



**INSTITUTIONAL**  
LIQUIDITY

## **ILQ Australia PTY LTD**

**ACN: 159 166 739**

**AFSL: 424122**

**RISK DISCLOSURE STATEMENT**

**ELECTRONIC TRADING TERMS**

**AND**

**CLIENT AGREEMENT**

**Last Updated: 11 August, 2017**

## Risk Disclosure Statement

This notice is provided to you (the “Client” or “you”) because you are considering dealing with ILQ Australia Pty Ltd (hereinafter “the Company” or “ILQ”) in Foreign Exchange Contracts, Contracts for Difference, and other Derivatives Contracts (“Transactions”) either on a margin basis or otherwise.

This notice cannot and does not disclose or explain all of the risks and other significant aspects involved in dealing in these Transactions and was designed to explain in general terms the nature of the risks particular to dealing in these Transactions and to help the Client to take investment decisions on an informed basis.

Prior to applying for an account you should consider carefully whether trading in these Transactions is suitable for you in the light of your circumstances and financial situation. Margin FX and CFDs involve different levels of exposure to risk and, in deciding whether to trade in such instruments, you should be aware of the following points:

- Trading in Margin FX and CFDs (“OTC Derivatives”) carries a high degree of risk. The “gearing” or “leverage” involved in trading OTC derivatives means that a small initial margin payment can potentially lead to large losses. The geared nature of derivatives also means that Margin FX and CFDs trading can carry greater risks than conventional share trading, which is generally not geared.
- A relatively small market movement can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you.
- Most OTC derivatives are off-exchange derivatives. This might be considered to involve greater risk than an on-exchange derivative as there is no exchange market on which to close out an open position – you are only able to open and close your positions with us.
- Foreign markets will involve different risks to Australian markets. The potential for profit or loss from OTC derivatives relating to a foreign market or denominated in a foreign currency will be affected by fluctuations in foreign exchange rates. It is possible to incur a loss if exchange rates change to your detriment, even if the price of the instrument to which the OTC derivatives relates remains unchanged.
- Margin FX and CFDs are contingent liability transactions which are margined and require you to make a series of payments against the purchase price, instead of paying the whole purchase price immediately, and they may only be settled in cash.
- You may sustain a total loss of the margin that you deposit with us to establish or maintain a position. If the market moves against you, you may be called upon to pay substantial additional margin at short notice. If you fail to do so within the required time, your position may be liquidated at a loss and you will be liable for any resulting deficit. You will be deemed to have received a notice requiring the payment of such funds, even if you are not at home or do not receive the messages we leave for you, if the notices are delivered to your nominated contact points.
- Even if a Margin FX and CFD is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when you entered into the contract.
- Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that trading in the underlying market is suspended or restricted.
- Placing a Stop Order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an Order if the underlying market moves straight through the stipulated price.
- We will not provide you with personal financial product advice relating to Margin FX and CFDs and we will not make Margin FX and CFD recommendations of any kind. The only advice we will give you will be as to how Margin FX and CFD’s work.
- There is no clearing house for Margin FX and CFDs, and the performance of a Margin FX and CFD by ILQ is not ‘guaranteed’ by an exchange or clearing house.
- Our insolvency or default may lead to your positions being liquidated or closed out without your consent. As all deposits lodged with us are held in a segregated client account or accounts, in such circumstances those deposits would attract all legal protections afforded under the Corporations Act. Net unrealised running profits are also held in trust by us (in excess of our contractual and regulatory

requirements) and would normally be similarly protected for your benefit as beneficial owner, unless a Court were not to uphold the trust in relation to the net unrealised profits, in which event you would rank as an unsecured creditor of ours in relation to such net unrealised profits.

- Although by dealing with us you will not be dealing in securities, you need to be aware that you may still be subject to the Corporations Act 2001 and, in particular, the market manipulation and insider trading provisions of the Act.
- The obligations to you under the Client Agreement and the margin FX and CFDs are unsecured obligations, meaning that you are an unsecured creditor of ours.

## 1. TERMS AND CONDITIONS

### 1.1 INTRODUCTION

The Client wishes to deal in over-the-counter financial products in accordance with the Client's instructions from time to time, and in accordance with the terms and conditions contained in this Agreement.

These terms and conditions are part of the agreement between ILQ Australia Pty Ltd (ACN 159 166 739) ("we", "our" or "us") and you the client ("you" or "yourself") which governs our trading services and all transactions we conduct with you.

We hold an Australian Financial Services Licence (ASFL) No. 424122.

The Agreement between us is constituted by the following documents:

- Application form;
- These terms and conditions; and
- Any additional terms and conditions issued by us and notified to you and accepted by you, in connection with our dealings with you;
- The market information sheet that is located on our website;
- These documents are referred to as the "Agreement".

There are other materials that explain the basis of our dealings with you and they include:

- Our product disclosure statement (PDS) and financial services guide (FSG);
- Our website, which includes our trading platform.

Please read this Agreement carefully and seek professional advice if necessary. Contracts that we enter into with you under this Agreement are legally binding and enforceable. By signing the Application form or by electronically submitting your application on our website you confirm that you accept the terms of the Agreement. When we open an account for you, you will be bound by the Agreement in your dealings with us.

### 1.2 INTERPRETATION

If there is any conflict between the terms of this Agreement and any applicable law, the applicable law will prevail provided that any applicable law relating to the provision of margin demands will not apply.

- a. Headings and examples in this Agreement are for ease of reference only and do not form part of this Agreement.
- b. The singular includes the plural, and the converse also applies. The masculine includes the feminine.
- c. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- d. A reference to a person includes bodies corporate, unincorporated, associations, trusts, partnerships, individuals or other entity, whether or not it comprises a separate legal entity.
- e. A reference to an agreement or document (including a reference to this Agreement) is to the Agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- f. A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal representatives).
- g. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

- h. 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).
- i. All references to times of the day are to the time in Sydney, New South Wales, Australia, unless otherwise specified.

### **1.3 WHO ARE WE**

ILQ Australia Pty Ltd is authorised and regulated by the Australian Securities and Investments Commission (ASIC) to provide financial product advice, deal and make a market in foreign exchange contracts and derivatives to retail and wholesale clients. ILQ is the holder of an AFSL 424122. ILQ is owned and supported by an experienced and capable staff and investors which have provided the capital to expand and support its operations.

## **2. GENERAL INFORMATION**

### **2.1 PRINCIPAL**

We will deal with you as principal and not as agent on your behalf. This means that any trades are agreed directly between you and us and we will be the counterparty to all of your trades. Unless we agree otherwise in writing, you will also deal with us as principal and not as an agent or representative of another person. You will not permit any person to deal on your behalf unless we agree that such person (the "Agent") can act on your behalf. We will be entitled to rely on any instructions given to us by the Agent in relation to your account. We may require confirmation that the Agent has authority to act on your behalf at any time we reasonably consider appropriate.

### **2.2 NO PERSONAL FINANCIAL ADVICE**

We will not provide any personal or financial product advice to you, in relation to the terms and conditions of this Agreement or on the merits of any trade. We deal with you on an execution-only basis and any advice we give you will be general advice only. This means that any advice we do give you has been prepared without taking account of your objectives, financial situation or needs. In the circumstances, you should seek professional advice as to whether the financial products that we offer are suitable for your purposes having regard to your objectives, financial situation or needs. You should obtain our PDS before making any decisions in relation to our products or services.

### **2.3 INVESTMENT RESEARCH AND OTHER PUBLISHED INFORMATION**

We may from time to time send published research reports and recommendations and other publications to you. If the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons. We make no representations as to the time of receipt by you of research reports or recommendations and cannot guarantee that you will receive such research reports or recommendations at the same time as other clients. We shall not be liable for any investment decision you make, based in whole or in part, on any investment research report, recommendation or other publication we send to you. Any such published research reports or recommendations may appear in one or more screen information service.

### **2.4 ALL TRADES AT YOUR RISK**

We may, but are under no obligation:

- a. To satisfy ourselves as to the suitability of any trade for you;
- b. To monitor or advise you on the status of any trades;
- c. To make margin calls; or except where legislation requires it, close any open position despite the fact that previously we may have given such advice or taken action in relation to that trade or any other.

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, losses (including consequential losses) or injury suffered or incurred by you as a result of or arising out of:

- a. Any misinformation or financial product advice provided by, or on behalf of, us relating to a trade entered into or proposed to be entered into by you under this Agreement; or
- b. Any information or financial product advice provided by, or on behalf of, us in relation to any financial product that you may deal in under this Agreement.

## **2.5 RELIANCE ON YOUR OWN JUDGMENT**

You must understand the risks of dealing in Margin FX and CFDs and rely solely upon your own judgement in dealing with us. We are not under any responsibility or owe to you any duty of care to monitor your trades or to prevent you from trading beyond your means or ability or otherwise, to protect you. Unless otherwise advised by us in writing we will classify you as a retail client for the purposes of the Corporations Act.

## **2.6 MARGIN REQUIREMENTS**

It is your responsibility and obligation to monitor and pay margins strictly in accordance with Clause 11. Before you begin to trade with us we will take all reasonable steps to provide you with a clear explanation of spreads, fees, funding and other charges for which you will be liable. You should appreciate that these charges will affect your trading net profits (if any) or increase your losses.

## **2.7 OUR TRADING SERVICE**

Our trading service is an on-line service and you specifically consent to the receipt of documents in electronic form via email, website or other electronic means. Upon your request we will send you the product disclosure statement and financial services guide in paper form at no charge.

## **2.8 ACCESS TO INTERNET**

You confirm that you have regular access to the internet and consent to us providing you with information about us and our services (including market information), our costs and charges and our notices by email or by posting such information on our website or on our trading platform. You acknowledge that in the event that you are unable for any reason whatsoever to place a trade or close a position because of difficulties you may be having with our trading platform, you will immediately telephone our dealing desk to place the trade or close the position.

## **2.9 UNDERLYING INSTRUMENTS**

You will not have any rights of ownership or otherwise in any underlying instrument as a result of the trade with us. This means you will not own or have any interest in the physical currency, index, commodity or bullion the subject of the Margin FX or CFD.

## **2.10 OUR DISCRETIONS**

Various clauses of this Agreement confer discretions on us to act in circumstances that are set out in the relevant provision. In exercising such discretions, we will act in accordance with the following:

- a. We will have due regard to our commercial objectives, which include;
- b. Maintaining our reputation as a product issuer;
- c. Responding to market forces;
- d. Managing all forms of risks, including, but not limited to operational risk and market risk; and
- e. Complying with our legal obligations as a holder of an AFSL;
- f. We will act when necessary to protect our position in relation to the trade or event;
- g. We will take into account the circumstances existing at the time and required by the relevant provision, and not take into account irrelevant or extraneous considerations or circumstances;
- h. We may take into account your trading or investment experience; and
- i. At all times, we will act reasonably, commercially and bona fide, and where required or appropriate provide you with prior notice before exercising that discretion.

### 2.11 APPLICATION FORM

You, by signing or submitting electronically the application form when you are applying to become our customer:

- Acknowledge to us that you have received or downloaded, and read and understood this Agreement and the current PDS;
- Agree that we will provide our products and services to you on the terms and conditions of this Agreement.

### 2.12 ANTI-MONEY LAUNDERING LEGISLATION

You acknowledge that we may require further information from you from time to time to comply with the Anti-money Laundering and Counter-Terrorism Financing Act (AML/CTF Act). By entering into this 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 Act. You also warrant that: 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 Australian law, international law or convention or by agreement; or the proceeds of your investment will be used to finance any illegal activities; and 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 rules instrument 2007 (1). We may also disclose your personal information to credit reporting agency for the purpose of verifying your information. We may request a credit reporting agency to provide an assessment of whether the personal information matches (in whole or in part) the personal information contained in a credit information file in its control or possession. The credit reporting agency may prepare and provide to us such assessment and may use the personal information (such as your name, date of birth and place of birth) for the purpose of preparing such assessment. By signing this Agreement, you EXPRESSLY agree to the making of such request by us and the disclosure of the personal information about you.

### 2.13 OUR OFFICE AND TRADING HOURS

- a. **Hours:** our office and trading hours and general financial practices are set out on our website.
- b. **Limited trading hours:** we are under no obligation to quote prices or accept orders or instructions in respect of any contract to which limited hours trading applies during any time when the relevant underlying exchange is closed for business.

