



KITCO MARKETS LLC
01 JAN, 2021

KITCO MARKETS

ACCOUNT TERMS & CONDITIONS

London
New York
Hong Kong
SVG

As presented by
KITCO MARKETS LLC

Foreword by
KITCO MARKETS LLC

KITCO MARKETS LLC

Account Terms

An agreement is made by KITCO MARKETS LLC (**KITCO MARKETS LLC**) and the Client on the following terms.

1. Terms

- 1.1. CFDs and other Transactions are issued and managed on the terms set out in this agreement.
- 1.2. These terms also cover the Account you must have to manage your Transactions. Even if the terms describe something in relation to your Account, they are terms which apply to your Transaction for a Financial Product, such as a CFD.
- 1.3. In order to establish your Account, you must complete an Application Form and that must be accepted by KITCO MARKETS LLC. KITCO MARKETS LLC may, in its absolute discretion, accept or decline to provide any one or more Financial Products that you have selected in your Application Form.
- 1.4. This agreement will apply to you in respect of any Financial Product that you have selected in the Application Form from the earlier of (a) the time KITCO MARKETS LLC accepts your Application Form; (b) the time KITCO MARKETS LLC otherwise agrees to provide the Financial Products to you; and (c) the time you first place an Order in respect of the Financial Products with KITCO MARKETS LLC or otherwise instruct us to provide a service in respect of the Financial Products.
- 1.5. Your Application Form may be the initial form you give us to open your Account or it can be another form which you later give us to apply for other kinds of Financial Products, in either case in the form we choose to accept. Your forms are in electronic form or, as KITCO MARKETS LLC permits from time to time.
- 1.6. KITCO MARKETS LLC may in its discretion allow you to have two or more Accounts from time to time. A reference in these terms to "Account" is a reference to all of the Accounts you have from time to time, unless the context requires a different meaning.
- 1.7. All Financial Products offered by KITCO MARKETS LLC are subject to the terms in this agreement, which includes those Schedules which apply to particular Financial Products you use from time to time (as specified in those Schedules). A reference to "terms" is a reference to the terms in this agreement (including the specific Schedules relevant to particular Financial Products) which are applicable to you, as amended from time to time.
- 1.8. If, after opening an Account, you later choose a different kind of Financial Product for Transactions which you have not previously dealt with KITCO MARKETS LLC, then the relevant Schedule (in the form applying at that time, and as later amended) for the Financial Products will apply to your Account when KITCO MARKETS LLC agrees to provide the Financial Products to you. You should check that you have the latest version of terms including the latest Schedule applicable to the Financial Products later chosen by you because that will apply to your Account even if you do not have a copy of them.
- 1.9. These terms set out all of your agreement except only for those provisions which are imposed by law and which cannot or have not been excluded by these terms.
- 1.10. KITCO MARKETS LLC will act honestly and exercise due care and diligence at all times in its performance of this agreement.

2. Orders

- 2.1. You may from time to time place Orders with us to enter into Transactions. Subject to this agreement, we will execute your Orders (or will instruct third parties to execute your Orders) on your behalf or with you as principal in accordance with your instructions.

- 2.2. We will use our reasonable endeavours to execute or arrange the execution of your instructions. We will not be responsible for delays or errors in the transmission or execution of your instructions (except to the extent that responsibility cannot be excluded by law).
- 2.3. We may refuse to accept an Order and we may place a limit on any Order or place other conditions on the receipt of instructions or Orders, in our absolute discretion and for any reason. We may at any time use, add and change filters within a trading system which prevent delivery of Orders or execution of Orders. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented by law or a direction from a regulatory authority from notifying you.
- 2.4. We may cancel or amend an Order in any of the following cases:
- (a) if the Financial Product the subject of the Transaction has been subject to a trading halt on a Financial Market or other regulatory action preventing execution of your Order and you have not reconfirmed instructions;
 - (b) if we consider the cancellation or variation is appropriate, having regard to the desirability to maintain a fair and orderly market, our obligations as the holder of an Australian financial services licence and our other legal and regulatory obligations;
 - (c) if required by a relevant Financial Market or CS Facility or Applicable Laws to do so, in respect of your Order or any contract we propose to enter into to hedge our Transactions with you in relation to your Order;
 - (d) in the event of an error.
- 2.5. We will make reasonable efforts to effect any instructions to cancel or to amend Orders as quickly as possible. If, however, an Order is filled prior to a cancellation or amendment instruction being effected, you are obliged to accept the Transaction on the original terms prior to your amendment or cancellation instruction; unless the Transaction is itself cancelled or amended.
- 2.6. We may execute Orders for you even in circumstances if we or our associates:
- (a) hold a principal position or deal in the relevant Financial Products;
 - (b) provide similar services to other persons in relation to the relevant Financial Products;
 - (c) have material price sensitive information relating to the relevant Financial Products if the individuals processing your Order are prevented from knowing or taking into account such information (including, but not limited to, by reason of procedures known as “Chinese walls”); or
 - (d) have a potential conflict of interest or duties including, for example, a conflict of interest of which you are not aware and which we are unable to disclose to you.
- 2.7. Notwithstanding any rule of law or equity to the contrary, KITCO MARKETS LLC is not disqualified from contracting with any person and no contract, transaction or arrangement in which KITCO MARKETS LLC is in any way interested is avoided or rendered voidable by virtue of your agreement with us or a Transaction. KITCO MARKETS LLC is not liable to account to you for any profit realised by any such contract, Transaction or arrangement in connection with this agreement or a Transaction. KITCO MARKETS LLC is not required to make any disclosure to you concerning any such contract, transaction or arrangement.
- 2.8. We and our related bodies corporate may enter into Transactions with you as principal, whether in respect of Financial Products able to be traded on a Financial Market or in respect of over-the-counter Transactions such as Derivatives or Foreign Exchange related Transactions. If permitted by Applicable Law, we or an associate may take the opposite position in a Transaction with you (in addition to the Transaction with you). Your

Orders may match opposite Orders of another person who is our client, and this may entitle us to receive fees or commission from both sides of the Transaction. Similarly, if we deal as principal, then your Orders may match opposite Orders entered on our behalf as principal and you authorise us to charge you commission or a Transaction Fee in respect of the Transaction in those circumstances.

- 2.9. You are aware of and acknowledge the right of KITCO MARKETS LLC and its related bodies corporate, directors and employees, either on their own account or on behalf of other clients or persons, to deal in any Transaction or take the opposite position to you in Transactions, if permitted (or, if not expressly permitted, then if not prohibited) to do so by the Corporations Act and the Rules.
- 2.10. You acknowledge that we do not operate any discretionary accounts and we will, unless otherwise expressly provided by this agreement, only act on your instructions (including those given by your Authorised Person).
- 2.11. Unless otherwise specified in this agreement, all Orders will remain open until either cancelled by you or purged by the trading system or the Online Trading Platform for the relevant Financial Market. An Order or unfilled part of an Order will be purged nine weeks from the date of the Order entry or such earlier time as determined by KITCO MARKETS LLC without having to notify you of that. Once an Order has partially traded, only the remaining volume can be cancelled and you remain liable for the volume traded. We do not accept responsibility for reinstating lapsed Orders or for contacting you to seek new instructions.
- 2.12. If a security code or identifier changes, you are responsible for replacing all live and contingent Order codes with the new relevant security code or identifier. We will not be responsible for any live or contingent Orders with the incorrect security code or identifier.
- 2.13. You must not instruct us to submit an Order to enter into an Transaction which would breach or cause us or any other person to breach the Corporations Act, the Rules or any other Applicable Laws including, without limitation, any law or the Rules in relation to:
- (a) market manipulation, false trading, market rigging, fictitious transactions, wash trading or matching of Orders;
 - (b) insider trading;
 - (c) short selling;
 - (d) creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
 - (e) misleading or deceptive conduct.
- 2.14. Your instructions to KITCO MARKETS LLC to enter into a Transaction, your Order to KITCO MARKETS LLC to enter into the Transaction and the Transaction remains valid and enforceable against you, without affecting your other liability to KITCO MARKETS LLC even if you (or your Authorised Person) are not authorised by your own rules (such as a corporate or trust constitution or an investment management agreement).
- 2.15. You agree not to make any Claim against KITCO MARKETS LLC for any Loss incurred or suffered by you which arise in connection with or directly or indirectly caused by an exercise of any power by a Financial Market (whether or not KITCO MARKETS LLC has given you a Confirmation in respect of any affected Transaction and whether or not that exercise of power was in relation to a particular contract made by KITCO MARKETS LLC to hedge its Transaction with you).

3. Calculations and Valuations

- 3.1. The Balance of an Account will be determined by KITCO MARKETS LLC on the basis of:
- (a) Transactions, including rolled Transactions;
 - (b) Transaction Fees;

- (c) Margin payments received and credited;
- (d) Unrealised Gain/Loss;
- (e) Finance Charges (including interest on an Account's Balance, forward and rollover fees components); and
- (f) any other fees and costs.

3.2. KITCO MARKETS LLC may from time to time calculate and report the Liquidated Value. The Liquidated Value is an indicative (non-binding) value of an Account calculated by KITCO MARKETS LLC for the Account. It takes into account (among other things, without limitation):

- (a) Finance Charges (whether or not accrued and payable);
- (b) the expected (but non-binding estimate of) costs of closing Transactions by termination or Close Out; and
- (c) Payment or credit to you to reduce your Margin cover (which is sometimes referred to as "return of Margin").

3.3. The Liquidated Value may also be reported as the "cost to close" a Transaction, according to the type of Transaction or the method of dealing.

3.4. KITCO MARKETS LLC Average spread should be noted as Average meaning this is the typical spread during normal market conditions, during significant events spread may be volatile and can be increased.

3.5. KITCO MARKETS LLC Permits News trading and scalpers, KITCO MARKETS LLC does not accept clients who hedge, hedge trading may be reversed in your account with applicable costs.

3.6. KITCO MARKETS LLC has four Main account types as per below and charges applicable

3.7. Classic account commissions and charges are within spread including execution cost

3.8. ECN/STP typical spreads from 0.0 average 0.2 on currency majors (RAW SPREAD) Crosses and execution per 1 standard lot is \$10USD based on the base /primary currency value.

3.9. ECN/STP Professional Accounts typical spreads from 0.0 average 0.2 on currency majors (RAW SPREAD) Crosses and execution per 1 standard lot is \$10USD based on the base /primary currency value.

3.10. ECN/STP BCT (Kitco Markets LLC Trading) Accounts typical spreads from 0.0 average 0.2 on EUR/USD on currency majors (RAW SPREAD) Crosses and execution per 1 standard lot is \$22USD based on the base/primary currency value.

3.11. KITCO MARKETS LLC may from time to time calculate and report the Available Funds for an Account. The value of the Available Funds is the amount calculated by KITCO MARKETS LLC as the amount of cash which would be paid to you from the Account if requested. The amount is subject to final adjustment by KITCO MARKETS LLC at any time including immediately after payment of cash to you for any reason whatever, including changes in value or level of Reference Securities, interest rates, currency rates, and unposted (or unreported) but accrued Finance Charges or Transaction Charges. Available Funds may also be reported as the "cost to close" a Transaction, according to the method of dealing.

3.12. KITCO MARKETS LLC may charge an international wire fee up to \$35 depending on country of international wire.

3.13. KITCO MARKETS LLC may from time to time calculate and report the Unrealised Gain/Loss for an Account. Unrealised Gain/Loss is the indicative amount of net profit or loss of an Account calculated by KITCO MARKETS LLC (including by the Online Trading Platform) by reference to prevailing market prices and so:

- (a) may be adjusted by KITCO MARKETS LLC at any time; and
 - (b) is not definitive and so does not assure you that the Transactions will have that value if actually terminated or sold at that particular time.
- 3.14. Terms and expressions used in this agreement for reporting and calculating amounts may differ from time to time from terms or expressions used in the Online Trading Platform usage or desk usage or market practice. You should have regard to the statements, Confirmations, guides and dealing practices used from time to time.
- 3.15. If the composition or calculation of a Reference Security is adjusted by its issuer, regulator or sponsor, KITCO MARKETS LLC will make such adjustment to the Transaction at the time determined by KITCO MARKETS LLC which reasonably preserves the intended economic effect of the Transaction, but without being obliged to consider your particular circumstances. KITCO MARKETS LLC need not give notice of the adjustment. If the Reference Security becomes subject to a take-over bid, a take-over offer, scheme of arrangement or other mechanism for change in control, then KITCO MARKETS LLC may elect to Close Out the Transaction on a new Closing Date determined by KITCO MARKETS LLC.
- 3.16. For CFD Transactions, the Long Party will be credited with an amount equal to the gross unfranked amount of any dividend payable to the Holder of the Reference Security (as determined by KITCO MARKETS LLC) and the Short Party will be debited with an amount equal to the gross unfranked amount of any dividend payable to the Holder of the Reference Security (as determined by KITCO MARKETS LLC).
- 4. Appointment of Authorised Persons**
- 4.1. You may authorise another person (**Authorised Person**) to give instructions and place Orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under this agreement. You must notify KITCO MARKETS LLC in your Application Form or otherwise in writing of any such authorisation, setting out the full name, telephone number, fax number, email address and specimen signature of that person.
- 4.2. Any change or revocation of such authority is only effective upon receipt by KITCO MARKETS LLC of a signed written notice of change or revocation from you. If another person is later appointed an Authorised Person, the notice must include the full name, telephone number, fax number, email address and specimen signature of that person and be verified by an Authorised Person and, if you are a body corporate, by a director.
- 4.3. For the purposes of this agreement, Orders placed by, and other instructions or directions given by, an Authorised Person (or which appear to us on the face of the Orders or other instructions or directions to be placed or given by an Authorised Person) are taken to be your Orders, instructions or directions.
- 4.4. You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person was:
 - (a) outside their actual or ostensible authority; or
 - (b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.
- 4.5. You agree not to make, and release us from any liability to you under your right to make, any Claim

against us for any Loss incurred or suffered by you which arise directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your Authorised Person.

5. Client Instructions

5.1. You must keep all passwords secret and ensure that unauthorised third parties do not obtain access to your Account for Transactions under this agreement.

5.2. Transmission of an instruction by you will not constitute a binding contract with KITCO MARKETS LLC until confirmed by KITCO MARKETS LLC via the Confirmation.

