

Margin FX and CFDs
Customer Agreement
26 June 2015

1. Introduction

- 1.1 Forex Capital Trading Pty Ltd is an Australian incorporated company. Our registered place of business is Level 18, 636 St Kilda Road, Melbourne, Australia 3004 (“ForexCT”).
- 1.2 ForexCT is authorised and regulated by the Australian Securities and Investments Commission (“ASIC”) under the Australian financial services licence number 306400.

2. About this Agreement

- 2.1 This Agreement governs your relationship with ForexCT. By opening an Account, you acknowledge that you have read and understood this Agreement.
- 2.2 You should read this Agreement carefully together with the Financial Services Guide, the Product Disclosure Statement and any other document that we supply to you.
- 2.3 ForexCT may amend this Agreement with immediate effect where such amendment is necessary to comply with any legal or regulatory obligation to which ForexCT is subject. In these circumstances, ForexCT will provide you with notification of such amendments as soon as reasonably practicable. Notification may be provided on the Website, via email or via the Trading Platform.
- 2.4 Without prejudice to clause 2.3, we may amend or vary this Agreement from time to time. ForexCT will notify you of any material amendments and variations by placing a notice on the Website or by email, or on the Trading Platform. Such notice will state the date it will come into effect, which date shall not be less than 3 Business Days after the notice is posted. Any such amendment will apply to all Orders and Transactions open on or after the effective date.
- 2.5 ForexCT may offer different types of accounts with different features and may also make additional Products and Trading Platforms available to you. These may be subject to supplemental conditions which will be provided to you as required. These terms will supplement and modify this Agreement. Should there be any conflict between this Agreement and any supplementary conditions, the supplementary conditions shall prevail.
- 2.6 Capitalised terms used in this Agreement are defined in section 43.

3. ForexCT’s relationship with you

- 3.1 We will deal with you as principal (and market maker) and not as your agent with respect to all Orders and any Transactions.
- 3.2 You enter into all Transactions as principal unless otherwise agreed in writing by us. If you act as an agent on behalf of a principal, whether or not you identify that principal to us, we will not accept that principal as a client.

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- 3.3 Unless otherwise advised by us in writing we will classify you as a Retail Client. We may review such client classification at any time.
- 3.4 ForexCT will deal with you on an execution-only basis at all times. We will not provide you with any advice on the merits or suitability of you entering into this Agreement or buying, selling or otherwise dealing in Transactions and we will not provide you with any investment advice although we may, at our sole and absolute discretion, provide you with generic or factual information on the nature, the terminology and the procedures involved in Orders and Transactions. Should you consider that you are provided with investment advice you acknowledge that it is given without the authority of us and should not be relied upon.
- 3.5 ForexCT does not and will not give you personal financial product advice. Any information and any general advice we provide to you does not take into account your personal objectives, financial situation or needs.
- 3.6 You shall inform ForexCT of any person that you appoint as an Authorised Person. This must be in the form agreed by ForexCT. You shall be responsible and liable for all acts and omissions of an Authorised Person.
- 3.7 Where we do provide general trading recommendations, market commentary, guidance on shareholding disclosure or other information:
- (a) it is incidental to your relationship with us;
 - (b) we do solely to enable you to make your own investment decisions and do not make personal recommendations or provide personal advice;
 - (c) we give no representation, warranty or guarantee as to the accuracy or completeness of such information; and
 - (d) where the information is in the form of a document containing a restriction on the person or category of persons for who that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction.
- 3.8 You will not have any rights of ownership, delivery or otherwise in any Underlying Instrument as a result of a Transaction with us. We will not transfer any Underlying Instrument or any rights (such as voting rights or delivery obligations) to you.

4. Risk warning

- 4.1 The Products that ForexCT offers are derivative products. Trading in derivative products involves a high level of risk. Therefore, you should only trade with money that you can afford to lose. Derivative products may not be suitable for everyone.
- 4.2 Before deciding to participate in Products offered by ForexCT, you should carefully consider your investment objectives, financial position, level of experience and risk appetite. If you do not fully understand the risks associated with trading derivative products, you should seek independent advice.

5. Rollover Adjustments and charges

- 5.1 All Transactions are subject to Rollover Adjustments. These adjustments will be set out on the Trading Platform or the Website. The PDS will provide further information as to how the Rollover Adjustment is calculated.
- 5.2 Where a Rollover Adjustment is applied to a Transaction, a credit or debit adjustment is made to the Account each time that Transaction is kept open Overnight, including Transactions kept open Overnight on non-Business Days. For the avoidance of doubt, a Transaction held Overnight on a Friday night will be liable for 3 days of Rollover Adjustments.
- 5.3 Should a Rollover Adjustment be made to the Account in accordance with clause 5.2 such that it results in negative Balance or zero dollars Account Equity, ForexCT reserves the right to unilaterally close any and all Transactions at the Closing Price.
- 5.4 You also agree to pay such sums of money as may from time to time be notified to you via the Website, email or otherwise. Such costs and charges may include, without limitation:
- (a) Spread and Rollover Adjustments;
 - (b) deposit and withdrawal fees;
 - (c) balance conversion fees;
 - (d) data fees;
 - (e) account maintenance and inactivity fees; and
 - (f) any other fees that may be notified to you in writing from time to time.
- 5.5 You acknowledge that ForexCT shall not be responsible for any bank fees or charges imposed by a credit card provider or debit card provider (or any other provider) and, if necessary, we shall pass these charges on to you.
- 5.6 If we receive or recover any amount in respect of an obligation of yours in a currency other than that in which such amount was payable, whether pursuant to a judgement of any court or otherwise, you will indemnify us and hold us harmless from and against any cost (including costs of conversion) or other loss suffered by us as a result of receiving such amount in such currency.
- 5.7 The Account Base Currency of your Account may be denominated in Australian dollars (AUD\$) or US dollars (US\$). If any Closed P&L, Rollover Adjustments or other charges are to be credited or debited to your Account in a currency other than AUD\$, we will automatically convert such amounts to AUD\$ at a rate reasonably determined by us. If you make any payment to us in relation to this Agreement in a currency other than that in which such amount was payable, you indemnify us from and against any cost (including costs of conversion) or loss we suffer as a result of receiving such amount in a currency other than the currency in which it was due.

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- 5.8 Unless we give you written notice to the contrary, all payments and deliveries between us will be made on a net basis and we will not be obliged to deliver any asset or make any payment to you unless and until we have received from you all appropriate documents and any cleared funds (as applicable).
- 5.9 We may receive remuneration from, or share charges with, any of our Affiliates or third parties in connection with Transactions carried out on your behalf.
- 5.10 Unless otherwise specified in this Agreement, all amounts due to ForexCT shall be immediately deducted from any funds held by ForexCT for you.

6. Opening an Account

- 6.1 An Account must be opened prior to entering into any Transactions. No Orders can be placed until an Account has been opened and clear funds received. Without prejudice to the foregoing, if ForexCT permits you to place an Order notwithstanding that an Account has not been opened, or cleared funds received, this will not limit your liability to ForexCT pursuant to this Agreement.
- 6.2 ForexCT may, in its sole and absolute discretion, refuse to accept you as a client for whatever reason but will notify you of any such refusal, without giving any reasons, as soon as reasonably practicable.
- 6.3 In some circumstances, ForexCT may allow you to open more than one Account. Where you have opened more than one Account with us, we will treat your Accounts as aggregated for the purposes of satisfying your obligations to us to pay any amounts you may owe. This means any Balance, including money deposited as Margin, on one Account may be used to discharge any amounts in respect of another Account. You acknowledge that ForexCT does not aggregate Accounts for the purpose of satisfying Margin Requirements.
- 6.4 When we open an Account, we will provide you with a user name, Account number and password. You acknowledge and undertake that this information is confidential and must not be disclosed to any other party for any reason whatsoever. You must immediately inform us if you are aware or suspect that a third party has had access to your username, Account number or password or that any person other than you or your Authorised Person is dealing on your Account.
- 6.5 Your username, password and Account number are extremely sensitive pieces of information. Any Order placed or Transaction entered into on your Account either over the telephone or on the Trading Platform using either your username, Account number or your password will be deemed as valid Orders and Transactions. ForexCT may rely on all instructions, Orders or other communications entered using such confidential information.
- 6.6 We may, at our sole and absolute discretion and at any time without prior notice, suspend, restrict, or withdraw your access to the Trading Platform. If we believe you have supplied

your username, Account number or password to other persons in breach of this Agreement we may immediately terminate this Agreement and your access and use of the Trading Platform.