## 3. YOUR ACCOUNT

### 3.1 OPENING

After we accept your application, we will open an account in your name. We may split your account into different sub-accounts denominated into different currencies and references in this Agreement to your account is to be taken to include reference to subaccounts or the relevant sub-accounts, as the case requires. We reserve the right to refuse to open an account for any reason whatsoever.

### 3.2 ACCOUNT INFORMATION

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, and including any changes to your contact details or financial status.

### 3.3 TRUST ACCOUNT

All moneys deposited by you to the credit of your account is client money within the meaning of the Australian client money rules, which are provisions of the Corporations Act, and which will be held in an account with an Australian ADI or an approved foreign bank in accordance with the Australian client money rules. Client money is held in trust for the clients entitled to it, or if the money is invested in accordance with the Australian client money rules, the investment is held in trust for the

clients entitled to it. You are referred to Clause 23 and our PDS for a description of the operation of the client money rules and how you are affected by them.

#### **3.4 NAMING OF CLIENT**

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 advise otherwise. In all other cases, the accounts will be established in the names as tenants in common. All account holders shall be jointly and severally liable for losses, fees or charges arising on a joint account. Among other things, this means that any monies owed on the account shall be payable in full by you or any of the other joint account holders

#### **3.5 ACCOUNT DETAILS**

Upon opening an account with us, you will be given an internet specific password, which must be declared, together with your account number, when you wish to access your account. You will also be given an account name, which must also be declared to access your account in certain circumstances.

It is your responsibility to keep your account number and security information confidential and agree that you will not disclose your account number or password to any other person.

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, unless the trade in question is not one that you in fact authorised directly or through a power of attorney; and

- The person using the account number obtained it from us as a result of our negligence, or
- We otherwise act negligently in accepting instructions on your account.

### **4. INSTRUCTIONS AND DEALING**

#### **4.1 BY TELEPHONE**

When you trade by telephone your instructions to open or close a trade must be given to our trader during the same telephone conversation in which the quote was given. We have no liability to you if this telephone conversation is interrupted before we receive an instruction from you to trade on that quote; nor are we under any obligation to repeat the quote in a subsequent conversation.

We will not accept an order left with other employees, on an answering machine or on a voice mail facility.

#### **4.2 CHANGING AUTHORISED PERSONS**

You may, by written notice, change the persons who are authorised from those indicated on the application; but we are not bound by any such variation until we actually receive written notice. We may act upon the oral or written orders or instructions of any authorised person, or any person who appears to us to be an authorised person, despite the fact that the person may not be authorised. For example, we are entitled to act on any orders or instructions transmitted using your user name, account number, user id or password.

#### **4.3 ACCOUNT SECURITY INFORMATION**

You are required to keep all security information relating to the account, including, but not limited to, any user name, account number, user id and password, confidential and we do not have to establish the authority of anyone using these items. If you are aware or suspect that these items are no longer confidential, you should contact us as soon as practicable so that they may be changed.

#### **4.4 FURTHER INSTRUCTIONS**

We may require instructions from you in respect of any margin FX contract or CFD or proposed margin FX contract or CFD 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 reasonable steps at your cost as we



reasonably consider necessary or desirable for our or your protection. But this does not detract from your responsibility to keep yourself informed at all times as to the key dates and events affecting your margin FX contracts and CFDs.

#### **4.5 CONFIRMATION OF INSTRUCTIONS**

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

- If any instruction is to close an account or remit money to you; or
- Otherwise, if it reasonably appears to us that confirmation is necessary or desirable.

#### **4.6 ACKNOWLEDGEMENT OF INSTRUCTIONS**

Instructions may be acknowledged orally or in writing by us, as appropriate.

#### **4.7 INTERNET INSTRUCTIONS**

Subject to Clause 4.8 any order or instruction sent by you by internet will only be deemed to have been received, and will only then constitute a valid instruction and binding margin FX or CFD between you and us, when such order or instruction has been recorded as accepted and confirmed to you (see earlier).

#### **4.8 INSTRUCTION NOT A CONTRACT**

When you transmit an order or instruction to us, this does not automatically give rise to a binding margin FX or CFD between you and us because any order made by you is always subject to us accepting your offer and such order having been recorded as accepted and confirmed by us to you. You are responsible for inquiring of us if a confirmation is expected in relation to a transaction, but has not been received by you.

##### **Right not to accept orders**

We may, but shall not be obliged to, accept instructions to enter into a transaction. If we decline to enter into a proposed transaction, we shall not be obliged to give a reason but we shall promptly notify you accordingly.

##### **Execution of orders**

We shall use our reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. If we encounter any material difficulty relevant to the proper carrying out of an order on your behalf we shall notify you promptly. We shall carry out an order on your behalf only when the relevant market is open for dealings, and we shall deal with any instructions received outside market hours as soon as possible when that relevant market is next open for business (in accordance with the rules of that market). You agree that we may execute an order on your behalf outside market hours. We will notify you of any material changes to our order execution policy, but it is your responsibility to check for any other changes to our order execution policy as published from time to time at [www.ilq.com.au](http://www.ilq.com.au). We will consider the continued placement of orders by you to constitute your continued consent to our order execution policy as in effect from time to time.

#### **4.9 CORRECT DESIGNATION**

It is your responsibility to ensure that moneys sent to us are correctly designated in all respects, including, where applicable, that the moneys are by way of margin and to which of your accounts they should be applied. We will provide you from time to time with details of such arrangements as may apply to making payments to us, which may include permitting payments in different currencies as notified by us to you.

### **5. CONSENT TO RECORDING OF TELEPHONE CONVERSATIONS**

You consent to:

- a. The electronic recording of your telephone discussions with us, with or without an automatic tone warning device; and
- b. The use of recordings or transcripts 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.

## 6. OPERATING YOUR ACCOUNT

### 6.1 CHARGES AND FEES YOU PAY

You agree to pay the charges and fees and receive the benefits set out in this Agreement. You agree that the fees and charges are subject to change and it is your responsibility to ensure that you are familiar with how the fees, charges, commission and other payments are calculated. You also agree to pay interest, in respect on any unpaid amount due under this Agreement, at a rate equal to three per cent per annum over the cash rate of the Reserve Bank of Australia (or of such monetary authority as may replace it). Such interest accrues and is calculated daily from the date payment was due until the date you pay in full and is compounded monthly.

### 6.2 INTEREST ON ACCOUNT

The company shall not be obliged to pay interest to the customer on any funds which the company holds. The customer waives all rights and entitlements to interest earned on the account.

### 6.3 COMMISSIONS

Other than in the limited circumstances set out in our PDS, we do not receive commissions.

### 6.4 TIMING OF CREDITS DEDUCTIONS OR FEES WHICH YOU ARE TO PAY FROM YOUR ACCOUNT

- a. Any charges will be deducted from your account the day following the day on which the charges were incurred and benefits will be paid the day on which it was derived.
- b. If a position is closed at a loss, that loss will immediately be deducted from your account and your available trading resources will be adjusted accordingly.
- c. If a position is closed at a profit that profit will immediately be credited to your account and your available trading resources will be adjusted accordingly, subject to Clauses 6 and 8 of this Agreement.

### 6.5 INCORRECT CREDITING OF ACCOUNT

- a. **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.
- b. **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.

### 6.6 REPORTING TO YOU

- a. **Confirmations:** in respect of each contract entered into by us with you a confirmation will appear in the trading platform. If the confirmation does not appear you must contact us immediately and if you do not do so the details, or lack thereof, that we have recorded in relation to the contract will be deemed to have been accepted by you. The prices quoted on confirmations sent to the client will be net of any charges, which may not be separately identified. The client agrees to receive confirmations in this form.
- b. **Trading Platform:**
  - i. You agree and acknowledge that: reports to you via our trading platform where you will be able to view, download and print them;
  - ii. You authorise us to use the trading platform as the means of providing the confirmations, daily statements, monthly statements and other reports we make;
  - iii. You will access and use such trading platform to:
    - A. Receive the confirmations, daily statements, monthly statements and other reports we provide;
    - B. Confirm all contracts; and

C. Monitor your obligations under this Agreement.

**7. MARKET DISRUPTION: INDEX FUTURES CFD**

- a. if we reasonably believe that we can no longer perform our obligations under the CFDs on the same economic basis as that underlying instrument the terms of the contract when the contract was originally entered into because of a supervision or halt in the underlying market for an underlying instrument, 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
- b. 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 CFD.

**8. OPENING A TRADE**

**8.1 NO RIGHTS IN UNDERLYING INSTRUMENT**

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

**8.2 OPENING A TRADE USING OUR TRADING PLATFORM**

You will be able to open or close a position and execute limit orders and stop loss orders on a trade opened with us via our trading platform. We will have no liability to you if any internet connection is lost with the result that you are unable to trade at any given price.

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.

If our computer records are at variance with your own records or recollection of your trading, the version of events recorded contemporaneously by our computer will prevail and our obligations to each other (including the obligation to pay any money) will be assessed and calculated on the basis that our contemporaneous computer records are correct and are conclusive evidence of the matters they record.

**8.3 TELEPHONE**

- a. You may request a quote to open a trade or close a position or otherwise give trading instructions by telephone on one of our designated trading lines. Indeed, you must do so if you are experiencing difficulty with our trading platform or website in placing a trade or closing an open position.
- b. When you trade by telephone your instructions to open or close a margin FX or CFD must be given to our trader during the same telephone conversation in which the quote was given. We have no liability to you if this telephone conversation is interrupted before we receive an instruction from you to trade on that quote; nor will we be under any obligation to repeat the quote in a subsequent conversation.

**8.4 NATURE OF QUOTE**

A quote given to you by one of our traders is not an offer to contract. If you indicate that you wish to trade at the price quoted you will be deemed to be making an offer to trade at the quoted price and our trader will be entitled to confirm or reject that offer. No trade will be effective unless and until such confirmation is given.

**8.5 FORMATION OF CONTRACT**

Your clicking 'buy' or 'sell' or accepting a quote to buy or sell by telephone will send a message to our traders indicating that you wish to trade on the terms and conditions 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 message to this effect. Your Trade will not have been placed and no contract will come into existence until we send this message to you. You must wait for this message to appear after sending a 'buy' or 'sell' message and should you not receive this within two minutes you must notify us immediately. If you do not receive our confirmation and you do not notify us as required, you will be deemed to have agreed only 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 telephone; if you do not, the transactions recorded by us will be deemed to have been agreed by you.

#### **8.6 CURRENCY**

All trades will be conducted in the currency appropriate to the trade and will be converted into US dollars for the purposes of calculating the components of your account summary. All withdrawals will be converted to your denominated currency at the exchange rate which the funds were deposited.

#### **8.7 US DOLLARS**

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

#### **8.8 POSITION DURATION**

With the exception of index futures CFDs and commodity CFDs a position has no inherent limit to its duration and, subject to the payment of margin and other relevant sums, can continue indefinitely. Any position opened by you may be closed by us at the prevailing rate if there is an event of default.

#### **8.9 OPPOSING POSITIONS**

- a. You may run opposing positions in margin FX contracts in the same currency pair and a position in a market where you have an opposing position already opened. Both long and short positions will appear in your trade account and they will be treated as two open positions. When you choose to keep two opposing open positions they will be revalued and rolled as an individual open position until you choose to offset or match the two positions.
- b. You may run opposing positions in the same market and a position in a market where you have an opposing position already open will automatically be deemed to be an instruction to close the earlier position. If you have more than one open position in the same market, closing trades will apply to them on a first opened first closed basis, unless otherwise agreed by us.

#### **8.10 DIFFERENCE IN BUY AND SELL PRICES**

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

#### **8.11 PROFIT AND LOSSES**

You further understand that a payment will pass between us equal to the difference in value expressed in US dollars 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.

### **9. PRICING**

#### **9.1 QUOTES**

We will quote prices which provide an indication of the prices at which we are prepared to deal with you and which are calculated in accordance with Clause 9.7 for margin FX and Clauses 9.4, 9.5 and 9.6 for CFDs. You should note that:

- a. **Principal:** we act under this Agreement as a principal, and accordingly, set the applicable price at which we are prepared to deal with you;

- b. **Other prices:** prices that may be quoted or traded upon from time to time by third parties do not apply to trades and dealings between us and you;
- c. **Different prices:** we, in our absolute discretion, may quote different prices to different clients and trade at different prices with different clients;
  - i. Underlying instrument: neither you or us;
  - ii. Acquire any interest in, or right to, acquire; and
  - iii. Is obliged to sell, purchase, hold, deliver or receive any underlying instrument;
- d. **Make and receive payments:** the rights and obligations of you and us under margin FX contracts or CFDs are principally to make and receive such payments as are provided in this Agreement and any margin FX contract or CFD.

