

**ACY Capital Australia Limited**  
**CLIENT TERMS AND**  
**CONDITIONS**

**CONTRACT FOR DIFFERENCE**

Issue Date 7 December 2020 – Version Number 9



VFSC License No.: 012868

This document is provided by ACY Capital Australia Limited (“ACY Capital Australia Limited, we, our, us”). Terms used in these Terms and Conditions have defined meanings and you should refer to Section 30 ‘Interpretation’.

# 1. Application

- 1.1 You must complete the online Application Form in order to open an Account. We, in our sole discretion, will decide whether to accept an Application.
- 1.2 Unless we agree otherwise, you agree to pay to us, and maintain at all times with us, cleared funds. These funds will be held in accordance with clause 3.5.
- 1.3 If we accept your Application, we will:
- a) establish the Account;
  - b) require you to transfer the amount to our ACY Capital Client Moneys trust account (if you are required to pay an initial amount under clause 1.2); and
  - c) credit the Account with the initial amount (once the funds have been cleared);
- 1.4 The Account is active once the steps in clause 1.3 have been completed.
- 1.5 There are other legal documents that you need to accept before trading with us, are not part of the Terms and Conditions. They include:
- a) our Key Information Statement (KIS);
  - b) Risk Warning clauses on our Website; and
  - c) Trading Platform product specification.
- 1.5 You may apply for more than one Account. The same terms and conditions apply to all your accounts.
- 1.6 You acknowledge that when you trade with us, you don't own, have any rights in, or take physical delivery of any Underlying Product, and there's no exchange of one Product for another.

## Term

- 1.7 The Agreement commence once the steps in clause 1.3 have been completed and continues until it is terminated in accordance with these Terms and Conditions.

## 2. Our Services

### Enter into Contracts

- 2.1** Subject to you fulfilling your obligations under these Terms and Conditions, if we accept an Order, we will enter into a Contract with you.
- 2.2** A platform message is given to you after each trade had been accepted. The Confirmation will include the product name, entry price, traded volume, and execution time. You can also check your open positions from our trading platform.
- 2.3** We enter into each Contract with you as a principal. We are your trading counterparty.

### How we provide services

- 2.4** We quote prices which provide an indication of the Underlying Prices at which we are prepared to deal with you. You acknowledge that:
- a) we act under the Terms and Conditions as a market maker, and accordingly, set the Product Price at which we are prepared to deal with you; and
  - b) Product Prices that may be quoted or traded upon from time to time by other market makers or third parties do not apply to trades and dealings between you and us.
- 2.5** To allow ACY Capital to have a completely neutral position and limited internal risk controls with trading, we may enter into an agreement with Hedging Counterparties immediately after you enter into a Contract with us.

### Anti-Money Laundering Legislation

- 2.6** You acknowledge that we may require further information from you from time to time to comply with the AML/CTF Laws. By entering into the Agreement, opening an account and transacting with us, you undertake to provide us with all additional information and assistance that we may reasonably require to comply with the AML/CTF Laws. You also warrant that:
- a) you are not aware and have no reason to suspect that:
    - i. the moneys held to fund your Transaction have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Vanuatu law, international law or convention or by agreement; and

- ii. 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 or organisation as the term is used in the Anti-Money Laundering and Counter-Terrorism Financing Act No.13 of 2014.

## **Our Operation Hours**

- 2.7** Our operation hours are normally 9am to 6pm (Australian Eastern Standard Time) on Business Days. However, we quote Product Prices and accept Orders on our platform during normal market trading hours.
- 2.8** We are under no obligation to quote Product Prices or accept Orders on a public holiday in any jurisdiction which, in our reasonable opinion, affects the relevant Underlying Product. We may give notice of such public holidays and the Underlying Products affected on the ACY Capital Trading Platform.

## **3. The Account**

### **Nature of Account**

- 3.1** The Account is a record, or a series of records, maintained by us that shows, at any point in time, the net position of the payments you have made or are required to make to us and the payments we have made or are required to make to you.
- 3.2** You authorise and direct us to:
- a) debit to the Account any Free Balance you withdraw and any amounts payable by you under these Terms and Conditions;
  - b) credit to the Account any amounts deposited by you and any amounts payable by us under these Terms and Conditions; and
  - c) designate the amounts in the Account as either Free Balance or Actual Margin depending on the amounts you deposit with us, your Orders, Contract positions and market movements in accordance with these Terms and Conditions.
- 3.3** We are not required to notify you before debiting, crediting or designating amounts on the Account.

## You agree to maintain sufficient funds on the Account

**3.4** You agree to deposit with us sufficient funds at all times to satisfy all amounts payable by you under these Terms and Conditions. It is your responsibility to ensure that the funds you transfer are cleared in sufficient time to meet all the payment obligations you have under these Terms and Conditions.

## Use of funds deposited with us

**3.5** We deposit all money paid by you into our ACY Capital Client Moneys trust account.

**3.6** You agree and acknowledge that:

- a) your money in our ACY Capital Client Moneys trust account is not kept separate from the money of other clients;
- b) we may withdraw your money from the ACY Capital Client Moneys trust account in any of the following circumstances:
  - i. making a payment to, or in accordance with your written directions for purposes of entering into Contracts (including but not limited to Margin Call Payments);
  - ii. defraying brokerage and other proper charges;
  - iii. paying to us money to which we are entitled;
  - iv. making a payment that is otherwise authorised by law;
  - v. paying to us money to which we are entitled pursuant to the operating rules of a financial market; and
  - vi. making a payment to another licensee provided that the receiving licensee is notified that the money has been withdrawn from the ACY Capital Client Moneys trust account and pays it into their trust account;
- c) we may use your money in our ACY Capital Client Moneys trust account for the following purposes:
  - i. as our capital, including working capital;
  - ii. meeting obligations incurred by us other than on your behalf;
  - iii. margining, guaranteeing, securing, transferring, adjusting, or settling of our dealings in derivatives with other parties, including dealings on behalf of other people other than you, the Client; or
  - iv. hedging, counteracting, or offsetting risk to us associated with a transaction between us and you, the Client.
- d) any amounts withdrawn under clause 3.6b):
  - i. belong to us; and
  - ii. will no longer be your funds or be held for you;
- e) we are entitled to invest the money held in our ACY Capital Client Moneys trust account, including in:

- I. investments in any manner in which we are, for the time being, authorised to invest in;
  - II. investment on deposit of any eligible money market dealer;
  - III. investment on deposit at interest with any financial institution;
  - IV. the acquisition of cash management trust interests;
  - V. investment in a security issued or guaranteed by the Commonwealth or a state or territory; and/or
  - VI. investment on deposit with a clearing and settlement facility;
- f) unless otherwise agreed in writing with you:
- I. we are solely entitled to any interest or earnings derived from your money being deposited in our ACY Capital Client Moneys trust account;

In the case of amounts withdrawn under clause 3.6c)iii and 3.6c)iv, the amounts are held in one or more accounts in the Hedging CounterParty's name.

## **Withdrawals of Free Balance**

**3.7** If the Account shows that you have Free Balance, you may request us to send these funds to you in respect of such amount as you may specify. However, we may at our discretion elect to withhold any payment requested (in whole or in part) due to you if an amount is required to be maintained with us under clause 1.2 or we are entitled to withhold an amount. We will notify you as soon as reasonably practicable if we decide to withhold any part of your Free Balance.

## **Accounts treated separately**

**3.8** Except as otherwise expressly provided in the Agreement, where you have opened more than one Account with us, we treat the Accounts as entirely separate. Therefore, any amount standing to your credit on one Account does not, except where we exercise our rights under clause 13 and 21.5, discharge any of your liabilities in respect of another Account. However, we are authorised to use the fund from your account in credit to cover the debt that you might have in other account.