- 6.7 An Account with more than one owner is a joint account (“**Joint Account**”). We may refuse instructions from one Joint Account owner and require confirmation from each Joint Account owner if we have any suspicion of any conflict or disagreement between or among the Joint Account owners. We may send statements of account to any Joint Account owner. You agree that each Joint Account owner will be individually as well as jointly responsible for any obligation or liability arising from or in relation to this Agreement or a Transaction regardless of who incurred such obligation or benefited from or participated in the related Transaction. The death or incapacity of any Joint Account owner will not reduce or otherwise affect any such obligation or liability. We may set-off or combine any Joint Account owner’s obligation or liability to ourselves against or with any obligation or liability related to or arising from your Account, whether such obligation or liability was incurred individually or jointly.

7. Our Quotes

- 7.1 ForexCT will use reasonable endeavours to provide a Quote for each of the Products that it offers during Trading Hours. All Orders will be executed on the basis of the Quote and no other price will be relevant to the execution of the Order.
- 7.2 ForexCT may determine the Transaction sizes for any Quote from time to time in its sole and absolute discretion.
- 7.3 All Quotes are set at our sole and absolute discretion and are typically based on a price for an Underlying Instrument to which that Product relates and are typically sourced from an Exchange or Liquidity Provider. The Quote may be higher or lower than the price for the Underlying Instrument to which the Product relates due to a number of factors, including, without limitation, interest rate costs, dividends, scrip issues, stock splits, competitor quotes or the weight of client business.
- 7.4 ForexCT will not provide a Quote for a Product in circumstances where the Underlying Instrument to which it relates is not actually trading on an Exchange or with a Liquidity Provider or it is outside the normal trading hours for such Underlying Instrument.
- 7.5 A Quote may change at any time before your Order has been executed.
- 7.6 All Quotes on the Trading Platform are indicative and on receipt of an Order we may, in our sole and absolute discretion, reject or accept your Order.
- 7.7 The Quotes we offer are fixed Spread unless otherwise notified to you.

7.8 Due to the nature of online trading systems and the potential unreliability of Exchange and Liquidity Provider price feeds we may, in our sole and absolute discretion, amend, remove or delete Orders and any associated Transactions which have been made on the Trading Platform or otherwise which, in the reasonable opinion of ForexCT, the Quote did not reflect the actual Underlying Instrument, Exchange or market prices to which the Transaction relates at the time the Order was executed.

8. Placing Orders (Trading Platform)

8.1 You may place an Order via our Trading Platform. We will be entitled to act upon Orders placed or purporting to be placed by you or any person via the Trading Platform without further enquiry as to the genuineness, authority or identity of the person giving or purporting to place any Order.

8.2 Orders via the Trading Platform will only be accepted by ForexCT during Trading Hours which will be notified to you from time to time including via the Website, email or otherwise.

8.3 ForexCT will treat all Orders as a buy or a sell instruction without reference to whether such Orders are intended to open or close a Transaction. Any Orders made by a client with reference to opening or closing a Transaction are not binding on ForexCT. It is your responsibility to ensure that an Order actually closes or opens a Transaction.

8.4 ForexCT is not obliged to accept any Order from you and it will notify you of any refusal as soon as reasonably practicable.

8.5 You may amend or cancel any Order during Trading Hours unless and until the Order has been executed. If an Order has been executed it will not be possible for you to amend or cancel the Order. Any confirmation of an Order amendment or cancellation by us to you shall not be binding on us if the Order has been executed before the amendment or cancellation was made. We shall not be liable for any Transactions entered into in such circumstances.

8.6 We may give you a confirmation following the execution of a Transaction. Confirmations are deemed to be, in the absence of a Manifest Error, conclusive and binding on you.

8.7 We may despatch confirmations to you via email or via the Trading Platform. We will post details of your Account activity via the Trading Platform and you may be able to generate daily, monthly and yearly reports of account activity as well as a report of each Transaction (subject to reasonable limits on retaining historical records). If you require ForexCT to generate this for you, then we can do so at your request, at no charge.

8.8 ForexCT does not warrant that you will always be able to trade with ForexCT via the Trading Platform during the Trading Hours or at all. If you wish to trade with ForexCT via the Trading Platform but are having difficulty in doing so, you should instead seek to trade with ForexCT by telephone.

9. Placing Orders (Telephone)

- 9.1 Orders may also be made on the telephone by talking directly to a Dealer. We have no obligation to accept Orders via any other medium including, without limitation, via email, letter, verbal conversations over non recorded telephone lines or instructions given in a personal conversation.
- 9.2 Orders by telephone will only be accepted by ForexCT during Office Hours which will be notified to you from time to time.
- 9.3 A Quote made by a Dealer may differ from those published on the Trading Platform.
- 9.4 A Quote made to you over the telephone is only valid for that conversation and may not be available on any subsequent telephone call or even later in that same telephone conversation. Quotes that have been given as 'indication only' are not valid and cannot be executed unless otherwise agreed by us. Quotes that have been qualified or Quotes that you have been told are no longer valid before you place your Order are not tradable.

10. Order types and duration

- 10.1 You may place the following types of Orders:
- (a) Market Order;
 - (b) Entry Order;
 - (c) OCO Orders;
 - (d) Stop Loss Orders;
 - (e) Guaranteed Stop Loss Orders;
 - (f) Take Profit Orders; and
 - (g) any other type of Order we may offer from time to time as described on our Website or as otherwise notified to you.
- 10.2 Some Order types may not be available for certain Products from time to time. This information will be listed on our Website or notified to you from time to time.
- 10.3 You may choose one of the following duration periods for an Entry Order:
- (a) Good until cancelled; and
 - (b) Good until value.
- 10.4 All Entry Orders default to Good till cancelled unless you specify otherwise in accordance with clause 10.3.

11. Order execution

- 11.1 An Order will be executed when the Quote reaches or breaches the price specified in your Order.
- 11.2 ForexCT is not obliged to inform you if an Order has been executed. It is solely your responsibility to ensure that you know at all times as to whether any Order has been executed or is still active and if you are in any doubt whatsoever as to the status of an Order it is your sole responsibility to contact us immediately.
- 11.3 Unless otherwise stipulated, no Orders are guaranteed which means that your Order may get executed at a worse price compared to the price specified in your Order. In such instances, the Order will be executed at the Quote based upon the first price that ForexCT would reasonably be able to obtain in the relevant Underlying Instrument or from a Liquidity Provider.
- 11.4 We may offer Guaranteed Stop Loss Orders on certain Products from time to time as notified to you. In these circumstances and subject to clause 20, we will guarantee that Guaranteed Stop Loss Orders will be executed at the price you specify and at no other price, irrespective of the Quote breaching the level you have specified. You should refer to our PDS for more information regarding Guaranteed Stop Loss Orders.
- 11.5 We reserve the right to amend the Order size and the minimum distance away from the current Quote that a price may be specified in a Guaranteed Stop Loss Order in our sole and absolute discretion.