## 9.2 AMENDED QUOTES AND MARGIN FX CONTRACTS OUTSIDE THE NORMAL TRADING SIZE

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

- a. Provide an amended quote of the contract price originally quoted by our trading platform; and/or
- b. Make the quote subject to special conditions and requirements as we consider fair and reasonable and as notified to you by us at the time of the order being considered by us. This may occur, for example, when you place an order outside the normal trading size, or the aggregate of your order and all other orders for a margin FX contract or CFD is outside the normal trading size, or to take account of any change in market conditions since the original quote. Such amended contract price will be determined by us as we consider fair and reasonable having regard to the applicable prices and costs of entering into a transaction of that size on the relevant market. You will not be obliged to proceed with any order for which special conditions and requirements are notified to you by us. For example, we may quote a revised price applicable to the proposed margin FX contract or CFD which you may, at your absolute discretion, accept or reject. The amended quote may no longer be available if there is any delay in acceptance.

## 9.3 MINIMUM TRADING SIZE

The size of your margin FX or CFDs must equal or exceed the minimum trading size.

## 9.4 INDEX FUTURES CFDS

- a. **Contract unit:** the contract unit of an index futures CFD will be the points total of the relevant equities index futures contract and our quoted prices in the relevant currency of the equity index futures contract at the relevant currency amount per index point (as specified on our website).
- b. **Our pricing:** the contract price of an index futures CFD will be the bid or offer price (whichever is applicable) calculated by us by applying our spread to the mid market price of the relevant equities index futures contract on the relevant Exchange. If the specified date of an index futures CFD is other than a date generally quoted in the market, we will calculate the relevant exchange rate from the available exchange prices for other value dates as we consider fair and reasonable.

## 9.5 BULLION CFDS

- a. **Contract unit:** the contract unit of a bullion CFD will be one ounce of the relevant metal (gold or silver) and we quote prices in the customary currency of the relevant market per ounce.
- b. **Our pricing:** the contract price of a bullion CFD will be a bid or offer price (whichever is applicable) calculated by us by applying our spread to the interbank rate.

## 9.6 COMMODITY CFDS

- a. **Contract unit:** the contract unit of a commodity CFD will be 1 unit (e.g. One ounce, pound or barrel) according to the custom of the relevant market and we quote prices in the customary currency of the relevant market per unit. If, in accordance with the custom of the relevant market, prices for a commodity are quoted in different currencies in different markets, you may request us to quote a price for the commodity CFD in any of the customary currencies.
- b. **Our pricing:**

- i. The contract price of a commodity CFD will be a bid or offer price (whichever is applicable) calculated by us by applying our spread to the last traded price of the relevant underlying instrument (being a futures contract over a commodity) on the relevant exchange.
- ii. If, in accordance with the custom of the relevant market, prices for a commodity are quoted in different currencies in different markets, you may request us to quote a price for the commodity CFD in any of the customary currencies.

## 9.7 MARGIN FX

### a. The contract unit:

- i. A margin FX contract will be one currency unit of the primary reference currency.

### b. Our pricing:

- i. The contract price of a margin FX will be a bid or offer price (whichever is applicable) calculated by us by applying our spread to the interbank rate.
- ii. If the specified date of a margin FX contract is other than a date generally quoted in the market, we will calculate the interbank rate from the available market prices for other value dates as we consider representative, fair and reasonable.

## 9.8 YOUR CHOICE TO DEAL

Except where:

- a. We exercise any of our rights to close out a margin FX contract or CFD; or
- b. A margin FX contract or CFD closes automatically;

It is your responsibility to decide whether or not you wish to deal at those prices. If you decide to deal at the prices indicated by us, you may make an offer to us to deal at that price. We may choose, in our absolute discretion, whether to accept or reject any offer to deal made by you.

## 9.9 ERRORS IN PRICES

- a. It is possible that errors, omissions or misquotes (“material error”) may occur in the pricing of margin FX contracts or 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 instruments which prevailed at the time. A material error may include an incorrect price, date, time or margin FX contract 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 margin FX contract or CFD to reflect what we consider to have been the fair price at the time the margin contract or CFD was entered into and there had been no material error;
  - ii. Close the trade and any open positions resulting from it; or
  - iii. Void the margin contract or CFD from the outset;
  - iv. Refrain from taking action to amend or void the margin FX contract or CFD.
- b. We will exercise the right in Paragraph 9.9(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; 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 9.9(a), we may, without notice, adjust your account or require that any moneys paid to you in relation to the margin FX contract or CFD the subject of the material error be repaid to us as a debt due payable to us on demand.

## 9.10 PRICE, EXECUTION PROCESS AND TRADING PLATFORM MANIPULATION

If we reasonably believe that you have exploited or manipulated our prices, our execution processes or our trading platform, we may in our sole and absolute discretion without notice to you:

- Enforce the trade(s) against you if it is a trade(s) which results in you owing money to us;
- Treat all your trades as void from the outset if they are trades which result in us owing money to you, unless you produce conclusive evidence within 30 days of us giving you notice under this clause that you have not committed any breach or warranty, misrepresentation or undertaking in this Agreement;
- Withhold any funds suspected to have been derived from any such activities;
- Make any resultant corrections or adjustments to your account;
- Close your account; and/or
- Take such other action as we consider appropriate.

#### **9.11 PRICE LATENCY TRADING AND EA POLICY**

Trading accounts using price latency trading strategies (we define price latency trading as a method traders use where they open and close trades within 120 seconds, and this price latency trades constitute more than 25% of total trades). ILQ permit the use of EA strategies (and EA is an Expert Advisor, which is an added on software linked to a Meta Trader currency platform and allows for automatic trades under certain conditions), however, EA strategies which use price latency trading, scalping or news event trading may be closed at any time at the discretion of ILQ.

ILQ reserves the right to, and the customer agrees to allow, ILQ to void trades from the outset, terminate your account with us and remit your net deposit where ILQ believes you have engaged in price latency trading and/or EA strategies which involve price latency trading.

No delay or omission on our part in exercising this right, power or remedy provided by law or under this Agreement, or partial or defective exercise thereof, will:

- i. Impair or prevent further or other exercise of such right, power or remedy;

OR

- ii. Operate as a waiver of such right, power or remedy.

No waiver of any breach of this clause 9.11 of this Agreement 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.

### **10. MARGIN**

#### **10.1 INITIAL MARGIN**

Upon placing a trade that creates an open position you are required to pay us, or have in your account, the margin for that trade as calculated by us ("initial margin").

At the time of opening the position, you must have margin in your account at least equivalent to:

- a. In the case of index, bullion and index future CFDs;  
*Initial margin requirement = (margin percentage x trade size) x quantity of contract units x contract price) x margin percentage;*
- b. In the case of a commodity CFD:  
*Initial margin requirement = (margin percentage x contract price/minimum point increment) x quantity of contract.*

#### **10.2 MARGIN WHILE POSITIONS OPEN**

In addition to the initial margin, you must have in respect of all open positions on your account margin calculated on the basis of the current contract price then being quoted and determined by us. The amount of margin on your account at any time will be determined as if such payments as are due

under this Clause 10 were calculated and deducted from your account on an ongoing basis during the day and based on the current bid or offer contract price (as applicable).

### **10.3 CONTINUING MARGIN OBLIGATION**

You also have a continuing margin obligation to us to ensure that at all times during which you have opened positions your account balance, that is your total net equity, taking into account all realised or unrealised profits and losses ("P&L"), is equal to at least the margin that we require you to have paid to us for all of your open positions. If there is any shortfall between your account balance (taking into account P&L) and your total margin requirement, you are required to deposit additional funds into your account. These funds are due and payable to us immediately on your account balance (taking into account P&L) falling below your margin requirement.

### **10.4 EXCEPTIONS**

The requirements imposed under Clauses 10.1 to 10.3 will vary in the following circumstances:

- a. We have expressly told you that you have an account type that allows for longer payment periods for margin, in which case you must pay margin in accordance with the payment periods that we have advised you;
- b. We have expressly agreed to reduce or waive a part of the margin that we would otherwise require you to pay us in respect of a trade; the period of waiver or reduction may be temporary and must be agreed in writing by us. Any such agreement will not restrict our right to seek further margin in respect of the trade or open positions at any time thereafter;
- c. We agree otherwise in writing, in which case you will be required to comply with such terms and conditions as stated in such written agreement;
- d. When you hold open positions in a margin FX contract or CFD and you place one or more trades in the opposite direction in a margin FX contract or CFD with the same underlying instrument, your margin requirement for all open positions with the same underlying instrument is the larger of the aggregate of the margin requirements for all long positions or the aggregate of the margin requirements for all short positions;
- e. For certain margin FX contracts or options or option related instruments;
- f. If we change the margin percentage under Clause 10.5. In the case of your continuous margin obligation set out in Clause 10.3, you will not be required to pay it if we have extended you a credit facility, and you have sufficient credit to cover your margin requirements. However, if at any time the credit facility is not sufficient to cover the margin requirement on your open positions you must immediately place additional funds in your account in order to fully cover the margin requirements.

### **10.5 CHANGING MARGIN PERCENTAGE**

We may vary the margin percentage, but we will only do so where we reasonably consider it necessary, for example in response to or in anticipation of the following:

- Changing volatility and/or liquidity in the underlying instrument or in the financial markets generally;
- Economic news;
- Changes in your dealing pattern with us;
- Your credit circumstances change; or
- Your exposure to us being concentrated in a particular underlying instrument.

You should note that there may be other circumstances which may give rise to us changing your margin percentage.

### **10.6 NOTIFICATION OF INCREASED MARGIN PERCENTAGE**

We will notify you of a change in the margin percentage by any of the following means: telephone, post, fax, email, text message or by posting notice of increase on our website. Any increase in margin arising from an increase in the margin percentage will be due and payable immediately on our demand, including any deemed demand in accordance with Clause 36.



## **11. YOUR OBLIGATION TO PAY AND MONITOR MARGIN**

### **11.1 YOU MUST PAY MARGIN**

- a. You must pay to us such amounts by way of margin as we may require under this Agreement, including but not limited to margin calculated by reference to this Agreement and the PDS and in order to always maintain the minimum total equity balance.
- b. Your failure to pay any margin required under this Agreement will be regarded as an event of default for the purposes of Clause 15.

### **11.2 YOU MUST MONITOR MARGIN**

- a. Through the electronic facility we will provide you with access to your account and sufficient information to enable you to calculate the amount of any margin required by us under this Agreement and notify you of the total amount of margin due from you in the base currency using our exchange rate. Nevertheless, it is your responsibility when placing any orders over the telephone to ensure that you request all relevant information in respect of your account 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 not requesting any such information.
- b. It is your responsibility to monitor at all times the amount of margin deposited with us from time to time against the amount of any margin currently required under Clauses 10 and 11 of this Agreement and any additional margin that may be necessary or desirable, having regard to such matters as:
  - i. Your open positions;
  - ii. The volatility of any relevant underlying instrument;
  - iii. The volatility of the relevant market;
  - iv. The volatility of the markets generally;
  - v. Any applicable exchange rate risk; and
  - vi. The time it will take for you to remit sufficient cleared funds to us.

### **11.3 NO OBLIGATION TO MAKE MARGIN CALL**

We are not under any obligation to keep you informed of your account balance and required margin by making a margin call. However, if we do so, the margin call may be made by telephone call, post, fax, email or text message. The margin call is deemed to have been made as soon as you are deemed to have received such notice in accordance with Clause 35. We are deemed to have made a demand on you if:

- a. We have left a message requesting you to contact us and you have not done so within a reasonable time after we have left such a message; or
- b. If we are unable to leave such a message and have used all reasonable endeavours to contact you by telephone at the telephone number last notified to us by you, but have been unable to contact you on such number.

### **11.4 TIMING OF CHANGES TO MARGIN PERCENTAGE**

You agree and acknowledge that any variation of the margin percentage under Clause 9.5 of this Agreement may take immediate effect on and from you being given oral or written notice of the variation in accordance with this Agreement.

### **11.5 NO ONLINE ACCESS**

Where we are not able to provide you on-line access through the electronic facility to information on the account due to circumstances that are reasonably within our control, we will use reasonable endeavours to make a margin call. You accept that in extreme circumstances where your open positions are moving or have moved particularly quickly against you, we may not provide a margin call before exercising our rights to close out your positions under this Agreement.