# **4. Orders**

## **Quotation of Derivative Prices**

**4.1** You may obtain a quote from us for a Derivative Price.

**4.2** You acknowledge that:

- a) any quote provided by us in accordance with this clause 4 is indicative only; and

- b) no Contract is entered into until your Order is accepted by us in accordance with these Terms and Conditions.

## **Placing Orders Acceptance of Order**

**4.3** You may, by placing an Order with us:

- a) offer to enter into a new Contract with us; or
- b) request us to Close Out an Open Position.

**4.4** You may provide us with electronic or written Orders (which includes Orders provided via the ACY Capital Trading Platform as described below). We may acknowledge instructions electronically or in writing, as appropriate.

**4.5** An Order may be:

- a) market order, which means that the Order will be executed at the current market price; or
- b) pending order, which means that the Order you place with pre-set price will remain capable of being accepted by us, until you cancel or we accept it.

**4.6** Before placing an Order you are responsible for ensuring that:

- a) the Actual Margin is equal to or more than the Required Margin, as set out in clause 6 of these Terms and Conditions; and
- b) you can comply with the requirements of clause 3.4.

**4.7** When placing an Order, you must set out details of:

- a) whether you intend to be the Long Party or the Short Party under the Contract;
  - b) the Contract Quantity; and
  - c) the Underlying Product;
- and other information applicable to the Order as we may require from time to time.

## **Acceptance of Order**

**4.8** We may in our sole discretion accept an Order in whole or in part. An Order is accepted by us through our trading platform.

**4.9** An Order is binding on you when we accept the Order. You acknowledge that we may accept an Order without any notice of acceptance, aside from giving you the Confirmation.

**4.10** We will inform you if we decide not to accept an Order.

**4.11** Orders may be placed as:

- a) market Orders to buy or sell a derivative product as soon as possible at the price obtainable in the market; or
- b) limit and stop Orders to trade when the price reaches a predefined level, as applicable to the various Underlying Products offered (or a combination of these types of Orders). Limit Orders to buy and stop Orders to sell must be placed below the current market price, and limit Orders to sell and stop Orders to buy must be placed above the current market price. If the bid price for sell Orders or ask price for buy Orders is reached, the Order is filled as soon as possible at the price obtainable in the market. Limit and stop Orders are therefore not guaranteed executable at the specific level or amount.

**4.12** Where your request to cancel an Order is not received by us prior to acceptance of that Order, the Contract or Close Out resulting from the acceptance of the Order is valid and binding on you and us under these Terms and Conditions.

**4.13** You acknowledge that any action by you to modify or cancel an Order is ineffective unless:

- a) we have received from you a cancellation notice in a form acceptable to us; or
- b) we have cancelled the order in our order records.

**4.14** Errors in pricing

(a) It is possible that errors, omissions or misquotes (“**Material Error**”) may occur in the pricing of CFDs quoted by us, which by fault of either of us or any third party, is materially incorrect when taking into account market conditions and quotes in Underlying Products which prevailed at the time. A Material Error may include an incorrect price, date, time or CFD or any error or lack of clarity of any information. If a trade is based on a Material Error, we reserve the right without your consent to:

- (i) 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;
- (ii) close the trade and any open Positions resulting from it;
- (iii) void the Contract from the outset; or
- (iv) refrain from taking action to amend or void the Contract.



(b) We will exercise the right in paragraph 4.14(a) reasonably, 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 4.14; but if it is not practicable we will give you notice as soon as practicable afterwards. In the absence of fraud or gross negligence 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.

(c) In the event that a Material Error has occurred and we exercise our rights under paragraph 4.14(a), we may, without notice, adjust your Account or require that any moneys paid to you in relation to Contract the subject of the Material Error be repaid to us as a debt due payable to us on demand.

## **5. No Transfer of Legal or Beneficial Interest in the Underlying Products**

**5.1** A Contract does not transfer the legal or beneficial interest in any Underlying Product to you and neither party has any right or obligation to acquire or deliver the Underlying Products.

## **6. Required Margin**

### **Obligation to have Required Margin**

**6.1** Our Margin requirements apply throughout the term of each Contract. It is your responsibility to ensure that the Required Margin is available on the Account at all times. We may or may not notify you that the Actual Margin is less than the Required Margin. If, at any time during the term of a Contract, the Actual Margin is not sufficient to cover the Required Margin, you must Close Out Open Positions or transfer adequate funds to us. Such transfer must be effected and documented immediately after we request you to do so. Even if you effect such Transactions, we may do one or both of cancel any Orders or Close Out one or more Contracts or part of a Contract at our sole discretion without assuming any responsibility towards you for such action.

**6.2** If, at any time during the term of a Contract, the Actual Margin is less than the Required Margin, the shortfall is immediately due and payable, and, if not paid, constitutes an Event of Default.

- 6.3** We provide to you through the ACY Capital Trading Platform access to information about the Account to enable you to calculate the Required Margin. It is your responsibility to understand all relevant information in respect of the Account before placing Orders, including all information in respect of your current Open Positions. We are not responsible for any losses you may suffer or incur as a result of not monitoring your account properly.
- 6.4** Where we are not able to provide you access through the ACY Capital Trading Platform due to technical reasons, you accept that in circumstances where your Contracts are moving or have moved quickly against you, we may not be able to contact you before system trigger Close Out orders to your Contracts under these Terms and Conditions.

## **7. Your Obligation to Pay Margin**

- 7.1** It is your responsibility to monitor your Margin through the ACY Capital Trading Platform. We are not obliged to keep you informed of your account balance or to notify you if your Actual Margin is less than your Required Margin.
- 7.2** You must maintain sufficient Margin as required by us under these Terms and Conditions and Conditions and as referred to in our KIS in order to maintain the minimum amount of Margin required by us.
- 7.3** You will also be required to meet any Margin Calls. It is your responsibility to login to your trading platform to monitor your open positions and margin level. Notify us immediately of any changes in your contact details.
- 7.4** Your failure to pay any Margin required under these Terms and Conditions and Conditions will be regarded as an Event of Default.

## **8. Commissions, Charges and Other Costs**

- 8.1** You must pay to us the applicable commissions and charges.

**8.2** We may vary these commissions and charges without notice when changes are to your advantage or are due to external circumstances beyond our control. Such circumstances include:

- a) changes in the relationship with our counterparties, which affect our cost structures;
- b) changes in commissions and charges from exchanges, clearing houses, information providers or other third-party providers that are passed on to you by us.

**8.3** We may vary these commissions and charges with immediate notice if:

- a) market conditions, including competitive behaviour, mean it is prudent for us to change our conditions; or
- b) for commercial reasons we wish to change our general cost and pricing structure; or
- c) significant particulars of your individual circumstances have changed.

**8.4** Amounts due under this clause 8 are debited from your Account on the Close of Business on the day the commission, charge or other Cost is incurred by you.

## 9. Interest on Open Positions

### **No interest paid on amounts we hold for you**

**9.1** Unless otherwise agreed in writing, we are not liable to:

- a) pay interest to you on any Free Balance in any Account or any other sum held by us; or
- b) account to you for any interest we receive on such sums or in connection with any Contract.

### **Default interest**

**9.2** If you fail to pay an amount payable to us under the Agreement, we may charge you interest on the unpaid amount at the default interest rate. The default interest rate will be central bank target rate for the relevant Underlying Product plus 5% as determined by us. The amount of default interest will be debited from the Account daily until the amount owed to us is paid.

### **Changes to interest rates**

**9.3** We may vary such interest rates without notice when changes are to your advantage or are due to external circumstances beyond our control. Such circumstances include:

- a) changes in the monetary or credit policies domestic or abroad that affect the general

- interest level in a way that is of importance to us;
- b) other developments in the general interest level, including in the money and bond markets, in a way that is of importance to us; or
- c) changes in the relationship with our counterparties, which affect our cost structures.

