty; or
- (j) arising from and in connection with or in any way related to Prospero Markets in good faith accepting and acting on instructions received by facsimile transmission, email or by other means of any kind which are signed by or purported to be signed by you or any Authorised Persons.

### 21.3 Survival of Indemnity and Limitations

21.3.1 The indemnity and limitations in clause 21 survive termination of this Terms and Conditions and/or any transaction under this Terms and Conditions.

## 22. WARRANTIES AND REPRESENTATIONS

### 22.1 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:

- 22.1.1 **legal disability:** you are not under any legal disability and are not subject to any law which prevents you from entering this Terms and Conditions or any Products;
- 22.1.2 **corporate authorisation:** if you are a company, you are empowered by, and have obtained, all necessary corporate or other authorities under your constitution and at law;
- 22.1.3 **consents:** you have obtained all necessary consents and have the authority to enter into this Terms and Conditions and any Products;
- 22.1.4 **compliance with laws and valid obligations:** you are complying with all laws to which you are subject, and the obligations expressed to be assumed by you under this Terms and Conditions and any Product are your legal, valid, binding and enforceable obligations;
- 22.1.5 **able to pay debts:** you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
- 22.1.6 **no liquidator etc.:** no liquidator, provisional liquidator, receiver, receiver and manager, trustee, controller, official manager, administrator or similar officer has been appointed in relation to your affairs and no application has been made for the appointment of any of these persons;
- 22.1.7 **information accurate:** at all times the information provided by you to us, whether in the Application Form or otherwise will be complete, accurate and not misleading; and
- 22.1.8 **transactions:** 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.

### 22.2 Trustee of a Trust

Where you are the trustee of a trust, settlement or fund (including a superannuation fund) you further undertake, warrant and represent to us, with the intention that these undertakings, warranties and representations are repeated each time you provide instructions to us:

- 22.2.1 **capacities:** you acknowledge and agree that you enter into this Terms and Conditions in your personal capacity and in your capacity as trustee of the trust;
- 22.2.2 **sole trustee:** you are the sole trustee or trustees of the Trust and

you have been validly appointed;

- 22.2.3 **trust validly created:** the trust was validly created and is in existence at the date of your application and has been duly stamped (if required);
- 22.2.4 **solely constituted:** the trust is solely constituted by the trust deed described in your Application Form and is as amended or substituted (Trust Deed);
- 22.2.5 **right of indemnity:** you have the right of indemnity against the assets of the trust under the Trust Deed and there has not, and will not be, any breach of trust or any other action that will prevent you from enforcing your rights under that indemnity;
- 22.2.6 **full authority:** you are empowered and have full authority under the Trust Deed to enter into this Terms and Conditions and to enter into the transactions contemplated by it;
- 22.2.7 **no actions:** there is no current or pending or threatened action or proceeding affecting the trust or any of the trust's assets before any court or body which draws or purports to draw into question or is likely to affect the legality, or validity, of your right of indemnity under the Trust Deed or of this Terms and Conditions or any Product or your ability to observe your obligations under it;
- 22.2.8 **ceasing to be trustee:** you will notify us immediately in writing if you cease for any reason to be the trustee of the trust or the trust is determined or ceases to exist;
- 22.2.9 **no distribution of capital or income:** you will not make any distribution of any income or capital or assets of the trust that results in there being insufficient assets of the trust to meet any of your liabilities under this Terms and Conditions or any Products.

## 22.3 Superannuation Funds

- 22.3.1 If you are the trustee of a superannuation fund you further undertake, warrant and represent to us, with the intention that this warranty is repeated each time you provide us with instructions, that you have sought advice as the trustee of a superannuation fund dealing in Products and are satisfied that in so doing you comply with all your fiduciary duties and obligations under the Superannuation Industry (Supervision) Act 1993, the regulations made under it and/or other relevant legislation or regulations, and that your dealings do not in any way breach that legislation or those regulations.

## 22.4 Notification of Changes

- 22.4.1 You undertake that throughout the term of this Terms and Conditions 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 that may affect the basis upon which we do business with you.

## 22.5 Trading Platform

- 22.5.1 Subject to clause 22.6 all warranties, express and implied, as to the description, quality, performance or fitness of the purposes for you of the Trading Platform or any component of such Trading Platform are disclaimed and excluded.
- 22.5.2 We do not warrant or forecast that the Trading Platform or any component of any Trading Platform or any services performed in respect of any such Trading Platform will meet the requirements of any user, or that the operation of the Trading Platform will be uninterrupted or error-free, or that any services performed in respect of the Trading Platform will be uninterrupted or error-free.