5.3. You must execute, or otherwise authorise KITCO MARKETS LLC to execute, all such agreements and other documents as required to enable the provision of the services and Financial Products contemplated in this agreement. You appoint KITCO MARKETS LLC as your attorney to do all things necessary to enter into such agreements on your behalf.

6. Confirmations

6.1. If the Client has provided KITCO MARKETS LLC with an email or other electronic address, the Client consents to Confirmations being dispatched to it electronically. The Client acknowledges that each Confirmation is subject to the customs and usages of the Exchanges relevant to the Reference Security (if any) may be subject and to the correction of errors and omissions.

6.2. It is the Client's obligation to review any Confirmation immediately to ensure its accuracy and report any discrepancies that you may have to us within 48 hours. Confirmations can be viewed electronically through the Online Trading Platform.

7. Client Representations and Warranties

7.1. You, the Client, represent and warrant that as at the date of this agreement and at all times during this agreement:

- (a) if you are a legal entity other than a natural person, the Client is duly organised and validly existing (or, if a natural person, you are of legal age to make binding agreements and are not under a legal disability or incapacity which would make this agreement unenforceable or invalid) and the Client has full power and authority to enter into, and has taken all necessary steps to enable it lawfully to enter into, this agreement and the transactions and obligations under it;
- (b) the person executing this agreement has full power and authority to execute this agreement on behalf of the Client, and bind the entity (whether a natural person, company, partnership or otherwise);
- (c) this agreement constitutes a legal, valid and binding obligation of the Client;
- (d) if the Client is more than one person they will each be jointly (that is, together) and severally (that is, individually fully) liable under this agreement;
- (e) if the Client is a corporation, the Client has been and is duly formed under the laws of the place of its incorporation and has power and authority to deal in the Financial Products offered by KITCO MARKETS LLC, and the person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (f) if the Client is one or more persons acting as a partnership in relation to this agreement, the

Client and each other partner has power and authority to deal in Transactions and to be bound by this agreement, and the person executing this agreement has full power and authority to execute this agreement on behalf of all of the partners;

- (g) if the Client is a Trustee, the trust deed specifically empowers and authorises dealings in the Financial Products covered by this agreement, and such dealings are within the authorised ambit of the Trust's investment strategy;
- (h) if the Client is comprised of two or more persons (that is, holding a joint Account), that all such decisions made, and instructions issued, pursuant to this agreement, are made on a fully informed and agreed basis by all the parties to the joint Account;
- (i) if the Client is an investment manager or a responsible entity, the investment management agreement or fund constitution specifically empowers and authorises dealings in the Financial Products, by the Client and on behalf of their underlying clients or investors; and
 - (i) such dealings are within the authorised ambit of each underlying client's investment strategy;
 - (ii) it will enter into transactions pursuant to the applicable investment management agreement as investment manager or responsible entity and not otherwise;
 - (iii) it will only deal in Financial Product transactions when the funds or other assets under its control are sufficient to meet the obligations which arise in connection with such dealing; and
 - (iv) if your appointment as investment manager or responsible entity is terminated, it is authorised to arrange for closing out of all Transactions entered into on behalf of the Client prior to the date of such termination as soon as possible;
- (j) the Client has read this agreement and any product disclosure statement issued by KITCO MARKETS LLC in relation to the Financial Products and Transactions relevant to the Account (including the disclosures of significant risks), has considered its objectives and financial situation and has been advised by KITCO MARKETS LLC to obtain appropriate independent advice prior to entering into this agreement, and has formed the opinion that dealing in the Financial Products is suitable for your needs and purposes;
- (k) the Client is willing and able, financially and otherwise, to assume the risk of trading in high risk investments, Transactions using Margin and all other Transactions covered by these terms;
- (l) information supplied to KITCO MARKETS LLC by the Client is, or at the time it is supplied will be, accurate in all material respects and the Client will not omit or withhold any information which would make such information inaccurate in any material respect;
- (m) the Client will provide to KITCO MARKETS LLC on request such information regarding its financial and business affairs and identity, as KITCO MARKETS LLC may reasonably require;
- (n) the Client and KITCO MARKETS LLC are bound by the Applicable Laws, Rules, customs, usages and practices (as modified from time to time) of the Exchange and clearing houses where any dealing takes place or would take place in relation to the Transaction including the Reference

Security for that Transaction and that KITCO MARKETS LLC may be bound by the Applicable Laws, Rules, customs, usages and practices of those Exchanges in any order made or contract entered into by KITCO MARKETS LLC in relation to the Order or Transaction made with the Client, which can affect KITCO MARKETS LLC's capacity to implement your Order or it might lead to later adjustments to the Transaction on the terms of this agreement;

- (o) that all Orders to be placed and all trading to be conducted under this agreement must be lawful;
- (p) in executing and complying with this agreement, the Client will not infringe any provisions of any other document or agreement to which the Client is a party; and
- (q) the Client will take all reasonable steps to obtain and communicate to KITCO MARKETS LLC all information, and will deliver or cause to be delivered to KITCO MARKETS LLC all documents with respect to dealings in the Financial Products which are requested by any person having the right to request such documents and information. The Client authorises KITCO MARKETS LLC to pass on or deliver all such information and documents to any such person.

8. Client Acknowledgments

8.1. The Client acknowledges and confirms to KITCO MARKETS LLC for KITCO MARKETS LLC's benefit in relying the following:

- (a) you (or, if a corporate entity, the directors who apply to be bound by these terms) have read and understood all documentation provided to you by us including this agreement and any additional agreements in relation to any Financial Products which you request KITCO MARKETS LLC to make available to you in relation to your Account;
- (b) you have received, read and understood our Financial Services Guide (**FSG**);
- (c) all dealings in Financial Products and the performance by us of our obligations under this agreement are subject to Applicable Laws;
- (d) we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with this agreement;
- (e) by this agreement (including any Transaction made under it) we do not act in a fiduciary capacity in relation to you and KITCO MARKETS LLC does not owe any fiduciary obligations to you in respect of its services provided to you in connection with this agreement;
- (f) KITCO MARKETS LLC may transfer from your other Account(s) held with KITCO MARKETS LLC (if any), whether carried or managed by KITCO MARKETS LLC, such funds as may be required to meet obligations as a result of Transactions between the Client and KITCO MARKETS LLC or to satisfy any amount owing by the Client under this agreement or otherwise and KITCO MARKETS LLC would not enter into this agreement but for this acknowledgement (and all of the other terms);
- (g) KITCO MARKETS LLC will deal as principal with the Client;
- (h) the Client and KITCO MARKETS LLC are bound by the Applicable Laws;
- (i) the Client will indemnify and keep indemnified KITCO MARKETS LLC and each of its related bodies corporate and their respective directors, officers employees and agents from and against all sums of money, actions, proceedings, suits, Claims, complaints, demands, damages,

costs, expenses and any other amounts whatever claimed against any of them;

- (j) KITCO MARKETS LLC is not required to act in accordance with your instructions if in KITCO MARKETS LLC's opinion to do so would or could constitute a breach by it or its agent or counterparty of the Corporations Act or any other Applicable Law;
- (k) that trading in Transactions incurs a risk of loss as well as a potential for profit;
- (l) dealings in the Transactions may create an obligation to give or take delivery or make a cash adjustment in accordance with the terms of the relevant transaction;
- (m) KITCO MARKETS LLC may act as principal in respect of the Financial Products traded by KITCO MARKETS LLC on behalf of the Client regardless of whether KITCO MARKETS LLC is acting on Client instructions or not;
- (n) subject to applicable legal or regulatory requirements, the Client consents to KITCO MARKETS LLC either knowingly or unknowingly taking the opposite side to the Client in relation to any of the Financial Products, without notice to the Client;
- (o) subject to applicable legal or regulatory requirements, the Client agrees and acknowledges that KITCO MARKETS LLC's directors, employees and associates may and can deal on their own account in relation to your Transactions;
- (p) KITCO MARKETS LLC may, in its sole discretion and without explanation, refuse to deal with or on behalf of the Client in relation to any Transaction (including Closing Out existing open positions held in KITCO MARKETS LLC's account on behalf of the Client) or to limit the number of open positions of or held on behalf of the Client or both (KITCO MARKETS LLC will try to inform the Client of any refusal before or as soon as practicable after such refusal);
- (q) if errors have occurred in the pricing of Transactions quoted by KITCO MARKETS LLC to the Client, KITCO MARKETS LLC may choose not to be bound by such Transactions (without further liability to the Client) if KITCO MARKETS LLC is able to substantiate to the Client that there was a material error at the time of the Transaction;
- (r) there are risks associated with using an internet-based deal execution trading system which include, but are not limited to, the failure of hardware, software, and internet connection and since KITCO MARKETS LLC does not control data flows, internet or power connection, routing via internet, configuration of your equipment or reliability of its connection, KITCO MARKETS LLC will not be responsible for communication failures, distortions or delays when trading (including processing payments)) via the internet;
- (s) reports to the Client on the execution of Confirmations by KITCO MARKETS LLC, and the content of such Confirmations, open position statements and monthly statements, unless otherwise objected to within 48 hours after communication to the Client, will be deemed to be conclusive proof of the accuracy of such contents and their execution in accordance with this agreement except only in the case of manifest error; and
- (s) a notice issued by an authorised officer or agent of KITCO MARKETS LLC stating the amount of money due and payable by the Client will be taken as conclusive evidence of except only in the case of manifest error.

9. Risks of Transactions

9.1. The Client acknowledges and understands that there are risks involved in Transactions, including:

- (a) the “gearing” or “leverage” involved in trading (especially CFDs) means that a small Initial Margin payment can potentially lead to large losses for the Client, including more than all of the Margin ever paid to KITCO MARKETS LLC;
- (b) the geared nature of Transactions also means that trading can carry greater risks than directly investing in the Reference Securities which is generally not geared;
- (c) 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;
- (d) over-the-counter Transactions such as CFDs are derivatives not made on any Exchange so might be considered to involve a greater risk than an on-exchange derivative since 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;
- (e) foreign markets will involve different risks to Australian markets, so the potential for profit or loss from Transactions relating to a foreign market or denominated in a foreign currency will be affected by fluctuations in foreign exchange rates;
- (f) it is possible to incur a loss if exchange rates change to your detriment, even if the price of the Reference Security to which the Transaction relates remains unchanged;
- (g) CFDs are contingent liability transactions (meaning you are contingently liable to pay more) which are margined (which means you initially pay part, not all of the purchase price) 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;
- (h) you may sustain a total loss of the Margin that you pay to us to establish or maintain a position;
- (i) you will be deemed to have received a notice requiring the payment of such funds, even if you are not contactable, or actually contacted, at the telephone, mail or email address you gave us or do not receive the messages we leave for you, if the notices are delivered to your nominated contact addresses;
- (j) even if a Transaction 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;
- (k) under some trading conditions it may be difficult or impossible to liquidate a position, such as (but not limited to) 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;
- (l) if the Client trades in denominated currencies other than Australian dollars the Client may lose money or value of the investment due to exchange rate fluctuations and that these losses may be in addition to any losses on the value of the Reference Security relevant to the Transactions;
- (m) gapping, whereby a market price falls or rises without the opportunity to trade, can result in significant losses even when a stop loss has been put on because it may not be possible to transact at the nominated price if the market has gapped;
- (n) under the Rules of an Exchange certain trading disputes between market participants (for

example errors involving traded prices that do not bear a relationship to fair market or intrinsic value) may lead to the exchange cancelling or amending a trade and in these situations your consent is not required for the cancellation of a Transaction which relates to that Exchange action;

- (o) in some circumstances Reference Securities may be halted, suspended from trading or have their quotations withdrawn from the exchange and these factors will affect the value of your Transaction relating to those Reference Securities;
- (p) a market disruption may mean the Client is unable to trade when desired, and the Client may suffer a loss as a result, including examples of disruption include the “crash” of a computer based trading system, fire or other exchange emergency or a regulatory body could declare an undesirable situation has developed in a particular contract and suspend trading; and
- (q) you may incur losses that are caused by matters outside our control for example, a regulatory authority exercising its powers during a market emergency may result in losses for the client or a regulatory authority can suspend trading (for example in a Reference Security) or alter the price at which a position is settled, which could also result in a loss to the client.

9.2. No advice or recommendation unless stated otherwise is provided by KITCO MARKETS LLC in relation to your Transactions. The Client must give consideration to their objectives, financial situation and needs and have formed the opinion that dealing in Transactions, including to the extent related to any Reference Securities is suitable for their purposes.

10. Fees and Charges

10.1. You must pay to us or as we direct:

- (a) any transaction charges imposed by KITCO MARKETS LLC and all transaction commission, charges, fees, Margins, premiums, settlement and clearing fees and charges, charges imposed by any Exchange, interest, default charges and Taxes and any other amounts due under this agreement on demand by KITCO MARKETS LLC in cleared funds or otherwise as required by this agreement;
- (b) a Transaction Fee, a Finance Charge or any or all of them (if applicable), in respect of each Transaction in which KITCO MARKETS LLC acts as principal;
- (c) Finance Charges applicable to any Transaction or Account (if applicable), as specified by KITCO MARKETS LLC from time to time;
- (d) any fees, Taxes, stamp duty or other charges as may from time to time be levied on or in connection with any Transactions entered into with you or on your behalf; and
- (e) in respect of any unpaid amounts required to be paid under this agreement including, (without limitation) any amounts due as a result of your failure to pay interest on all such amounts denominated in Australian dollars at the rate of Base Rate plus 4% per annum, such interest to accrue daily from the due date to the date of its payment in full.

10.2. KITCO MARKETS LLC may receive commissions and other benefits from other parties in relation to Transactions KITCO MARKETS LLC enters into with you or on your behalf or in connection with other services provided to you. KITCO MARKETS LLC is entitled to retain such commissions and benefits.

10.3. If you have been referred to us or on behalf of a broker or other third party, that broker or third

party may receive benefits in the form of a commission or rebate from us.