12. Closing a Transaction

- 12.1 You may close a Transaction at any time during Trading Hours. We will not close any Transaction at any other time unless otherwise agreed by us.
- 12.2 An open Transaction can only be closed by specifically selecting the open Transaction that you wish to close and by the execution of an equal and opposite Transaction. For the avoidance of doubt, if you have an open buy Transaction you can only close it by selecting that open Transaction on the Trading Platform and executing a sell Transaction on the same Product and of the same Transaction size and vice versa.
- 12.3 If ForexCT refuses to accept your Order to close a Transaction, the Transaction will remain open until such time as your Order to close the Transaction has been accepted by ForexCT.
- 12.4 You may not partially close a Transaction on ForexCT's PROfit Trading Platform. However, this can be done on ForexCT's MT4 Trading Platform.

13. Additional rights to close Transactions

- 13.1 If you do not have sufficient Account Equity to satisfy your Margin Requirements or your Account Equity reaches zero dollars, then we reserve the right to close out all open Transactions without further notice to you. This is referred to as Automatic Closeout.
- 13.2 ForexCT is not required to notify you before exercising an Automatic Closeout.
- 13.3 You acknowledge and agree that you are solely responsible for monitoring your open Transactions, Margin Requirements and the level of Account Equity that you have at all times.
- 13.4 ForexCT may close all or part of any Transactions at any time without notice at the Closing Price:
- (a) if your Account Equity reaches zero dollars or you have insufficient Margin to meet your Margin Requirement to maintain any Transactions;
 - (b) an Event of Default, Potential Event of Default or Force Majeure Event occurs;
 - (c) we reasonably consider that there are Exceptional Market Conditions occurring or about to occur;
 - (d) a Manifest Error occurs;
 - (e) if the Underlying Instrument to which the Transaction relates becomes illiquid and due to such illiquidity we are unable to trade or borrow a sufficient quantity of such Underlying Instrument to cover or settle any hedge position related to or in connection with the Transaction;
 - (f) if we are required, at any time, by a lender to return any Underlying Instrument borrowed by us which relates to the Transaction and we are then unable to maintain a hedge position in respect of the Transaction;
 - (g) if at any time we are otherwise unable to establish or maintain a hedge position, or any other Hedging Disruption occurs, in respect of the Transaction or the continuation of any such hedge is likely, in our reasonable judgment, to become more burdensome to us;
 - (h) where we reasonably believe it necessary for the protection of our rights or our clients' rights under this Agreement; or
 - (i) as otherwise contemplated by this Agreement.
- 13.5 Where we exercise our rights in accordance with this Agreement to close any of your Transactions, we will do so at a time and date determined by us in our reasonable discretion and the Transaction will be closed at the Closing Price. Any and all amounts payable in settlement of such Transactions are immediately due and payable.

14. Expiry of Futures Transactions

- 14.1 You may close a Futures Transaction at any time during Trading Hours up to the Last Trading Day. You will not be able to close such Transaction at any time after the Last Trading Day. You acknowledge that it is your responsibility to know when the Last Trading Day is for each relevant Product. This is generally specified on the Trading Platform.
- 14.2 A Futures Transaction that has not been closed in accordance with clause 14.1 or, otherwise in accordance with this Agreement, will automatically close on the Expiry Date at the Closing Price. Any subsequent attempt by you to close such Futures Transaction (whether or not accepted in error or otherwise by ForexCT) will be void.
- 14.3 All pending Orders in relation to any Futures Transaction will be cancelled when such Futures Transaction is closed at expiry by ForexCT or otherwise.
- 14.4 A Futures Transaction will not be rolled over into the next contract period for that Product.
- 14.5 You acknowledge and agree that ForexCT will have the right to close any Transaction at the Closing Price in its sole and absolute discretion without notice if the relevant Underlying Instrument to which a Transaction relates is a derivative financial instrument which may settle on expiry by a delivery other than in cash, a reasonable period prior to the expiry date of such instrument as determined in the sole and absolute discretion of ForexCT.

15. Hedged Transactions

- 15.1 ForexCT may allow you to execute Hedged Transactions on some Products from time to time. A Hedged Transaction is an open Transaction that is opposite of another open Transaction. In other words, it is the same Product, but the opposite direction (i.e. one is Long and the other Short). A Hedged Transaction may be a Fully Hedged Transaction or a Partially Hedged Transaction.
- 15.2 We reserve the right, in our sole and absolute discretion, to reduce the Margin Requirement to zero for Fully Hedged Transactions. We also reserve the right to reduce the Margin Requirements for Partially Hedged Transactions. If we choose to reduce the Margin Requirement, we do not waive the right to impose normal Margin Requirements at any given time.
- 15.3 You acknowledge and agree that if the Margin Requirement for a Hedged Transaction has been reduced and you close any one Transaction that forms part of the Hedged Transaction, it will immediately trigger the full Margin Requirement for that Transaction still open. If you do not have sufficient Margin such Transaction will be closed in accordance with clause 13.1.
- 15.4 ForexCT may close all or part of any Hedged Transaction at any time without notice at the Closing Price where we reasonably believe that the Hedged Transaction is being abused by

you including where we reasonably believe that such Hedged Transactions are not in the ordinary course of trading.

16. Open P&L and Closed P&L

- 16.1 If you have a Long Transaction, you will have positive Open P&L if the Bid Price is greater than the Open Rate and negative Open P&L if the Bid Price is less than the Open Rate. The converse applies to Short Transactions. While a Transaction is open the profit or loss accrued in this way is Open P&L.
- 16.2 Your Open P&L on an open Transaction will become Closed P&L at the moment when it is closed. The closure of a Transaction creates an obligation on you to pay any negative Closed P&L to ForexCT or an obligation on ForexCT to pay to you any positive Closed P&L as the case may be.
- 16.3 When a Transaction is closed, Closed P&L is calculated as the difference between the opening value of the Transaction and its closing value. The Closed P&L will be immediately credited or debited from your Balance.

17. Negative Balance Protection

- 17.1 Subject to clause 17.3 and without prejudice to any other right ForexCT may have under this Agreement, ForexCT guarantees that you cannot lose more than your Balance. This is called Negative Balance Protection.
- 17.2 You acknowledge that if you deposit additional funds with us, for Variation Margin or otherwise, then the potential loss will include this amount. However, the maximum potential loss will still be limited to the amount equal to your Balance.
- 17.3 From time to time, ForexCT may introduce trading accounts that do not offer Negative Balance Protection. Such trading accounts will be set out in the Website or the Account opening documentation.

18. General trading restrictions

- 18.1 If we, in our sole and absolute discretion, determine that Scalping has occurred or is occurring on your Account we are entitled to take one or more of the following countermeasures including, without limitation:
- (a) adjust the Quote, Transaction sizes and Spreads available to you;
 - (b) adjust any Transaction;
 - (c) restrict your access to streaming, our instantly tradable Quotes, including providing manual Quotes only;

- (d) recover from your Account or you any historic trading profits that have been gained through or reasonably appear to have been gained from Scalping as determined by us in good faith; and
 - (e) terminate this Agreement in accordance with clause 27.
- 18.2 Any attempt to circumvent the Scalping prohibition by opening a Hedged Transaction within the 2 minute timeframe will not be permitted. We consider this practice to also be Scalping and it is strictly prohibited.
- 18.3 From time to time and in our sole and absolute discretion, we may prohibit trading in certain Products for 2 minutes before and after a Critical News Release.