## 22.6 Statutory Warranties

- 22.6.1 Where any Applicable Law implies in this 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 this 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:

if the breach relates to goods:

- (a) the replacement of the goods or the supply of equivalent or similar goods;
- (b) the repair of the goods;
- (c) the payment of the cost of repairing the goods or acquiring the relevant goods, or
- (d) payment of the cost of having the goods repaired; or

if the breach relates to services:

- (e) the supplying of the services again; or
- (f) the payment of the cost of having the services supplied again.

## 23. TRADING PLATFORM

### 23.1 Scope

- 23.1.1 This clause 23 applies to your use of the Trading Platform.

### 23.2 Access and Use

- 23.2.1 Once your Account is opened, you will get access to the Trading Platform, unless agreed otherwise or stated on our Website.
- 23.2.2 You will be responsible for providing the system to enable you to

use our Trading Platform.

**23.2.3 When using the Trading Platform you must:**

- (a) ensure that your own system is maintained in good order and is suitable for use with such Trading Platform;
- (b) run such tests and provide such information to us as we consider necessary to establish that your 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 a Trading Platform or any unauthorised transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to use;
- (e) immediately notify us of any defect, malfunction or virus in or impacts the Trading Platform and cease all use of such Trading Platform until you have received our permission to resume use;
- (f) not at any time leave the terminal from which you have accessed such Trading Platform or let anyone else use the terminal until you have logged off such Trading Platform; and
- (g) not disguise or interfere in any way with the IP address of the computer you are using to access the Trading Platform or otherwise take steps to prevent us from correctly identifying the actual IP address of the computer you are using whilst accessing the Trading Platform.

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

**23.3 Use of Information, Data and Software**

**23.3.1 In the event that you receive any data, information or software via the Trading Platform other than that which you are entitled to receive pursuant to this Terms and Conditions, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.**

**23.4 Intellectual Property**

**23.4.1 All rights in patents, copyrights, design rights, trademarks and any other intellectual property rights (whether registered or unregistered) relating to the Trading Platform remain vested in us or our licensors.**

**23.4.2 You will not copy, interfere with, tamper with, alter, amend or modify the Trading Platform or any part or parts thereof unless expressly permitted by us in writing.**

**23.4.3 You will not reverse compile or disassemble the Trading Platform,**



nor 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.

- 23.4.4 Any copies of the Trading Platform made in accordance with law are subject to the terms and conditions of this Terms and Conditions. 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 Trading Platform made by you. If we so request, you must as soon as reasonably practical, provide us with a statement of the number and whereabouts of copies of the Trading Platform.

## 23.5 Liability and Indemnity

- 23.5.1 Without prejudice to any other terms and conditions of this Terms and Conditions relating to the limitation of liability and provision of indemnities, the following clauses apply to our Trading Platform.

- (a) **System errors:** 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 Trading Platform may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Trading Platform for this reason.
- (b) **Delays:** Neither we nor any third party software provider accepts any liability for any delays, inaccuracies, errors or omissions in any data provided to you in connection with Trading Platform.
- (c) **Viruses from/associated with the Trading Platform:** We have no liability to you (whether in contract, tort or otherwise, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced via the Trading Platform or any software provided by us to you in order to enable you to use the Trading Platform, so long as we have taken reasonable steps to prevent any such introduction.
- (d) **Viruses from your system:** You must ensure that no computer viruses, 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) **Unauthorised use:** We are not liable for any Loss, liability or cost whatsoever arising from any unauthorised use of the Trading Platform. You continuously indemnify us against all Loss, liabilities, judgments, suits, actions, proceedings,

claims, damages and costs resulting from or arising out of any act or omission by any person using the Trading Platform by using your designated passwords, whether or not you authorised such use.

- (f) **Markets:** We are not liable for any act taken by or on the instruction of a market, clearing house or regulatory body.