- 10.4. Unless otherwise agreed, the terms of any amounts payable by you under this agreement are stated exclusive of local Tax. You must pay the local Tax on the amount charged for the supply of the service, unless that is not permitted by law. KITCO MARKETS LLC will when required by law and as far as practicable state in Confirmations the amounts as GST-inclusive.
- 10.5. The amounts of the fees, commissions and charges referred to in clause 10.1 will be as notified from time to time in writing by KITCO MARKETS LLC, either by way of your contact details or posting to KITCO MARKETS LLC's website or as otherwise agreed with you or permitted by these terms.
- 10.6. You agree that KITCO MARKETS LLC may:
- (a) debit your Account (on a monthly or any other basis) and pay itself, without further reference to you:
 - (i) all administration fees, including but not limited to fees associated with returned cheques, payment processing, Short Message Service (SMS), debt collection and telephone transcript copies from your Account with KITCO MARKETS LLC during the full term of this agreement while you use such services; and
 - (ii) all fees, charges and royalties which you owe to KITCO MARKETS LLC;
 - (b) deduct from the Account the Transaction Fee or the amount of any Margin you must pay to maintain the required Margin cover; and
 - (c) withdraw from the Account any amount reimbursable in accordance with this agreement.
- 10.7. If:
- (a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or
 - (b) KITCO MARKETS LLC is required to pay any Tax (other than income tax) in respect of any payment made in relation to this agreement at your request,
- then you:
- (a) indemnify KITCO MARKETS LLC against the Tax; and
 - (b) agree to pay to KITCO MARKETS LLC an additional amount to ensure KITCO MARKETS LLC receives a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount KITCO MARKETS LLC would have received had a deduction or withholding or payment of Tax not been made.
- 10.8. You must reimburse KITCO MARKETS LLC for all fees (both direct and indirect) and expenses charged in connection with any Transaction (other than Tax on the income of KITCO MARKETS LLC) and for all costs and expenses incurred by KITCO MARKETS LLC in implementing this agreement and in enforcing its rights under this agreement (including its legal costs of external or internal legal advisers on a full indemnity basis).
- 10.9. The rolling of a Transaction to a forward date (regardless of whether the existing or new position is a spot or forward position) is a new Transaction. A Transaction Fee which is a commission is payable in respect of each Transaction unless KITCO MARKETS LLC acts as principal.

- (a) the rates will be as determined by KITCO MARKETS LLC in its absolute discretion and you might not have prior notice of the current rate.
- 10.10. If Foreign Exchange Transactions are “rolled over” or “swapped”, you will be charged or will be entitled to receive a Finance Charge at the daily rollover rate determined by KITCO MARKETS LLC. The rollover rate is the interest rate differential between the two applicable currencies. The Finance Charge ordinarily is calculated and applied by way of being added to the Transaction amount (forward points) which will therefore vary depending on a number of factors including (but not limited to):
 - (a) the currency pair you are trading;
 - (b) the applicable interest rates in the interbank markets according to the period of the rollover that is the interest rates offered for each currency pair (paid or earned);
 - (c) the size of the Transaction;
 - (d) the standard KITCO MARKETS LLC fees that may apply; and
 - (e) other factors, all as determined by KITCO MARKETS LLC in its absolute discretion.
- 10.11. The forward points can either be:
 - (a) accumulated as an offset to your Account balance and will be directly debited or credited to your Account balance on settlement date; or
 - (b) reflected in the price at which the open contract is rolled forward, that is, it is included in the price (or rate at which the contract is rolled) and debited or credited to your Account balance on its settlement date.
- 10.12. You acknowledge that you are responsible for your own legal costs associated with entering into this agreement and for all Taxes and expenses incurred by you in connection with this agreement, including any Transaction made under it.
- 10.13. All payments by you under this agreement are:
 - (a) to be made without any set-off by you, counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of this agreement; and
 - (b) payable in any currency that KITCO MARKETS LLC may require or determine.
- 10.14. KITCO MARKETS LLC may give notice to you of any change in its Transaction Fees or any rates, fees charges or other amounts payable by this agreement in any manner permitted by this agreement, including by posting to KITCO MARKETS LLC’s website or to a Online Trading Platforms or platform administration service. KITCO MARKETS LLC is not required to give any particular minimum period of notice of any change or new fee, charge or change in rates.
- 10.16. If no minimum period is required or is not stated elsewhere in this agreement, notice of a change in Transaction Fees, charges or rates (including new ones) may be effective immediately KITCO MARKETS LLC first generally publishes the information of any variation or new item on its website or through Online Trading Platform or platform administration service.
- 10.17. You authorise KITCO MARKETS LLC to use and to disclose the tax file number which you have

provided to KITCO MARKETS LLC for all Accounts conducted by you with KITCO MARKETS LLC for the purposes of Transactions in accordance with any legal requirements.

- 10.18. If GST is payable on a taxable supply made by KITCO MARKETS LLC under, by reference to, or in connection with this agreement, you must also pay the amount of GST payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to you to be GST inclusive. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have that meaning in this agreement.

11. Client Moneys

- 11.1. KITCO MARKETS LLC must deal with any money and property which you pay or give to, or which is otherwise received by KITCO MARKETS LLC in connection with financial services provided by KITCO MARKETS LLC, in accordance with the Applicable Laws. For example, KITCO MARKETS LLC may be required to pay such moneys in a clients' segregated account or into a trust account which complies with the requirements of the Corporations Act. You acknowledge and authorise that:

- (a) your moneys and the moneys of other clients of KITCO MARKETS LLC may be combined and deposited by KITCO MARKETS LLC in a trust account or clients' segregated account, separate from the moneys of KITCO MARKETS LLC;
- (b) all moneys credited to the trust account or clients' segregated account maintained by KITCO MARKETS LLC
SECURITIES may be used by KITCO MARKETS LLC to meet the default of any client of KITCO MARKETS LLC to the extent permitted by the Corporations Act;
- (c) moneys credited to a trust account or clients' segregated account maintained by KITCO MARKETS LLC under the Corporations Act may be used by KITCO MARKETS LLC for purposes unrelated to your Account to the extent permitted by the Corporations Act and accordingly such use of a trust account or clients' segregated account does not fully protect your money and property from risk of loss.

- 11.2. You authorise by these terms, constituting written instructions to KITCO MARKETS LLC, KITCO MARKETS LLC to withdraw and use any or all moneys to which you are otherwise entitled in any clients' segregated account or trust account maintained by KITCO MARKETS LLC to meet any liability, obligation of other Loss which you owe to KITCO MARKETS LLC under these terms

- 11.3. You agree that KITCO MARKETS LLC is entitled to all interest earned on moneys credited to a clients' segregated account or trust account unless you and KITCO MARKETS LLC have otherwise agreed in writing.

- 11.4. The proceeds of a Transaction or other moneys to which you are entitled under this agreement will be paid directly to you and not to any third party, unless you have otherwise instructed us to do so. You must provide relevant account details for payment instructions in respect of payments to be made by KITCO MARKETS LLC to you. Although KITCO MARKETS LLC will take reasonable steps to comply with your payment instructions, KITCO MARKETS LLC accepts no responsibility for any failure to comply with those instructions and, if such failure occurs, the relevant moneys will continue to be held by KITCO MARKETS LLC in accordance with the Corporations Act and Applicable Laws.

- 11.5. All currency exchange risks regarding any payment instruction or any Order or Transaction entered into or arranged for you by KITCO MARKETS LLC is your responsibility. Any conversion from one currency to another required to be made for performing or executing any payment instruction,

Order or Transaction may be effected by KITCO MARKETS LLC in the manner and at the time and at the exchange rates that KITCO MARKETS LLC, in its absolute discretion, decides.

12. Margin

12.1. The Client undertakes to comply strictly with the following:

- (a) KITCO MARKETS LLC requires the Client to pay cleared funds as an Initial Margin prior to any Transaction being effected. The amount of Initial Margin required by KITCO MARKETS LLC and the time at which it is required is in the absolute discretion of KITCO MARKETS LLC. KITCO MARKETS LLC is not obliged to permit any offset of any Initial Margin required by KITCO MARKETS LLC.
- (b) The Initial Margin requirement applicable in respect of a Transaction may be increased by KITCO MARKETS LLC in its absolute discretion as to time for payment and amount. If there is an increase or other change, KITCO MARKETS LLC may require that the Client deposit with KITCO MARKETS LLC additional cleared funds equal to such an increase or comply with the other change.
- (c) The Client's liability to pay Margin accrues at the time the requirement for Margin comes into existence.
- (d) The Client's liability to pay Initial Margin accrues at the time the Account is established in accordance with clause 1.3..
- (e) If the required Margin cover has not been paid, the Client acknowledges and agrees that KITCO MARKETS LLC may refuse any request by the Client to enter into any further Transactions until KITCO MARKETS LLC has confirmed the receipt of payment in the required amount in the form of cleared funds.
- (f) The time when funds paid by the Client to KITCO MARKETS LLC are "cleared funds" is when KITCO MARKETS LLC determines when they are cleared funds. This may mean, for example, that cleared funds in the trust account or client segregated account are not cleared funds for the purposes of KITCO MARKETS LLC being paid Margin cover.
- (g) Any amounts paid to KITCO MARKETS LLC by the Client in respect of Margin cover (e.g., Initial Margin or additional payment in respect of Margin) will not fall due for repayment or payment by KITCO MARKETS LLC until all of the obligations of the Client under or in respect of the Account or any other account with or transaction between KITCO MARKETS LLC and the Client whether under this agreement or otherwise are satisfied in full. Until this time any Margin amount will not constitute a debt due by KITCO MARKETS LLC to the Client nor will the Client have any right to receive payment of any amount in respect of these funds.
- (h) Subject to the Client meeting all of its obligations to maintain the required Margin cover, KITCO MARKETS LLC may permit the Client to withdraw or be paid from its Account any amount not required by KITCO MARKETS LLC to be maintained in the Account.
- (i) If the Client fails to maintain the required Margin cover including but not limited to making on time in cleared funds the payments within the time specified by KITCO MARKETS LLC, KITCO MARKETS LLC may Close Out any open positions without further notice or liability for that. Alternatively KITCO MARKETS LLC may in its sole discretion without having to consider the risk or loss to the Client partially Close Out an open position by closing it out in respect of some (but not all) of the Reference Securities, without further notice or liability to the Client.

- (j) The Client's liability with respect to maintaining the required Margin cover is limited to the amount it has invested with KITCO MARKETS LLC.
- (k) The Client is responsible to pay in cleared funds any deficit owing to KITCO MARKETS LLC after closure of positions in accordance with these terms and if the Client defaults in payment of such deficit, KITCO MARKETS LLC may realise any other position held by the Client with KITCO MARKETS LLC and apply the proceeds against that deficiency.
- (l) KITCO MARKETS LLC will have sole, absolute and unfettered discretion as to the exercise of any power or right under this clause or otherwise under this agreement.
- (m) Any power or right exercised by KITCO MARKETS LLC under this clause or otherwise under this agreement including, without limitation, the calling of Margin, will be binding upon the Client.
- (n) The Client acknowledges that it must provide payment in cleared funds so that it will not have satisfied its obligation until cleared funds have been credited to the correct account required for payment for the Margin.

13. Defaults

13.1. Each of the following constitutes a Default:

- (a) you breach this agreement, whether by act or omission, immediately the last time permitted for performance has passed;
- (b) you fail to pay, or provide security for, amounts payable to KITCO MARKETS LLC by the required time;
- (c) you fail to pay by the required time the amounts due in respect of any Transaction entered into pursuant to this agreement;
- (d) you fail to perform any obligation arising pursuant to the settlement of a contract which arises pursuant to a Transaction;
- (e) you fail to fulfil any settlement obligations in respect of a Transaction entered into pursuant to this agreement;
- (f) you fail to comply with any limit or restriction imposed on you by KITCO MARKETS LLC in connection with your Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities);
- (g) a guarantee lodged by you, or lodged by a third party at your request, in favour of KITCO MARKETS LLC is withdrawn without KITCO MARKETS LLC's consent or becomes ineffective and other replacement security acceptable to KITCO MARKETS LLC is not provided;
- (h) any security provided by you (to any one) which is binding on your assets becomes enforceable and the holder of that security takes any step to enforce the security;
- (i) any representation or warranty which you give under or pursuant to this agreement is or becomes incorrect or misleading in any way which is material to the interests of KITCO MARKETS LLC;
- (j) KITCO MARKETS LLC believes that you may not be able to meet your obligations to KITCO MARKETS LLC in respect of one or more Transactions, including, without limitation strict compliance with any time limits for performance;

- (k) you become insolvent or bankrupt;
- (l) the Client calls a meeting to discuss a contemplated scheme of arrangement or compromise or the Client enters or proposes to enter into any scheme of arrangement or compromise with its creditors;
- (m) you enter into a composition or scheme of arrangement for the benefit of creditors;
- (n) KITCO MARKETS LLC believes that you, the Client, have ceased to pay debts duly owed to KITCO MARKETS LLC in accordance with this agreement or has threatened to cease carrying on business;
- (o) the Client becomes insolvent or a receiver, or receiver and manager or administrator is appointed to the Client or any of your assets;
- (p) if you are a body corporate:
 - (i) a resolution is passed or a petition is presented or an order is made for your winding up or liquidation;
 - (ii) you go into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or you or another person appoint a liquidator, receiver, administrator or official manager in respect of your assets;
 - (iii) a director of you has not given a valid deed of guarantee and indemnity in respect of your obligations under this agreement) in favour of KITCO MARKETS LLC and in a form acceptable to KITCO MARKETS LLC; or
 - (iv) you have not notified KITCO MARKETS LLC of a change of any director within seven (7) days of the change taking effect;
- (q) if you are acting on behalf of another person pursuant to authority provided by another person, the authority is varied in a way which (in KITCO MARKETS LLC's opinion) negatively impacts on your authority or legal or financial capacity to perform your obligations under this agreement;
- (r) if you are a trustee, the relevant fund or trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made which would result in there being, in KITCO MARKETS LLC's opinion, insufficient assets of the trust or fund to meet your liabilities under this agreement or any Transaction;
- (s) if you are a natural person, you die or become of unsound mind or if you or your estate is liable to be dealt with in any way under any law relating to mental health;
- (t) you impose a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
- (u) in the absence of making alternative arrangements, you are not contactable by KITCO MARKETS LLC within 12 hours in order for KITCO MARKETS LLC to obtain instructions in relation to any of your Transactions; and
- (v) the occurrence of any other event referred to in an applicable Schedule as constituting a

Default or which KITCO MARKETS LLC and you have agreed constitutes a Default.