19. Margin Requirements

- 19.1 As a condition of entering into a Transaction, we require the deposit of cash to secure your liability to us for losses which may be incurred in respect of a Transaction (“**Initial Margin**”). Initial Margin is due and payable immediately as a condition to opening the relevant Transaction and we may decline to open any Transaction if you do not have sufficient Account Equity to satisfy the Initial Margin.
- 19.2 If there is an adverse movement in the price of a Transaction or Underlying Instrument to which the Transaction relates or if we determine in our sole and absolute discretion that there is an increase in the risk of an adverse movement in the price of a Transaction or Underlying Instrument to which the Transaction relates, we will require additional security from you in the form of cash to supplement the Initial Margin (“**Variation Margin**”).
- 19.3 You acknowledge and agree that if you do not have sufficient Account Equity to meet your Margin Requirements, ForexCT may immediately exercise its rights in accordance with clause 13.1 of this Agreement.
- 19.4 Margin rates may vary from Product to Product but are calculated for most Products by multiplying the notional Transaction value by the Margin percentage set out in the Website or as otherwise notified to you. ForexCT may vary Margin rates set out in the Website or otherwise as notified to you with or without notice particularly during Exceptional Market Conditions.
- 19.5 You must ensure at all times that your Account Equity is sufficient to meet your Margin Requirement for all open Transactions. However, ForexCT may in its sole and absolute discretion allow you to open Transactions notwithstanding that your Account Equity is insufficient to meet your Margin Requirement provided that ForexCT may at any later time require you to make a further cash deposit to give you the required Account Equity.
- 19.6 Without prejudice to clause 13.1, if at any time your Account Equity is not sufficient to cover your Margin Requirement, we shall be entitled to make a Margin Call. A Margin Call is due and payable immediately.

- 19.7 It is your responsibility to monitor your Account at all times and to ensure that your Account Equity is sufficient to satisfy your Margin Requirement.

20. Client Money

- 20.1 All money received from you will be deposited and held on trust in a segregated trust account established, maintained and operated in accordance with the Australian Client Money Rules.
- 20.2 ForexCT does not use Client Money for any purpose, including meeting obligations incurred by us when hedging with other counterparties. Furthermore, Client Money is not used to meet the trading obligations of other clients.
- 20.3 ForexCT is entitled to deduct any negative Open P&L you owe to us in respect to your open Transactions.
- 20.4 You acknowledge and agree that ForexCT shall not be responsible or liable for the solvency or any act or omission of any bank holding the trust accounts.
- 20.5 You waive the right to any interest on funds deposited in your Account.
- 20.6 Due to fraud prevention measures and in accordance with money laundering regulations ForexCT will endeavour to refund monies back to where they came from. Where monies have been deposited by card, the cash will be returned to that card where possible. Where not possible and where cash has been deposited using BPAY or Electronic Funds Transfer (EFT) we may require sight of original bank statements showing original fund transfer to ForexCT before refunding to such bank account.
- 20.7 Where bank accounts have been closed, ForexCT may require a letter from the originating bank stating that the account has been closed and there are no funds owing to the bank. Before ForexCT will refund to a new bank account we may require sight of the original deposit transfer statement from the closed account and sight of an original new bank account statement.
- 20.8 Due to transfer costs, ForexCT may refuse refunds under AUD\$100 unless you are closing your Account.
- 20.9 If there has been no movement on your Account for a period of six years after the date you become entitled to a transfer of your money held in such account (notwithstanding any payments or receipts of interest or similar items) and we are unable to contact you despite having taken reasonable steps to do so, such money shall be treated by us as unclaimed money and dealt with in accordance with the provisions of the Unclaimed Moneys Act 1962 (Vic).

21. Quoting and execution errors

- 21.1 A “Manifest Error” means a clear, obvious or manifest quoting or execution error including, but not limited to, a mistype of a quote, a quote or trade which is not representative of fair market prices, an erroneous price quote from us, such as but not limited to an erroneous quote due to failure of hardware, software or communication lines or systems and/or inaccurate external data feeds provided by third-parties.
- 21.2 Any trading or purported trading by you to exploit a Manifest Error or errors in prices or misquotes (whether knowingly or otherwise) including without limitation: (i) taking advantage or attempting to take advantage of pricing errors or misquotes or trading outside the Trading Hours; and (ii) engaging in any forms of abusive trading determined in our sole and absolute discretion, then we are entitled, in our sole and absolute discretion, to take one or more of the following measures (without limitation):
- (a) void, close, cancel and adjust any and all Orders and Transactions;
 - (b) adjust the Quote, Transaction size and Spreads;
 - (c) refuse Orders;
 - (d) restrict access to the Trading Platform;
 - (e) recover from your Account or otherwise any historic trading profits that have been gained through or reasonably appear to have been gained from such action as determined by us; and
 - (f) terminate this Agreement in accordance with clause 27.
- 21.3 We will not be liable to you for any Loss you or any other person may suffer or incur as a result of or in connection with a Manifest Error. Any dispute arising from such Manifest Error will be resolved by us in our sole and absolute discretion.

22. Force Majeure

Without prejudice to any other disclaimer or limitation of liability contained in this Agreement, we will not be liable or responsible to you for any Loss caused, directly or indirectly, by (i) any breakdown or failure of any transmission or communication system or equipment or computer facility or trading software, whether belonging to us, any of our affiliates, you, any market, or any settlement or clearing system, (ii) any act of God, war, terrorism, malicious damage, civil commotion, industrial acts, (iii) any Exceptional Market Conditions, (iv) any act of any governmental authority, agency or instrumentality or supranational body, or (v) any other event or circumstance which in our opinion prevents an orderly market in relation to any of your Orders or Transactions (each, a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, all of our obligations under this Agreement will be immediately and automatically suspended for the duration of such Force Majeure Event. Additionally, we may take any one or more of the following steps as we may deem appropriate in our sole and absolute discretion:

- (a) alter normal Trading Hours;
- (b) alter the Margin requirements;
- (c) amend or vary this Agreement or the terms of any Transaction;
- (d) close out any or all open Transactions, cancel any or all Orders or other instructions;
- (e) restrict or suspend access to the Trading Platform; or
- (f) take or omit to take all such other actions as we may deem appropriate in our sole and absolute discretion.

23. Hedging disruption

Notwithstanding anything to the contrary in this Agreement, if ForexCT determines that a Hedging Disruption has occurred, or may occur, including a Hedging Disruption which is a result of any actual or imminent delay, disruption, suspension, or reduction in any payment or settlement in respect of any Transaction or asset ForexCT deems necessary to hedge its Transaction price risk, whether such Hedging Disruption arises directly or indirectly from the failure of a hedging counterparty to perform its obligations or otherwise, then you will be liable to ForexCT for any increased costs or expenses resulting from such Hedging Disruption (including any costs of unwinding, establishing or re-establishing a hedge) and ForexCT may upon notification of such costs to you deduct them from your Account or demand payment of such costs directly from you. If you fail to comply fully and by the required time with any such demand, this will constitute an Event of Default.