## 23.6 Suspension and Withdrawal

23.6.1 We may suspend or permanently withdraw the Trading Platform, by giving you written notice.

23.6.2 We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use the Trading Platform, or any part thereof, 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 this Terms and Conditions, 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 this Terms and Conditions by us. In addition, the use of a Trading Platform may be terminated automatically, upon the termination (for whatever reason) of:

- (a) any licence granted to us that relates to the Trading Platform; or
- (b) this Terms and Conditions.

23.6.3 In the event of a termination of the use of the Trading Platform for any reason, upon request by us, you must, either return or destroy all hardware, software and documentation that we have provided you in connection with such Trading Platform and any copies thereof.

## 24. FORCE MAJEURE

### 24.1 Force Majeure Event

24.1.1 For the purpose of this Terms and Conditions, a Force Majeure Event means any occurrence or non-occurrence as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Terms and Conditions and that is beyond the reasonable control of that party, including forces of nature, industrial action and action or inaction by a Government Agency.

24.1.2 A Force Majeure Event includes, but not limited to:

- (a) where we are, in our opinion, unable to maintain an orderly market in our Products in respect of any one or more of the Underlying Instruments 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 market or Underlying Instruments;
- (c) the imposition of conditions, limits or special or unusual terms in the relevant markets or Underlying Instruments;
- (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 Instruments; or
- (f) where we reasonably anticipate that any of the circumstances set out in paragraphs 24.1(a) to 24.1(e) of this Terms and Conditions are about to occur.

## 24.2 Notice and Suspension of Obligations

24.2.1 If a party to this Terms and Conditions is affected, or likely to be affected, by a Force Majeure Event that party must immediately give the other party prompt notice of that fact including:

- (a) full particulars of the Force Majeure Event;
- (b) an estimate of its likely duration;
- (c) the obligations affected by it and the extent of its effect on those obligations; and
- (d) the steps taken to rectify it.

24.2.2 The obligations under this Terms and Conditions of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

## 24.3 Actions We May Take

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

- (a) alter normal trading times;
- (b) the Margin Percentage, Margin Call Level and/or Stop Out Level;
- (c) amend or vary this Terms and Conditions and any transaction contemplated by this Terms and Conditions, including any Contract, insofar as it is impractical or impossible for us to comply with our obligations to you;

- (d) any or all open Positions, 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.
- 24.3.2 In some circumstances, we may be unable, after using all reasonable efforts, to acquire, substitute, maintain, unwind or dispose of any Underlying Instrument we consider necessary to hedge or protect our exposure to market and other risks arising from an open Position. In such circumstances, we may close that open Position at the Contract Price.
- 24.3.3 To the extent practicable, we will take reasonable steps to notify you of any action that we propose to take under clause 24.3 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

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

## 25. DISPUTE RESOLUTION

### 25.1 Informing Us About Disputes

- 25.1.1 You should inform us immediately in writing of any dispute or difference whatsoever in connection with this Terms and Conditions. We will investigate and endeavour to resolve any dispute or difference in accordance with our internal complaints handling system.

### 25.2 How Disputes Are Dealt With

- 25.2.1 Any dispute or difference in connection with this Terms and Conditions must be dealt with by you in Australia, in accordance with our procedures from time to time for handling disputes. You should contact us or consult the PDS for information about our internal complaints process.
- 25.2.2 Where the event the dispute or difference is unable to be resolved by us to your satisfaction in accordance with our internal complaints handling system:
- (a) you may refer the dispute or difference to the Australian Financial Complaints Authority (**AFCA**) for determination in accordance with their rules; or
  - (b) if the dispute or difference does not fall within AFCA's rules, the dispute or difference may be submitted by us to

arbitration in accordance with and subject to the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules the Arbitrator will be a person recommended by the New South Wales Chapter of the Institute of Arbitrators and Mediators of Australia; or

- (c) if the dispute or difference does not fall within the rules of AFCA, you may request us to refer the dispute to arbitration in accordance with clause 25.2(b) above, and:
- we may decide in our absolute discretion whether to agree to any such request;
  - without agreement by us in accordance with this paragraph, you will not be able to refer the dispute or difference to arbitration, but will have to submit for the benefit of us only the dispute or difference to the exclusive jurisdiction of the Courts of New South Wales.

25.2.3 You and we agree to accept any determination of the arbitrator under sub-paragraphs (b) or (c) above as final and binding and submit for the benefit of us only, to the exclusive jurisdiction of the Courts in New South Wales for the enforcement of any such determination. For the avoidance of doubt, this clause will not prevent us from commencing proceedings in any other jurisdictions for the enforcement of any such determination.