14. Actions Following a Default

14.1. Upon or after any Default occurring, KITCO MARKETS LLC, in addition to any and without prejudice to any other rights it may have under this agreement, has the right and power in its sole absolute and unfettered discretion and without necessity to give prior or any notice to the Client take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Transactions entered into pursuant to this agreement and, without limitation, KITCO MARKETS LLC may:

- (a) cancel any outstanding Orders;
- (b) enter into one or more Transactions to effect the Close Out of one or more unsettled Transactions or open positions;
- (c) settle any Transaction which has not at the time of Default settled;
- (d) cover in whole or in part open positions by entering into further Transactions;
- (e) take any other action a reasonably prudent broker, intermediary or principal might take in the circumstances to protect KITCO MARKETS LLC's personal obligation incurred when dealing on your behalf;
- (f) charge the Client with all of the costs, expenses and losses incurred by KITCO MARKETS LLC as a result of entering into, or Closing Out Transactions pursuant to this agreement;
- (g) convert any amount owed by the Client to KITCO MARKETS LLC into US dollar currency at any time on or after payment is due (until payment is received in full);
- (h) satisfy obligations that the Client may have to KITCO MARKETS LLC out of any property belonging to the Client including, money or security in KITCO MARKETS LLC's custody or control including, without limitation, by selling securities lodged by the Client with KITCO MARKETS LLC or setting off obligations such that security transferred as collateral is not required to be returned and to enforce any asset or security held by KITCO MARKETS LLC in such manner as it sees fit at your expense;
- (i) transfer from your other Accounts, if any, such funds as may be required for that purpose to satisfy any obligation the Client may have to KITCO MARKETS LLC;
- (j) apply any money that you have paid, or which is held by KITCO MARKETS LLC, or in any trust account or clients' segregated account, and to which you are entitled, by way of set-off;
- (k) immediately, or at a later time, terminate this agreement, one or more Schedules, one or more Accounts, one or more Transactions or any combination of these;
- (l) realise or enforce any security or guarantee provided by you or in respect of your obligations to KITCO MARKETS LLC;
- (m) convert any or all amounts owing by you to KITCO MARKETS LLC or by KITCO MARKETS LLC to you in a foreign currency into US dollar currency;
- (n) calculate any or all amounts owing by you to KITCO MARKETS LLC and declare such amount immediately due and payable; or

- (o) exercise any power or right that KITCO MARKETS LLC may have in accordance with this agreement or in law or equity or take any other form of action as the holder of an AFSL may be required to take.
- 14.2. In respect of any action which KITCO MARKETS LLC takes, or refrains from taking under this clause, you must account to KITCO MARKETS LLC as if KITCO MARKETS LLC took, or refrained from taking, the action on your instructions and, without limitation, you are liable for any deficiency and are entitled to any surplus which may result.
- 14.3. In exercising any right of sale of any property under this agreement, KITCO MARKETS LLC may sell (or arrange for the sale of) the property:
 - (a) either by public auction, private treaty or tender;
 - (b) for cash or on credit;
 - (c) in one lot or in parcels;
 - (d) with or without special conditions or stipulations as to title or time or mode of payment or purchase money or otherwise;
 - (e) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security);
 - (f) whether or not in conjunction with the sale of any property to any person; and
 - (g) upon such other terms and conditions as KITCO MARKETS LLC may consider appropriate. KITCO MARKETS LLC is not liable for any loss occasioned by a sale of the property.
- 14.4. Upon any sale purporting to be made in the exercise of the powers conferred by this agreement or otherwise, no purchaser will be:
 - (a) bound to ask whether any default has been made or otherwise as to the propriety or regularity of any sale; or
 - (b) affected by express notice that any such sale is unnecessary or improper.

Despite any irregularity or impropriety in any such sale, the sale will be deemed to be authorised by such powers, as regards the protection of the purchaser or other party to any such dealing or disposal, and will be valid accordingly.
- 14.5. KITCO MARKETS LLC will not forgo any of the rights outlined in this clause incurred as a result of a delay in the exercise of such rights; if KITCO MARKETS LLC does not exercise any of its rights it reserves the right to do so at any time in the future.
- 14.6. Any action taken by KITCO MARKETS LLC will not limit any other provision of this agreement and be without prejudice to any of rights KITCO MARKETS LLC may have to any remedy or damages.
- 14.7. Subject to Applicable Laws on the right to access moneys in a trust account or a clients' segregated account,
KITCO MARKETS LLC may appropriate credits and all payments received from or on behalf of the Client or held on behalf of the Client in reduction of any moneys owing by the Client to KITCO MARKETS LLC whether on the Account or on any other account including, but not limited to, accounts with KITCO MARKETS LLC for dealing in any Financial Products.

- 14.8. The Client acknowledges that KITCO MARKETS LLC has a lien over all Financial Products of the Client in the possession or control of KITCO MARKETS LLC for any charge, expense (including any applicable costs, stamp duty and administration fees) and any amount owing to KITCO MARKETS LLC.

15. Disputes

- 15.1. The Client agrees to examine the terms of each deal Confirmation immediately upon receipt and the Client agrees that the contents of a Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within 48 hours of issue of a written Confirmation the Client notifies KITCO MARKETS LLC of any disputed detail in the Confirmation received by the Client.

- 15.2. Upon receipt of written notice within the 48 hour period to a disputed detail, KITCO MARKETS LLC will investigate the dispute and in co-operation with the Client must endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, the Client will continue to satisfy its obligation to maintain Margin cover made by KITCO MARKETS LLC in respect of the derivative position as if the Confirmation was correct and the details contained in the Confirmation were not the subject of dispute.

16. Tape Recordings

- 16.1. KITCO MARKETS LLC may record any or all incoming and outgoing phone calls with the Client with or without the use of an automatic tone warning device and without making a disclosure of the recording being made. The Client agrees to the use of such recordings and their transcripts for any purpose which KITCO MARKETS LLC considers desirable including as evidence in any dispute between KITCO MARKETS LLC and the Client.

- 16.2. Recordings may be used to assess the performance of or to train KITCO MARKETS LLC's representatives, monitoring compliance with KITCO MARKETS LLC's respective regulatory and contractual obligations and resolving disputes.

- 16.3. KITCO MARKETS LLC is not obliged unless Applicable Laws require for it to keep any transcripts or copies of any telephone recording or conversation nor to tell the Client when it disposes of the record.

- 16.4. KITCO MARKETS LLC agrees that upon request, copies of any telephone recording or transcript relating to your dealings will be provided to the Client in the event of a dispute or anticipated dispute with respect to such dealings. The Client agrees to pay any reasonable cost associated with providing any such transcript or copy.

17. Client to Provide Information

- 17.1. The Client acknowledges that information may be provided to any regulatory authority or any other person or organisation including if KITCO MARKETS LLC reasonably considers that the disclosure is required by Applicable Laws, regulatory requirement or necessary to protect KITCO MARKETS LLC's interests. The Client authorises KITCO MARKETS LLC to provide any such information concerning your Account, this agreement, any CFD entered into or proposed to be entered into by the Client.

- 17.2. You must, upon the request of KITCO MARKETS LLC request, take all reasonable steps to deliver all information and documentation which KITCO MARKETS LLC requires in order for it to comply with its compliance policies and its duties and the Client authorises KITCO MARKETS LLC to produce such information or documentation to any regulatory agency, with or without prior notice to the Client.

18. Online Trading Platform

- 18.1. KITCO MARKETS LLC provides an Online Trading Platform for the purpose of logging into the Online Trading Platform and providing additional information and services "Online Trading Platform" to clients of KITCO MARKETS LLC. KITCO MARKETS LLC reserves the right to withdraw or suspend access to the Online Trading Platform in its absolute discretion at any time without prior notice to the Client.
- 18.2. The Client is responsible for the confidentiality and use of any user-name login and password issued by KITCO MARKETS LLC and agrees that it will not disclose any such information to third parties. If the Client becomes aware of any unauthorized use, loss or theft of its user-name login and/or password, it must notify KITCO MARKETS LLC immediately. KITCO MARKETS LLC reserves the right to cancel the Client's user-name and/or password without notice, KITCO MARKETS LLC will notify the Client as soon as practical should this happen.
- 18.3. The Client acknowledges that the Online Trading Platform includes information which is supplied by persons not controlled by KITCO MARKETS LLC (**Information Vendors**) and that KITCO MARKETS LLC has not verified any information provided by an Information Vendor and that it is acting solely in the capacity as a carrier by conveying the information to the Client. Except to the extent required by law, neither KITCO MARKETS LLC nor any Information Vendor makes any representation or warranty as to the accuracy, timeliness, suitability or completeness of any information accessed via the Online Trading Platform. The Client agrees that information is provided via the Online Trading Platform is provided for its own use and that it may not on sell, disclose or make available such information to any other person without the prior consent of KITCO MARKETS LLC or the Information Vendor as appropriate.
- 18.4. KITCO MARKETS LLC agrees to grant the Client access to one or more electronic terminals, including terminal access through the Client's internet browser, for the electronic transmission of orders to the Clients' Account with KITCO MARKETS LLC.
- 18.5. KITCO MARKETS LLC will permit the Client electronically to monitor the activity and positions in its Account by providing a Online Trading Platform. The Online Trading Platform may be a proprietary service offered by KITCO MARKETS LLC or a third party system offered by another broker, vendor or exchange.
- 18.6. The Online Trading Platform includes all software and communication links. In accordance with this agreement, KITCO MARKETS LLC agrees to supply the Client with software for use with the Online Trading Platform, and to agree to grant the Client a non-exclusive and non-transferable licence to use the Online Trading Platform subject to the terms of this agreement.
- 18.7. The Client agrees to use the Online Trading Platform software solely for their internal business or investment purposes.
- 18.8. If the Online Trading Platform is to be provided by a third party, the Client agrees and acknowledges that KITCO MARKETS LLC will receive benefits in accordance with the terms of any agreements between the third party service provider and the Client as if KITCO MARKETS LLC were a party to the agreement.
- 18.9. The Online Trading Platform provided by KITCO MARKETS LLC may be used to transmit, receive and confirm the execution of orders, subject to market conditions and applicable exchange rules and regulations.
- 18.10. KITCO MARKETS LLC consents to the Client's access and use in reliance upon the Client having adopted procedures to prevent unauthorised access to and use of the service, in any event, the Client agrees to any financial liability for trades executed through the service.
- 18.11. The Client may send and receive, electronic messages, email, engage in chat, download and upload files and

otherwise use the Online Trading Platform as permitted in accordance in this agreement, our policies, any applicable laws and, if a third party provides the service, the terms of use and access agreement. Any activity in conferences and chats are subject to review, modification and deletion without notice to the Client.

- 18.12. KITCO MARKETS LLC reserves the right to institute or change any policies at any time relating to the use of the Online Trading Platform. Bulletin boards may be subject to limitations on usage, reproduction or dissemination, and the Client remains responsible for adhering to any such limitations.
- 18.13. The Client acknowledges and agrees that the Online Trading Platform may be delayed by filters or other electronic features of the electronic system.
- 18.14. There are significant risks in trading through the Online Trading Platform because it is serviced by means of computer and telecommunications systems, even if generally accepted industry standards and practices are followed, including that your data may not be protected, and there are risks that other users of the Online Trading Platform, institutions or brokers may be able to see your Orders and other communications relating to trading and execution without your (or our) consent and that third parties (including persons on private networks) will have the ability to attach to your network.
- 18.15. The features, components or terms of use of Online Trading Platform may be changed by us or the provider of the Online Trading Platform without requiring an amendment to this agreement.
- 18.16. You are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Online Trading Platform and for any communication service fees and charges incurred by you in accessing and using the Online Trading Platform.
- 18.17. You are responsible for ensuring you have in place alternative arrangements for the execution of Orders or other services available through the Online Trading Platform, if the Online Trading Platform or any aspect of it ceases to be available or subject to failure (including, for example, arrangements for the use of telephone or facsimile).
- 18.18. You must notify us immediately if you become aware of any inaccurate information being transmitted through the Online Trading Platform including, for example, inaccurate content as to Orders, Transactions or Account balances.
- 18.19. You must only use the Online Trading Platform for your own internal business and investment purposes.
- 18.20. You also agree to be bound by any terms and conditions of access and use which we or any third party provider of an Online Trading Platform may specify and notify to you, from time to time.
- 18.21. You are responsible for reading, understanding and complying with the details of the operational aspects of the Online Trading Platform. It is important that you read and understand any user manuals and operational procedures or rules relating to the relevant Online Trading Platform and which are made available either by KITCO MARKETS LLC or the provider of the Online Trading Platform. Further information on how to use and understand the Online Trading Platform can be obtained on our website.
- 18.22. You are responsible for the consequences of any unauthorised disclosure or use of security information, and for any actions or omissions by an Authorised Person.
- 18.23. We (or any third party providing the Online Trading Platform) may suspend, terminate or impose conditions on the use by you or any Authorised Person of the Online Trading Platform at any time without notice to you.
- 18.24. If you are uncertain as to whether your Order has been received, you must make all reasonable attempts to verify whether the Order has been received, approved and effected prior to taking further action. You agree to issue specific cancellation or amendment instructions with respect to an existing Order and not to attempt

to effect changes by placing a second or duplicate Order. You will be solely responsible and liable for any duplicate instruction that you place.

19. Exchange Data

19.1. If the Client uses the Online Trading Platform, the Client agrees and acknowledges that:

- (a) data made available to the Client which is sourced from an Exchange or other provider (other than KITCO MARKETS LLC) is not the property of KITCO MARKETS LLC and remains the valuable property of the relevant provider; and
- (b) the Client is prohibited from publicly displaying, redistributing, or re-transmitting the data in any way without having executed a market data distribution agreement or similar agreement with the relevant provider.

20. Appointment of Attorney

20.1. In consideration of KITCO MARKETS LLC entering into this agreement, you irrevocably appoint KITCO MARKETS LLC and each director, secretary and principal executive officer and each employee (which employee's title of office includes the word "Manager" or "Head") of KITCO MARKETS LLC severally as your attorney at any time and from time to time following a Default, to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of this agreement, and in particular, without limitation, in connection with, or incidental to, the exercise of any of the rights and powers of KITCO MARKETS LLC under this agreement. Those powers may be exercised in the interests of KITCO MARKETS LLC notwithstanding any conflict with the interests of KITCO MARKETS LLC. This appointment survives termination of this agreement.