24. Client representations and warranties

24.1 You represent and warrant to us, on and as of the date this Agreement comes into effect and on and as of each date on which any Transaction is outstanding, as follows:

- (a) you are of sound mind, legal age and legal competence;
- (b) you will enter into this Agreement and open each Transaction as principal and regardless of any subsequent determination to the contrary, all Transactions are suitable for you to engage in and you are aware of the risks involved in all Transactions;
- (c) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and each Transaction;
- (d) if you are not an individual person, that the client is properly empowered and has obtained all necessary authority pursuant to its constitutional and organisational documents;
- (e) where applicable, the person or persons entering into this Agreement on your behalf has or have been duly authorised to do so;
- (f) this Agreement, each Transaction and the obligations created under or in connection with them are binding upon you and enforceable against you in accordance with their terms and do not and will not violate the terms of any regulation, order, charge

or agreement by which you are bound or to which you or any of your assets are subject;

- (g) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the foregoing) an Event of Default (a “**Potential Event of Default**”) has occurred with respect to you;
- (h) unless you have informed us otherwise in writing, you act as principal and sole beneficial owner (but not as trustee) in entering into and performing this Agreement and each Transaction;
- (i) all details supplied on your account opening forms, as well as any other any information which you provide or have provided to us in respect of your financial position or other matters, is accurate, complete and not misleading;
- (j) except as otherwise agreed by us, you are the sole beneficial owner of all margin you transfer under this Agreement, free and clear of any security interest whatsoever;
- (k) if you are not resident in Australia, you are solely responsible for ascertaining whether, and you have confirmed to your satisfaction that, your entering into and performing this Agreement and engaging in Transactions is lawful under applicable laws of the jurisdiction of your residence;
- (l) you are not a resident of the United States of America or a company or business incorporated under the laws of a State of the United States of America or located within the jurisdiction of the United States of America;
- (m) all copies of documents and agreements given by or on behalf of you to ForexCT constitute true, accurate and complete copies and those documents and agreements are in full force and effect;
- (n) you will use the services offered by us pursuant to this Agreement in good faith and you will not use any electronic device, software, algorithm, or any trading strategy that aims to manipulate or take unfair advantage of the way in which we construct, provide or convey our Quotes;
- (o) you will not use our Quotes for any purpose other than your own trading purposes and you agree not to redistribute our Quotes to any other person whether such redistribution be for commercial or personal purposes; and
- (p) you are not entering into this Agreement or any Transaction wholly or predominantly for personal, domestic or household use or consumption.

24.2 You covenant and agree with us, as follows:

- (a) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all necessary authority, powers, consents, licences and authorisations to enable you lawfully to perform this Agreement and each Transaction;
- (b) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to you;

- (c) unless you have informed us otherwise in writing, you will at all times act as principal and sole beneficial owner (but not as trustee) in performing this Agreement and in entering into and performing each Transaction;
- (d) you will promptly notify us if (i) you become aware of any detail supplied on your account opening forms or any other information provided to us in respect of your financial position or other matters being inaccurate, incomplete or misleading when supplied or provided or (ii) any such detail or information subsequently becomes inaccurate, incomplete or misleading;
- (e) you will at all times use all reasonable steps to comply with all Applicable Legislation in relation to this Agreement and any Transaction; and
- (f) upon demand, you will promptly provide us with such information as we may reasonably require or request in relation to any of the matters referenced in this Clause 24 or, without limiting the generality of the foregoing, to ensure compliance with any Applicable Legislation.

25. Events of default

25.1 Each and any of the following events shall constitute an Event of Default:

- (a) you fail to comply fully and by the required time with any obligation to make any payment when due under this Agreement or to make or take delivery of Margin or any other property or asset under or in connection with this Agreement or any Transaction;
- (b) we have reasonable grounds to believe that (i) you are in breach of any covenant or agreement set out in this Agreement or (ii) any representation or warranty made by you or otherwise with respect to or in connection with any Transaction, is or was untrue, false or misleading when made, repeated or deemed to be made or repeated;
- (c) any action is taken or any event occurs, in each case which we believe might have an adverse effect upon your ability to perform any of your obligations under or in connection with this Agreement or any Transaction;
- (d) any circumstances that we believe in our sole and absolute discretion there may be a violation of the Applicable Legislation or good market practice;
- (e) any circumstance where we believe that it is necessary or desirable to take any action to protect our position or the position of any of our clients from any risk we perceive;
- (f) you fail to comply fully and by the required time with any demand made under section clause 26.6;
- (g) you die or become of unsound mind; or
- (h) where you become subject to an Insolvency Event.

25.2 If an Event of Default occurs we may, in our sole and absolute discretion and at any time, take one or more of the following actions without prior notice:

- (a) void any open Order;

- (b) treat any and all of your Transactions then outstanding as having been repudiated by you and close or part-close all or any of your Transactions at the Closing Price;
- (b) exercise our rights of set off pursuant to clause 28;
- (c) convert any cash balances on your Account into the Account Base Currency;
- (d) retain any cash, investments (including any interest or other payment payable thereon) or other assets due to you, and sell them without notice to you at such price and in such manner as we, acting reasonably, decide, applying the proceeds of sale and discharging the costs of sale and the sums secured under this clause 25.2;
- (e) charge you interest on any money due, from close of business on the date when monies first fell due until the date of actual payment at a rate of 2% per calendar month on the total cumulative sum owing;
- (f) close your Account and refuse to accept any Orders or to enter into any further Transactions;
- (g) take or omit to take all such other actions as we may deem appropriate in our sole and absolute discretion; and
- (h) if you have failed to make a payment when due, we may inform your partner, employer, any professional, regulatory or other organisation with which you are associated or any person who we believe to have an interest in knowing such facts of the amount of such overdue sum, the circumstances thereof, the fact that you have failed to make payment, and any other relevant facts or information. By entering into this Agreement you expressly consent to any such disclosure of this data by us in the circumstances set out herein.

25.3 If we take any action under clause 25, unless in our sole and absolute discretion we consider it necessary or desirable to do so without prior notice by you, we will, where reasonably possible, take steps to advise you before exercising such rights. However, any failure on our part to take such steps will not invalidate the action taken by us under clause 25.

26. Limitation of liability and indemnity

26.1 We shall not be liable to you or any person for any Loss (including any incidental, indirect or consequential Loss) whether arising out of negligence, breach of contract, misrepresentation or breach of statutory provision enforced at law, incurred or suffered by you under or in connection with this Agreement, any Order or Transaction, the Trading Platform or any of our dealings with you (including any Order not accepted by us) and irrespective of whether or not you or any other person have been informed of the possibility of such Loss. Without limiting the generality of the foregoing, under no circumstances will we be liable to you or any person for any loss of profits, loss of goodwill, loss of business opportunity or reputational damage.

26.2 We shall not be liable for any Loss suffered or incurred by you as a result of any error in any Order, instruction or information given by you or an Authorised Person, as a result of us acting on any Order or instruction which is, or appears to be, from such Authorised Person.

- 26.3 You agree to fully indemnify ForexCT and its Affiliates (and in respect of each, their respective officers and employees) on demand against any and all liabilities, costs, claims, damages and expenses of any nature whatsoever which we or our Affiliates (or in respect of each, their respective officers and employees) may suffer or incur directly or indirectly (including those incurred to an Exchange, clearing house or other regulatory authority) as a result, or in connection with, or arising out of:
- (a) this Agreement and any other agreement between the client and ForexCT or our affiliates;
 - (b) any Transaction effected with you or on instructions by you or an Authorised Person,
 - (c) without limiting the foregoing, any breach by you of your obligations under this Agreement or any Transaction;
 - (d) any representation or warranty by you or an Authorised Person proving to be incorrect in any material respect when made or repeated, or deemed to have been made or repeated;
 - (e) any credit card charge back by you; and
 - (f) any claims, actions, proceedings or investigations arising out of or in connection with this Agreement or any Transaction.
- 26.4 No warranty is provided by ForexCT or any of its authorised officers, employees and agents regarding the performance of our Trading Platform or website or any information sourced from third parties and all information provided by ForexCT to you is for your private use and is not to be communicated to any third party without the prior written consent of ForexCT.
- 26.5 Any credit card chargeback by you represents an immediate liability from you to us for any such amount and we shall be entitled to otherwise recover from you by any means the full amount of such chargeback and associated costs.
- 26.6 If we consider in good faith that there is a high risk of a credit card chargeback from you, you shall on demand by us put such funds into your Account as we shall require to cover such risk. If you fail to comply fully and by the required time with any such demand, this will constitute an Event of Default.