### **11.6 YOUR OBLIGATION TO NOTIFY US**

It is your responsibility to notify us immediately of any changes in your contact details and to provide us with any alternative contact details and ensure that our margin calls will be met if you will be un

contactable at the contact address or telephone number notified to us. You acknowledge that we are not liable for any losses (including indirect or consequential losses), costs, expense or damages incurred or suffered by you as a consequence of your failure to do so.

#### **11.7 TIME ALLOWANCE FOR FORWARDING MARGIN**

We are not obliged to allow you time to forward further funds to meet such margin as is required under this Clause 11 before exercising our right to close out your positions. However, where we, in our absolute discretion, do allow you time to meet your margin requirements that permission will only be effective once it is confirmed in writing by us, and only to the extent specified in the written notice given by us.

### **12. CLOSING A MARGIN FX CONTRACT OR CFD**

#### **12.1 WHEN CAN A MARGIN FX CONTRACT OR CFD (OTHER THAN AN INDEX FUTURES CFD OR COMMODITY CFD) BE CLOSED?**

A margin FX contract or CFD (other than an index futures CFD or a commodity CFD, which are together referred to in this clause as "excepted contracts") may be closed out if:

- a. You give instructions to close a margin FX contract or CFD, by entering into an equal and opposite contract as follows:
  - i. **Single position closing:** a single open trade position can be closed by choosing the close button when you execute the trade on line. The contract will be closed and offset by the opposite trade.
- b. We may exercise any of our rights under this Agreement to close a margin FX contract, CFD or any excepted contract at any time before the contract closes under Clause 13.3.

#### **12.2 WHEN CAN AN EXCEPTED CONTRACT BE CLOSED?**

An excepted contract can only be closed by those contracts with the same specified date.

#### **12.3 TIME LIMITS FOR CLOSING**

Details of the last day and time for closing out a, FX option contract or Futures CFD, are available on request. It is your responsibility to be aware of the last day and time for closing out a particular FX option contract or Futures CFD.

#### **12.4 METHOD OF CLOSING MARGIN FX CONTRACTS OR CFDS BY US**

Where we exercise any of our rights under this Agreement to close a margin FX contract or CFD, we will do so by entering into an equal and opposite margin FX contract or CFD on the account.

#### **12.5 CONTRACT PRICE AT CLOSING**

Where a margin FX contract or CFD is closed under this Agreement, we will determine the contract price at the time of closing in accordance with the current prices then being quoted by us.

#### **12.6 CONTRACT VALUE AT CLOSING**

A margin FX contract or CFD will close at the contract value at the time of closing as calculated by us, which will equal:

$$\text{Contract price} \times \text{contract quantity}$$

And as notified to you.

#### **12.7 TIMING OF PAYMENTS**

Any payment due by either us or you under this Clause 12 in respect of dates on or after the closing date will be made by us adjusting the account at close of business on the settlement date.

- If the amount calculated as the contract value is greater than the amount calculated as the opening value, credit the difference to the account; and
- If the amount calculated as the opening value is greater than the amount calculated as the contract value, debit the difference from your account.

### **13. CLOSE OF BUSINESS ACCOUNTING**

#### **13.1 WHEN WE ACCOUNT**

Commencing at close of business on the date of the transaction and at close of business on each subsequent business day during the terms of the margin FX contracts (including the closing date), we will account under this Clause 13.

#### **13.2 CONTRACT VALUE**

We will calculate the contract value, which will equal  
*contract price x contract quantity.*

#### **13.3 CONTRACT VALUE AT CLOSE**

- Index futures CFD: the contract price will be the bid or offer price, depending on whether you are long or short, calculated in accordance with Clause 9.4 (pricing)
- Bullion CFDs: the contract price will be the bid or offer price, depending whether you are long or short, calculated in accordance with Clause 9.5.
- Commodity CFDs: the contract price will be the bid or offer price, depending on whether you are short or long, calculated in accordance with Clause 9.6.
- Margin FX contracts: the contract price will be the offer or bid price, depending on whether you are long or short, calculated in accordance with Clause 9.7.

#### **13.4 VALUATION**

If on the date of the transaction:

- The current contract value exceeds the opening value, the short party will pay to the long party such excess;
- The opening value exceeds the current contract value, the long party will pay to the short party such excess.

If, on any business day during the term of the margin FX contract or CFD, (including the closing date):

- The contract value exceeds the contract values on the preceding business day, the short party will pay to the long party such excess;
- The closing value on the preceding business day, exceeds the current contract value, the long party will pay to the short party such excess.

#### **13.5 DAILY SWAPS OF MARGIN FX CONTRACTS AND CFDS (OTHER THAN EXCEPTED CONTRACTS)**

When you hold a position or positions overnight in a margin FX contract or CFD (other than an excepted contract) they will be rolled to the next business day which will result in you paying a swap charge or receiving a swap benefit at the ILQ swap rate and the amount depends on our swap rate, being the rates at which you receive or pay interest on positions that remain open overnight. This is a varying rate dependent upon the applicable rate in the interbank markets for the currencies or bullion, the duration of the rollover period, the size of the position and the ILQ spread that is applied at our discretion. The operation of this Clause 13.5 is subject to Clauses 13.7 to 13.10.

#### **13.6 ENTITLEMENT**

If you are long on a margin FX contract you may either receive a swap benefit or pay a swap charge, depending on the currency you are long, subject to Clause 13.7 and if you are short on a margin FX contract you may either pay a swap charge or receive a swap benefit, depending on the currency you are short on, subject to Clause 13.9.

### **13.7 LONG MARGIN FX CONTRACTS**

If you are long on a margin FX contract where the bought currency interest rates are higher than the sold currency interest rates you will receive interest at the swap rate if you hold the position overnight and do not close it before the settlement time. This is because you are holding the higher yielding currency. On the other hand, if you are long on a margin FX contract where the bought currency interest rates are lower than the sold currency interest rates then you will pay interest at the swap rate if you hold the position overnight and do not close it before the settlement time. This is because you are holding the lower yielding currency.

### **13.8 BULLION CFDS**

Commodity CFDs over futures contracts do not incur financing costs. Commodity CFDs over physical commodities (such as gold and silver) carried overnight will incur financing costs for the total notional value of the position at the relevant financing rate. If you are short on the Commodity CFDs over futures contract carried overnight you may receive financing from us. However, in certain market conditions we may require you to pay a daily rollover fee where you would ordinarily have received a financing fee.

### **13.9 SHORT MARGIN FX**

If you are short on a margin FX where the sold currency interest rates are higher than the bought currency interest rates you will pay interest at the swap rate if you hold the position overnight and do not close it before the settlement time. This is because you are holding the lower yielding currency. On the other hand, if you are short on a margin FX contract where the sold currency interest rates are lower than the bought currency interest rates then you will receive interest at the swap rate if you hold the position overnight and do not close it before the settlement time. This is because you are holding the higher yielding currency.

### **13.10 ROLLOVER OF COMMODITY AND INDEX FUTURES CFDS**

A rollover will arise in commodity and index futures CFDs when the underlying front month futures contract is approaching the expiry date and we change our CFD pricing fee from the front month to the next serial futures contract. When the new price feed takes effect you will immediately create a gain or loss in your open trade equity. This profit or loss will depend on your position size and direction and the price differential of the expiring contract and the new contract on which the price will be now based. You will be credited or debited with a rollover charge or benefit that will fully offset the effect of the abovementioned profit or loss. For example, if you have made a profit on the change the new contract price feed you will receive a rollover charge which will offset the gain.

### **13.11 REVALUATION OF POSITIONS AFFECTED BY LIMITED HOURS TRADING**

You acknowledge that any reduction by the application of limited hours trading under this Agreement has the result that open positions will be marked to market after close of trading on the primary exchange and your margin requirement will vary accordingly. If you do not wish to accept this additional risk, you may close out any affected contract at any time after notice has been to you.

### **13.12 SETTLEMENT**

In relation to swap charges and benefits, they will be accrued in the swap value field of your open trade position. In the event there are insufficient funds in your account, any amount due to us because of the swap charges becomes a debt due and owing by you to us.

## **14. STOP LOSS ORDERS AND LIMIT ORDERS**

### **14.1 AVAILABILITY OF ORDERS**

Stop loss orders and limit orders are only available on selected instruments. We may refuse to accept any stop loss orders or limit orders on any trade. Such orders, if we do accept, may be placed or cancelled at any time during the trading hours of the exchange on which the underlying instrument is traded.

#### **14.2 MARGIN REQUIREMENTS TO FILL ORDERS**

An order which involves an instruction to us to open a trade above a certain price will not ordinarily be filled unless at the time when the price reaches the relevant limit your account contains sufficient trading resources to cover the initial margin for the trade which is to be opened. We may, however, at our discretion proceed to fill such an order notwithstanding that your account has insufficient trading resources to cover the initial margin for the trade which is to be opened. In such circumstances we reserve the right at any time after the opening of the trade to require you to deposit cash in the amount of the required initial margin for that trade. Any such further cash deposits will be payable as margin in accordance with the provisions of Clause 11. A failure to make payment in the time and manner required will be an event of default. We reserve the right to refuse to open a trade in accordance with a limit order if:

- a. There has been an event of default; and
- b. In any other circumstances where we would be entitled to close the trade if it had already been opened.

#### **14.3 LIABILITY FOR LOSSES ARISING FROM ORDERS**

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

#### **14.4 OUR RIGHT TO IMPOSE A STOP LOSS ORDER**

We may impose a stop loss order on any of your open trades where we believe such action is necessary or desirable to limit the losses on any of your positions including, but without limitation where:

- a. We have any reason whatever to think that you will not pay us any money that is or may become due to us; or
  - b. You make any statement to us which we have reason to believe is or may not be true; or
  - a. You fail to do anything that you have undertaken to us that you will do; or
  - c. 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 telephone numbers given by you to us but are unable to speak to you personally and:
    - i. We leave a message on any message-taking facilities offered but we do not hear from you within 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 a 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
- ii. No message-taking services are offered and we dial all the numbers given by you again after a period of not less than 30 minutes and are still unable to speak with you at once.

#### **14.5 INFORMING YOU OF ORDERS WE IMPOSE**

We will as soon as is reasonably practicable after imposing a stop loss order attempt to inform you of it by telephoning you on the number or numbers that you leave with us and:

- a. Informing you personally of the stop loss order or if this is not possible by;
- b. Leaving a message if, and only if, there is an automated message-taking facility or a person who offers to take such a message for you. If a message is left, it will be deemed to have reached you whether or not it has in fact done so. We will also send written notification to you by post and/or email at the addresses that you have given to us. 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.

## **15. EVENTS OF DEFAULT**

### **15.1 WHAT CONSTITUTES AN EVENT OF DEFAULT**

The following constitute events of default, which upon their occurrence give us the right to take action in accordance with Clause 15.2:

- a. An insolvency event occurs in relation to you;
- b. You are an individual and you die or become of unsound mind;
- c. You fail to provide any margin or other sum due under this Agreement in respect of any margin FX contract or CFD, or the margin held by us in respect of any open positions falls below our margin requirements;
- d. You are in breach of any warranty or representation made under this Agreement and/or any information provided to us in connection with this Agreement is or has become untrue or misleading;
- e. Any fee due to us is not paid in accordance with this Agreement;
- f. Whether or not any sums are currently due to us from you, where any cheque or other payment instrument has not been met on first expectation or is subsequently dishonoured or you have consistently failed to pay any amount owed to us in time;
- g. At any time or for any period deemed reasonable by us you are not contactable or you do not respond to any notice or correspondence from us;
- h. We reasonably believe it is prudent for us to take any or all of the actions described in Clause 15.2 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- i. We reasonably consider that there are abnormal trading conditions;
- j. We reasonably consider it necessary for the protection of our rights under this Agreement;
- k. We are unable to make price in the margin FX contract or CFD due to the unavailability of the relevant market information for reasons beyond our control;
- l. We consider that you may be in breach of any applicable law;
- m. We are so requested by ASIC or any other regulatory body or authority;
- n. The aggregate of your order and all other orders for a margin FX contract or CFD is outside the normal trading size; or
- o. A position limit is less likely to be exceeded.