## 25.3 Where We May Commence Legal Proceedings

25.3.1 Clause 25.2 is for the benefit of us only, and it does not prevent us from commencing proceedings against you in any relevant jurisdiction, in addition to submitting any dispute or difference whatsoever with you in connection with this Terms and Conditions to arbitration in accordance with clause 25.2.2(b) of this Terms and Conditions.

## 26. PRIVACY

### 26.1 Personal Information

26.1.1 In the course of opening your Account and providing services to you under this Terms and Conditions, it will be necessary for us to obtain and hold personal information that we will obtain from you in accordance with data protection and anti-money laundering legislation. You agree that we can rely on, hold and process personal information for the purpose of performing our services and obligations under this Terms and Conditions and for the purpose of improving those services.

26.1.2 If you do not provide the information requested by us or agree to our information handling practices detailed in this Terms and Conditions, we may not be able to provide our services to you.

- 26.1.3 We collect, use, hold, handle and/or disseminate your information in a way that is at all times compliant with the Privacy Act 1998 and its provisions.

## 26.2 Disclosing Information

You agree to us disclosing any information we collect from you:

- 26.2.1 in accordance with this clause 26;
- 26.2.2 where we are required by law or regulatory authorities;
- 26.2.3 to regulatory authorities and to such third parties as we originally consider necessary in order to prevent crime;
- 26.2.4 where reasonably necessary, to any third party which provides a service to us in connection with this Terms and Conditions, but restricted to the purposes of providing that service.

## 26.3 Credit and Identity Checks

- 26.3.1 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 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.

## 26.4 Introducing Brokers

- 26.4.1 In the situation where you have been introduced to us by an introducing broker, you consent to us exchanging information with that introducing broker for the purposes of this clause. You may withdraw your consent by advising us accordingly in writing.

## 26.5 New Products or Services

- 26.5.1 You authorise us to contact you by email, phone 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. If you do not wish to receive such information, you should inform us of this.

## 26.6 Pass Personal Data

- 26.6.1 You authorise us to pass your personal information to our selected Related Entities or third parties for the purpose of contacting you by email, phone or post to give you information about products offered by that Related Party for the period you have an Account with us and after you have closed it. You should advise us if you no longer wish to receive this information.

## 26.7 Other Countries

- 26.7.1 You acknowledge that it may be necessary for your information to be transferred to someone who provides a service to us in other

countries, and you consent to such transfer.

## **26.8 Access to and Change of Information**

- 26.8.1 You may contact us at the address listed in the PDS if you wish to request access to any personal information that we hold about you.
- 26.8.2 You must immediately notify us if any of your information that you have previously provided to us changes. This is a continuing obligation of yours.

## **26.9 Recording**

We retain copies (whether in material, electronic or other form) of the following documents for at least the period specified:

- 26.9.1 each FSG given by us, or by an authorised representative of us while acting in that capacity – for a period commencing on the date of the FSG and continuing for at least seven (7) years from when the document was first provided to you; and
- 26.9.2 any Terms and Conditions, transaction records, written or electronic communications between you and us, and any other client documents including copies of your identification documents, for the life of the client relationship and additional seven (7) years from the date we cease to provide financial services to you.

## **27. CONFLICTS OF INTEREST**

- 27.1 We are required by law to take all reasonable steps to identify conflicts of interests between ourselves, our Associates and our Clients, or between one Client and another, that arise in the course of providing our financial services.
- 27.2 Subject to the Applicable Laws, we may pay to and accept from third parties (and not be liable to account to you) benefits, commissions or remunerations which are paid or received as a result of Contracts entered into by you.
- 27.3 We may give general financial product advice or provide other financial services (in accordance with our AFSL) to another Client about or concerning the Underlying Market in relation to which you enter a Contract.
- 27.4 Subject to Applicable Laws, we are not under any obligation to account to you for any profit, commission or remuneration made or received from or by reason of Contracts or circumstances in which we have a material interest or where in particular circumstances a conflict of interest may exist.
- 27.5 You acknowledge that you are aware of the possibility that the conflicts disclosed in this clause will arise and consent to us acting notwithstanding such conflict.