**9.4** We may vary such interest rates with immediate notice if:

- a) market conditions, including competitive behaviour, mean it is prudent for us to change our conditions; or
- b) for commercial reasons we wish to change our general cost and pricing structure; or
- c) significant particulars of your individual conditions have changed.

## **10. Currency Conversions**

**10.1** All amounts paid by you to us and paid by us to you will be denominated in Australian dollars, US Dollars, New Zealand Dollars, British Pounds Sterling or Euros. Where you deal in a Contract denominated in a currency other than Australian dollars, US Dollars, New Zealand Dollars, British Pounds Sterling or Euros:

- a) funds transferred from our ACY Capital Client Moneys trust account will be converted at the current spot rate for the conversion of the relevant funds into your nominated currency (being either Australian dollars, US Dollars, New Zealand Dollars, British Pounds Sterling or Euros) minus a conversion calculation fee of up to 2 per cent, which we will charge you; and
- b) realised profits and losses will be converted to your nominated currency (being either Australian dollars, US Dollars, New Zealand Dollars, British Pounds Sterling or Euros) immediately on closing of the position at the current spot rate minus a conversion calculation fee of up to 2 per cent, which we will charge you.

**10.2** Amounts due under this clause 10 are debited from your Account on the Close of Business of the day that a currency conversion occurs.

**10.3** We may waive or defer the conversion calculation fee at our discretion.

## **11 Swap Charge for Contracts Held Until the Specified Date**

**11.1** Where a Contract is held at the Close of Business on the day before its Specified Date, it is rolled over to a new Specified Date. On re-opening, the Contract is subject to a Swap Charge determined by us in accordance with this clause:

(a) if you are the Long Party and the Bought Swap Rate is higher than the Sell Swap Rate, we must pay you interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate;

(b) if you are the Long Party and the Bought Swap Rate is less than the Sell Swap Rate, you must pay us interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate;

(c) if you are the Short Party and the Sell Swap Rate is higher than the Bought Swap Rate, we must pay you interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate; and

(d) if you are the Short Party and the Sell Swap Rate is lower than the Bought Swap Rate, you must pay us interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate.

**11.2** The Swap Charge is paid by adjusting the Underlying Product Price by an amount equal to the amount of the Swap Charge calculated in accordance with this clause.

## **12. Close out of Contracts**

**12.1** You need to login to your Trading Platform to place order to Close your open positions. Alternatively, you can submit a ticket for us to close positions on your behalf.

**12.2** An Open Position is Closed after our trading platform acceptance of your Close positions order or by us under clause 22.

**12.3** If a Contract is Closed under clause 12.1, the realised profit will be credited into your account, and the realised loss will be deducted from your account.

## **13. Our Rights to Reduce the Position Limit, Close Out a Contract, Refuse an Order or Terminate the Terms and Conditions**

**13.1** We may, with or without notice, and in addition to any other rights we may have under these Terms and Conditions:

- a) Close Out or cancel all or part, as we reasonably consider appropriate, the Contracts; or
- b) reduce your Position Limit; or
- c) refuse Orders; or
- d) terminate the Agreement; or
- e) adjust the price, size or value of the Contract; or
- f) adjust the Required Margin.

**13.2** We may exercise our rights in clause 13.1 if:

- a) an Event of Default has occurred; or
- b) we reasonably consider that there are abnormal trading conditions; or
- c) we reasonably consider it necessary for the protection of our rights under the Agreement; or
- d) we are unable to make prices in the relevant Contract due to the unavailability of the relevant market information for reasons beyond our control; or
- e) we so decide in our absolute discretion and, in this case only, give written notice of such decision to you; or
- f) we consider that you may be in possession of 'inside information'; or
- g) we consider that you may be in breach of any applicable law; or
- h) either party is so requested by the Vanuatu Financial Services Commission or any other regulatory agency or authority; or
- i) your Actual Margin is less than the Required Margin; or
- j) the aggregate of the Contract Value for your Orders and the Contract Value for all other orders for an Underlying Product is below the minimum or above the maximum values that we reasonably consider appropriate in the market; or
- k) we reasonably believe that you've manipulated our prices, execution process or the Trading Platform, including using any electronic device, software, algorithm, trading strategy or arbitrage practice (including but not limited to latency abuse, price manipulation or time manipulation) to take unfair advantage of the way in which we construct, provide or convey our bid or ask prices; or
- l) if multiple accounts with hedging trades are used to speculate the gapping of the market open.

**13.3** If we exercise our right to Close Out all or part of any Contract, clause 13 applies except that we determine, in our sole discretion, the Close Out Value for the affected Contract.

**13.4** You accept that we may Close Out any of your Contracts and in what proportion that we decide in our absolute discretion.

## 14. Suspension and Market Disruption

### 14.1 If at any time:

- a) trading in an Underlying Product on the Underlying Market is limited or suspended; or
- b) trading is limited or suspended on the Underlying Market so as to restrict trading within any relevant Underlying Product, such that we are prevented from determining the Underlying Product Price of an Underlying Product, then the Underlying Product Price of such Underlying Product is to the Underlying Product Price immediately preceding such limitation or suspension.

If the limitation or suspension continues for 5 Business Days, we may Close Out the Contract and if we do so we will determine the Close Out Date and the Close Out Value acting in good faith.

We reserve the right at all times during the term of any such limitation or suspension to adjust the Underlying Product Price of any affected Underlying Product in our reasonable discretion but having regard to the then prevailing market conditions affecting trading as a whole or trading in such Underlying Product.

## 15. Client's Warranties and Representations

### 15.1 You and each Guarantor (as applicable) warrant and represent that:

- a) all necessary consents required in order for it to conduct its business and relevant to the performance, validity or enforceability of the Terms and Conditions and any Contract or Order have been obtained and are in full force and effect.
- b) you are not under any legal disability with respect to, and are not subject to any law or regulation which prevents its performance according to the Terms and Conditions or any Contract or Transaction contemplated by the Terms and Conditions;
- c) the information you give us is complete, accurate and not misleading in any material respect;
- d) you have obtained all necessary consents and have the authority to enter into these Terms and Conditions;
- e) you are complying with all laws to which you are subject;
- f) you are able to pay your debts as and when they fall due are not otherwise insolvent;
- g) you will not conduct any Transactions, including trades, which contravene laws or regulations in any Transactions in relation to insider trading, market manipulation or market abuse;
- h) unless stated in the Application Form, you are not acting as trustee of a trust;
- i) all funds deposited in the Account are not subject to an Encumbrance;
- j) no Event of Default continues unremedied;
- k) there are no actions or claims pending the adverse determination of which might have a Material Adverse Effect on your ability or the Guarantor's ability to perform its

- obligations under the Terms and Conditions any Contract or Order, or on the rights granted to us;
- l) if a body corporate:
    - I. it is duly authorised and validly existing under the laws of its jurisdiction of incorporation;
    - II. it is properly empowered and has obtained necessary corporate or other authority pursuant to its constitutional and organisational documents;
  - m) it is not entitled to claim for itself or any of its assets or revenues any right of general immunity or exemption on the grounds of sovereignty or otherwise from suit, execution, attachment or other legal process in respect of its obligations under the Terms and Conditions, any Contract or Order; and
  - n) it is in compliance with all laws to which it is subject including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements;
  - o) if you completed the Application in the name of a trustee:
    - I. you are the sole trustee of the trust;
    - II. no action has been taken or proposed to remove you as trustee of the trust;
    - III. you have power under the trust deed to enter into and comply with your obligations under the Agreement and any Contract or Order;
    - IV. you have in full force and effect the authorisations necessary to enter the Agreement or any Contract and make an Order, perform obligations under them and allow them to be enforced (including under the trust deed and its constitution (if any)) and
    - V. you have a right to be fully indemnified out of the assets of the trust in respect of obligations incurred by you under the Agreement and any Contract or Order;
    - VI. the trust fund is sufficient to satisfy that right of indemnity and all other obligations in respect of which you have a right to be indemnified out of the trust fund;
    - VII. you have not, and never have been, in default under the trust deed;
    - VIII. no action has been taken or proposed to terminate the trust;
    - IX. you and your directors and other officers have complied with their obligations in connection with the trust; and
    - X. you have carefully considered the purpose of the Agreement and any Contract or Order and consider that entry into the Agreement and any Contract or Order is for the benefit of the beneficiaries and the terms of the trustee documents are fair and reasonable;

**15.2** The above warranties and representations are deemed to be repeated each time you place an Order.

**15.3** You and the Guarantor (if applicable) acknowledge that we have entered into the Terms and Conditions in reliance on the representations and warranties in this clause 15.1.