21. Limitations of Liability and Indemnity

21.1. Subject to those provisions of the Trade Practices Act 1974 (Commonwealth), the Australian Securities and Investments Commission Act 2001 (Commonwealth), the Corporations Act and any other rights implied by law which cannot be excluded by agreement between the parties:

- (a) we make no warranties either expressly or impliedly as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any services we provide under this agreement including, without limitation, the Online Trading Platform;
- (b) we exclude all liability in contract, tort or otherwise relating to or resulting from use of any services we provide under this agreement and for any Loss incurred by you directly or indirectly, including without limitation as a result of or arising out of:
 - i. in the absence of negligence, fraud, dishonesty or misconduct by KITCO MARKETS LLC or any of its employees, agents and representatives and to the full extent of the law, any delay in transmitting or a failure to transmit funds caused by reasons outside the control of KITCO MARKETS LLC or as a result of KITCO MARKETS LLC's failure to execute Orders in a timely manner or administer this agreement in the manner contemplated by this agreement for reasons beyond its control (reasons outside KITCO MARKETS LLC's control include but are not limited to, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication failure, strikes or war);
 - ii. any moratorium, suspension, halt, delisting or removal from quotation or sponsored publication of any Reference Security or any other similar or analogous occurrence in relation to the Reference Security;
 - iii. any unauthorised use of the Client's user-name login or password;

- iv. any inaccuracy, error or delay in or omission from any information provided to you under the terms of or for purposes in connection with this agreement including the Online Trading Platform;
 - v. any delay, interruption, failure or inaccuracies in the transmission of your instructions;
 - vi. any failure of any electronic means used to transmit instructions or to disseminate Orders, data or information or of any telecommunications link;
 - vii. any fault, error or defect in design or engineering of the Online Trading Platform or computer systems or any delay, fault, failure or loss of access to the Online Trading Platform;
 - viii. any private dealings, contracts, transactions or relationships between the Client and any of KITCO MARKETS LLC's employees or agents.
 - ix. any delays or failures or inaccuracies, or loss of access to, the provision of a service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Online Trading Platform or in respect of the transmission of Orders or any other information;
 - x. any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific;
 - xi. any government restriction, Exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to our Online Trading Platform, theft, sabotage, war, earthquakes, strike, force majeure and, without limitation, any other conditions beyond our control;
 - (c) KITCO MARKETS LLC is not liable in contract, tort (including negligence) or otherwise for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply of a service or Financial Product including, without limitation the Online Trading Platform; and
 - (d) every exemption and limitation from liability available to KITCO MARKETS LLC will also be available to KITCO MARKETS LLC's directors, employees, agents and representatives, for whom KITCO MARKETS LLC will the benefit of this agreement on trust;
 - (e) KITCO MARKETS LLC's liability to you is in any event limited to:
 - (i) in the case of goods, the replacement or repair of the goods; or
 - (ii) in the case of services, the re-supply of the services.
- 21.2. To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep KITCO MARKETS LLC and its respective officers, employees, agents and representatives indemnified from and against all Claims arising out of:
- (a) acting on your instructions in relation to their dealings in Transactions or otherwise in relation to their Account;
 - (b) the occurrence of any Default Event;
 - (c) KITCO MARKETS LLC exercising any of its rights and powers upon occurrence of a Default Event;
 - (d) the payment of any amounts to the Client, in accordance with this agreement;
 - (a) any lawful action by KITCO MARKETS LLC in accordance with KITCO MARKETS LLC's rights under this agreement or otherwise, including any actions by KITCO MARKETS LLC to ensure compliance with any direction, request or requirement of any regulatory authority or government body;

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

22. Termination

22.1. KITCO MARKETS LLC and the Client agree that:

- (a) without affecting any existing obligations or liabilities, and subject to any other term of this agreement, either the Client or KITCO MARKETS LLC may terminate this agreement at any time by giving the other fifteen (15) Business Days' notice in writing to that effect; and
- (b) upon termination of this agreement, that unless otherwise agreed in writing KITCO MARKETS LLC will Close Out all of the Client's positions.

22.2. KITCO MARKETS LLC may at any time at its sole discretion terminate or restrict your access to the Online Trading Platform at any time. If KITCO MARKETS LLC terminates this agreement or access to the Online Trading Platform any Online Trading Platform licence agreement will automatically terminate and any hardware, software, manuals or other items provided by KITCO MARKETS LLC be returned. The Client will be liable for all fees charges and obligations incurred under this agreement prior to termination.

22.3. If any event occurs which has the effect of making or declaring it unlawful or impracticable for KITCO MARKETS LLC to offer any kind of Transactions (e.g., CFDs) to the Client in accordance with the terms outlined in this agreement, KITCO MARKETS LLC may immediately terminate this agreement by providing the Client written notice of that.

22.4. Termination of this agreement will not release either party from their obligations or liabilities relating to any

breach of the terms outlined in this agreement.

- 22.5. If this agreement is terminated, a closing notice must be provided by the Client in respect of all open positions. Such notice must be provided no later than on the fifth Business Day before the termination date. If the Client fails to unwind any open position by that time, KITCO MARKETS LLC may Close Out positions as if a Default had occurred.

23. Illegality

- 23.1. If any event occurs which has the effect of making or declaring it unlawful or impracticable for KITCO MARKETS LLC to offer or to maintain Transactions (including CFDs) to you in accordance with the terms outlined in these terms, KITCO MARKETS LLC may immediately terminate these terms by providing you written notice of that. A termination of these terms will also result in the closure of all Transactions (including all CFDs) as if a Default had occurred in relation to them. Any such termination will not relieve you of any obligations you may have to KITCO MARKETS LLC in accordance with these terms prior to the termination.

- 23.2. For this clause, events include any change in law, regulation, treaty, order, official directive or ruling or in their interpretation or application by any governmental authority or agent, and the introduction, implementation, operation or taking effect of, any law, regulation, treaty, order or official directive or ruling.

24. Variation of this agreement

- 24.1. We may vary this agreement by giving you notice of any variation by any of the following or any combination of the following: a document in writing, by updating our website, by posting a message in the Online Trading Platform, by electronic mail or by telephone call with you or by fax to you. The notice of variation is effective even if you are unaware of the notice. The minimum period of notice will be the lesser of:

- (a) any minimum period of notice required by the Applicable Laws;
- (b) if no such minimum period is required by the Rules, then not less than two (2) Business Days' notice (unless paragraph (c) applies); and
- (c) subject to paragraph (a), if we believe a variation is necessary to maintain or to restore the security of any Accounts or of our systems or to comply with any legal or regulatory requirement, we may make the variation with any method of notice we choose or without prior notice and in that case we will notify you of the change as soon as practicable after the change.

25. Notices

- 25.1. Any notices or communications, which include demands for payment to KITCO MARKETS LLC in relation to a Transaction, can be made by telephone, email, mail, facsimile to the contact details as provided by the Client to KITCO MARKETS LLC from time to time.

- 25.2. All communications to the Client will be deemed to have been received:

- (a) when delivered to the Client if delivery occurs in person;
- (b) three (3) Business Days from and including the date of postage if delivered by mail;
- (c) when transmitted to the Client if delivered by facsimile; and
- (d) when transmitted to the Client if sent by email or SMS,

unless earlier receipt is confirmed by reasonable evidence of that.

- 25.3. The client must notify KITCO MARKETS LLC in writing (signed) of any change in the Client's name, address, telephone number, fax number or email address.

25.4. If an Account is opened in the joint names of more than one person, each person agrees that we may discharge any obligation we have to give a notice or a document to those persons under this agreement or Applicable Laws by giving notice to any one of those persons.

26. Anti-Terrorism/Money Laundering

26.1. You acknowledge that:

- (a) we are subject to various anti-money laundering and counter-terrorism financing laws (AML/CTF Laws) which may prohibit us from offering services or entering into or conducting Transactions; and
- (b) the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.

26.2. You agree that:

- (a) we are not required to take any action or perform any obligation under or in connection with this agreement if we are not satisfied as to your identity or if we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws;
- (b) we may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Australia or any other country, and we will incur no liability to you if we do so; and
- (c) we will not incur any liability to you for any loss you suffer (including consequential loss) however caused by reason of any action taken or not taken by us as contemplated in paragraph (a) or (b) above.

26.3. You agree to provide all information and documents to us which we reasonably require to comply with any law in Australia or any other country, including any AML/CTF Laws. You agree that we may disclose information which you provide to us, or about Transactions you have with us or which you seek to conduct with us, if we are required to do so by any Applicable laws in Australia or in any other country.

26.4. You represent and warrant to us that the payment of moneys by us in accordance with this agreement, or any instructions given by you, will not breach any law in Australia or any other country.

27. Privacy

27.1. Information which the Client provides KITCO MARKETS LLC and any other information provided by the Client in connection with your Account will primarily be used for the processing the Clients account application and for complying with certain laws and regulations. KITCO MARKETS LLC may use this information to send you details of other services or provide you with information that we believe may be of interest to the Client. KITCO MARKETS LLC's privacy policy is available from www.kitcomarkets.com

27.2. The Client acknowledges that they have read and received a copy of the KITCO MARKETS LLC privacy policy. KITCO MARKETS LLC may change that policy at any time without notice.

27.3. You agree that your personal information can be used or disclosed by us as contemplated in this agreement. You agree to take all reasonable steps to deliver information or documentation to KITCO MARKETS LLC, or cause information or documentation to be delivered to KITCO MARKETS LLC concerning Transactions which are requested by a person having a right to request such information or documentation. You understand that if you do not provide any information requested by us or do not agree to us using your information as set out in

this clause 27 we may not be able to provide our services to you.

- 27.4. The Client acknowledges and agrees that KITCO MARKETS LLC is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's identity and credit standing, before during and after an Account is opened (since the insolvency or bankruptcy of the Client after cessation of the Account or termination of this agreement may continue to be relevant to KITCO MARKETS LLC). If such searches are carried out, KITCO MARKETS LLC may keep records of the contents and results of such searches in accordance with all current and applicable laws.
- 27.5. KITCO MARKETS LLC may provide all such information regarding the Client in relation to its obligations to, or requests (whether legally binding or not) by a relevant regulatory body.

28. **Governing Law and Rules**

- 28.1. The parties agree that any dealings between them are subject to, and they are each bound by, the Applicable Laws as amended or altered from time to time.
- 28.2. The Client acknowledges that this agreement is governed by the laws in force in New South Wales and all parties to this agreement agree to submit to the non-exclusive jurisdiction of the Courts of New South Wales in relation to any claim or dispute arising out of the performance of this agreement.

29. **General**

- 29.1. If any of the provisions contained in this agreement are found to be invalid or unenforceable, such provisions will be deemed deleted, and the validity and enforceability of the remaining provisions will continue unimpaired.
- 29.2. This agreement contain the entire terms and understanding between you and KITCO MARKETS LLC concerning the provision of the services (including the Account and all Transactions) referred to in this agreement, as later amended only in accordance with this agreement.
- 29.3. If a party fails to exercise or delays in exercising any right under this agreement, by doing so it does not waive such right. The rights provided in this agreement do not exclude other rights provided by law.
- 29.4. The Client may not assign or otherwise transfer its rights or obligations under this agreement or any transaction, without the express written consent of KITCO MARKETS LLC.

30. **Interpretation**

Unless the context otherwise requires, any expressions or phrases not otherwise defined within this agreement have the meaning given to them in the Applicable Laws.

Account means an account held in your name or on your behalf with KITCO MARKETS LLC for the purposes of these terms.

Applicable Laws means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and Orders of a regulatory authority or a court, rules and procedures of a Financial Market or a CS Facility which apply to the relevant matter

Application Form means the form of application by which a person applies to become a client of KITCO MARKETS LLC and to open an Account.

Authorised Person means the person (if any) described as your authorised agent in the Application Form or another person notified by you to us in accordance with these terms.

Available Funds has the meaning given in clause

3.4. **Balance** has the meaning given in clause 3.1.

Base Rate means the amount nominated by KITCO MARKETS LLC for this term from time to time, as notified to you or posted on its website.

Business Day means a weekday which is not a gazetted public holiday in Sydney.

Claim means any or all, actual or potential claim, action, complaint, suit, cause of action, arbitration, debt due, costs, claim, entitlement, allegation, demand in respect of damages and any other benefit verdict and judgment whether both at law or in equity or arising under the provisions of any statute, award or determination whether known at the date of these terms or not.

Close Out, Closed Out and Closing Out in relation to a Transaction mean discharging or satisfying the obligations of the parties under the Transaction and this includes:

- (a) by delivering the amount or value of the Reference Security (including a dollar multiple of an index required in accordance with the terms of the Transaction);
- (b) as a result of the matching up of the Transaction with a Transaction of the same kind under which you have assumed an offsetting opposite position; and
- (c) making adjustments for fees and charges.

Closing Date means the date on which the Transaction is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with these terms.

Confirmation means any confirmation of a Transaction issued by us or on our behalf to you and includes an electronically transmitted confirmation.

Corporations Act means the Corporations Act 2001 (Commonwealth) and regulations made under it, as amended from time to time.

CS Facility means a clearing and settlement facility, within the meaning of the Corporations Act (which includes, for example, any clearing or settlement facility through which Transactions are cleared or settled), whether located in Australia or overseas.

Default has the meaning in clause 13.1 and, if applicable, as supplemented by a term in a Schedule.

Derivatives means derivatives as defined in section 761D of the Corporations Act.

Exchange means any exchange or market in which KITCO MARKETS LLC participates from time to time or which the Reference Security is traded or, if an index, who sponsors the index, as the context permits or requires.

Exchange System means, in relation to a Financial Market or CS Facility the trading, clearing or settlement facility or system (or both) operated by or on behalf of the relevant Financial Market or CS Facility.

Finance Charge means a charge payable in accordance with clauses 3 and 8.

Financial Market means a financial market within the meaning of the Corporations Act (which includes, for example, any market on which prices of Financial Products are quoted), whether located in Australia or overseas.

Foreign Exchange means currency including Australian Dollars and foreign currency.

Forward Purchase and similar expressions mean the purchase of a currency (or other agreed security or commodity) at a Price agreed at the time of the purchase, which purchase is to be settled at a future time.

Hedge Counterparty, when used in a Schedule, has the meaning given to the term in the relevant Schedule (and KITCO MARKETS LLC may from time to time provide a list of Hedge Counterparties relevant to any particular Financial Product

or Online Trading Platform).

Initial Margin means the amount which you are required to invest with KITCO MARKETS LLC or pay to KITCO MARKETS LLC (depending on the Financial Products which you deal in); in either case as the initial Margin covers for any Transaction which you propose to enter into.