## **28. NOTICES**

### **28.1 Notices Must be in Writing**

- 28.1.1 Subject to clause 28.2, any notice or other communication given or



made under or in connection with the matters contemplated by this Terms and Conditions will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

**Prospero Markets Pty Ltd**

Address: Suite 602, 160 Queen Street, Melbourne Victoria 3000, Australia

Phone 1300 768 888

Email Address: [info@prosperomarkets.com](mailto:info@prosperomarkets.com)

**You:** The address and electronic mail address provided by you for this purpose in the Application Form.

**28.2 Provision of Notice**

- 28.2.1 A notice in writing can be provided personally or by hand, or by letter, email or the Website or via the Trading Platform.
- 28.2.2 We may send notices to you via the Trading Platform, at your last known home or email address, place of work, fax, telephone, pager number or other contact details.

**28.3 When Notices are Received**

Any such notice will be deemed to have been received:

- 28.3.1 if delivered personally or by hand, at the time of delivery;
- 28.3.2 if posted, within three (3) Business Days of posting;
- 28.3.3 if oral, whether by telephone or face to face, when actually given;
- 28.3.4 if by leaving a message on a telephone answering machine or voice mail, when the message was left;
- 28.3.5 if sent by facsimile, on completion of its transmission; and
- 28.3.6 if posted on or provided through the Website or Trading Platform or if sent by electronic mail, on posting, providing or sending.

**28.4 Change of Notice Details**

- 28.4.1 You may alter the address (including electronic mail 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 28.3 of this Terms and Conditions.
- 28.4.2 You agree and acknowledge that you are solely responsible for

ensuring that we have your current address, telephone number, facsimile number and electronic mail address.

## 28.5 Deemed Notice

- 28.5.1 You agree and acknowledge that any Confirmations, statements, supplementary 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 or the Trading Platform.

## 29. MISCELLANEOUS

### 29.1 Governing Law and Jurisdiction

- 29.1.1 This Terms and Conditions, and each Contract between us and you, will be governed by and construed in accordance with the law of New South Wales, Australia.
- 29.1.2 You and we submit, for the benefit of us only, to the exclusive jurisdiction of the law of New South Wales, Australia. For the avoidance of doubt, this clause 29.1 will not prevent us from commencing proceedings in any other relevant jurisdiction.

### 29.2 Assignment and Delegation

- 29.2.1 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 this Terms and Conditions to any person without our prior written consent.
  - (b) You may not charge or create any security interest over any or all of their rights under this Terms and Conditions, including any rights to deposits held by us.
  - (c) Without prejudice to clause 29.2.1 of this Terms and Conditions, we may assign or deal with our rights or delegate any of our obligations under this Terms and Conditions to any person on giving not less than seven (7) 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 this 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 this 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 this Terms and Conditions, we may disclose to any actual or potential delegate, assignee or other party as referred to in clause 29.2.3 of this Terms and Conditions, such information relating to you and your relationship with us, as we see as appropriate.

29.2.2 If:

- (a) there is a material change in the management, ownership or control of you and in particular, any change in the director or shareholder of you without our prior written approval; or
- (b) there is a material change in the management, ownership or control of the trust of which you are trustee without our prior written approval,
- (c) such an event will constitute an unlawful assignment of this Terms and Conditions allowing us to immediately terminate this Terms and Conditions under clause 29.3.

### 29.3 Cumulative Rights and Remedies

- 29.3.1 The rights, powers, authorities, discretions and remedies contained in this Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law.

### 29.4 Rights of Third Parties

- 29.4.1 Nothing in this Terms and Conditions is intended to confer on any person other than us or you any right to enforce any term of this Terms and Conditions.

### 29.5 Illegality

- 29.5.1 If at any time any provision of this 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 this 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.

### 29.6 Delay, Omission and Waiver

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

- 29.6.1 No delay or omission on our part in exercising any right, power or remedy provided by law or under this Terms and Conditions, or partial or defective exercise thereof, will:
  - (a) impair or prevent further or other exercise of such right,

power or remedy; or

(b) operate as a waiver of such right, power or remedy.

29.6.2 No waiver of any breach of any term of this Terms and Conditions will (unless expressly agreed in writing 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.