## 16. Undertakings and Acknowledgments

You and the Guarantor undertake to:

- 16.1 notify us of any change to the details supplied by you in your Application Form and any material or anticipated change in your financial circumstances which may affect the basis upon which we do business with you;
- 16.2 notify us if any warranty or representation made by you or the Guarantor is or becomes incorrect or misleading;
- 16.3 do everything necessary to ensure that no Event of Default occurs;
- 16.4 supply to us when requested to do so such financial or other information relating to you or the Guarantor as we may from time to time reasonably request.

## 17. Indemnity and Exclusion of Liability

### Indemnity

- 17.1 You indemnify us against any liability or loss (including consequential losses) arising from, and any Costs incurred in connection with:
- a) us acting in connection with the Terms and Conditions or any Contract or Order in good faith on fax, telephone, email or written instructions purporting to originate from your offices or to be given by an Authorised Person; or
  - b) an Event of Default; or
  - c) your breach of these Terms and Conditions;
  - d) the Agreement or any Contract or Order; or
  - e) us acting in accordance with any direction, request or requirement of any regulatory authority or government body.

You agree to pay amounts due under this indemnity on demand from us.

- 17.2 This indemnity survives any termination of the Agreement.

### Indirect Losses

**17.3** We are not liable for indirect losses which occur as a side effect of the main loss and damage which are not foreseeable by you and us. We are not liable to you for losses which you incur which are foreseeable by us for the reason that you have communicated the possibility of such losses or any special circumstances to us.

**17.4** We are not liable to you for any loss of profit or opportunity.

### **Exclusion of Liability**

**17.5** We are not liable for loss or Costs caused by:

- a) any action we may take under these Terms and Conditions, so long as we act with the terms of its provisions and in particular act reasonable where required to do so; any claim, loss, expense, cost or liability suffered or incurred by you except to the extent that such a loss, expense, cost or liability is suffered as a result of our breach of these Terms and Conditions, negligence or wilful default;
- b) the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under the Terms and Conditions;
- c) not accepting or your Orders or delay in accepting your Orders;
- d) not designating or delay in designating amounts as either Actual Margin or Free Balance on the Account.

## **18. Dealings Between You and Us**

**18.1** We are entitled to act on the oral or written Orders:

- a) of any Authorised Person;
- b) of any person who appears to us to be an Authorised Person, notwithstanding that the person is not, in fact, so authorised; and
- c) transmitted using your username, account number, user ID and/or password.

**18.2** You agree to promptly provide any instructions to us which we may require. If you do not provide the instructions promptly, we may, in our absolute discretion, take such steps at your cost, as we consider necessary or desirable for our own protection or your protection. This provision is similarly applicable in situations when we are unable to contact you.

**18.3** We may (but we are not obliged to) require confirmation in such form as we may reasonably request if an instruction is to remit money due to you or if it appears to us that such confirmation is necessary or desirable.

**18.4** If you are more than one person (for example, joint account holders):

- a) the liabilities of each such person are joint and several;
- b) we may act upon instructions received 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 provided by us to one such person is deemed to have been provided to all such persons; and
- d) our rights under clause 21 apply if an Event of Default occurs in respect of any one of such persons.

## **19. Taxes**

### **Stamp duty**

**19.1** You must pay and account for any transfer or similar duties or taxes, and any loan security or other stamp duties chargeable in connection with any Transaction effected pursuant to or contemplated by these Terms and Conditions or the KIS and will indemnify and keep indemnified us against any liability arising as a result of your failure to do so.

### **GST**

**19.2** Consideration for a supply under or in connection with or contemplated by these Terms and Conditions and the KIS is exclusive of GST unless expressly stated to be inclusive of GST.

**19.3** If GST is payable by us or any members in our group of companies on any supply under or in connection with or contemplated by these Terms and Conditions or the KIS, in addition to providing any consideration for that supply (which is exclusive of GST), you must:

- a) pay to us or the relevant member of our group of companies (as the case may be) an amount equal to the GST payable on the supply, without deduction or set-off of any other amount; and
- b) make that payment as and when the consideration or part of it must be paid or provided, except that you need not pay unless you have received a tax invoice (or adjustment note) for that supply.

### **Withholding**

- 19.6** If you make any payment which is subject to any withholding or deduction, you must pay us such additional amount to ensure that the amount actually received by us equals the full amount we would have received had no withholding or deduction been made.
- 19.7** If we make any payment which is subject to any withholding or deduction, we will pay you the net amount after making such withholding or deduction and will not pay you an additional amount.

## **20. Guarantee and Indemnity**

### **Requirement for a Guarantor**

- 20.1** Your obligations under the Terms and Conditions must be guaranteed:
- a) where you (including a trustee) are a company, by each director of the Company; and
  - b) in any other circumstance, where we determine, in our absolute discretion, that such a guarantee is required.

### **Guarantee**

- 20.2** The Guarantor unconditionally and irrevocably guarantees to us your compliance with your obligations in connection with the Agreement, including each obligation to pay money.
- 20.3** If you do not comply with those obligations on time and in accordance with the Agreement, then the Guarantor agrees to comply with those obligations on demand from us. A demand may be made whether or not we have made demand on you.

### **Indemnity**

- 20.4** The Guarantor indemnifies us against any liability or loss arising from, and any Costs it incurs, if:
- a) you do not, or are unable to, comply with an obligation you have (including an obligation to pay money) in connection with the Terms and Conditions; or
  - b) an obligation you would otherwise have under the Terms and Conditions (including an obligation to pay money) is found to be unenforceable; or
  - c) an obligation the Guarantor would otherwise have under clause 20.2 is found to be unenforceable; or
  - d) a representation or warranty by you in the Terms and Conditions is found to have been incorrect or misleading when made or taken to be made.

**20.5** The Guarantor agrees to pay amounts due under clause 20.2 on demand from us.

**20.6** We need not incur expense or make payment before enforcing this right of indemnity.

### **Extent of guarantee and indemnity**

**20.7** The guarantee in clause 20.1 is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of your obligations in connection with the Agreement. The Guarantor waives any right it has of first requiring us to commence proceedings or enforce any other right against you or any other person before claiming from the Guarantor under this guarantee and indemnity.

### **Acknowledgement**

**20.8** The Guarantor acknowledges that, before entering into this guarantee and indemnity, it:

- a) was given a copy of the Agreement (and all documents giving rise to your obligation in connection with the Agreement) and had full opportunity to consider their provisions; and
- b) is responsible for making itself aware of your financial position and any other person who guarantees any of your obligations in connection with the Agreement.