Liquidated Value has the meaning given in clause 3.2.

Long Party means the party to a Transaction (including a CFD) who is treated as having notionally bought the Reference Security (or, in the case of an index CFD, a right in respect of payment arising from a change in the level of an index).

Loss means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Margin means a payment or other margin payment, by whatever terms they are described, and any like payments, required to be paid under these terms.

Online Trading Platform means the Meta Trader4 electronic trading platform offered by KITCO MARKETS LLC to enable the client to trade in the Transactions. Meta Trader4 is provided by Meta Quotes Software Corp, a company located in Nassau, Bahamas.

Open Transaction means, at any time, a Transaction which has not been Closed Out or settled prior to the time agreed for settlement.

Order means any Order placed by you with us to purchase or sell or otherwise deal in Financial Products.

Price means, in relation to a Transaction, the price or rate quoted by KITCO MARKETS LLC (as adjusted for any Transaction Fee or other fees and charges) and agreed to by you to express the value of the Reference Securities the subject of that Transaction.

Reference Security means security, Financial Product, Foreign Exchange, commodity (or other relevant thing) the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an exchange or other market facility.

Reference Security Price means the market price of the security, Financial Product, Foreign Exchange, commodity (or other relevant thing) which is the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an exchange or other market facility, in any case as calculated by KITCO MARKETS LLC, having regard to the purposes of the calculation and the intent to make a reasonable determination in good faith but without having to consider the specific personal interests of any person.

Rules, in relation to a Financial Market or a CS Facility, means the operating rules, procedures, customs and usages of the of the Financial Market or CS Facility (as applicable).

Security Information means any of your email address, logon code, password or trading password.

Segregation or segregated means, in relation to an account or an asset that:

- (a) the party holding the assets in the account:
 - (i) holds the asset separately from its own property;
 - (ii) holds the account separately from its own accounts and the accounts of any other person except you (Non-Client);
 - (iii) does not record or deposit any assets of its own in the account;

(b) records in relation to such an asset or account must:

- (i) be kept separate from records in relation to any other account of the party or any Non-Client;
- (ii) record separately the particulars associated with that asset and account;
- (iii) record separately in respect of each client particulars of the amount or property deposited in or withdrawn from the account;
- (iv) ensure that assets in the account are separately classified;
- (v) correctly record and explain dealings in relation to the assets in the account.

The account must be described as the trust account, the clients' segregated trust account or a custody account as the case may be.

Settlement Time means the time by which a Transaction must be settled, as set out in the Confirmation for the Transaction.

Short Party means the party to a Transaction (including a CFD) who is treated as having notionally sold the Reference Security.

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any government agency, other than any imposed on overall net income.

Term Currency means, in Foreign Exchange Transactions, one party agrees to pay a specified amount of currency in one currency to purchase an amount of another currency.

Terms means the terms of this agreement, as amended from time to time.

Transaction means any contract:

- (a) between you and KITCO MARKETS LLC as principal;
- (b) to:
 - (i) purchase, or agree to purchase (including a forward purchase) a Reference Security;
 - (ii) sell, or agree to sell a Reference Security or
 - (iii) pay an amount calculated in respect of a Reference Security in one currency against the settlement in another currency (or other agreed Reference Security), and
- (c) in respect of which (other than in respect of Closing Out and Open Transaction as permitted under these terms) you have, or is taken to have, agreed (whether orally, electronically or in writing) to:
 - (i) the Reference Securities involved;
 - (ii) the amount of the currency (or other agreed Reference Security or Derivative) to be purchased or sold by you;
 - (iii) the Price; and
 - (iv) the settlement date.

Transaction Fee means the fee or commission from time to time specified by KITCO MARKETS LLC to be the amount payable by you to KITCO MARKETS LLC in respect of each Transaction, which may include a Transaction Fee payable to

KITCO MARKETS LLC as principal.

Unrealised Gain/Loss has the meaning given in clause 3.5.

we, us, our or **KITCO MARKETS LLC** means KITCO MARKETS LLC (ACN 606 118 736) and its successors or assignees.

you means the person or persons in whose name we open an Account (including any Authorised Person), following an application by that person or those persons.

Schedule 1 – Foreign Exchange Transactions

1. Introduction

1.1. The following terms will apply to you, and you agree to be bound by them, each time you place an Order with KITCO MARKETS LLC to deal in a Foreign Exchange Transaction (FX Terms).

2. Interpretation

In this clause, the following terms have the following meanings:

Authorised Person means a person authorised pursuant to clause 5 of the terms to bind you under these Terms.

Bought Currency means the currency to be received by you in exchange for the currency to be provided by you under a Position.

Deal has the meaning given in the Corporations Act.

Foreign Exchange Transaction means a Transaction in respect of Foreign Exchange.

Hedge Contract means a contract between KITCO MARKETS LLC and a Hedge Counterparty on the same, or substantially similar, terms as the CFD (including if one or more CFDs from you and other clients which in aggregate correspond with the Hedge Contract).

Hedge Counterparty means a person with whom KITCO MARKETS LLC enters into a Hedge Contract to hedge KITCO MARKETS LLC's exposure to a CFD. KITCO MARKETS LLC may from time to time on its website or as it decides provide details of the Hedge Counterparty.

Market Rate means the rate of exchange which KITCO MARKETS LLC is quoted by a bank dealing in the interbank Foreign Exchange market.

Position means a margin Foreign Exchange Transaction entered into by you pursuant to these Terms under which the parties agree to exchange an agreed amount of one currency for an agreed amount of another currency for settlement on the Value Date (and, for the avoidance of doubt, either agreed amount may be nil).

Sold Currency means in the case of a Position, the currency to be provided by you in exchange for the currency to be received by you.

Spot Date means the date on which a Position entered into for spot delivery falls due for settlement in accordance with prevailing conventions in the interbank market.

Unusual Volatility means, in respect of a Position, such fluctuation in inter-day rates and intra-day rates as KITCO MARKETS LLC determines from time to time in its absolute discretion is unusual for the purposes of these Terms.

Value Date means the date agreed at the time the relevant deal is entered in to, to be the date of settlement of that deal (specified in the deal confirmation).

Variation Margin means an amount deposited by you with KITCO MARKETS LLC including any increase or reduction on settlement of a Closed Out Position.

3. **Acknowledgements**

In these FX Terms you acknowledge the following in favour of KITCO MARKETS LLC:

- (a) A Foreign Exchange Transaction is cash settled with no physical exchange of the Reference Security.
- (b) There is no definitive term attached to a Foreign Exchange Transaction, such a contract will continue until the Closing Date.
- (c) Anything KITCO MARKETS LLC is permitted to do in accordance with this Schedule 1 may be done in its absolute discretion, and any opinion or view required to be formed by KITCO MARKETS LLC may be formed in its absolute discretion.
- (d) A Position may be Closed Out without a physical exchange of the Bought Currency for the Sold Currency and references in the definition of Position to an exchange of currency and settlement and in the definitions of Bought Currency and Sold Currency to amounts to be received by you or provided by you under a Position will be construed as if that Position were to be unwound by delivery.
- (e) Notwithstanding it has an agreed Value Date, each Position continues indefinitely until it is unwound by delivery or by being Closed Out and references in the definitions of Position and Value Date to settlement will be construed as if that Position were to be unwound by delivery.

4. **Entering into Positions and Options**

- (a) On any Business Day you may request KITCO MARKETS LLC to quote the rate at which you may enter a Position.
- (b) Immediately upon receiving the quote, you may by telephone or otherwise instruct KITCO MARKETS LLC to arrange the entry into by you of a Position equivalent to that for which the quote was sought. Receipt by KITCO MARKETS LLC of your instruction will constitute an offer by you to KITCO MARKETS LLC to enter into such a Position.
- (c) KITCO MARKETS LLC is under no obligation to accept your offer to enter into a Position, and without limitation, is not obliged to accept your offer to enter into a Position:
 - (i) if you have exceeded or would exceed a limit applying to you as notified by KITCO MARKETS LLC; or
 - (ii) until KITCO MARKETS LLC has received the Initial Margin required in respect of that Position , in cleared funds.
- (d) The Initial Margin required in respect of a Position will be payable when KITCO MARKETS LLC accepts your offer to enter into a Position.
- (e) If KITCO MARKETS LLC accepts your offer to enter into a Position, KITCO MARKETS LLC will issue to you a written confirmation of that Position promptly after it has been entered into, in the form of a deal confirmation, but failure by KITCO MARKETS LLC to issue a confirmation will not prejudice or affect that

Position. KITCO MARKETS LLC will not have any liability as a result of a failure to issue a deal confirmation. If KITCO MARKETS LLC decides not to accept your offer to enter into a Position, KITCO MARKETS LLC will advise you of that decision as soon as is practicable.

- (f) You undertake to examine the Terms of each Confirmation immediately upon receipt and unless within 48 hours of issue of a written confirmation you notifies KITCO MARKETS LLC of any disputed detail in the confirmation, you agree that the contents of the confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal. Upon receipt within that 48 hours of written notice as to a disputed detail, KITCO MARKETS LLC will investigate the matters disputed and you will co-operate with KITCO MARKETS LLC in good faith to resolve the dispute. You must, notwithstanding any such dispute, continue to satisfy your obligation to maintain Margin cover made by KITCO MARKETS LLC in respect of that Position as if the details contained in the confirmation were correct and not the subject of dispute.
- (g) KITCO MARKETS LLC may, in its absolute discretion, limit the value of Positions you may have outstanding under these Terms:
 - (i) beyond which if you decide to enter into any further Positions, you must seek and obtain credit approval from KITCO MARKETS LLC; and
 - (ii) beyond which you may not enter into any further Positions.
- (h) KITCO MARKETS LLC may vary this limit at any time by notice to you.
- (i) You undertake to advise KITCO MARKETS LLC of your intention to take delivery of the Bought Currency at the time you offer to enter into a Position and you agree that if you fail to advise of such intention, KITCO MARKETS LLC may, in its absolute discretion, allow you to unwind that Position on Terms acceptable to KITCO MARKETS LLC. Any notice to take delivery is irrevocable.

5. Interest charges on positions remaining open after value date

- (a) KITCO MARKETS LLC is entitled to interest which will accrue on a daily basis and be payable daily by you in respect of a borrowing by you of the Sold Currency under a Position.
- (b) You are entitled to interest which will accrue on a daily basis and be payable daily by KITCO MARKETS LLC in respect of a borrowing by KITCO MARKETS LLC from you of the Bought Currency under a Position, from the Value Date of the Position until the date that the Position is unwound by delivery or by being Closed Out at KITCO MARKETS LLC's prevailing rates of interest.
- (c) Interest payments will be settled by KITCO MARKETS LLC on each day by debiting or crediting your Account with the daily interest rate differential between the amount of interest payable by you under the Position and the amount of interest payable by KITCO MARKETS LLC to you under the Position
- (d) In debiting or crediting interest to your Account, KITCO MARKETS LLC may charge or pay you interest at a rate different to the interest rate which KITCO MARKETS LLC is charged or paid on equivalent borrowings of foreign currency by a bank and may retain the difference.
- (e) The rates of interest applicable under this Schedule 1 may be as agreed between you and KITCO MARKETS LLC from time to time and, in the absence of such agreement, will be a rate determined by KITCO MARKETS LLC in its absolute discretion.

6. Delivery of Positions

- (a) If you have specified that delivery is required in a notice given under clause 25, you must pay to KITCO MARKETS LLC on the Value Date the amount of the Sold Currency under the Position in cleared funds and following receipt by KITCO MARKETS LLC of the Sold Currency, KITCO MARKETS LLC will credit your Account the Bought Currency under the Position.

7. Close Out of Positions

- (a) Unless you have given a notice under clause 25, you may at any time give KITCO MARKETS LLC notice of your request to have all or any of its Positions Closed Out. Following receipt of such a notice KITCO MARKETS LLC may at a time it chooses in its absolute discretion, enter into a matching and opposite Position on your behalf. Without limiting its discretion KITCO MARKETS LLC acknowledges that this may occur as soon as practicable after the later of:
 - (i) receipt from you of such notice; and
 - (ii) any time and date specified in such notice at which you request the Close Out to occur, KITCO MARKETS LLC will use its best endeavours to achieve such Close Out at the Market Rate for delivery on the later of the Value Date of the original Position and the Spot Date in respect of the matching Position.
- (b) The difference (if any) between the amount of the Bought Currency under the matching Position and the amount of the Sold Currency under the original Position if positive, will be a "Realised Profit" and, if negative, will be a "Realised Loss".
- (c) The Closing Out of a Position in accordance with the FX Terms this will constitute a complete discharge of all obligations of KITCO MARKETS LLC and you will give or take delivery of any currency under that Position and has the effect of immediately cancelling the Position so that the only obligations that continue in respect of the Position are those provided for under the FX Terms.
- (d) You acknowledge that if you give KITCO MARKETS LLC standing instructions to enter into a Position when a particular price level is reached in the Foreign Exchange market the price at which the Position is entered into might not be that exact price.