### **15.2 WHAT ACTION MAY WE TAKE?**

If an event of default occurs we may take all or any of the following actions:

- a. Immediately require payment of any amount you owe us, including margin;
- b. Terminate this Agreement;
- c. Close all or any of your open positions;
- d. Limit the size of your open positions either in monthly terms or a number of margin FX contracts or CFDs (net or gross);
- e. Refuse orders to establish new positions;
- f. Convert any ledger balances to the base currency of your account;
- g. Exercise our rights of set off;
- h. Change the margin level at which we may close your account;
- i. Impose new margin requirements to your trading or account;
- j. Limit or withdraw the credit on your account;
- k. Suspend your account and refuse to execute any trades;
- l. Call on any guarantee in respect of your obligations;
- m. Require you immediately to close out and settle the margin FX contract or CFD in such a manner as we requested;
- n. 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 margin FX contract or CFD;
- o. Combine, close or consolidate any of the accounts sustained by you and offset any and/or amounts owed to, or by, us in such manner as we may in our absolute discretion determine; or
- p. Retain any amount owed by us to you against any contingent liability of yours to us or so long as the contingency subsists.

### **15.3 ADDITIONAL CLOSING RIGHTS**

We may also close your account on 14 days' notice in the circumstances set out below. If we rely on our rights under this clause, your account will be suspended during the 14 day notice period and you will not be able to place trades other than those to close existing open positions. If you have not closed all the open positions within the 14 days' notice we are entitled to take any action within Clause 15.2. The relevant circumstances are:

- a. Any litigation is commenced involving both of us in an adversarial position to each other and, in view of the subject matter of or any issues in dispute in relation to that litigation, we reasonably decide that we cannot continue to deal with you while the litigation is pending;
- b. Where you have persistently acted in an abusive manner toward our staff (for example by displaying what we consider to be serious discourtesy or the use of offensive or insulting language);
- c. Where we believe on reasonable grounds that you are unable to manage the risks that arise from your trades.

### **15.4 OUR RIGHTS TO CLOSE OR VOID**

Without limiting our right to take action under Clauses 15.2 and 16.3, we may also close or void individual open positions and/or cancel any order where: 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 there is a material breach of the agreement in relation to the open position.

### **15.5 OUR RIGHTS TO SUSPEND ACCOUNT**

Without limiting our right to take action under Clauses 15.2, 15.3 and 15.4, we may in our discretion suspend your account pending investigation for any reason. Whilst your account is suspended you will be able to close your open positions but you will not be entitled to place new trades. Circumstances in which we may choose to exercise this right include but are not limited to the following:

- a. When we have reasonable grounds for believing that an event of default has occurred or may occur but believe that it is reasonably necessary to investigate circumstances with a view to confirming this;
- b. When we have reasonable grounds for believing that you do not have a sufficient understanding of the trades which you are placing or the risks involved;
- c. When we have not received within 10 days of a written request all information, which we believe that we require in connection with this Agreement;
- d. We have reason to believe that there has been a breach in your account share or that there has been a threat to your account share; or
- e. We have reason to believe that it is necessary for us to comply with any regulatory requirements.

### **15.6 CONCLUDE INVESTIGATIONS**

If we have suspended your account pending 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 will seek to take further action pursuant to this Agreement.

### **15.7 EXERCISE OF RIGHTS**

We may exercise our rights to close open positions under this Clause 15 at any time after the relevant event has occurred and will do so on the basis of the next available price for the affected open position, as determined under Clause 12.

## **16. NETTING AND SETTING OFF**

At any time following the occurrence of an Event of Default, we may, by notice to you, specify a date (the "Liquidation Date") for the termination and liquidation of Netting Transactions in accordance with this Clause.

- a. This Agreement and all trades under it form part of a singular agreement between us and you, and we both acknowledge that we enter into this Agreement and any trades under it in reliance upon these being a singular agreement. When open positions and/or your account are closed under this Agreement, we may:
  - i. Combine and consolidate your cash and any money we hold for you in all of the accounts you may have with us; and
  - ii. Set-off against each other the amounts referred to 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, interest, costs, expenses, charges and any debit balance on any account even if those accounts have been closed. 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. If the rights under these paragraphs are exercised, all the payment obligations will be consolidated into an obligation for you to pay the net sum to us or for us to pay a net sum to you.

## **17. PAYMENTS**

### **17.1 YOUR PAYMENTS MUST BE THE FULL AMOUNT**

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

### **17.2 PAYMENTS WE OWE YOU AND YOU OWE TO US ARE OFFSET**

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

### **17.3 PAYMENT OF AMOUNTS DUE TO US**

Unless otherwise provided in this Agreement, all amounts due to us will, at our option:

- a. Be deducted from any funds held by us for you; or
- b. Be paid by you in accordance with this Agreement.

You must pay all commissions, fees and charges, including administration fees, data fees, rollover and financing charges, and other charges that may be levied by us from time to time, in accordance with this Agreement and the PDS. Goods and services tax will be added to the amount payable where relevant.

### **17.4 WITHDRAWING CREDIT FROM YOUR ACCOUNT**

When your account is in credit, you may request us to send you a cheque or effect payment by alternative means of the amount in credit of such amount as you may specify. But, 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 reasonably 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 reasonably determine that there is an unresolved dispute between us and you in connection with this Agreement or any margin FX contract or CFD; or
- e. We consider it necessary or desirable to withhold such amount to comply with our regulatory or legal obligations, and we will notify you as soon as reasonably practicable if we decide to take such action.

#### **17.5 NO SECURITY INTERESTS CREATED**

Nothing in this Agreement is intended to create or does create in favour of either of us any mortgage, charge, lien, pledge or other security interest in any cash or other property transferred by one to the other under any margin FX contract or CFD.

#### **17.6 PAYMENTS TRANSFERRED MUST HAVE FREE TITLE**

Each of us agrees that all rights, title and interest to and in any payment which it transfers to the other in respect of a margin FX contract or CFD under this Agreement vests in the recipient clear of any liens, charges, encumbrances or other interest of the transferor or any third party.

### **18. AMENDMENT AND TERMINATION**

#### **18.1 CURRENT VERSION OF AGREEMENT GOVERNS MARGIN FX CONTRACTS AND CFDS**

You agree that the version of this Agreement published on our website at the time of entering into a margin FX contract or CFD governs that margin FX contract or CFD.

#### **18.2 AMENDING AGREEMENT**

We may amend or replace this Agreement by giving written notice of the changes. We will only make changes for good reason, including:

- a. Making the provisions clearer or more favourable to you;
- b. Reflecting legitimate increases or reductions in the cost of providing services to you;
- c. Rectifying any mistakes that may be discovered;
- d. Reflecting any changes in the applicable laws, codes of practice or decisions by court, ombudsman, regulator or similar body;
- e. Reflecting changes in market conditions;
- f. Reflecting changes in the way we do business.

#### **18.3 YOU MAY OBJECT**

If you object to any changes, you must notify us within 14 days of the date the notice is deemed to be received under Clause 36. 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 close your account as soon as reasonably practicable and/or restrict you from placing trades and/or orders to close your open positions.

#### **18.4 APPLICATION DATE**

Subject to Clause 18.2, the amendments made under this Clause 18 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.

#### **18.5 OUR RIGHT TO TERMINATE**

We may terminate this Agreement and close your account at any time by giving you 30 days' written notice; this right is in addition to any other rights to terminate this Agreement or close your account that we may have under this Agreement.

#### **18.6 YOUR RIGHT TO TERMINATE**

You may also terminate this Agreement or close your account at any time by giving us written notice. Your account will be closed as soon as reasonably practicable after we have received notice, all open positions are closed, or orders cancelled, and all of your obligations are discharged.

#### **18.7 RESERVATION OF RIGHTS**

If you or we provide notice to close your account or terminate this Agreement under this Clause 18, 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.

### **19. APPLICATION OF ACCOUNT FUNDS**

#### **19.1 OUR RIGHTS TO APPLY ACCOUNT FUNDS**

We may at any time without prior notice to you, in order to discharge your obligations (actual or contingent) under this Agreement:

- a. Apply all or part of any currency held by us in your account and any currency held by us for the purpose of your dealings in such order or manner as we think fit, whether the liabilities are actual or contingent, primary or collateral, joint or several;
- b. Combine or consolidate all or any of the your accounts with us; and
- c. Convert at a commercial rate currency as at the time of deposit 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.

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

#### **20.1 OUR RIGHT TO CEASE TO TRADE IN MARGIN FX CONTRACTS OR CFDS**

We may at any time by written notice to you cease to offer to trade in any margin FX contract or CFD, specifying in the notice a date on which we will cease to offer to trade in the particular margin FX contract or CFD and such date being at least seven (7) days after the notice is sent.

#### **20.2 CLOSE OUT OF POSITIONS IF WE CEASE TO TRADE**

- a. You agree to close out all open positions in relation to the margin FX contract or CFD 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 the day.
- b. If we exercise our right to close out your remaining positions under the preceding Clause, we will close out those open positions at the closing price for the contract except where your open positions are outside the normal trading size, in which case we will close those positions at a reasonable price determined by us in accordance with market practice, but at our absolute discretion.

### **21. LEGAL AND REGULATORY REQUIREMENTS**

#### **21.1 OUR ACTIONS TO COMPLY WITH THE LAW**

Despite any other provision of this Agreement, in providing the services in this Agreement, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure compliance with all applicable laws.

#### **21.2 YOU AGREE TO COMPLY WITH THE LAW**

You agree strictly to comply with all applicable laws. If we reasonably consider you have not so complied, we may terminate this Agreement immediately without notice.

## **22. LIMITATION OF LIABILITY**

### **22.1 OUR LIABILITY LIMITED**

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 action we may take under this Agreement, so long as we act within the terms of its provisions and in particular act reasonably where required to do so; and
- b. 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 breach of the agreement, negligence or wilful default.

### **22.2 REASONABLY FORESEEABLE LOSSES**

Other than is described in Clause 22.3 and subject to our limits on our liability in this Clause 22, we are each only responsible for losses that are reasonably foreseeable consequences of breaches of this Agreement are at the time the Agreement is entered into.

### **22.3 INDIRECT LOSSES**

We are not responsible 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.

### **22.4 LOSS OF PROFIT**

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

### **22.5 APPLICATION OF LIMITATIONS**

The limitations of liability in this Clause 22 apply whether or not we or any of our employees or agents knew of the possibility of the claim being incurred.

### **22.6 YOU AGREE TO INDEMNIFY US**

You agree continuously to indemnify us against 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 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 Agreement;
- b. Us entering into any margin FX contract or CFD;
- c. Us taking any action under this Agreement;
- 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.

### **22.7 SURVIVAL OF INDEMNITY**

The indemnity in Clause 22.6 survives termination of this Agreement and any transaction under this Agreement.

## **23. CLIENT MONEY**

### **23.1 AUSTRALIAN CLIENT MONEY RULES AND AUTHORISATIONS**

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 bank accounts. 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.

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

The customer agrees that, in the event that there has been no movement on the customer's trading account balance for a period of at least six (6) years (notwithstanding any payments or receipts of charges, interest or similar items) and the Company is unable to trace the customer despite having taken reasonable steps to do so, the Company may release any customer's money balances from the segregated account.

### **23.2 INVESTMENT OF MONEYS HELD**

We may invest any of your money held in any segregated trust account as permitted by the Australian client money rules and you irrevocably and unconditionally authorise us to undertake any such investment.

### **23.3 TREATMENT OF INVESTMENT CAPITAL AND INTEREST**

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 rules;
- c. In the event that the amount received 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 the benefit of you, 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 Agreement;
- d. We will not charge a fee for investing your moneys in accordance with the Australian client money rules.

### **23.4 PROPERTY HELD ON TRUST**

If property, other than money, is given to us by you or a person acting on your behalf, or for your benefit, it must be held by us on trust in accordance with the Australian client money rules.