### **Payments**

**20.9** The Guarantor agrees to make payments under this guarantee and indemnity:

- a) in full without set-off or counterclaim, and without any withholding or deduction unless prohibited by law; and
- b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

**20.10** If the Guarantor makes a payment that is subject to any withholding or deduction, the Guarantor agrees to pay us such additional amount to ensure that the amount actually received by us equals the full amount we would have received had no withholding or deduction been made.

### **Our rights are protected**

**20.11** The rights given to us under this guarantee and indemnity, and the Guarantor's liabilities under it, are not affected by any act or omission of us or any other person. For example, those rights and liabilities are not affected by:

- a) any act or omission:
  - I. varying or replacing the Agreement;
  - II. releasing you or giving you a concession (such as more time to pay);
  - III. releasing any person who gives a guarantee or indemnity in connection with any of your obligations;
  - IV. by which a person becomes a Guarantor after the date of this guarantee and indemnity;
  - V. by which the obligations of any person who guarantees any of your obligations (including obligations under this guarantee and indemnity) may become unenforceable;
  - VI. by which any person who was intended to guarantee any of the obligations does not do so, or does not do so effectively;
  - VII. by which a person who is co-surety or co-indemnifier is discharged under a Client Agreement or by operation of law;
  - VIII. a person dealing in any way with the Agreement or this guarantee and indemnity;
  - IX. the death, mental or physical disability, or liquidation, administration or insolvency of any person including you or the Guarantor;
  - X. changes in the membership, name or business of any person;
  - XI. acquiescence or delay by us or any other person.

### **Guarantor's rights are suspended**

**20.12** As long as any obligation is required, or may be required, to be complied with in connection with this guarantee and indemnity, the Guarantor may not, without our consent:

- a) reduce its liability under this guarantee and indemnity by claiming that you or it or any other person has a right of set-off or counterclaim against us; or
- b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Terms and Conditions or any other amount payable under this guarantee and indemnity; or
- c) claim an amount from you, or another guarantor (including a person who has signed the Application Form as a "Guarantor"), under a right of indemnity; or
- d) claim an amount in your liquidation, administration or insolvency or of another guarantor of any of your obligations (including a person who has signed the Application Form as a "Guarantor").

## 21. Termination

**21.1** If all of your Contracts have been Closed Out, you may terminate the Terms and Conditions, including your rights associated with the use of the ACY Capital Trading Platform, immediately by giving written notice to us.

**21.2** We may:

- a) Close Out any Contracts; and
- b) terminate the Terms and Conditions, including your rights associated with the use of the ACY Capital Trading Platform, either:
  - i) at any time on giving you five days notice; or
  - ii) immediately, following an Event of Default or to otherwise protect our interests, without notice to you.

**21.3** On termination by any party, we may consolidate all Accounts held by you, and deduct all amounts due to you from any Account, before transferring any credit balances on any Account to you.

**21.4** After the Terms and Conditions has been terminated, in addition to the rights set out at clause 21.3:

- a) any indemnity granted by you;
- b) the guarantee and indemnity granted under clause 20;
- c) all of your and the Guarantor's confidentiality obligations;
- d) your obligations in relation to the ACY Capital Trader Platform in clause 22;
- e) the representations and warranties given by you and the Guarantor;
- f) any exclusion of our liability, under the Agreement, and any other rights or obligations you have which arose before the Terms and Conditions is terminated,

continue to have full force and effect.

## 22. ACY Capital Trading Platform

**22.1** The ACY Capital Trading Platform provides a possibility for execution of certain Transactions. Furthermore, details regarding Accounts, Confirmations and messages from us to you may be available on the ACY Capital Trading Platform. The following terms apply to Contracts executed through the ACY Capital Trading Platform:

- a) we are not liable to you for any loss, expense, cost or liability suffered or incurred by

- you due to failure of the system, transmission failure or delays or similar technical errors whether or not the error might be due to factors under our control;
- b) we are not liable to you for any removal of profits or losses you might suffer due to errors in quotes which are the result of your typing errors or feed errors committed or your erroneous perception of information entered into the system by you;
  - c) we are not liable to you for any loss, expense, cost or liability suffered or incurred by you due to any failure of third party plugins, signals, EAs, and custom indicators that not developed by us and not under our control;
  - d) we are entitled to make the necessary corrections in your Account according to market value of the Underlying Product in question at the time when the error occurred;
  - e) we may offer real-time tradable prices to you. Due to delayed transmission between you and us, the price offered by us may have changed before an Order from you is received by us. If automatic Order execution is offered to you, we are entitled to change the price on which the Order is executed to the market value at the time at which the Order from you was received;
  - f) the ACY Capital Trading Platform may be available in several versions, which may be differentiated in various aspects including, but not limited to the level of security applied, products and services available. We are not liable to you for any loss, expense, cost or liability suffered or incurred by you due to you using a version different from our standard version with all available updates installed;
  - g) you are responsible for providing the system to enable you to use the ACY Capital Trading Platform; you are responsible for the installation and proper use of any virus detection/scanning program we require from time to time;
  - h) you are responsible for all Orders, and for the accuracy of all information, sent via the ACY Capital Trading Platform using your name, password or any other personal identification means implemented to identify you;
  - i) you are obliged to keep passwords secret and ensure that third parties do not obtain access to your trading facilities;
  - j) you must inform us immediately of any unauthorised access to the ACY Capital Trading Platform or any unauthorised Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease;
  - k) you are liable to us for Contracts executed by means of your password even if such use might be unauthorised or wrongful; and
  - l) regardless of the fact that the ACY Capital Trading Platform might confirm that a Contract is executed immediately when you transmit instructions via the ACY Capital Trading Platform, the Confirmation forwarded by us or made available to you on the ACY Capital Trading Platform constitutes our confirmation of a Contract;
  - m) you must inform us if you become aware of a material defect, malfunction or virus in the ACY Capital Trading Platform and cease all use of the ACY Capital Trading Platform until you have received permission from us to resume use.

**22.2** All rights in patents, copyrights, design rights, trademarks and any other intellectual property rights (whether registered or unregistered) relating to the ACY Capital Trading Platform remain vested in us or our licensors. You will not copy, interfere with, tamper



with, alter, amend or modify the ACY Capital Trading Platform or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the ACY Capital 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. Any copies of the ACY Capital Trading Platform made in accordance with law are subject to these 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 ACY Capital Trading Platform made by you. If we so request, you must as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the ACY Capital Trading Platform.

## 23. Client Money

### Client money

**23.1** The moneys paid by you into the ACY Capital Client Moneys trust account are held for you and are segregated from ACY Capital's own funds. This means those funds are not available to pay general creditors in the event of receivership or liquidation of ACY Capital. You agree and acknowledge that individual Accounts of our clients are not separated from each other within the ACY Capital Client moneys trust Account.

**23.2** ACY Capital is entitled to retain all interest earned on the money held in the ACY Capital Client Moneys trust account.

### Handling Retail Client money

**23.3** For the avoidance of any doubt, ACY Capital does not use money paid to it by retail clients for any of the following purposes:

- a) meeting obligations incurred by ACY Capital in connection with margining, guaranteeing, securing, transferring, adjusting, or settling dealings in derivatives by ACY Capital, or dealings on behalf of people other than the retail client from whom payment was received;
- b) meeting any other obligations incurred by ACY Capital other than on behalf of the retail client from whom payment was received;
- c) as its own capital, including working capital; and
- d) hedging risk.

### Withdrawal Authority

**23.4** Margin is part payment by you to ACY Capital for the ACY Capital Contract and is not held on deposit for you. You must pay Margin to ACY Capital for the Contract. You must pay Margin in an amount of at least the minimum required Margin amount.