27. Termination

- 27.1 This Agreement will remain in force unless and until terminated.
- 27.2 This Agreement may be terminated by you at any time, by notice in writing to us, provided that you do not have any open Transactions and do not have any outstanding liabilities to us.
- 27.3 We may terminate this Agreement immediately upon notice in writing to you at any time.

27.4 Termination will be without prejudice to accrued rights and remedies and the existence and enforceability of any open Transaction, which will remain open until closed in accordance with this Agreement.

27.5 At any time after termination of this Agreement, we may, without notice, close out any of your open Transactions at the Closing Price.

28. Right of set off

28.1 We may at any time set off any liabilities owed by us to you against any amount owed by you to us. We reserve the right, without notice to you and in its absolute discretion, to consolidate any or all of your Accounts of whatever type or description or any accounts in which you have a part or management function or oversight interest. If the amount of any obligation is unascertained, we may estimate that amount and set off in respect of the estimate, subject to us accounting to you when the amount of the obligation is ascertained

28.2 Our rights under this clause 28 will be in addition to any other right of set-off or similar right we may have, whether as a matter of contract, under common law, or otherwise.

28.3 For the avoidance of doubt, we shall be entitled at any time to deduct, without notice or recourse to you, any monies deposited in or credited to your Account in error by us or on our behalf.

29. Suspensions and de-listings

29.1 If an Exchange or an Underlying Instrument to which the Transaction relates is suspended, ForexCT may increase the Margin Requirement to the extent considered by ForexCT in our sole and absolute discretion. If such Underlying Instrument remains suspended for more than 3 Business Days, ForexCT may close the Transaction at the Closing Price.

29.2 If an Exchange on which an Underlying Instrument is principally traded announces that pursuant to the rules of such Exchange an Underlying Instrument has ceased (or will cease) to be listed, traded or publicly quoted on such market for any reason (other than a take-over offer or merger event) and is not immediately re-listed, re-traded or re-quoted on a market or quotation system located in the same country as such Exchange, either the day on which such an event occurs, or (if earlier) the day on which such event is announced, we will close the Transaction at the Closing Price.

29.3 If an Underlying Instrument in which you hold a Transaction is subject to regulatory or Exchange limitations then ForexCT may, in its reasonable discretion, close the Transaction at the Closing Price.

30. Corporate Actions

- 30.1 If a Corporate Action occurs we will reasonably determine what adjustment, if any, should be made to the Transaction to account for the dilutive or concentrative effect of any such event to preserve the economic equivalent of such Transaction prior to the relevant event or to reflect the effect of such event on such Transaction. Any such adjustments will be effective as of a date reasonably determined by us.
- 30.2 ForexCT does not make dividend payments.
- 30.3 If a Share CFD goes ex-dividend and you are hold a Short Transactions on that Share CFD during the ex-dividend date, ForexCT will debit the declared cash dividend from your Account Balance.
- 30.4 If an Underlying Instrument to which a Transaction relates is subject to a Merger Event, ForexCT reserves the right to close any or all affected Transactions at any time during the Merger Event or to adjust the opening price of such Transaction to reflect any cash portion of the offer or to amend the size to reflect any corresponding adjustment to the Underlying Instrument caused by the Merger Event and/or to close the affected Transaction and reopen a new Transaction reflecting the new Underlying Instrument that has been created. Any such adjustments will be effective as of a date reasonably determined by us.
- 30.5 If we determine that no adjustment could be made under this clause 30 which would produce a commercially reasonable result, we may close your Transaction at the Closing Price on a date reasonably determined by us.

31. Trading Platform

- 31.1 ForexCT gives no warranties, representations or guarantees as to the merchantability, fitness for any particular purpose or otherwise with respect to the electronic system made available to you on the Trading Platform through which you may receive information from or transmit information to ForexCT or its content, or any documentation or any hardware or software provided by ForexCT. Adverse results of using the Trading Platform, which could be the result of hardware, software or communication link inadequacies or other causes, could involve, for example, failures, delays, malfunction, software erosion or permanent hardware damage to your own computer equipment. Such results could lead to possible economic and/or data loss.
- 31.2 You are responsible for ensuring that your computer equipment is compatible with the Trading Platform and that it meets the minimum system requirements.
- 31.3 You should be aware that there are risks inherent in electronic communications such that they may not be secure and may be intercepted by unauthorised parties or may fail to reach their intended recipient promptly or at all.

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- 31.4 The information technology and communications systems used by ForexCT may fail to work properly or at all from time to time. Such failures may occur at any time, therefore ForexCT does not warrant that you will be able to trade with ForexCT at all times during Trading Hours.
- 31.5 ForexCT may suspend access to the Trading Platform at any time and from time to time without notice for any reason including without limitation to carry out maintenance.
- 31.6 ForexCT will not be liable in respect of any Loss (including loss of profit or revenue), cost or damage including, without limitation, consequential, unforeseeable, special or indirect damages or expense which you might incur as a result of or arising out of either accessing and using or being unable to access and use the Trading Platform.

32. Charting

The Charts operate on pricing data sourced from third parties. We shall use reasonable endeavours to ensure an acceptable service but you acknowledge and accept that the pricing data displayed on the Charts may be delayed and we do not guarantee the accuracy or completeness of the data, either current or historical, and we do not guarantee that the service will not be interrupted. Furthermore, you agree and acknowledge that in the event of a discrepancy between the pricing data on the Charts and the Quotes provided on the Trading Platform, the Quotes on the Trading Platform prevail.

33. Confidentiality

You agree to keep confidential any confidential or proprietary information disclosed by us to you unless you can demonstrate that:

- (a) the information is in the public domain other than as a result of being disclosed in breach of this Agreement; or
- (b) you are required to disclose the information by law or by any court or regulatory agency or authority, provided you notify us as soon as possible upon becoming aware of any such requirement. For the avoidance of doubt, you acknowledge and agree that all information concerning our charges and Margin rates notified to you is confidential information except to the extent that we have placed that information in the public domain.

34. Privacy and disclosure of information

- 34.1 As required by the current anti-money laundering regulations as contained in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ('AML/CTF Act'), you acknowledge and agree that we are required to collect personal information about you to establish proof of your identity and address details.
- 34.2 You give us consent to the processing of this information for the purposes of performing our obligations under this Agreement including the disclosure of information to Affiliates and to

electronically verify your name, address, date of birth and other information through a range of public and private databases. Electronic verification is performed for the sole purpose of ForexCT satisfying its customer verification obligations under the Applicable Legislation.

34.3 You authorise ForexCT to disclose personal information collected about you as may be required by any Applicable Legislation without prior notice to you.

35. Conflicts of interest

35.1 You accept that we and our Affiliates may:

- (a) have interests which conflict with your interests; or
- (b) owe duties which conflict with duties which would otherwise be owed to you, and you consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Legislation.

35.2 We are required to have arrangements in place to manage conflicts of interest between us and our clients and between different clients. We operate in accordance with a conflicts of interest policy we have put in place for this purpose in which we have identified those situations in which there may be a conflict of interest, and in each case, the steps we have taken to manage that conflict.

36. Complaints and disputes

If you have any complaint related to ForexCT's performance under this Agreement, you should direct that complaint to our Compliance Department, who will investigate the nature of the complaint in accordance with ForexCT's complaints handling procedure. A copy of ForexCT's complaints handling procedure is available on request.