### **23.5 YOU AUTHORISE US TO DEAL WITH YOUR ACCOUNT**

You irrevocably and unconditionally authorise us and/or any associate of ours to:

- a. Withdraw, deduct or apply any amounts payable by you to us and/or any associate of ours under this Agreement from your moneys held in any segregated trust account or invested by us, including, without limitation making a payment for, or in connection with, the margining, adjusting or settling of dealings in margin FX contracts or CFDs entered into by you or the payment of interest or charges to us, it being acknowledged and agreed by you that such amounts belong to us under this Agreement and may be used by us in our business from time to time, including for the payment of amounts to our counterparties;
- b. Pay, withdraw, deduct or apply any amounts from your moneys held in any segregated trust account or invested by us as permitted by the Australian client money rules, it being acknowledged and agreed by you that any such amounts that belong to us may be used by us in our business from time to time, including for the payment of amounts to our counterparties;
- c. Deal with any property, other than money, given to us in accordance with the terms and conditions of this Agreement, including, without limitation:
  - i. Dealing with such property in connection with the margining, adjusting or settling of dealings in margin FX contracts or CFDs entered into by you: or
  - ii. Selling or charging in any way any or all of your property which may from time to time be in the possession or control of us or any of our associates following the happening of an event of default;

- d. Deal with any property, other than money, given to us as permitted by the Australian client money rules.
- e. Use such moneys for the payment of amounts to counterparties with whom we enter into derivatives to hedge our exposure to you in connection with margin FX and/or CFDs or hedge our exposure to other clients who have entered into these financial products under the Client Agreements with us.

## 24. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

### 24.1 YOUR WARRANTIES

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

- a. **Legal disability:** you are not under any legal disability and are not subject to any law which prevents you from entering this Agreement or any margin FX contract or CFD;
- b. **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;
- c. **Consents:** you have obtained all necessary consents and have the authority to enter into this Agreement;
- a. **Compliance with laws:** you are complying with all laws to which you are subject;
- d. **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;
- e. **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;
- f. **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 in any material respect; and
- g. **Transactions:** 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. **Suitability:** you fully understand the risks associated with entering into the Transaction contemplated under this Agreement, the PDS and that you have obtained relevant taxation, legal and other professional advice in relation to the Transactions.

### 24.2 TRUSTEE OF A TRUST

Where you are the trustee of a trust, settlement or fund (including a superannuation fund) (the trust) 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:

- a. **Capacities:** you acknowledge and agree that you enter into this Agreement in your personal capacity and in your capacity as trustee of the trust;
- b. **Sole trustee:** you are the sole trustee or trustees of the trust and you have been validly appointed;
- c. **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);
- d. **Solely constituted:** the trust is solely constituted by the trust deed described in your application and is as amended or substituted (trust deed);
- e. **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;
- f. **Full authority:** you are empowered and have full authority under the trust deed to enter into this Agreement and to enter into the transactions contemplated by it;
- g. **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 Agreement or any margin FX contract or CFD or your ability to observe your obligations under it;

- h. **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;
- i. **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 Agreement.

#### **24.3 SUPERANNUATION FUNDS**

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

#### **24.4 NOTIFICATION OF CHANGES**

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

#### **24.5 ELECTRONIC SERVICES**

- a. Subject to Clause 24.6 all warranties, express and implied, as to the description, quality, performance or fitness of the purposes for you of the electronic services or any component of such electronic services are disclaimed and excluded.
- b. We do not warrant or forecast that the electronic services or any component of any electronic services or any services performed in respect of any such electronic services will meet the requirements of any user, or that the operation of the electronic services will be uninterrupted or error-free, or that any services performed in respect of the electronic services will be uninterrupted or error-free.

#### **24.6 STATUTORY WARRANTIES:**

Where the Corporations Act, the ASIC Act or the Consumer and Competition Act 2010 of the Commonwealth of Australia or any similar state or territory legislation implies in this Agreement 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 Agreement. However, our liability for any breach of such term, condition or warranty will be limited, at our option, to any one or more of the following:

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

### **25. ELECTRONIC SERVICES**

#### **25.1 SCOPE**

This Clause 25 applies to your use of electronic services.

#### **25.2 ACCESS**

Once you have gone through the share procedures associated with an electronic service provided by us, you will get access to such service, unless agreed otherwise or stated on our website. Please

consult our website for more details on operating times. We may change our share procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.

### **25.3 ACCESS REQUIREMENTS**

You will be responsible for providing the system to enable you to use an electronic service.

### **25.4 VIRUS DETECTION**

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

### **25.5 USE OF INFORMATION, DATA AND SOFTWARE**

In the event that you receive any data, information or software via the electronic service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.

### **25.6 MAINTAINING STANDARDS**

When using the electronic service you must:

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

### **25.7 SYSTEM DEFECTS**

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

### **25.8 INTELLECTUAL PROPERTY**

All rights in patents, copyrights, design rights, trade-marks and any other intellectual property rights (whether registered or unregistered) relating to the electronic services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the electronic services or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the electronic services, 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 electronic services made in accordance with law are subject to the terms and conditions of this Agreement. You must ensure that all the licensors trademarks and copyright and restricted rights notices are reproduced on these copies. You must maintain an up-to-date written record of the number of copies of the electronic services made by you. If we so request, you must as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the electronic services.

### **25.9 LIABILITY AND INDEMNITY**

Without prejudice to any other terms and conditions of this Agreement relating to the limitation of liability and provision of indemnities, the following clauses apply to our electronic services.

- a. **System errors:** we have no liability to you for damage 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. You acknowledge that access to electronic services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to electronic services for this reason.

- b. **Delays:** neither we nor any third party software provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an electronic service.
- c. **Viruses from an electronic service:** we have no liability to you (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into the system via the electronic service or any software provided by us to you in order to enable you to use the electronic service, 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 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 electronic service. You continuously indemnify us against all losses, liabilities, judgments, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using the electronic service 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.

#### **25.10 SUSPENSION OR PERMANENT WITHDRAWAL WITH NOTICE**

We may suspend or permanently withdraw an electronic service, by giving you 10 days' written notice.

#### **25.11 IMMEDIATE SUSPENSION OR PERMANENT WITHDRAWAL**

We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use the electronic service, 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 Agreement, on the occurrence of an event of default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of share. In addition, the use of an electronic service may be terminated automatically, upon the termination (for whatever reason) of (i) any licence granted to us that relates to the electronic service; or (ii) this Agreement.

#### **25.12 EFFECTS OF TERMINATION**

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

### **26. DIRECT DEBIT AUTHORISATION**

The following provisions apply if a direct debit arrangement ("direct debit authorisation") is entered into between you and us to debit the account of you for moneys you owe to us:

- a. The direct debit authorisation applies in respect of all moneys due and payable to us under the confirmation and this Agreement;
- b. You:
  - i. Must ensure that sufficient funds are available in the nominated account to meet all drawings on their due dates;
  - ii. Must advise us immediately if the account nominated is transferred or closed;
  - iii. Must ensure a suitable alternate payment method is arranged with us if you terminate this direct debit authorisation;
  - iv. Are liable for all fees incurred by us in relation to failed drawings.
- c. We:



- i. Where the due date falls on a non-business day, will draw the amount on the next business day thereafter; and
  - ii. Reserve the right to cancel the direct debit authorisation if three or more drawings are returned unpaid by your nominated financial institution and to arrange with you an alternate payment method.
- d. You:
- i. May terminate or amend the direct debit authorisation at any time by giving 14 days prior to written notice to us;
  - ii. Stop payment of a drawing under the direct debit authorisation by giving three (3) days' prior written notice to us;
  - iii. Where you consider a drawing has been debited incorrectly, you can dispute the drawing directly with us or lodge a direct debit claim through your nominated financial institution.

## **27. FORCE MAJEURE**

### **27.1 FORCE MAJEURE EVENT**

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 margin FX contracts or CFDs 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 limits or special or unusual terms in the relevant markets or underlying instruments;
- d. The excessive movement, volatility or loss of liquidity in the relevant markets or underlying instruments; or
- e. Where we reasonably anticipate that any of the circumstances set out in Paragraphs 26.1(a) to (d) of this Agreement are about to occur.

### **27.2 ACTIONS WE MAY TAKE**

If we determine that a force majeure event exists then we may (without prejudice to any other rights under this Agreement 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 this Agreement and any transaction contemplated by this Agreement, 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 margin FX contracts or CFDs, 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.

### **27.3 NOTIFICATION OF FORCE MAJEURE EVENT**

To the extent practicable, we will take reasonable steps to notify you of any action that we propose to take under Clause 27.2 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.

### **27.4 LIABILITY**

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 Agreement or for taking or omitting to take any action in accordance with Clauses 27.2 or 27.3 of this Agreement.

#### **27.5 CLOSE OPEN POSITIONS**

In some circumstances, we may be unable, after using all reasonable efforts, to acquire, substitute, maintain, unwind or dispose of any underlying 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.

### **28. DISPUTE RESOLUTION**

#### **28.1 INFORMING US ABOUT DISPUTES**

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

#### **28.2 HOW DISPUTES ARE DEALT WITH**

Any dispute or difference whatsoever in connection with this Agreement must be dealt with by you in Australia as follows in 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 Financial Ombudsman Service (FOS) for determination in accordance with their rules; or
- b. If the dispute or difference does not fall within FOS' 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 FOS, you may request us to refer the dispute to arbitration in accordance with Paragraph (b) above, and: we may decide in our absolute discretion whether to agree to any such request;
- d. 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.
- e. You and we agree to accept any determination of the arbitrator under Paragraph (b) or 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 28 will not prevent us from commencing proceedings in any other relevant jurisdiction for the enforcement of any such determination.

#### **28.3 WHERE WE MAY COMMENCE LEGAL PROCEEDINGS**

Clause 28.2 of this Agreement 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 Agreement to arbitration in accordance with Paragraph 28.2(b) of this Agreement.

#### **28.4 INTERNAL COMPLAINTS HANDLING POLICY**

You should contact us for information on how complaints are handled by us internally.

### **29. PRIVACY**

#### **29.1 PERSONAL INFORMATION**

In the course of opening your account and providing services to you under this Agreement, it will be necessary for us to obtain and hold personal information that we 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 those services and our obligations under this Agreement and for the purpose of improving those services through such things as product improvement and development.

#### **29.2 PROVISION OF OUR SERVICES**

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

#### **29.3 DISCLOSING INFORMATION**

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

- a. In accordance with this Clause 29;
- b. Where we are required by law or regulatory authorities;
- c. To regulatory authorities and to such third parties as we originally consider necessary in order to prevent crime;
- d. Where reasonably necessary, to any third party which provides a service to us in connection with this Agreement, but restricted to the purposes of providing that service.

#### **29.4 CREDIT AND IDENTITY CHECKS**

You consent to us, or our agents acting on our behalf, carrying our credit and identity checks, including money laundering, compliance regulatory reporting and fraud prevention checks, as we may reasonably 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.

#### **29.5 INTRODUCING BROKERS**

In the situation where you have been introduced to by an introducing broker, you consent to us exchanging information with that introducing broker for the purposes of this Clause 29. You may withdraw your consent by advising us accordingly.

- a. Client understands and agrees that ILQ does not control, and cannot endorse or vouch for the accuracy or completeness of any information or advice Client may have received or may receive in the future from Introducing Broker or from any other person not employed by ILQ regarding foreign currency or exchange (“forex”) trading or the risks involved in such trading.
- b. ILQ provides risk disclosure information to all new Clients when they open accounts. Client should read that information carefully, and should not rely on any information to the contrary from any other source.
- c. Client acknowledges that no promises have been made by ILQ or any individual associated with ILQ regarding future profits or losses in Client’s account. Client understands that forex trading is very risky, and that many people lose money trading.
- d. If Introducing Broker or any other third party provides Client with information or advice regarding forex trading, ILQ shall in no way be responsible for any loss to Client resulting from Client’s use of such information or advice.
- e. To the extent Client has previously been led to believe or believes that utilizing any third party trading system, course, program, research or recommendations provided by Introducing Broker or any other third party will result in trading profits, Client hereby acknowledges, agrees and understands that all forex trading, including trading done pursuant to a system, course, program, research or recommendations of Introducing Broker or another third party involves a substantial risk of loss. In addition, Client hereby acknowledges, agrees and understands that the use of a trading system, course, program, research or recommendations of Introducing Broker or another third party will not necessarily result in profits, avoid losses or limit losses.
- f. Client understands that Introducing Broker and many third party vendors of trading systems, courses, programs, research or recommendations may not be regulated by a government agency, and it would be to his benefit to inquire as to the regulatory status of

the vendor in question. It would be to his benefit to do business with regulated vendors only.