**23.5** Since you must pay Margin for the Contract and you control when you place Orders, ACY Capital requires that all of your moneys for payment for your Contract must first be deposited into the ACY Capital Client Moneys trust. ACY Capital only accepts your payment into the ACY Capital Client Moneys trust account on the basis that it is authorised and directed by you to withdraw so much of those funds as it is entitled to do so under any contracts you enter into with ACY Capital (this includes any applicable fees and charges). Your acceptance of these Terms and Conditions and your payment to the ACY Capital Client Moneys trust account serves as confirmation of your direction to ACY Capital to withdraw these funds.

## 24. Force Majeure

### Force Majeure Event

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

- a) where we are, in our opinion, unable to maintain an orderly market in our Contracts in respect of any one or more of the Underlying Products 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 Products;
- c) the imposition of limits or special or unusual terms in the relevant markets or Underlying Products;
- d) the excessive movement, volatility or loss of liquidity in the relevant markets or Underlying Products; or
- e) where we reasonably anticipate that any of the circumstances set out in clauses 24.1a) to d) of these Terms and Conditions are about to occur.

### Actions we may take

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

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

### **Notification of Force Majeure event**

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

### **Liability**

**24.4** 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 these Terms and Conditions or for taking or omitting to take any action in accordance with clauses 24.2 or of these Terms and Conditions.

### **Close open positions**

**24.5** In some circumstances, we may be unable, after using all reasonable efforts, to acquire, substitute, maintain, unwind or dispose of any Underlying Product 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 Underlying Product Price.

## **25. Dispute Resolution**

**25.1** You should inform us immediately in writing of any dispute whatsoever in connection with these Terms and Conditions. We will endeavour to investigate and resolve any dispute in accordance with internal dispute resolution process.

**25.2** In the event the dispute is unable to be resolved by us to your satisfaction, the dispute must be dealt with by you in Vanuatu, as follows:

- a) you may refer the dispute to the Vanuatu Financial Services Commission (VFSC) for

- determination in accordance with their rules; or
- b) if the dispute or difference does not fall within the rules of VFSC, you may request us to refer the dispute to arbitration and if we agree to such a request (in our absolute discretion) then you and we agree to accept any determination of the arbitrator as final and binding.

## 26. General

### How we may exercise our rights

- 26.1** We may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing clauses).
- 26.2** If we do not exercise a right or remedy fully or at a given time, we may still exercise it later.
- 26.3** Our rights and remedies under the Terms and Conditions are in addition to other rights and remedies given by law independently of the Terms and Conditions. We may enforce our rights and remedies in any order we choose.
- 26.4** We may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing clauses).
- 26.5** If we do not exercise a right or remedy fully or at a given time, we may still exercise it later.
- 26.6** Our rights and remedies under the Terms and Conditions are in addition to other rights and remedies given by law independently of the Terms and Conditions. We may enforce our rights and remedies in any order we choose.

### Set-off

- 26.7** We may set off any amount owing by us to you (whether or not due for payment) against any amount due for payment by you to us under the Terms and Conditions, any Contract or an Order.

**26.8** We may do anything necessary to effect any set-off under this clause (including varying the date for payment of any amount owing by us to you). This clause applies despite any other agreement between you and us.

### **Reinstatement of rights**

**26.9** Under law relating to liquidation, administration, insolvency or the protection of creditors, a person may claim that a Transaction (including a payment) in connection with the Terms and Conditions is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- a) We are immediately entitled as against you and the Guarantor to the rights under the Terms and Conditions to which it was entitled immediately before the Transaction; and
- b) On request from us, you and the Guarantor agree to do anything (including signing any document) to restore to us any rights (including the Guarantee) held by it immediately before the Transaction.

### **No merger**

**26.10** Our rights under the Terms and Conditions are additional to and do not merge with or affect and are not affected by any mortgage, charge or other encumbrance held by us or any of your other obligations or obligations of the Guarantor to us, despite any rule of law or equity or any statutory provision to the contrary.

### **Further steps**

**26.11** You agree to do anything we ask (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- a) to bind you and any other person intended to be bound under Agreement;
- b) to show whether you are complying with this Agreement.

### **Waivers**

**26.12** A provision of the Terms and Conditions, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

### **Assignment**

**26.13** You may not assign any of your rights or delegate any of your obligations under these Terms and Conditions to any person, without our prior consent.

**26.14** We may assign or delegate our any of our obligations under these Terms and Conditions to any person on giving not less than 7 Business Days' notice to you, subject to obtaining VFSC approval where, and to the extent that such approval is required.

#### **Inconsistent law**

**26.15** To the extent permitted by law, the Terms and Conditions prevails to the extent it is inconsistent with any law.

**26.16** A provision of the Terms and Conditions that is void, illegal or unenforceable is ineffective only to the extent of the voidness, illegality or unenforceability, but the remaining provisions are not affected.

**26.17** Rights given to us under the Terms and Conditions and your liabilities under it are not affected by anything which might otherwise affect them at law.

**26.18** Any present or future legislation which operates to vary your obligations in connection with a Terms and Conditions with the result that our rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### **Notices and other communications**

**26.19** Unless expressly stated otherwise in the Terms and Conditions, all notices, certificates, consents, approvals, waivers and other communications in connection with the Terms and Conditions:

- a) must be in writing or such other means as we specify from time to time and sent to the address below:

#### **ACY Capital Australia Limited**

**Address:** 1276 Kumul Hwy, 1st Floor Govant Building, Port Vila, Vanuatu

**Phone:** +678 24404

**Email:** [info@acy.com](mailto:info@acy.com)

**Web:** [www.acy.com](http://www.acy.com)

- a) must be signed by the sender (if an individual) or an Authorised Person of the sender;
- b) will be taken to be received:
  - I. if delivered by person, by post or facsimile transmission - when delivered, received or left at the last notified address of the recipient;
  - II. if sent by email - when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered;

**26.20** We may, to the extent of your authorisation, give a communication under the Terms and Conditions to your Authorised Person.

**26.21** Communications take effect from the time they are received unless a later time is specified in them.

### **Applicable law**

**26.22** The Terms and Conditions is governed by and construed in accordance with the laws in force in New South Wales, Australia.

**26.23(a)** For the benefit of ACY Capital, and subject to clause 26.23(b), the parties irrevocably agree that the courts of New South Wales, Australia and Federal Court of Australia shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim (including any non-contractual dispute, controversy or claim) arising out of or in connection with this Agreement, including any questions regarding its existence, validity, formation or termination. For these purposes, each party irrevocably submits to the jurisdiction of the courts of New South Wales and the Federal Court of Australia.

**26.23(b)** Nothing in this clause 26.23(a) limits the right of ACY Capital to bring proceedings, including third party proceedings, against the other party in any other court of competent jurisdiction, and bringing or continuing of proceedings in any one or more jurisdictions shall not preclude the bringing of proceedings in any other jurisdictions, whether concurrently or not, if and to the extent permitted by applicable law.

**26.24** Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices as notified to the other party from time to time.

## **Confidentiality**

**26.25** Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of the Terms and Conditions) except:

- a) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- b) if allowed or required by law or the Terms and Conditions or required by a regulatory authority or VFSC;
- c) in connection with any legal proceedings relating to the Terms and Conditions;
- d) to any person in connection with an exercise of rights or a dealing with rights or obligations under an Terms and Conditions (including in connection with preparatory steps such as negotiating with any potential assignee or other person who is considering contracting with us in connection with the Terms and Conditions).

## **Indemnities**

**26.26** Any indemnity in the Terms and Conditions is a continuing obligation, independent of your other obligations under the Terms and Conditions and continues after the Terms and Conditions ends. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity under the Terms and Conditions.

## **Counterparts**

**26.26** This Agreement may consist of a number of copies each signed or electrically accepted by one or more parties to the Agreement.