37. Taxes

37.1 You are responsible for all taxes (Australian or foreign) that may arise as a result of or in connection with a Transaction, whether under current or changed law or practice. We will have no responsibility for any of your tax liabilities, or for providing information or advice in respect of such liabilities and will not be responsible for notifying you of a change in tax law or practice.

37.2 If we become liable to pay any tax on your behalf as a result of or in connection with a Transaction you will reimburse us on demand in full for the amount of such tax paid by us. If we become liable to pay any stamp duty, stamp duty reserve tax or any other similar documentary tax or duty in any jurisdiction (collectively "Stamp Duty") in respect of any Underlying Instrument purchased or otherwise acquired by us or any of our Affiliates in order to hedge any Transaction between us and you, you will reimburse us on demand in full for the amount of such Stamp Duty paid by us or such Affiliate.

38. Notices

- 38.1 This clause 38 does not apply when you place Orders or enter into Transactions or where otherwise provided in this Agreement.
- 38.2 Unless otherwise agreed or provided in this Agreement, all notices, instructions and other communications sent or given by us to you under or in connection with this Agreement or any Transaction may be verbal or in writing and may be sent or given to your last known home address, place of work, telephone number (including by leaving messages on a telephone answering machine or voice mail system), fax number, email address or other contact details.
- 38.3 All notices, instructions and other communications sent or given by you to ForexCT under or in connection with this Agreement or any Transaction must be sent or given in writing to our registered place of business set out in clause 1.1 of this Agreement (or any other address subsequently notified to you for such purpose), addressed to the attention of our Compliance Department.
- 38.4 Any notice, instruction or other communication sent or given by us will be deemed to have been duly sent or given upon the earlier of (i) actual receipt by you or (ii) the time specified below, as applicable:
- (a) if delivered in person, when left at your last known home or work address;
 - (b) if sent or given by leaving a message on a telephone answering machine message or voice mail system, one hour after the message was so left;
 - (c) if sent or given by express post or overnight courier, in the ordinary course of the post or such overnight courier and in any event on the next day (or the third day in the case of international air mail) after posting (excluding Sundays and public holidays);
 - (d) if sent or given by e-mail, one hour after sending, provided no “not sent” or “not received” message is received from the relevant e-mail provider;
 - (e) if sent by SMS text, 1 hour after sending; and
 - (f) if a message on our Website or Trading Platform, one hour after we have posted it.
- 38.5 Any notice, instruction or other communication sent or given by you will be deemed to have been duly sent or given upon actual receipt by us.

39. Telephone recording

ForexCT may record telephone calls with you and such recordings shall be the sole property of ForexCT. By entering into this Agreement, you agree to ForexCT recording all such telephone conversations.

40. Contacting you

You authorise ForexCT to telephone or otherwise contact you at any time whatsoever in order to discuss any aspect of your Account.

41. No cooling off

The cooling off provisions of the Corporations Act do not apply to any Orders or Transactions.

42. General provisions

Assignment and sublicensing

42.1 You must not assign, sub-license, sub-contract, mortgage or otherwise transfer or dispose of this Agreement or any of its rights or obligations under it without the prior written consent of ForexCT.

42.2 ForexCT is entitled to assign its rights and obligations under this Agreement upon written notice to you.

Relationship

42.3 The relationship between the parties is one of independent contractors. Neither party has the authority to bind the other party by contract or otherwise and neither party's employees or agents are employees or agents of the other party. The parties are not partners or joint venturers.

Entire agreement

42.4 This Agreement and any other documents referred to in this Agreement or executed in connection with this Agreement is the entire agreement of the parties about the subject matter of this Agreement and supersedes all other representations, negotiations, arrangements, understandings or agreements and all other communications.

Further assurances

42.5 Each party must, at its own expense, whenever reasonably requested by the other party, promptly do or arrange for others to do, everything reasonably necessary to give full effect to this Agreement.

Indemnities

42.6 The indemnities in this Agreement are:

- (a) continuing obligations of the parties, separate and independent from their other obligations and survive the termination or expiry of this Agreement; and

- (b) absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the liability of the party giving the indemnity.

42.7 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

Costs

42.8 Each party must pay its own costs in respect of this Agreement and the documents and transactions contemplated by this Agreement, except that you must pay all stamp duty chargeable on this Agreement, and any other documents contemplated by this Agreement.

Invalid or unenforceable provisions

42.9 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

Waiver and exercise of rights

42.10 A waiver by a party of a provision of or of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

42.11 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

42.12 A single or partial exercise of a right by a party does not preclude another exercise of that right or the exercise of another right.

42.13 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

Governing law and jurisdiction

42.14 This Agreement is governed by the laws of Victoria, Australia.

42.15 Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, Australia; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

43. Definitions and interpretations

43.1 In this Agreement the following words and expressions shall have the following meanings unless the context requires otherwise:

Account	means the trading account you open with ForexCT to trade the Products;
Account Base Currency	has the meaning set out in clause 3.3;
Account Equity	refers to your cash balance at any given time plus the aggregate total of all Open P&L plus any credit we have provided to you;
Affiliate	means any related body corporate as defined in the Corporations Act;
Applicable Legislation	means the Corporations Act and the regulations made under it and all applicable financial services laws including the rules of any relevant regulatory authority or Exchange;
ASIC	means the Australian Securities & Investments Commission or any regulatory body which replaces it or performs its functions;
Ask Price	means the price at which you can buy to open or close a Transaction and is always the higher of the two prices Quoted
Australian Client Money Rules	means the provisions of Part 7.8 of the Corporations Act and the Corporations Regulations made under those provisions that specify the manner in which financial services licensees are to deal with client money and property;
Authorised Person	means a person you authorise to give instructions to ForexCT on your behalf and identified by completing the form approved by ForexCT;
Balance	means your Account Equity minus the aggregate total of all Open P&L;
Bid Price	means the price at which you can sell to open or close a Transaction and is always the lowest of the two prices Quoted;
Business Day	means any day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Melbourne, Australia;

CFD	means a contract for difference and is a contract between you and us where we agree to exchange the difference in cash between the opening and the closing value of the Transaction;
Client Money	means your free cash not being used by you for any purposes plus Margin paid by you plus your positive Open P&L less your negative Open P&L less any amounts owed by you which are due and payable to ForexCT provided that, if such amount is a negative number, the amount of Client Money shall equal zero;
Closed P&L	means any profit or loss (as appropriate) that is realised upon the closure or expiry of a Transaction;
Closing Price	means the closing price of the Transaction as determined by ForexCT in our sole and absolute discretion;
Corporate Action	means payment of a dividend, scrip dividend or special dividend, a rights issue, open offer or free distribution of shares by way of a bonus, capitalisation or any other offer or issue to the holders of the Underlying Instrument, a takeover, reverse takeover, merger, demerger, listing, delisting or suspension from listing or any analogous event directly affecting holders of the Underlying Instrument;
Corporations Act	means the Corporations Act 2001 (Cth);
Critical News Release	means a news release that we determine in our absolute discretion is a critical news release;
Dealer	means an employee or officer of ForexCT who is able and qualified to accept Orders and enter into Transactions;
Events of Default	has the meaning given in clause 25;
Exceptional Market Conditions	means the suspension, closure, liquidation, imposition of limits, special or unusual terms, excessive movement, volatility or loss of liquidity in any relevant market, Exchange, Liquidity Provider or Underlying Instrument, or where ForexCT anticipates any of the above circumstances are about to occur
Exchange	has the same meaning as "financial market" under section 767A of the Corporations Act and includes any futures, derivatives or stock exchange or other organised market for Transactions in financial products whether or not licensed or approved;