- g. Because the risk factor is high in forex transactions trading, only genuine "risk" funds should be used in such trading. If Client does not have the extra capital the Client can afford to lose, Client should not trade in the forex markets.
- h. Client understands and acknowledges that ILQ may compensate Introducing Broker for introducing Client to ILQ and that such compensation may be on a per-trade basis or other basis. Further, the Client has a right to be informed of the precise nature of such remuneration.
- i. Client understands and agrees that if Client's account with ILQ is introduced by Introducing Broker that Introducing Broker shall have the right to access Client's ILQ account information, including address, phone number, and e-mail address to enable Introducing Broker to provide ongoing training and assistance, updates on company activities and any other on-going information to be of assistance in client's trading, as and when available.
- j. The disclosure document does not give the Introducing Broker the right to enter into any trades on Client's ILQ account unless authorized by Client under a power of attorney between Client and Introducing Broker granting such Introducing Broker the right to trade on Client's account.

#### **29.6 NEW PRODUCTS OR SERVICES**

You authorise us to contact you by email, telephone or post to give you information about our new products or services and you consent to us using your data for this purpose for the period that you have an account with us and after you have closed the account. However, if you do not wish to receive such information, you should advise us.

#### **29.7 PASS PERSONAL DATA**

You authorise us to pass your personal information to selected related entities of us or third parties for the purpose of contacting you by email, telephone 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. If you no longer wish to receive this information, you should advise us.

#### **29.8 OTHER COUNTRIES**

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.

#### **29.9 ACCESS TO INFORMATION**

You may contact us at the address listed in the product disclosure statement if you wish to request access to any personal information that we hold about you for the time.

#### **29.10 RECORDING**

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.

### **30. ILLEGALITY ETC.**

If at any time any provision of this Agreement 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 Agreement 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.

### **31. ASSIGNMENT AND DELEGATION**

The following provisions apply in relation to assignment and delegation:

- a. You may not assign any of your rights or delegate any of your obligations under this Agreement to any person without our prior written consent.

- b. You may not charge any or all of their rights under this Agreement, including any rights to deposits held by us.
- c. Without prejudice to Paragraph 30(a) of this Agreement, we may assign our rights or delegate any of our obligations under this Agreement to any person on giving not less than seven (7) business days' notice to you, subject to obtaining ASIC 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 Agreement, 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 Agreement, 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 the assignee has assumed our rights and obligations under this Agreement in relation to the relevant moneys owing by you.
- e. Despite anything to the contrary contained in this Agreement, we may disclose to any actual or potential delegate or assignee as referred to in Paragraph 30(c) of this Agreement, such information relating to you and your relationship with us, as we see fit.

### **32. RIGHTS AND REMEDIES**

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **33. RIGHTS OF THIRD PARTIES**

Nothing in this Agreement is intended to confer on any person other than us or you any right to enforce any term of this Agreement.

### **34. DELAY, OMISSION AND WAIVER**

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

- a. No delay or omission on our part in exercising any right, power or remedy provided by law or under this Agreement, or partial or defective exercise thereof, will:
  - iii. Impair or prevent further or other exercise of such right, power or remedy;OR
  - iv. Operate as a waiver of such right, power or remedy.  
No waiver of any breach of any term of this Agreement 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.

### **35. GOVERNING LAW AND JURISDICTION**

#### **35.1 LAW**

This Agreement and each margin FX contract and CFD between us and you will be governed by and construed in accordance with the law of New South Wales, Australia.

#### **35.2 JURISDICTION**

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 35 will not prevent us from commencing proceedings in any other relevant jurisdiction.

## **36. NOTICES**

### **36.1 NOTICES MUST BE IN WRITING**

Subject to Clause 36.2 and the PDS, any notice or other communication given or made under or in connection with the matters contemplated by this Agreement will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

- a. ILQ Australia Pty Ltd  
Level 10, 20 Martin Place  
Sydney, New South Wales 2000

Website: [ilq.com.au](http://ilq.com.au)  
Ph no.: +61 2 8607 8364  
Fax no.: 61 2 9475 0636  
Email: [clientservices@ilq.com.au](mailto:clientservices@ilq.com.au)

- b. You: the address, facsimile number and electronic mail address provided by you for this purpose.

### **36.2 PROVISION OF NOTICE**

A notice in writing can be provided by letter, fax, email or to the extent permitted by applicable laws, the website including the trading platform. We may send notices to you at your last known home or email address, place of work, fax, telephone, pager number or other contact details.

### **36.3 WHEN NOTICES ARE RECEIVED**

Any such notice will be deemed to have been received:

- a. If delivered personally or by hand, at the time of delivery;
- b. If posted, within three (3) business days of posting;
- c. If oral, whether by telephone or face to face, when actually given;
- d. If by leaving a message on a telephone answering machine or voice mail, one hour after the message was left;
- e. If sent by facsimile, one hour after completion of its transmission; and
- f. If sent by electronic mail, one hour after sending.

### **36.4 CHANGE OF NOTICE DETAILS**

You may alter the address (including electronic mail address) to which confirmations, statements and other communications are issued, by written notice to us and we may notify you of a change to any of its 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 36.3 of this Agreement.

### **36.5 DEEMED NOTICE WHERE NOTICE SENT CONTACT DETAILS PROVIDED**

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.

### **36.6 YOUR RESPONSIBILITY TO UPDATE CONTACT DETAILS**

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

## **37. MT4 AND ILQ'S MANAGEMENT OF ORDER EXECUTION**

Meta Trader (MT4) is a third party solution which can be integrated with our execution services and MT4 facilitates customised or self written scripts to implement client trading strategies.

ILQ provides a download of this third party solution but has no control over the software or any subsequent client customisation.

It is worth noting however that when utilising "instant" orders (the default setting), instead of "market" orders (which permit slippage but reduces risk of re-quotes) clients can manage their downside risk of slippage through a configurable setting "locally" (by inputting the maximum "deviation" from current "local" bid/offer price struck). This totally controls the acceptable slippage (difference between the client side or "locally" displayed bid/offer) which the client is allowing the order to be filled at if it differs from the market price which ILQ has on its execution server upon actual receipt of the order.

The primary reason is the time delay between local prices and execution server prices as well as market volatility at certain times.

Latency can be managed through a number of proactive measures such as using an effective ISP, a VPS (Virtual Private Server) Service and ensuring the local machine (PC or Laptop) has a high capacity and is unfettered by other resource hungry applications which may impact the performance to deliver orders. ILQ recognises that latency is simply a part of the nature of using the internet so will permit slippage (variance between "market" order price and the actual market price upon receipt of the order) of one pip both in ILQ's favour, and out of ILQ's favour. This means that whether ILQ is in or out of the money, we will still fill this order. If a client does not want any slippage whatsoever if out of the money then they can manage this downside risk by a deviation setting of less than one pip i.e. zero.

### 38. ENTIRE AGREEMENT

This Agreement, the Account Application Form, the PDS, the Confirmation, Risk Disclosure Statement, the FSG and any additional terms and conditions as determined and notified to you from time to time contain the entire agreement between the parties with respect to its subject matter. It sets out the only terms relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

### 39. SCHEDULE 1

#### 39.1 Definitions

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

<b>Account</b>	means an account you have with us;
<b>Agreement</b>	means this Client Agreement, as amended, varied, or replaced from time to time;
<b>AML/CTF Act</b>	means the Anti-Money Laundering and Counter-Terrorism Financing Act and all regulations, rules and instruments made under that Act;
<b>Applicable laws</b>	means all: <ul style="list-style-type: none"> <li>• 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, this Agreement and the transactions contemplated by this Agreement; and</li> <li>• Applicable Australian law; and</li> <li>• Applicable market rules.</li> </ul>
<b>Application form</b>	means the application form and account opening documentation, including documentation required to be returned for the purposes of complying with Anti-Money Laundering and Counter-Terrorism Financing legislation, completed by you and submitted to us;
<b>ASIC</b>	means the Australian Securities and Investments Commission;

<b>ASIC Act</b>	means the Australian Securities and Investments Commission Act 2001 of the Commonwealth of Australia;
<b>Associate</b>	means: <ul style="list-style-type: none"> <li>• A person who is an officer, employee, agent, representative or associate of a party;</li> <li>• A related body corporate of a party; and</li> <li>• A person who is an officer, employee, agent, representative or associate of a related body corporate of a party</li> </ul>
<b>Australian client money rules</b>	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;
<b>Australian law</b>	means all laws, procedures, standards and codes of practice that apply in relation to the parties, this Agreement and the transactions contemplated by this Agreement, including the Corporations Act, the ASIC Act, ASIC policy and the Privacy Act (Cth) 1998.
<b>Authorised person</b>	means you and/or any person authorised by you to give instructions to us under this Agreement;
<b>Base currency</b>	means US dollars or the currency as agreed under Clause 8.7 of this Agreement;
<b>Bullion</b>	means gold or silver;
<b>Bullion CFD</b>	means a CFD whose value fluctuates by reference to the fluctuations in the underlying instrument which relate to gold or silver;
<b>Business day</b>	means: <ol style="list-style-type: none"> <li>Any day other than a Saturday, Sunday or public holiday on which banks are open for business in Sydney, New South Wales, Australia;</li> <li></li> </ol>
<b>CFD</b>	means the contracts for difference that we offer to our clients from time to time under the PDS and the terms and conditions of the Client Agreement;
<b>Client money</b>	means the moneys clients have deposited with us and held by us under the client money rules;
<b>Close of business</b>	5:00PM ET USA
<b>Closing price</b>	means the price determined by us, from time to time, having regard to the last traded or mid close price and our spread as may be appropriate for the underlying instrument;
<b>Commodity</b>	means oil or gas;
<b>Commodity CFD</b>	means a CFD whose value fluctuates by reference to the fluctuations in the value of an underlying instrument relating to a commodity;
<b>Confirmation</b>	means a form of notification, which may be provided by us electronically, including via the internet, requiring access by the client, confirming entry into a contract;
<b>Contract</b>	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 or any back to back agreement which we may enter into to enable us to enter into or fulfil our obligations under such contract;
<b>Contract price</b>	means the price per contract unit of a margin FX contract, quoted from time to time by us and which is calculated under Clause 9 of this Agreement;
<b>Contract quantity</b>	means in relation to a margin FX contract, the number of contract units as the case may be, traded by you as stated in the confirmation;
<b>Contract unit</b>	means the minimum trading size for the type of margin FX contract you wish to trade with us as set out in Clause 9;
<b>Contract value</b>	means the total value of the contract as calculated by us in



	accordance with the terms of this Agreement;
<b>Corporations Act</b>	means the Corporations Act 2001 of the Commonwealth of Australia;
<b>Electronic service</b>	means a service provided by us, for example an internet trading service offering clients access to information and trading facilities, via an internet service, a swap service and/or an electronic order routing system and including relevant software provided by us to enable you to use an electronic trading service;
<b>Equity index futures contract</b>	means a futures contract over an equity index.
<b>Event of default</b>	means an event described in Clause 15.1;
<b>Excepted contract</b>	means an index future CFD or a commodity CFD;
<b>Exchange rate</b>	means the exchange rate we may reasonably offer to you from time to time having regard to the applicable prevailing interbank rates and our spread, and which is available to you from us via the electronic services or on request;
<b>Expiry date</b>	means the day on which the relevant contract expires;
<b>Force majeure event</b>	has the meaning given to it in Clause 27 of this Agreement;
<b>FSG</b>	means our relevant financial services guide, including a supplementary and replacement financial services guide;
<b>GMT</b>	means Greenwich Mean Time;
<b>Index</b>	means the market index on which a CFD is based;
<b>Index Futures CFD</b>	means CFD whose value fluctuates by reference to the fluctuations in the value of an underlying instrument, which is an equity index futures contract.
<b>Insolvency event</b>	<p>means any of the following:</p> <ol 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: <ol style="list-style-type: none"> <li>i. that a corporate client be wound up;</li> <li>ii. appointing a liquidator or provisional liquidator for a corporate client;</li> </ol> </li> <li>c. A liquidator, provisional liquidator or controller is appointed to a corporate client;</li> <li>d. A resolution is passed to appoint an administrator to a corporate client;</li> <li>e. You enter into a deed of company arrangement or propose a reorganisation, moratorium or other administration involving all or any of your creditors;</li> <li>f. A corporate client is dissolved or wound up in any other way;</li> <li>g. You are or state that you are unable to pay your debts as and when they fall due;</li> <li>h. You are or state that you are insolvent;</li> <li>i. You seek or obtain protection from any of your creditors under any legislation;</li> <li>j. You become insolvent or commit an act of bankruptcy or your estate comes within the law dealing with bankrupts;</li> <li>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;</li> <li>l. If execution is levied against your business or your property and is not removed, released, lifted, discharged or discontinued within 28 days;</li> <li>m. You seek a moratorium or propose any arrangement or compromise with your creditors;</li> <li>n. Any other event having substantially the same legal effect as the events specified in Paragraphs (a) to (n) above;</li> </ol>