## **Consent to Telephone Recording**

**26.27** You agree that we may record all telephone conversations, emails, internet conversations (chat), and meetings between you and us and use such recordings, or transcripts from such recordings, as evidence towards any party (including, but not limited to, any regulatory authority and/or court of law) to whom we, in our entire discretion, see it to be desirable or necessary to disclose such information in any dispute or anticipated dispute between us and you.

## **Netting**



**26.28** If on any date the same amounts are payable under these Terms and Conditions by each party to the other in the same currency, then, on such date, each party's obligations to make payment of any such amount will be automatically satisfied and discharged. If the amounts are not in the same currency, the amounts are converted by.

**26.29** If the aggregate amount that is payable by one party exceeds the aggregate amount that is payable by the other party, then the party by whom the larger aggregate amount is payable must pay the excess to the other party and the obligations to make payment of each party will be satisfied and discharged.

**26.30** If the Terms and Conditions is terminated according to clause 21, you and we agree that the claims we have against each other are finally discharged by means of Close Out netting. We will determine the Close Out Values for each affected Contract in our sole discretion. The final amount to be paid by one of the parties will be the difference between the payment obligations of the parties.

### **Currency of payments**

**26.31** All payments under the Terms and Conditions must be made in Australian dollars or any other currency that we may agree to.

### **Amendment**

**26.12** We may vary the Agreement at any time by giving written notice to you. You will be deemed to accept and agree to the amendment on the earlier of:

- a) you entering into a Transaction, modifying an Open Position or accessing the ACYTrader Platform; and
- b) you not notifying us to the contrary by the date specified by us in our written notice which will, in most cases, be at least 5 days after you are deemed to have received notice of the amendment.

**26.12** Any amended agreement will supersede any previous agreement between us on the same subject matter and will govern any Transaction entered into after, or outstanding on, the date the new edition comes into effect.

## **27. Privacy**

**27.1** Before completing the online Application Form you should read our KIS and the Terms and Conditions carefully. The Application Form requires you to disclose personal information and explains how we collect personal information and then how we maintain, use and disclose this information.

- a) We collect personal information from you in order to process your Application, and if your Application is accepted, to administer your investment and to provide you with services related to your investment. If you do not provide us with your personal information, we may not be able to process your Application or provide our services to you.
- b) In order to do these things, we may disclose your personal information on a confidential basis to our agents, contractors or third-party service providers which provide services to us in connection with these Terms and Conditions but restricted to the purposes of providing that service.
- c) We may also disclose your personal information to regulatory authorities and third parties as required or authorised by law.
- d) We may also use your personal information to tell you about other products and services offered by us or other companies associated with ACY Capital and in order to do that we may disclose your information to other such companies.
- e) We also disclose your personal information to your financial adviser.
- f) You acknowledge 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.

**27.2** 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 27. You may withdraw your consent by advising us accordingly in writing.

**27.3** In most cases you can gain access to the personal information that we hold about you. We may charge you a fee for providing access, based on the cost of providing the information. We aim to ensure that the personal information we retain about you is accurate, complete and up-to-date. To assist us with this, please contact us if any of the details you have provided change. If you have concerns about the completeness or accuracy of the information, we have about you, we will take steps to correct it.

**27.4** We may record all conversations with you and monitor and maintain a record of all emails sent by or to us. All such records are our property and can be used by us.

**27.5** Our full privacy policy is available from our website [www.acy.com](http://www.acy.com)

## 28. Privacy

- 28.1** After your account is approved, you are given access to our private client portal.
- 28.2** The portal remains the private property of ACY Capital.
- 28.3** All information and announcement materials shown on the portal are for reference only. It is not intended to provide any sort of marketing purpose, trade recommendations or personal advices.
- 28.4** Technical errors within the system may occur. We will notify you if the errors impacted your account. However, you cannot claim losses against us for any private system errors.
- 28.5** Other technical errors that the ACY Capital Trader Platform has might impact the calculation of your trading cost, trading profit and loss, and other fees and charges relate to your account. We will rectify these issues as priority and notify you if these issues impacted your account. The adjustment is made according to Clause

## 29. Interpretation

Throughout these Terms and Conditions.

Term	Definition
<b>Account</b>	Means your Account with ACY Capital established under these Terms and Conditions, including all Trading Accounts and all Transactions recorded in them, for using ACY Capital Trader.
<b>Actual Margin</b>	Means the Free Balance amount standing to the credit of your Account and required as Actual Margin.
<b>ACY Capital Client Moneys trust account</b>	Means the bank account maintained by ACY Capital as a trust account (It is not part of your Account).
<b>ACY Capital Products</b>	Over-the-Counter derivative contracts over foreign exchange, commodities and indices.
<b>ACY Capital Trader Platform</b>	Means any online ACY Capital Trader Platform for trading in our Contracts.

<b>Agreement</b>	Means the Terms, the Application Form and the Confirmations.
<b>AML/CTF Laws</b>	Means the Anti-Money Laundering and Counter-Terrorism Financing Act No.13 of 2014 and the Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Act No.16 of 2017.
<b>Applicable Law</b>	All laws, procedures, standards and codes of practice that apply in relation to ACY Capital and the ACY Capital Products, including Vanuatu law, and the applicable laws or regulations of any other country, including all relevant rules of Government Agencies, exchanges, trade and clearing associations and self-regulatory organisations.
<b>Application</b>	Means your application to us for an Account on the terms and conditions set out in this document, the KIS and the Application Form.
<b>Application Form</b>	Means the application form available on our website.
<b>Authorised Person</b>	Means those persons you notify us as authorised by you to give instructions to us.
<b>Bought Swap Rate</b>	Means LIBID for a currency minus a margin of no more than 0.25% as determined by us.
<b>Business Day</b>	Means a day on which banks are open for general banking business in New South Wales, Australia (not being a Saturday, Sunday or public holiday in that place).
<b>Client</b>	A prospective or existing client of ACY Capital.
<b>Client Money</b>	Means the moneys Clients have deposited with us and held by us.
<b>Close Out Date</b>	Means the date on which all or part of a Contract is Closed Out.
<b>Close of Business</b>	Means 22.00 GMT.
<b>Closed Out or Close Out</b>	In relation to a Transaction means discharging or satisfying the obligations of the Client and ACY Capital under the Transaction and this includes matching up the Transaction with a Transaction of the same kind under which the Client has assumed an offsetting opposite position.
<b>Close Out Value</b>	For a Contract means the amount calculated as follows:  Close Out Underlying Product Price x Contract Quantity (in each case, as applying to the Contract).
<b>Confirmation</b>	Means a message from us to you confirming your Transaction in respect of a Contract.
<b>Contract</b>	Means an over the counter derivative agreement between you and us where the Underlying Product is a CFD derivative on FX, Index or Commodities which we nominate as available to underlie an Order.
<b>Contract Value</b>	Means the face value of the Contract and is calculated by ACY Capital by multiplying the applicable price of the Contract by the number of the Underlying Product.