Expiry Date	means the expiry date and time of a Futures Transaction as set out in the Product Schedule and where such date is not a Business Day it will be the Business Day immediately preceding the Expiry Date unless otherwise specified in the Product Schedule;
FSG	means the financial services guide prepared by ForexCT, as amended from time to time;
Fully Hedged Transaction	means an open Transaction that is equal and opposite of another open Transaction;
Futures Transaction	means a Transaction which has a set contract period that expires automatically;
Good until cancelled	means an Entry Order that will remain in effect until cancelled by you in accordance with this Agreement or is executed by us or we no longer offer that Product;
Good until value	means an Entry Order that will remain in effect until the time and date requested by you or until it is executed by us or we no longer offer that Product;
Guaranteed Stop Loss Order	means a Stop Loss Order where the execution is guaranteed in accordance with clause 11.4;
GMT	means Greenwich mean time;
Hedging Disruption	means circumstances where we are unable, after using commercially reasonable (but no greater) efforts, to (i) acquire, establish, re-establish, substitute, maintain, unwind, or dispose of any transaction or asset we deem necessary to hedge any risk related to or in connection with a relevant Transaction; or (ii) realise, recover or remit the proceeds of any such transaction or asset;
Hedged Transaction	has the meaning set out in clause 15.1;
Initial Margin	has the meaning set out in clause 19.1;
Insolvency Event	means for any party that is a body corporate, the happening of one or more of the following events: <ul style="list-style-type: none">(a) process is filed in a court seeking an order that it be wound up, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed;(b) a liquidator, provisional liquidator any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;

- (c) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (d) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (e) any action is taken by the ASIC with a view to its deregistration or its dissolution, or an application is made to the ASIC that any such action be taken;
- (f) it is insolvent within the meaning of section 95A of the *Corporations Act*, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any Governing Legislation;
- (g) as a result of the operation of section 459F(1) of the *Corporations Act*, it is taken to have failed to comply with a statutory demand;
- (h) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
- (i) any event or circumstance set out in section 461 of the *Corporations Act* occurs in relation to it; or
- (j) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (j) inclusive happens to it under the law of any jurisdiction;

Introducing Broker	means a third party which is remunerated by ForexCT for the referral of clients to ForexCT;
Last Trading Day	means the last time and date prior to the Expiry Date that you can close a Futures Transaction. If the Last Trading Day is not a Business Day, then the immediately prior Business Day will be treated as the Last Trading Day;
Liquidity Provider	means a bank or other financial institution or third party that provides executable two-way quotes in respect of relevant Underlying Instruments to which the Products relate on a continuous and regular basis;
Long	means taking a buy position on a Product;
Loss	means any loss, cost, claim, damages (whether

	compensatory, exemplary or punitive) or expenses, including fees and expenses of legal counsel;
Manifest Error	has the meaning set out in clause 21;
Margin	means the amount of cash collateral we require at any given time to open and maintain a Transaction;
Margin Call	means a demand by ForexCT for additional funds to be deposited into your Account;
Margin FX	means a Transaction that gives exposure to the changes in the value of an exchange rate;
Margin Requirement	means the Initial Margin and Variation Margin;
Market Order	means an instruction by you to open or close a Transaction (buy or sell, as the case maybe) at the Market Rate;
Market Rate	means the current Bid Price or Ask Price (as the case maybe);
Merger Event	means in respect of any Underlying Instrument: (a) any reclassification or change of the Underlying Instrument that results in a transfer of or an irrevocable commitment to transfer all outstanding securities of the same class as the Underlying Instrument to another entity or person; (b) consolidation, amalgamation, merger or binding share exchange of the issuer of the relevant Underlying Instrument with or into another person (other than a consolidation, amalgamation, merger or binding share exchange in which such issuer is the continuing person and which does not result in a reclassification or change of all outstanding securities of the same class as the Underlying Instrument); or (c) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 50% or more of the outstanding securities of the same class as the Underlying Instrument that results in a transfer of or irrevocable commitment to transfer all such securities (other than such securities owned or controlled by such other entity or person);
Negative Balance Protection	has the meaning set out in clause 17.1;
Office Hours	means the office hours as notified to you from time to time;

Open P&L	means, at any given time, the Closed P&L that would be incurred by you on a Transaction if it were to be closed at that time;
Order	means an instruction by you to either open or close a Transaction and may include (without limitation) a Market Order, Entry Order, Stop Loss Order, Guaranteed Stop Loss Order, Take Profit Order or OCO Order;
Order Rate	means the price that you specify in your Entry Order;
Overnight	means holding an open Transaction at 12.00 GMT;
Partially Hedged Transaction	means an open Transaction which is opposite but not equal to another transaction;
PDS	means the product disclosure statement prepared by ForexCT, as amended from time to time;
Potential Event of Default	has the meaning as set out in clause 24.1(g);
Product Schedule	means the list of Products we offer to clients from time to time;
Products	refers to each type of Margin FX and CFD product that ForexCT offers from time to time as set out in the Product Schedule or as otherwise notified to you;
Quote	means the Bid Price or the Ask Price (as the case maybe) quoted by ForexCT for each Product;
Retail Client	has the meaning given to it under sections 761G and 761GA of the Corporations Act;
Rollover Adjustment	means the financing adjustment made to your Account in accordance with clause 5;
Short	means taking a sell position on a Product;
SL Rate	refers to the stop loss rate which means the price that you specify in your Stop Loss Order;
Spreads	means the difference between the Bid Price and the Ask Price of the Quote;
Stop Loss Order	means an instruction by you to close a Transaction at the price that you specify which is less advantageous than the current Market Rate;

Take Profit Order	means an instruction by you to close a Transaction at the price that you specify which is more advantageous than the current Market Rate;
Trading Platform	means the online electronic trading platform that ForexCT makes available to clients via the internet or otherwise to facilitate trading the Products, including without limitation, any online or downloadable trading platform and application for a mobile device;
TP Rate	refers to the take profit rate which means the price that you specify in your Take Profit Order;
Trading Hours	means the trading hours for each Product listed in the Product Schedule;
Transaction	means a transaction in a Product or any other contractual arrangement entered into between you and us including any transaction liable to margin and includes Futures Transactions (as the context requires), unless otherwise stated;
Scalping	means opening and closing a profitable Transaction within a 2 minute timeframe (closing a Transaction in loss within the 2 minute timeframe does not constitute scalping) and includes opening a hedged trade within the 2 minute timeframe;
Underlying Instrument	means a financial instrument that forms the subject of a Transaction and is generally quoted on an Exchange or, in the case of some financial instruments, quoted by a Liquidity Provider;
Variation Margin	has the meaning set out in clause 19.1; and
Website	means our internet website www.forexct.com.au and any other website that may be notified to you from time to time.

41.2 In this Agreement, unless the context requires another meaning:

- (a) a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document (including this Agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;

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- (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) to a party means a party to this Agreement;
 - (vi) to an item, recital, clause, schedule or annexure is to an item, recital, clause, schedule or annexure of or to this Agreement;
 - (vii) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;
 - (viii) to a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators;
 - (ix) to a law:
 - (A) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and
 - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (C) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
 - (x) to proceedings includes litigation, arbitration and investigation;
 - (xi) to a judgement includes an order, injunction, decree, determination or award of any court or tribunal;
 - (xii) to time is to Melbourne time unless otherwise stated;
 - (xiii) to \$ or dollars is to Australian dollars unless otherwise stated; and
 - (xiv) the word including or includes means including, without limitation, or includes, without limitation.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (c) Headings are for convenience only and do not affect interpretation.
 - (d) If a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day.
 - (e) If a period occurs from, after or before a day or the day of an act or event, it excludes that day.

- (f) This Agreement may not be construed adversely to a party only because that party was responsible for preparing it.