## 30. INTERPRETATION AND DEFINITION

### 30.1 Interpretation

- 30.1.1 The defined terms used in the Terms and Conditions are capitalised and set out in this Schedule.
- 30.1.2 If there is any conflict between the terms of this Terms and Conditions and any Applicable Law, the Applicable Law (to the extent it cannot be excluded or modified by this Terms and Conditions) will prevail.
- 30.1.3 In this Terms and Conditions any reference to a person includes bodies corporate, unincorporated associations, partnerships and individuals.
- 30.1.4 In this Terms and Conditions, all references to times of the day are to the time in Sydney, New South Wales, Australia, unless otherwise specified.
- 30.1.5 Headings and examples in this Terms and Conditions are for reference only and do not affect the construction of the Agreement.
- 30.1.6 In this Terms and Conditions any reference to any enactment includes references to any statutory modification or re-enactment of such enactment or to any regulation or order made under such enactment (or under such a modification or re-enactment).
- 30.1.7 If there is any inconsistency between the PDS and this Terms and Conditions, the PDS will prevail.
- 30.1.8 If there is any inconsistency between a Confirmation that we provide after a Contract is executed and this Terms and Conditions, the Confirmation will prevail.
- 30.1.9 The terms and expressions in this Terms and Conditions have defined meanings, these meanings and the rules of interpretation, are set out in Schedule 1.

### 30.2 Definitions

In this Terms and Conditions, the following terms and expressions have, unless the context otherwise requires, the following meanings:

ACCOUNT	means an account you have with us.
ADI	means an Authorised Deposit-Taking Institution.
AFSL	means the Australian Financial Services Licence held by Prospero Markets Pty Ltd (AFSL No: 423034).
AGREEMENTS	means this Terms and Conditions, the PDS, the Application Form, the Financial Service Guide, and any information on our Website or Trading Platform, as amended, varied, or replaced from time to time, which together govern our relationship with you.
AGGREGATE CLOSE-OUT PROTECTION AMOUNT	has the same meaning as defined in the PDS.
AGGREGATE MARGIN CLOSE- OUT PROTECTION	has the same meaning as defined in the PDS.
AML/CTF LAWS	means the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> and all regulations, rules and instruments made under that Act.
APPLICABLE LAWS	<p>means all:</p> <ul style="list-style-type: none"><li>(a) applicable provisions of laws and regulations, including all relevant rules of government agencies, exchanges, trade and clearing associations and self-regulatory organisations, that apply to the parties, the Agreements and the transactions contemplated by the Agreements;</li><li>(b) applicable Australian law; and</li><li>(c) applicable 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 Contract and any exercise by such exchange, clearing house or other organisation or market of any power or authority conferred on it.</li></ul>
APPLICATION FORM	means the application form and account opening documentation, including documentation required to be returned for the purposes of complying with the AML/CTF Laws, completed by you and submitted to us.
ASIC	means the Australian Securities and Investments Commission.
ASSOCIATE	<p>means:</p> <ul style="list-style-type: none"><li>(a) a person who is an officer, employee, agent, representative or associate of a party;</li><li>(b) a Related Body Corporate of a party; and</li></ul>

	(c) a person who is an officer, employee, agent, representative or associate of a Related Body Corporate of a party.
ASK PRICE	has the same meaning as defined in the PDS.
AUSTRALIAN CLIENT MONEY RULES	means the provisions in Part 7.8 of the Corporations Act and the Corporations Regulations made under those provisions that specify the manner in which financial services licensees are to deal with client moneys and property as modified by ASIC.
AUTHORISED PERSON	means you and/or any person authorised by you to give instructions to us under this Terms and Conditions.
BASE CURRENCY	means the currency as agreed under clause 3.6 of this Terms and Conditions.
BID PRICE	has the same meaning as defined in the PDS.
BUSINESS DAY	means any day other than a Saturday, Sunday or public holiday on which banks are open for business in Sydney, New South Wales, Australia.
CFD	means a contract for difference that we offer to our clients from time to time under the PDS and the terms of this Terms and Conditions;
CLIENT MONEY	means the moneys our clients have deposited with us and held by us under the Australian Client Money Rules.
CLIENT MONEY TRUST ACCOUNT	means client moneys trust account (or any one of several of them) maintained by us as a trust account under section 981B of the Corporations Act. The moneys held in it beneficially for you are credited to your Account.
CLOSING PRICE	means the price determined by us, from time to time, in accordance with the terms of this Terms and Conditions;
COMMISSION	means the fee paid to us for initiating a Contract;
COMMODITY	means oil, gas or such other commodities as published through our Trading Platform.
COMMODITY CFD	means a CFD whose value fluctuates by reference to the fluctuations in the value of an Underlying Instrument relating to a Commodity;
CONFIRMATION	means a form of notification, which may be provided by us electronically, including via the Trading Platform or the internet, confirming entry into a Contract;
CONTRACT	means any contract, whether oral or written, including any derivative, option, future, contract for difference or other transaction relating to such financial products entered into by us with you. Contract is also referred to as Position in the

Agreements.