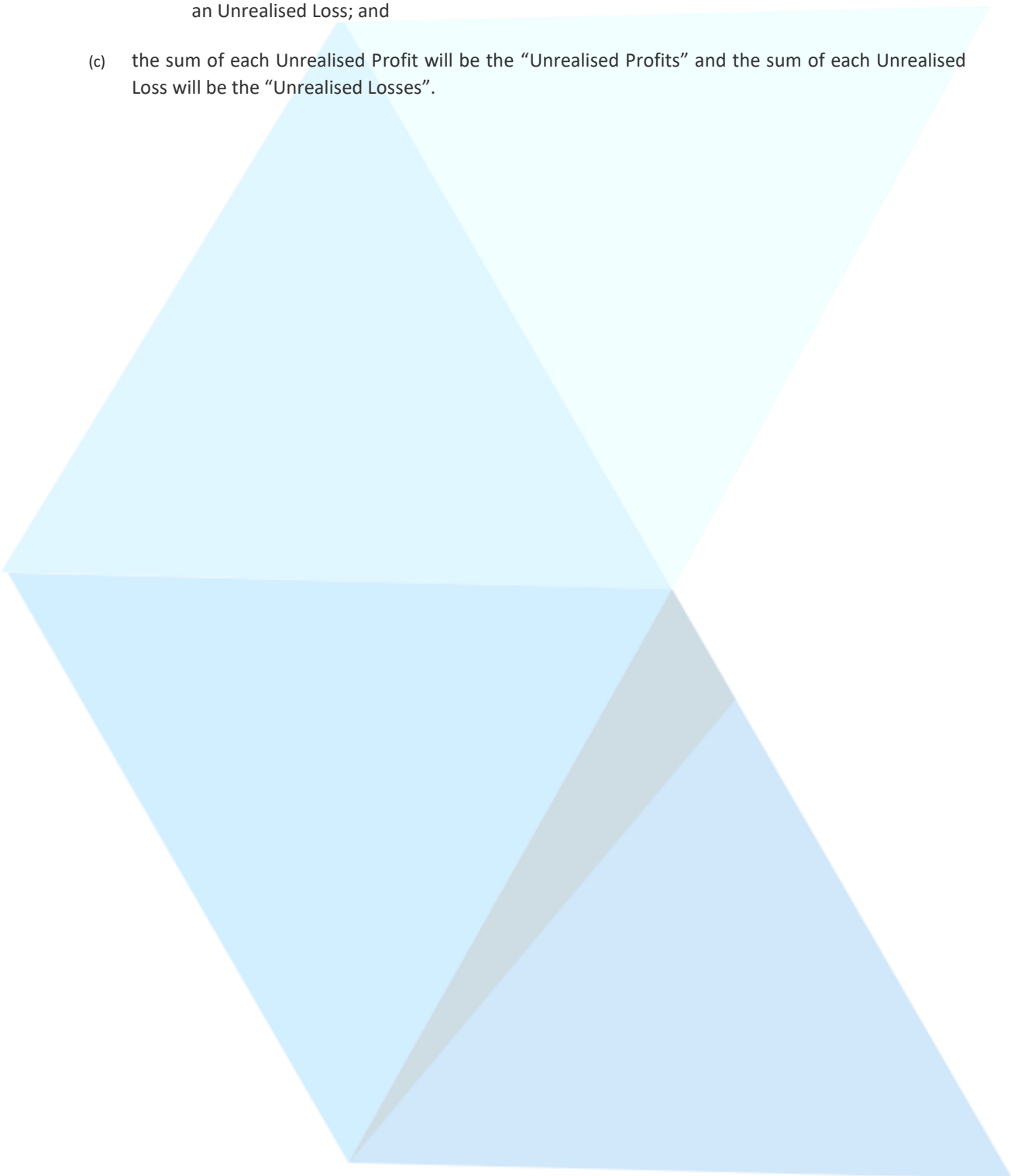
8. Settlement of Closed Out Positions

- (a) When a Position is Closed Out in accordance with the FX Terms which:
 - (i) results in a Realised Profit, KITCO MARKETS LLC will credit your Account the Realised Profit; or
 - (ii) results in a Realised Loss, you must pay to KITCO MARKETS LLC the Realised Loss in such currency as KITCO MARKETS LLC may require in cleared funds within 24 hours of being advised of the amount so payable.
- (b) If you have requested payment of any money owed to you under the FX Terms, KITCO MARKETS LLC will (at its discretion) deduct that money from your Account and pay it to you by cheque or in such other manner as may be agreed between KITCO MARKETS LLC and you.
- (c) KITCO MARKETS LLC may set off any money owed to you under the FX Terms against any money owed by you in respect of a Foreign Exchange Transaction. If such a set-off is made, references in the FX Terms to Realised Profit and Realised Loss will be read as including the net amount of Realised Profit or Realised Loss (as the case may be) remaining after the set-off.

9. Revaluations

KITCO MARKETS LLC may at any time, by reference to the Market Rate, revalue all Positions. Such revaluation will be effected in the following manner:

- (a) in order to carry out a revaluation under, KITCO MARKETS LLC will ascertain in relation to each Position, the amount of the Sold Currency which could be purchased with the amount of the Bought Currency at the prevailing Market Rate;
- (b) if the amount calculated in accordance with sub-clause 9(a):

- (i) is greater than the amount of the Sold Currency under the Position, then the difference will represent an Unrealised Profit; and
 - (ii) is less than the amount of the Sold Currency under the Position, then the difference represents an Unrealised Loss; and
 - (c) the sum of each Unrealised Profit will be the “Unrealised Profits” and the sum of each Unrealised Loss will be the “Unrealised Losses”.
- 

Schedule 2 – CFD terms

1. Introduction

- 1.1. The following terms will apply to you, and you agree to be bound by them, each time you place an Order with KITCO MARKETS LLC to deal in a Contract for Differences (as defined in clause 2 of this Schedule) (CFD Terms).

2. Interpretation

In this clause, the following terms have the following meanings:

Adjustment Event means, any event in respect of which KITCO MARKETS LLC considers in its absolute discretion an adjustment to the terms of a CFD is appropriate including, for example:

- (a) if the Reference Security is a share, debenture, unit or other security (or depositary receipt of any kind in respect of any of them) - a bonus issue for combination of rights issued, rights issue, stock split, share or other capital consolidation, security reclassification or sub-division return of capital, buy back, special dividend (however legal constituted), in specie distribution, takeover, scheme of arrangement or similar event or other corporate action event in respect of the security, whether or not the event triggers an adjustment to any exchange traded derivative of it,
- (b) a distribution to existing holders of additional shares or other securities or other Financial Products granting them the right to receive dividends or other proceeds equally and proportionately with payments made to holders of the underlying securities; or securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in money cash or money's worth) at less than the prevailing market price per share as determined by KITCO MARKETS LLC;
- (c) an event that has a dilutive or concentrative effect on the market value of the shares;
- (d) if the Reference Security is an index, a substantial adjustment to the composition of the index outside its own terms allowing for adjustments or weightings; a failure to publish the index or a suspension or cancellation of the index; and
- (e) if the Reference Security is a Derivative which is able to be traded on a Financial Market – any event in respect of which the operator of the Financial Market makes an adjustment to the terms of the Derivative.

CFD means a contract for one Contract for Difference.

CFD Transaction means a Transaction in respect of one or more CFDs.

Close of Business means the normal time of close of trading of the relevant Exchange.

Close Out, Closed Out and Closing Out in relation to a CFD Transaction means discharging or satisfying your obligations to KITCO MARKETS LLC under the CFD Transaction and this includes:

- (a) by delivering the amount or value of the Reference Security (including a dollar multiple of an index) required in accordance with the terms of the CFD Transaction; or
- (b) as a result of the matching up of the CFD Transaction with a CFD Transaction of the same kind under which you have assumed an offsetting opposite position;
- (c) making adjustments for fees and charges.

Closing Date means the date on which the CFD Transaction is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with the terms.

Closing Price means the price of the CFD at the Closing Date.

Closing Value means the value determined by multiplying the number of CFDs by the value or level of the CFD's Reference Security at the Closing Date.

Contract for Difference means a Financial Product, being a Derivative which derives its value from one or more Reference Securities and which KITCO MARKETS LLC has notified you constitutes a

"Contract for Difference" for the purposes of the CFD Terms. Notification can be by way of PDS, email, posting to KITCO MARKETS LLC's website, the Online Trading Platform, Account statement or in any other way.

Contract Value means the face value of the CFD, and is calculated by KITCO MARKETS LLC by multiplying the price (or, if an index, the level) of the relevant Reference Security by the number of securities (or, if an index, multiplier) specified in the CFD.

Hedge Contract means a contract between KITCO MARKETS LLC and a Hedge Counterparty on the same, or substantially similar, terms as the CFD (including if one or more CFDs from you and other clients which in aggregate correspond with the Hedge Contract).

Hedge Counterparty means a person with whom KITCO MARKETS LLC enters into a Hedge Contract to hedge KITCO MARKETS LLC's exposure to a CFD. KITCO MARKETS LLC may from time to time on its website or as it decides provide details of the Hedge Counterparty.

3. Acknowledgements

In these terms you acknowledge the following in favour of KITCO MARKETS LLC:

- (a) CFD Transactions are cash settled with no physical exchange of the Reference Security;
- (b) there is no definitive time to the life of a CFD, so such a contract will continue until the Closing Date.

4. Opening and closing CFD Transactions

4.1. All CFD Transactions are entered into between you and KITCO MARKETS LLC as principal. The acquisition of a CFD involves entering into, or opening, a CFD. The disposal of a CFD involves Closing Out an open CFD.

4.2. KITCO MARKETS LLC will from time to time state the prices or values at which it may enter into a CFD Transaction with you, either to open or Close Out a CFD (including by an Online Trading Platform) to do so.. If you wish to enter into a CFD Transaction you may submit an Order to KITCO MARKETS LLC. KITCO MARKETS LLC is not bound to enter into any CFD Transaction with you and reserves the right to state another price or value at which it may deal with you.

- (a) You may request on any given Business Day by a Online Trading Platform, via telephone or otherwise KITCO MARKETS LLC to quote a price at which KITCO MARKETS LLC may be prepared to enter into a CFD. You agree to and acknowledge that a price quotation pursuant to this request does not constitute an offer to enter into a new or close an existing CFD.
- (b) Upon receiving the quote from KITCO MARKETS LLC, you may by a Online Trading Platform, via telephone or otherwise offer to enter into a CFD with KITCO MARKETS LLC at the price quoted by KITCO MARKETS LLC.
- (c) KITCO MARKETS LLC is not obliged to accept your offer to enter into a CFD and, without limitation, is not obliged to accept your offer to enter into a CFD:
 - (i) if you have exceeded or would exceed a pre-determined limit imposed on you under clause 4.2(g) below; or until KITCO MARKETS LLC has received from you the Initial Margin required in the form of cleared funds to enter into the respective CFD.

- (d) The Initial Margin required to enter into a CFD, if not already received from you, will be payable to KITCO MARKETS LLC upon acceptance by KITCO MARKETS LLC of your offer to enter into the CFD.
- (e) If KITCO MARKETS LLC accepts your offer to enter into a CFD, KITCO MARKETS LLC will issue to you an electronic Confirmation of the CFD entered into shortly after it has been entered into. Failure by KITCO MARKETS LLC to issue a Confirmation will not prejudice or affect the relevant CFD. KITCO MARKETS LLC will not bear any liability whatever resulting from the failure to issue a Confirmation. KITCO MARKETS LLC will promptly advise you if KITCO MARKETS LLC decides not to accept your offer to enter into a CFD.
- (f) You agree to examine the terms of each Confirmation immediately upon receipt and you agree that the contents of the Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within 48 hours of receipt of a written Confirmation you notify KITCO MARKETS LLC of any disputed detail in the Confirmation received by you. Upon receipt of written notice within the 48 hour period of a disputed Transaction, KITCO MARKETS LLC will investigate the dispute and in co-operation with you must endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, you must continue to satisfy your obligations to maintain Margin cover and to pay Margin calls made by KITCO MARKETS LLC in respect of the CFD as if the Confirmation was correct and the details contained in the Confirmation were not the subject of dispute.
- (g) In its absolute discretion, KITCO MARKETS LLC reserves the right to limit the value of CFDs you may have outstanding under these terms. If you wish to enter into any further CFDs, you must seek and obtain approval from KITCO MARKETS LLC, beyond which you may not enter into any further CFDs whatever.
- (h) KITCO MARKETS LLC may vary the limit imposed at any time in its absolute discretion.

4.3. If KITCO MARKETS LLC enters into a CFD Transaction with you for the acquisition of one or more CFDs:

- (a) KITCO MARKETS LLC will give you a Confirmation in respect of the CFD Transaction setting out, among other things, the number of CFDs acquired and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the acquisition of the CFD; and
- (b) you or KITCO MARKETS LLC (as applicable), must pay the relevant amount referred to in paragraph 4.3 (a) by the time specified in the Confirmation.

4.5. If KITCO MARKETS LLC enters into a CFD Transaction with you for the disposal of one or more CFDs (by way of Closing Out that contract):

- (a) KITCO MARKETS LLC will give you a Confirmation in respect of the CFD Transaction setting out, among other things, the number of CFDs disposed of and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the disposal of the CFD; and
- (b) you or KITCO MARKETS LLC (as applicable) must pay the relevant amount referred to in paragraph 4.4 (a) by the time specified in the Confirmation,.

5. **Settlement of Difference**

5.1. After Close of Business on each Business Day over the term of an open CFD, KITCO MARKETS LLC will determine at Close of Business the Contract Value of the CFD.

5.2. If the Contract Value determined by KITCO MARKETS LLC in accordance with clause 5.1 above is higher than the Contract Value determined by KITCO MARKETS LLC in respect of the previous Close of Business, then the

Short Party must pay to the Long Party the difference.

- 5.3. If the Contract Value determined by KITCO MARKETS LLC in accordance with clause 5.1 above is lower than the Contract

Value determined by KITCO MARKETS LLC in respect of the previous Close of Business, then the Long Party must pay to the Short Party the difference.

- 5.4. In order to determine in accordance with the CFD Terms the Contract Value at Close of Business on the Business Day on which the CFD is entered into, the Contract Value will be determined by KITCO MARKETS LLC using the Reference Security Price at which KITCO MARKETS LLC and you agreed to enter into the CFD.

- 5.5. If KITCO MARKETS LLC determines that the Contract Value of a CFD at Close of Business cannot be determined in accordance with clause 5.1 above for any reason, the Contract Value at Close of Business will be the value determined by KITCO MARKETS LLC in its sole discretion.

- 5.6. Without limiting clause 5, if at any time trading on an Exchange is suspended or halted in any Reference Security, KITCO MARKETS LLC will, when determining the Contract Value, at its discretion consider (but is not limited to) the last traded price before the trading suspension or halt.

6. Dividend Payment and Receipt

- 6.1. If you are the Long Party to a CFD, and the issuer of the Reference Security makes a cash distribution in respect of the Reference Security (for example, a dividend in respect of a Reference Security which is a security), KITCO MARKETS LLC will credit to your Account in respect of the CFD an equivalent amount (less any Taxes and costs) within a reasonable period following the date the cash distribution is paid in respect of the Reference Security corresponding with your CFD being the amount that will be equal to the cash dividend payable to the holder of the Reference Security multiplied by the quantity on the first Business Day following the ex-dividend date for the Reference Security. KITCO MARKETS LLC is not obliged to pay to you any amount under this clause 6.1 unless and until it receives that amount as the owner of the Reference Security or an equivalent amount under the Hedge Contract acquired in respect of the CFD. Further, KITCO MARKETS LLC is not liable to pay to you any amount in excess of the amount (less any Taxes and costs) which KITCO MARKETS LLC itself receives either as the owner of the Reference Security or pursuant to a Hedge Contract acquired in respect of the CFD.