<b>Costs</b>	Include costs, charges and expenses, including those incurred in connection with advisers.
<b>Currency</b>	Means a currency which we nominate as being available to underlie an derivative on FX.
<b>Event of Default</b>	<p>Each of the following is an Event of Default:</p> <ul style="list-style-type: none"> <li>a) you do not pay on time any amount payable by it under the Terms and Conditions in the manner required under these Terms and Conditions, including, for the avoidance of doubt, any situation where the Actual Margin on your Account at any time is less than the Required Margin; or</li> <li>b) you do not comply with any obligation under the Terms and Conditions (other than those covered by paragraph (a)) and, if the non-compliance can be remedied, does not remedy the noncompliance within seven days;</li> <li>c) an event occurs which has or is likely to have (or a series of events occur which, together, have or are likely to have) a Material Adverse Effect; or</li> <li>d) any change in law or interpretation which makes it unlawful for us to give effect to any provision of the Terms and Conditions;</li> <li>e) we or you are requested to end a Contract (or any part of a Contract) by any regulatory agency or authority;</li> <li>f) you die or become of unsound mind;</li> <li>g) a representation or warranty made, or taken to be made, by or for you in connection with the Terms and Conditions is found to have been incorrect or misleading when made or taken to be made; or</li> <li>h) you exceed the Position Limit on your Account;</li> <li>i) you or a Guarantor becomes Insolvent; or</li> <li>j) where you are trustee of a trust: <ul style="list-style-type: none"> <li>(i) you cease to be the trustee of the trust or any step is taken to appoint another trustee of the trust, in either case without your consent; or</li> <li>(ii) an application or order is sought or made in any court for: <ul style="list-style-type: none"> <li>(A) removal of you as trustee of the trust; or</li> <li>(B) property of the trust to be brought into court or administered by the court or under its control; or</li> <li>(C) a notice is given or meeting summoned for the removal of you as trustee of the trust or for the appointment of another person as trustee jointly with you; or</li> </ul> </li> </ul> </li> <li>k) the Terms and Conditions or a Transaction in connection with the Terms and Conditions is or becomes (or is claimed to be) wholly or partly void, voidable or unenforceable (“claimed” in this paragraph means claimed by you or anyone on behalf of any of it); or</li> <li>l) distress, execution or other process is levied against any property of you and is not removed</li> <li>l) discharged or paid within seven days;</li> <li>m) any security created by any mortgage or charge becomes enforceable against you and the mortgagee or charge takes steps to enforce the security or charge;</li> <li>n) we reasonably consider it necessary for its own protection or the protection of its associates.</li> </ul>
<b>Free Balance</b>	The cash balance in your Margin Account plus or minus any floating Profit/Loss less any Margin requirements. You can, subject to our Terms and Conditions, withdraw funds up to the amount, if any, of your ‘Free Balance’.
<b>Guarantor</b>	Means any person(s) identified as such in the Application.
<b>Hedging Counterparty</b>	means any counterparty to which we have deemed suitable to form an agreement to pass trades as back to back transactions to manage risk.

<b>Insolvent</b>	<p>A person is Insolvent if:</p> <ul style="list-style-type: none"> <li>(a) it commits act of bankruptcy;</li> <li>(b) a liquidator or trustee in bankruptcy or similar person is appointed to the person;</li> <li>(c) it is (or states that it is) an insolvent under administration or insolvent; or</li> <li>(d) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or</li> <li>(e) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or</li> <li>(f) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or</li> <li>(g) it is taken to have failed to comply with a statutory demand; or</li> <li>(h) it is otherwise unable to pay its debts when they fall due; or</li> <li>(i) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.</li> </ul>
<b>Interest Period</b>	Means the number of calendar days between one Business Day and the next Business Day.
<b>KIS</b>	Means ACY Capital's Key Information Statement.
<b>LIBID</b>	Means the London Interbank Bid Rate.
<b>LIBOR</b>	Means the London Interbank Offered Rate.
<b>Limit Order</b>	Used to enter or exit the market at a predetermined price that is more favourable to you than the current market price.
<b>Long Party</b>	Means in respect of any Contract the party identified in the Confirmation as having notionally bought the Underlying Product.
<b>Loss</b>	<p>means the difference between the Opening Value of the Contract and the Close Out Value of the Contract if you are:</p> <ul style="list-style-type: none"> <li>(a) the Long Party and the Close Out Value of the Contract is lower than the Opening Value of the Contract; or</li> <li>(b) the Short Party and the Close Out Value of the Contract is higher than the Opening Value of the Contract;</li> </ul>
<b>Margin</b>	Means the amount of cash or other assets paid to ACY Capital and credited to your Account as Margin.
<b>Margin Call</b>	Means a call on you, requiring you to top up the amount of money you have in your Account as Margin in order to maintain your required Margin where the market has moved against you, and where the additional payment is required in order to maintain your Open Positions.
<b>Margin Percentage</b>	Means the percentage rate applicable to your Contract as specified by us in our sole discretion and published on our website.
<b>Mark to Market Payments</b>	Means the payments calculated under clause 7.
<b>Material Adverse Effect</b>	<p>means a material adverse effect on:</p> <ul style="list-style-type: none"> <li>(a) your ability to comply with its obligations under the Terms and Conditions; or</li> <li>(b) your rights under the Terms and Conditions; or</li> <li>(c) the business or financial position of you.</li> </ul>

<b>Open Position</b>	Means, at any time, a Transaction which has not been Closed Out, or settled prior to the time agreed for settlement.
<b>Opening Value</b>	Means Opening Underlying Product Price x Contract Quantity
<b>Opening Underlying Product Price</b>	Means the Underlying Product Price on opening the Contract as agreed between us and you.
<b>Order</b>	Means any Order placed by you to enter into a Transaction.
<b>Position Limit</b>	Means a limit placed by us on the sum of the Contract Values for all Contracts between us and you.
<b>Previous Contract Value</b>	means, the amount calculated as follows: (a) where the Contract Value is being determined for the first time for a Contract, the Opening Value; (b) in all other cases, the Contract Value at the most recent Valuation Time.
<b>Profit</b>	Means the difference between the Opening Value of the Contract and the Close Out Value of the Contract if you are: (i) the Long Party and the Close Out Value of the Contract is higher than the Opening Value of the Contract; (ii) the Short Party and the Close Out Value of the Contract is lower than the Opening Value of the Contract.
<b>Required Margin</b>	Means an amount that is required to be standing to the credit of your Account and which is calculated as follows: (i) when an Order is placed to open a Contract, an amount that is: Opening Value x Margin Percentage (ii) throughout the term of an Open Position: Contract Value x Margin Percentage in respect of each such Open Position between you and us
<b>Sell Swap Rate</b>	Means LIBOR for a currency plus a margin of no more than 0.25% as determined by us.
<b>Short Party</b>	Means the party identified in the Confirmation as having notionally sold the Underlying Product.
<b>Specified Date</b>	Means the future value date with reference to which that Contract was entered into.
<b>Terms and Conditions</b>	The agreement between you and ACY Capital in respect of your trading in Account. Both you and ACY Capital are bound by the terms of these Terms and Conditions.
<b>Transaction</b>	A purchase or sale by a Client of a ACY Capital Product.

<b>Underlying Product</b>	The underlying asset, security, currency, commodity, futures contract or index the reference to which the value of a Contract is determined.
<b>Underlying Product Price</b>	Means the exchange rate at which the underlying Currency, or the price of underlying Index, or Commodity.
<b>Valuation Time</b>	Means: (a) the Close of Business on each Business Day; and (b) any other time that we decide in our absolute discretion.
<b>VFSC</b>	Vanuatu Financial Services Commission
<b>Website</b>	Means the internet address <a href="http://www.acy.com">www.acy.com</a>

## 29. References to certain general terms

**Unless the contrary intention appears, a reference in this Agreement to:**

- a) (singular includes plural) the singular includes the plural and vice versa.
- b) (variations or replacement) a document (including this Agreement) includes any variation or replacement of it;
- c) (law) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- d) (person) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;
- e) (two or more persons) an Agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- f) (jointly and severally) an Agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- g) (reference to a group of persons) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- h) (dollars) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- i) (calculation of time) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- j) (reference to a day) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- k) (meaning not limited) the words “include”, “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- l) (reference to anything) anything (including any amount) is a reference to the whole and each part of it.



If an event under the Terms and Conditions must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of the Terms and Conditions.