CONTRACT PRICE	means the price per Contract Unit of a Contract, quoted by and accepted by us.
CONTRACT QUANTITY	means in relation to a Contract, the number of Contract Units as the case may be, traded by you as stated in the Confirmation.
CONTRACT UNIT	means the relevant unit for the type of Contract you wish to trade with us in accordance with the terms of the Terms and Conditions.
CONTRACT VALUE	means the total value of the Contract as calculated by us in accordance with the terms of this Terms and Conditions.
CORPORATIONS ACT	means the <i>Corporations Act 2001</i> (Cth).
EVENT OF DEFAULT	means an event described in clause 18.1 of this Terms and Conditions.
EXCEPTED CONTRACT	<p>means a CFD where the Underlying Instrument is a Commodity future or other future product which will be automatically rolled over to a new Contract upon the Expiry Date.</p> <p>For the avoidance of doubt, CFDs where the Underlying Instrument is Commodity future or other future product which will NOT be subject to automatic rollover, are not Excepted Contracts.</p>
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 Trading Platform or on request.
FORCE MAJEURE EVENT	has the meaning given to it in clause 24 of this Terms and Conditions.
FSG	means our relevant financial services guide, including any supplementary and replacement financial services guide.
INDEX	means the market index on which a CFD is based.
INDEX FUTURES CFD	means a CFD whose value fluctuates by reference to the fluctuations in the value of an Underlying Instrument, which is a futures contract over an equity index;
INITIAL MARGIN	has the meaning referred to in clause 6.1 of the PDS;
INSOLVENCY EVENT	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>(a) an order is made that a corporate client be wound up;</li> <li>(b) an application is made to a court for an order: <ul style="list-style-type: none"> <li>(i) that a corporate client be wound up;</li> <li>(ii) appointing a liquidator or provisional liquidator for</li> </ul> </li> </ul>



- a corporate client;
- (c) a liquidator, provisional liquidator or controller is appointed to a corporate client;
- (d) a resolution is passed to appoint an administrator to a corporate client;
- (e) you enter into a deed of company arrangement or propose a reorganisation, moratorium or other administration involving all or any of your creditors;
- (f) a corporate client is dissolved or wound up in any other way;
- (g) you are or state that you are unable to pay your debts as and when they fall due;
- (h) you are or state that you are insolvent;
- (i) you seek or obtain protection from any of your creditors under any legislation;
- (j) you become insolvent or commit an act of bankruptcy or your estate comes within the law dealing with bankrupts;
- (k) a bankruptcy petition is presented in respect of you or, if a partnership, in respect of one or more of the partners, or if a company, a receiver, trustee, administrative receiver or similar officer is appointed;
- (l) if execution is levied against your business or your property and is not removed, released, lifted, discharged or discontinued within 28 days;
- (m) you seek a moratorium or propose any arrangement or compromise with your creditors;
- (n) any other event having substantially the same legal effect as the events specified in paragraphs (a) to (n) above;
- (o) any security created by any mortgagee or charge becomes enforceable against you and the mortgagee or chargee takes steps to enforce the security or charge;
- (p) any indebtedness of you or any of your Related Corporations becomes immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity by reason of your default or the default of any of your subsidiaries, or you or any of your subsidiaries fail to discharge any indebtedness on its due date;
- (q) you fail fully to comply with any obligations under this Terms and Conditions or any Contract;
- (r) any of the representations or warranties given by you are, or become, untrue;
- (s) we consider it necessary for our own protection or the protection of our Associates;