- 6.2. If you are the Short Party to a CFD, KITCO MARKETS LLC will debit your (relevant) Account with an amount that will be equal to the cash dividend plus any imputation or franking credits payable to the holder of the Reference Security multiplied by the quantity on the first Business Day following the ex-dividend date for the Reference Security.

7. Closing out a CFD

- 7.1. At any time you may give KITCO MARKETS LLC by way of the Online Trading Platform, telephone or otherwise notice of its intention to close any CFD (whether in whole or part) by specifying the Reference Security and the quantity of CFDs that you wish to close.

- 7.2. Upon receipt of a notice of intent to close a CFD, in accordance with clause 7.1 KITCO MARKETS LLC will use reasonable endeavours to provide a quote for the Closing Price and notify you of that quote (by telephone or otherwise). It is your obligation to notify KITCO MARKETS LLC as soon as possible (by telephone or otherwise) as to whether you are willing to accept the Closing Price quote. If you accept the Closing Price quoted by KITCO MARKETS LLC, the CFD, or relevant portion of the CFD, will be closed on the Closing Date.

- 7.3. At the Close of Business on the Closing Date, if there is a difference between the Closing Value and the Contract Value of the CFD (or portion of it closed under clause 7.2) it must be accounted for in the following way:

(a) If the Closing Value is greater than the Contract Value, the Short Party must pay to the Long Party the

difference; and

- (b) If the Closing Value is less than the Contract Value, the Long Party must pay to the Short Party the difference.

7.4. If the issuer whose security represents the Reference Security on which all or part of a CFD is based becomes externally administered in accordance with the meaning in the Corporations Act (or equivalent legislation), the CFD will be taken to have been Closed at that time. The Closing Price of the CFD will be determined by KITCO MARKETS LLC who may consider a number of factors it deems appropriate including, for example, the last traded price of the Reference Security.

7.5. If the Reference Security on which the CFD is based ceases to be listed for quotation on an Exchange, or is suspended from quotation for 5 consecutive Business Days, KITCO MARKETS LLC may, in its absolute discretion, without limiting clause 7.6 elect to terminate the relevant CFD. If KITCO MARKETS LLC elects to do so then:

- (a) the Closing Date will be deemed to be the date which KITCO MARKETS LLC determines (**Early Closing Date**); and
- (b) you will be treated as having given notice under clause 7.1 on the Early Closing Date.

7.6. If KITCO MARKETS LLC determines that the Closing Value of a CFD cannot be calculated on or with effect on the Closing Date for any reason, the Closing Value will be the value determined by KITCO MARKETS LLC in its sole discretion.

7.7. Without limiting clause 7.6, if at any time trading in the Reference Security on an Exchange is suspended or halted at any time, KITCO MARKETS LLC will, in its absolute discretion in determining the Closing Value of a CFD, have regard to (but is not limited by) the last traded price before the suspension or halt.

7.8. All calculations made by KITCO MARKETS LLC in accordance with the CFD Terms in the absence of any manifest error will be binding on you.

8. Settlement of Positions

8.1. Payments to be made to you with respect of any CFD must be made in accordance with this clause 8.

8.2. If a CFD is Closed Out in accordance with clause 7 above, or settlement for difference being made in accordance with clause 5 above:

- (a) KITCO MARKETS LLC will credit to your (relevant) Account any amount payable by KITCO MARKETS LLC to you; or
- (b) subject to clause 8.3 below you must pay to KITCO MARKETS LLC any amount payable by you to KITCO MARKETS LLC in cleared funds in any such currency that KITCO MARKETS LLC may require immediately upon the payment request being made.

8.3. If there is any free equity in your Account, any amount owing by you in accordance with clause 8.2 above will be settled in whole or in part by debiting your Account with KITCO MARKETS LLC.

8.4. If you request payment of any money owed to you under this clause 8, KITCO MARKETS LLC will deduct the amount of the requested payment from your Account and pay you, electronically, by cheque or in any other manner as agreed. Money owed to you that has not been the subject of any payment request by you will remain in your Account.

8.5. KITCO MARKETS LLC may offset any money owed to you under these terms or any other agreement against

any moneys owed by you under these terms or any other agreement.

9. Adjustment Events

- 9.1. If the Reference Security on which a CFD is quoted is subject to an Adjustment Event or possible Adjustment Event, KITCO MARKETS LLC will determine the adjustment, if any, that will be made to the Contract Value of that Reference Security, the related quantity (or both) that would have placed the parties in substantially the same economic position they would have been in had the event not occurred. KITCO MARKETS LLC will notify you as soon as practicable of the adjustment. In the absence of any manifest error any adjustment determined will be deemed to be conclusive and binding on you.
- 9.2. KITCO MARKETS LLC may give you an opportunity to elect to participate in an adjustment to the CFD which corresponds with the Adjustment Event, but KITCO MARKETS LLC is not obliged to give you that opportunity, or give reasonable notice of it or make its terms correspond exactly with the Adjustment Event, nor is KITCO MARKETS LLC obliged to accept in part or at all any election you make to participate. Any adjustment will take effect at the time determined by KITCO MARKETS LLC.
- 9.3. If the Reference Security is subject to a take-over offer or similar event, KITCO MARKETS LLC may at any time prior to the closing date of the offer provide you notice of KITCO MARKETS LLC's intention to Close the CFD, in accordance with clause 7, with the Closing Price being the price notified to you by KITCO MARKETS LLC.
- 9.4. If at any time an Adjustment Event occurs and it is not reasonably practicable as determined by KITCO MARKETS LLC in its absolute discretion to make an adjustment in accordance with clause 9.1 above, then without limiting 9.1 above, KITCO MARKETS LLC may at any time after the Adjustment Event give you notice of KITCO MARKETS LLC's intention to Close Out the CFD. If this occurs you will be taken to have been provided with Closing Notice in accordance with clause 7 above, with the Closing Price being the price notified to you by KITCO MARKETS LLC.
- 9.5. References to "offer", "take-over" and "closing date" in clause 9.1 above will have the same meaning given to them in the Corporations Act 2001.

10. Interest on Open CFD positions

- 10.1. Finance Charges
- (a) When you are a Long Party under a CFD, KITCO MARKETS LLC charges you a Finance Charge by interest payments which accrue on a daily basis and are payable to KITCO MARKETS LLC daily by you; and
- (b) when you are a Short Party under a CFD, you may be entitled to receive interest payments which will accrue on a daily basis and are payable to you by KITCO MARKETS LLC daily, from the date the CFD is entered into until the Closing Date, at an interest rate determined by KITCO MARKETS LLC in accordance with clause 10.5 below.
- 10.2. Each day KITCO MARKETS LLC will make interest payments by debiting or crediting your Account with the interest rate differential between the amount of interest payable by you and the amount of interest payable by KITCO MARKETS LLC to you. If you have insufficient free equity in your account, under this clause you acknowledge that any such amount is a debt owed by you to KITCO MARKETS LLC.
- 10.3. When debiting or crediting amounts of interest to your Account, KITCO MARKETS LLC may charge or pay you interest at a rate that is different to the rate which KITCO MARKETS LLC is charged or paid on equivalent borrowings from its bank or any other client or counterparty.
- 10.4. KITCO MARKETS LLC will retain the difference between the amount KITCO MARKETS LLC may charge or pay you and the amount KITCO MARKETS LLC may charge or paid on equivalent or similar borrowings with its bank or counterparty.

10.5. The interest rate applicable under this clause is the rate nominated by KITCO MARKETS LLC from time to time.

11. Margin Requirements

11.1. Any reference to time under this clause 11 includes weekends and public holidays.

11.2. Prior to entering into a CFD with KITCO MARKETS LLC you acknowledge that KITCO MARKETS LLC requires you to pay cleared funds as an Initial Margin and to maintain the minimum total Margin determined by KITCO MARKETS LLC in its absolute discretion from time to time. The Margin cover requirements may be determined automatically by a Online Trading Platform. The required Margin cover may change at any time, including outside of trading hours and without prior notice to you. The amount of Initial Margin required by KITCO MARKETS LLC and the time at which it is required is in the absolute discretion of KITCO MARKETS LLC. KITCO MARKETS LLC is not obliged to permit any offset of any Initial Margin required by KITCO MARKETS LLC.

11.3. All of your payments for Margin (after withdrawal from any trust account or clients' segregated account) are received and held by KITCO MARKETS LLC absolutely for its benefit (however, KITCO MARKETS LLC will use the balance (if any) towards purchasing or maintaining the Reference Security or Hedge Contract and maintaining the account for managing its own margin obligations on those Reference Securities or Hedge Contracts. The Margin maintained with KITCO MARKETS LLC is therefore a notional amount allocated to your Account by reference to your payments of Margin to KITCO MARKETS LLC (and not any deposit held on trust for you).

11.4. You have an absolute obligation to maintain the amount of Margin cover required by KITCO MARKETS LLC.

11.5. The Initial Margin requirement applicable in respect of any CFD may be increased by KITCO MARKETS LLC in its absolute discretion as to time for payment and amount. In the event of such an increase KITCO MARKETS LLC may require that you pay KITCO MARKETS LLC additional cleared funds equal to such an increase.

11.6. If KITCO MARKETS LLC increases the required Margin cover you acknowledge and agree that KITCO MARKETS LLC may refuse any request by you to enter into any further CFD positions until KITCO MARKETS LLC has confirmed the receipt of the payment for more Margin in the form of cleared funds.

11.7. KITCO MARKETS LLC does not owe you any payment from your Account in respect of any Margin amount with KITCO MARKETS LLC until all of your obligations under all Accounts between KITCO MARKETS LLC and you and under these terms are satisfied in full. Until this time any Margin amount will not constitute a debt due by KITCO MARKETS LLC to you nor will you have any right to receive payment of that Margin.

11.8. Subject to you meeting all Margin obligations KITCO MARKETS LLC may permit you to withdraw from your Account any excess free equity.

11.9. KITCO MARKETS LLC will have sole, absolute and unfettered discretion, as to the exercise of any power or right under clause 11.

11.10. Any power or right exercised by KITCO MARKETS LLC under clause 11 will be binding upon you.

12. Actions Following a Default

12.1. Upon or after any Default occurs, KITCO MARKETS LLC, without prejudice to any other rights it may have under these terms, has the right and power in its sole absolute and unfettered discretion and without necessity to give prior or any notice to you to do any one or more of the following:

(a) in accordance with clause 13 terminate these terms;

(b) Close Out all or any open CFD positions you may have as if you had given a closing notice to KITCO MARKETS LLC and had accepted the Closing Price determined by KITCO MARKETS LLC in accordance

with clause 7;

- (c) in accordance with clause 12.2 treat all or any open CFD positions as having been terminated by you;
- (d) terminate any agreement or account whatever you have or may have with KITCO MARKETS LLC;
- (e) in the event of there being insufficient funds in your Account to satisfy amounts owing to KITCO MARKETS LLC (including to maintain the Margin cover), KITCO MARKETS LLC may cancel any outstanding Orders in order to close your Account;
- (f) satisfy obligations that you have to KITCO MARKETS LLC out of any property belonging to you including, money or security in KITCO MARKETS LLC's custody or control including, without limitation, the Account or by selling securities lodged by you with KITCO MARKETS LLC or setting off obligations such that security transferred as collateral is not required to be returned but instead the value of them (as determined by KITCO MARKETS LLC) is applied in calculation of the set-off of obligations and to enforce any asset or security held by KITCO MARKETS LLC in such manner as it sees fit at your risk and expense;
- (g) transfer from your other accounts or the Account, if any, such funds as may be required for that purpose to satisfy any obligation you may have to KITCO MARKETS LLC.

12.2. If KITCO MARKETS LLC treats a CFD as having been terminated by you and KITCO MARKETS LLC exercises its rights in accordance with clause 12.1(c), KITCO MARKETS LLC will calculate the amount owing by you or by KITCO MARKETS LLC as if you had been given a Closing Notice and you had accepted the Closing Price determined by KITCO MARKETS LLC in accordance with clause 7. KITCO MARKETS LLC may debit from your Account an amount equal to the amount which would have been payable by you to KITCO MARKETS LLC had the CFD been closed at the Closing Price. It is agreed that this amount represents a reasonable pre-estimate of the damages incurred by KITCO MARKETS LLC.

13. Termination of a CFD Contract

- 13.1. You acknowledge that KITCO MARKETS LLC may terminate a CFD (apart from any other right to terminate) if:
- (a) the Reference Security ceases to be able to be traded on a relevant market or is subject to a trading suspension or trading halt for a period of more than two (2) Business Days;
 - (b) an Adjustment Event occurs and KITCO MARKETS LLC determines that it is not reasonably practicable to make an adjustment to the terms of a CFD under this Schedule;
 - (c) the relevant Hedge Contract, or KITCO MARKETS LLC's rights under the relevant Hedge Contract or in respect of the relevant Reference Security, are Closed Out, suspended or terminated by the Hedge Counterparty (which may occur automatically under the terms of any agreement between KITCO MARKETS LLC and the Hedge Counterparty); or
 - (d) KITCO MARKETS LLC considers, acting reasonably, that the Hedge Counterparty or issuer of the Reference Security may not be able to meet its obligations to KITCO MARKETS LLC under the terms of the Hedge Contract or Reference Security or other contracts between KITCO MARKETS LLC and the issuer of the Reference Security or the Hedge Counterparty.
- 13.2. If KITCO MARKETS LLC terminates a CFD under clause 13.1 or otherwise, KITCO MARKETS LLC will determine a termination value, payable by KITCO MARKETS LLC to you or by you to KITCO MARKETS LLC, which KITCO MARKETS LLC considers appropriate, acting reasonably, and having regard to the circumstances of termination, the value (if any) of the Reference Security and the position as between KITCO MARKETS LLC and the Hedge Counterparty in respect of the Hedge Contract. The termination will take effect at the time

determined by KITCO MARKETS LLC.

13.3. provided by this clause and KITCO MARKETS LLC is not otherwise liable to you.

13.4. You agree that this limitation of liability under this clause is a reasonable term having regard to at least the nature of the services and Financial Products offered and provided by KITCO MARKETS LLC to you, the benefits to you and the risks and benefits from Transactions using KITCO MARKETS LLC in the context of these terms.