	<p>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> <p>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;</p> <p>q. You fail fully to comply with any obligations under this Agreement or any margin FX contract;</p> <p>r. Any of the representations or warranties given by you are, or become, untrue;</p> <p>s. We reasonably consider it necessary for our own protection or the protection of our associates.</p>
<b>Interbank rate</b>	means the mid interbank rate calculated by us with reference to the bid and offer prices for the underlying instrument most recently quoted by any one or more third party banks;
<b>Limit order</b>	has the meaning given to it in section 5.7.3 of the PDS;
<b>Limited hours trading</b>	means the ability of the client to trade margin FX contracts and CFDs and (where available) as are designated by us from time to time under this Agreement only during such hours as the relevant Exchange is open;
<b>Margin</b>	means the amount that you must have in your account to enter into a margin FX contract or CFD with us;
<b>Margin call</b>	means a call on you normally made via the trading platform, requiring you to top up the amount of money you have in your account as margin in order to maintain your margin percentage where the market has moved against you, and where the additional payment is required in order to maintain your open positions;
<b>Margin FX contract</b>	means any contract, whether oral or written or concluded electronically entered into between you and us and includes margin FX contracts;
<b>Margin percentage</b>	means, such percentage of the contract value as specified by us as described in the current PDS, and as amended by us under Clause 10.5 of this Agreement from time to time;
<b>Margin requirement</b>	means the amount of money that you are required to deposit with us as consideration for entering into a trade and maintaining an open position;
<b>Market rules</b>	means the rules, regulations, customs and practices from time to time of any exchange, licensed financial market, clearing house, licensed clearing and settlement facility, or other organisation or market involved in the conclusion, execution or settlement of a transaction or contract and any exercise by such Exchange, clearing house or other organisation or market of any power or authority conferred on it;
<b>Minimum total equity balance</b>	means such minimum total equity balance in your account (as amended from time to time);
<b>Minimum trading size</b>	means such minimum contract quantity or contract value as we may specify on our website from time to time for any type of margin FX contract or CFD;
<b>Next serial futures Contract</b>	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;
<b>Normal trading size</b>	means the minimum and maximum contract quantity or contract value that we reasonably 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;
<b>Opening value</b>	means in relation to a contract, the total contract value as agreed between us and you at the time of the transaction as stated on the confirmation or as determined in accordance with the terms of this Agreement.
<b>PDS</b>	means our product disclosure statement, including a supplementary and replacement product disclosure statement;
<b>Product schedule</b>	means the list of margin FX contracts and CFDs we hold ourselves out from time to time as willing to quote a price, as amended by us from time to time, the product schedule is available at <a href="http://www.ilq.com.au">www.ilq.com.au</a> .
<b>Position</b>	means the long or short position you have taken in your margin FX contract or CFD with us;
<b>Position limit</b>	means the limits, if any, imposed by us under this Agreement;
<b>Relevant interest rate</b>	means such applicable interest rate as we may reasonably select from time to time which is appropriate to the currency of the outstanding amount or the underlying instruments (as applicable) as detailed on the daily statement.
<b>Rollover benefit</b>	means a benefit you may receive on margin FX contracts and CFDs held overnight and which is described in Clause 13 of this Agreement;
<b>Rollover charge</b>	means a charge you may have to pay where you have a margin FX position held overnight and which is described in Clause 13 of this Agreement;
<b>Rollover rate</b>	means the rate as we may determine from time to time having regard to rolling from the front month underlying futures contract to the next serial futures contract;
<b>Settlement date</b>	means such settlement date following the closing date as we may reasonably determine in accordance with practice in the relevant market and notify to you at the time of entering into the contract;
<b>Specified date</b>	means in relation to a contract, the future date with reference to which the contract was entered into;
<b>Spread</b>	means the difference in the bid and offer prices of a margin FX contract quoted from time to time by us and, where appropriate, expressed as a percentage of the relevant price;
<b>Stop loss order</b>	has the meaning given to it in section 5.6.1 of the PDS;
<b>Swap rate</b>	means the rate as we may determine from time to time having regard to the interbank rate;
<b>Total equity</b>	means the aggregate of the current cash balance in your account and your current unrealised profits and losses;
<b>Trading platform</b>	means the trading platform in the electronic service we make available to you by which you may trade with us online in our margin FX contracts and CFDs;
<b>Underlying instrument</b>	means the instrument, in this case currency, futures contract, bullion or other instrument or asset or factor the reference to which the value of a contract is determined.
<b>Underlying market</b>	means the underlying market in which the underlying instrument is traded.
<b>Unrealised P&amp;L</b>	means a figure stated on the trading platform which represent your unrealised profits less your unrealised losses;
<b>Website</b>	means the internet address <a href="http://www.ilq.com.au">www.ilq.com.au</a> and includes the trading platform, product schedule and market information sheet;
<b>We/us/our</b>	means ILQ Australia Pty Ltd (ACN 159 166 739).

## 40. Schedule 2

### ELECTRONIC TRADING TERMS

- 1.1. **Scope:** These clauses apply to your use of any Electronic Services.
- 1.2. **Access:** Once you have gone through the security procedures associated with an Electronic Service provided by us, you will get access to such service, unless agreed otherwise or stated on our website. Please consult our website for more details on operating times. We may change our security procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.
- 1.3. **Restrictions on services provided:** There may be restrictions on the number of transactions that you can enter into on any one day and also in terms of the total value of those transactions when using an Electronic Service. You acknowledge that some marketplace restrictions on the types of orders that can be directly transmitted to their electronic trading systems. These types of orders are sometimes described on synthetic orders. The transmission of synthetic orders to the market is dependent upon the accurate and timely receipt of prices or quotes from the relevant market or market data provider. You acknowledge that a market may cancel a synthetic order when upgrading its systems, trading screens may drop the record of such an order, and you enter such orders at your own risk.
- 1.4. **Right Of Access:** In respect of any market to which we allow you to submit orders or receive information or data using Electronic Services, we may at any time or times, on reasonable notice (which, in certain circumstances, may be immediate) enter (or instruct our or the Market's subcontractors to enter) your premises and inspect your System to ensure that it complies with the requirements notified by us to you from time to time and that you are using Electronic Services in accordance with this Agreement and any requirements of any relevant Market or Applicable Regulations.
- 1.5. **Access requirements:** You will be responsible for providing the System to enable you to use an Electronic Service.
- 1.6. **Virus detection:** You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.
- 1.7. **Use of information, data and software:** In the event that you receive any data, information or software via an Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.
- 1.8. **Maintaining standards:** When using an Electronic Service you must:
  - 1.8.1. Ensure that the System is maintained in good order and is suitable for use with such Electronic Service;
  - 1.8.2. Run such tests and provide such information to us as we shall reasonably consider necessary to establish that the System satisfies the requirements notified by us to you from time to time;
  - 1.8.3. Carry out virus checks on a regular basis;
  - 1.8.4. Inform us immediately of any unauthorised access to an Electronic Service or any unauthorised Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and
  - 1.8.5. not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service.
- 1.9. **System defects:** In the event you become aware of a material defect, malfunction or virus in the System or in an Electronic Service, you will immediately notify us of such defect, malfunction or virus and cease all use of such Electronic Service until you have received permission from us to resume use.
- 1.10. **Intellectual Property:** All rights in patents, copyrights, design rights, trademarks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the Electronic Services, 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 Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. You shall ensure that all the licensors' trademarks and copyright and restricted rights notices are reproduced on these copies. You shall maintain an up-to-date written record of the number of copies of the Electronic Services made by you. If we so request, you shall as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the Electronic Services.

- 1.11. **Liability and Indemnity:** Without prejudice to any other terms of this Agreement, relating to the limitation of liability and provision of indemnities, the following clauses shall apply to our Electronic Services.
  - 1.11.1. **System errors:** We shall have no liability to you for damage 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. You acknowledge that access to Electronic Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Electronic Services for this reason.
  - 1.11.2. **Delays:** Neither we nor any third party software provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Electronic Service.
  - 1.11.3. **Viruses from an Electronic Service:** We shall have no liability to you (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into the system via an Electronic Service or any software provided by us to you in order to enable you to use the Electronic Service, provided that we have taken reasonable steps to prevent any such introduction.
  - 1.11.4. **Viruses from your System:** You will 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 that we suffer arising as a result of any such introduction.
  - 1.11.5. **Unauthorised use:** We shall not be liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Electronic Service. You shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using an Electronic Service by using your designated passwords, whether or not you authorised such use.
  - 1.11.6. **Markets:** We shall not be liable for any act taken by or on the instruction of a Market, clearing house or regulatory body.
- 1.12. **Suspension or permanent withdrawal with notice:** We may suspend or permanently withdraw an Electronic Service, by giving you 10 days written notice. We will notify you of this action by the medium specified in your account application. The following process would apply in relation to suspension and subsequent closure of your account:
  - 1.12.1. During the notice period (if any):-
  - 1.12.2. We will not close your open trades or limit / stop loss orders already placed (unless we are otherwise entitled to do so i.e. you request that we do so via telephone);
  - 1.12.3. You will not be able to place any new trades or orders nor to give any other instruction, except insofar as necessary to close a trade or to cancel an order in place before the start of the notice period. In particular you will not be entitled to place a closing trade or any order in such a size that would result in a new trade being opened;
  - 1.12.4. All trades will be closed and all orders cancelled on the same day that your Account is closed (or as soon as reasonably practicable thereafter);
  - 1.12.5. All trades will be closed at the ILQ price;
  - 1.12.6. We can effect closures at any time, but closure will generally be effected approximately one hour before the close of the underlying or our trading hours for the market in question;

- 1.12.7. Once your account has been closed you will no longer be entitled to place any trades or orders or to otherwise deal on your account.
- 1.13. **Immediate suspension or permanent withdrawal:** We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use any Electronic Service, 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 regulations, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of security. In addition, the use of an Electronic Service may be terminated automatically, upon the termination (for whatever reason) of (i) any licence granted to us which relates to the Electronic Service; or (ii) this Agreement. The use of an Electronic Service may be terminated immediately if an Electronic Service is withdrawn by any market or we are required to withdraw the facility to comply with applicable regulations.
- 1.14. **Effects of termination:** In the event of a termination of the use of an Electronic Service for any reason, upon request by us, you shall, at our option, return to us or destroy all hardware, software and documentation we have provided you in connection with such Electronic Service and any copies thereof.
- 1.15. **Idle Prices:** We have an agency execution model and automatically cover all client positions with executing brokers and liquidity providers. On rare occasions the aggregated price feed which we provide to clients can become "idle". We reserve the right to reverse market or instant orders are executed where idle prices have been struck. These cases will be investigated by us and the client advised via e-mail or telephone where possible to notify the client of the trades being cancelled. We will always check to ensure that the reversal does not result in an unintended position being generated i.e. if the order is executed and subsequently reversed to open a position, any subsequent order(s) closing this position would also be reversed leaving the net P&L at zero so the client is not disadvantaged by this reversal due to our onward transmission of invalid prices.
- 1.16. **Misquotes:** We have an agency execution model and automatically cover all client positions with executing brokers and liquidity providers. Although we mitigate the risk of invalid prices feeds reaching clients through utilising a price aggregation system which generates a price from multiple liquidity providers (typically in excess of 10 liquidity providers), there are rare occasions where the prices can become "skewed". In such rare instances if orders are filled at these prices, we reserve the right to reverse orders where idle prices have been struck. These cases will be investigated by us and the client advised via e-mail or telephone where possible to notify the client of the trades being cancelled. We will always check to ensure that the reversal does not result in an unintended position being generated i.e. if the order is executed and subsequently reversed to open a position, any subsequent order(s) closing this position would also be reversed leaving the net P&L at zero so the client is not disadvantaged by this reversal due to our onward transmission of invalid prices.

**Stale quotes and misquotes policy:** ILQ's quoted prices may on rare occasions become "stale" or "skewed". ILQ reserves the right to cancel orders executed on idle or skewed prices. ILQ will actively monitor/report and investigate such trading activity and in the event that trades are being cancelled will notify the client accordingly. ILQ will pursue the fair treatment of its Customers and will use its best endeavours to make sure cancellations are performed fairly and that the client is not disadvantaged by the cancellation i.e. no inadvertent positions are left open and the client's net position is in line with the client's positions at the time of correction.