**INTERBANK RATE**

means the wholesale rate quoted between banks and other

	liquidity providers;
LIMIT ORDER	has the meaning referred to in the PDS;
LOSS	means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
MARGIN	means the amount that you must pay to us and have in your Account to enter into or maintain a Contract with us in accordance with this Terms and Conditions;
MARGIN CALL	means a call on you normally made via the Trading Platform, requesting you to top up the amount of money you have in your Account as Margin;
MARGIN CALL LEVEL	means a particular Margin Level at or below which the Trading Platform will automatically trigger a Margin Call;
MARGIN LEVEL	means the percentage of Net Equity to Total Margin Requirements;
MARGIN FX CONTRACT	means a contract between you and us for the taking of a spot Position in a foreign currency;
MARGIN PERCENTAGE	means such percentage as specified by us, and as amended by us in accordance with clause 13.3 of this Terms and Conditions from time to time.
MARGIN REQUIREMENT	means the amount of money that you are required to pay to us and deposit with us for entering into a trade and/ or maintaining an open Position.
MATERIAL ERROR	means errors, omissions or misquotes that may occur in relation to Products.
MINIMUM TRADING SIZE	means such minimum Contract Quantity or Contract Value as we may specify through our Trading Platform and/or Product Schedule on our Website from time to time for any type of Product.
MAXIMUM TRADING SIZE	means such maximum Contract Quantity or Contract Value as we may specify through our Trading Platform and/or Product Schedule on our Website from time to time for any type of Product.
NET EQUITY	means the aggregate of the current cash balance in your Account, adding all your realised and unrealised profits and losses, and deducting applicable charges and fees payable to us. The term Net Equity under this Terms and Conditions has the same meaning as given to it in the PDS.
NEXT SERIAL FUTURES CONTRACT	means a contract of the same type as the futures contract, which is the Underlying Instrument of the relevant CFD Contract, but with the expiry date being the next occurring expiry date.

NORMAL TRADING 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.
ORDERS	means an offer made by you under the Agreements.
PDS	means our product disclosure statement, including any supplementary and replacement product disclosure statement.
POSITION	means the long or short Position you have taken with us. Position has the same meaning as Contract in the Agreements.
PRODUCTS	means any of the Margin FX Contracts and CFDs listed in the Product Schedule at any given time, offered by us.
PRODUCT SCHEDULE	means the list of available Products offered by us and the associated details, which is available on the Website.
RELATED BODY CORPORATE	has the meaning given in the Corporations Act, with any necessary modifications for companies incorporated outside Australia.
ROLLOVER BENEFIT	means a benefit you may receive on Excepted Contracts held overnight and which is described in the PDS.
ROLLOVER CHARGE	means a charge you may have to pay where you have an Excepted Contract held overnight and which is described in the PDS.
SPREAD	means the difference in the bid and offer prices of a Contract quoted from time to time by us and, where appropriate, expressed as a percentage of the relevant price.
STOP LOSS ORDER	has the meaning referred to in the PDS.
STOP OUT LEVEL	means the level of Margin Level that will allow Prospero Markets the ability to close all or some of your open Contracts.
SWAP BENEFIT	means a benefit you may receive on a Position held overnight in a Margin FX contract or CFD (other than an Excepted Contract) and which is described in the PDS.
SWAP CHARGE	means a charge you may have to pay on a Position held overnight in a Margin FX contract or CFD (other than an Excepted Contract) and which is described in the PDS.
SWAP RATE	means the rate determined by us from time to time taking into account of the factors set out in the PDS.
TOTAL MARGIN REQUIREMENT	means the sum of your Margin Requirements for all of your open Positions.

TRANSACTION FEE	means the fee or commission from time to time specified by us to be the amount payable by you to us in respect of each Contract or Order as set out in a PDS or on the Trading Platform.
TRADING PLATFORM	means the trading platform we make available to you by which you may trade with us online in our Products. This includes any electronic service provided by us, for example an internet trading service offering clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system and relevant software provided by us to enable you to use an electronic trading service.
TRADING PLATFORM TIME	means the time zone our Trading Platform is set in. This may change from time to time and is generally GMT+2 or GMT+3. Please refer to our Website for the time zone of our Trading Platform Time.
UNDERLYING INSTRUMENT	means the equity, Index, Commodity, currency, futures contract, stock or other instrument or asset or factor the reference to which the value of a Contract is determined.
UNDERLYING MARKET	means the underlying market in which the Underlying Instrument is traded.
WE/ US/ OUR	means Prospero Markets Pty Ltd (ABN 11 145 048 577);
WEBSITE	means the internet address <a href="http://www.prosperomarkets.com">www.prosperomarkets.com</a> and includes the Trading Platform.