



# 条款及细则

## (TERMS AND CONDITIONS)

澳大利亚激石集团有限公司  
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Level 5, 530 Collins Street  
Melbourne VIC  
3000 AUSTRALIA  
电话 +61 3 9020 0155  
传真 +61 3 8679 4408  
[www.pepperstone.com](http://www.pepperstone.com)  
[support@pepperstone.com](mailto:support@pepperstone.com)

风险警告：外汇及衍生品交易可能造成您全部资金的亏损。 金融服务牌照号码：414530

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## 1. 申请

### 申请开户

- 1.1 您必须填写申请表申请账户，我们可依酌情权单方面决定是否接受您的申请。
- 1.2 您同意向我们支付清算资金并随时在我们的账户中保持这些资金，除非我们另有约定。我们将按照第3.5条的规定持有资金。
- 1.3 如果我们接受您的申请，我们将：
  - (a) 建立您的账户；
  - (b) 如果您需要根据第1.2条支付初始金额：
    - (i) 您或者将附有的申请表格的支票存入我们的信托账户，或者您以电子转账将款项转入我们的信托账户；
    - (ii) 一旦资金清算完毕，初始金额就会贷记入您的账户。
- 1.4 您的账户将在第1.3条中的步骤完成后生效。
- 1.5 您可以申请多个帐户。

### 条款

- 1.6 协议在我们接受您的申请时开始并持续有效，除非协议根据本条款而终止。

### 反洗钱法规

- 1.7 您同意根据反洗钱与反恐融资法的要求，我们可能会不定期地要求您提供信息。通过提交申请表、开立账户、我们进行交易，您承诺向我们提供我们需要根据反洗钱与反恐怖融资法案要求的所有信息和协助。
- 1.8 根据反洗钱/反恐怖融资法案或其他适用法律法规的要求，我们可能会传递从您那里收集的有关交易的信息，并且我们没有义务通知您。我们可能会采取我们认为必要的和适当的与您有关的反洗钱和其他调查（包括限制名单，被阻止的人和名单），并且我们保留对这些调查采取行动的权利，并且不对您负有任何责任。
- 1.9 您也保证：
  - (a) 您不知道也没有理由怀疑：
    - (i) 用于您账户资金已经或即将来源于或者涉及洗钱和恐怖主义融资，或被澳大利亚法律、国际法或公约禁止或通过协议的其他非法活动；或者
    - (ii) 您的投资收益将用于资助任何非法活动；
  - (b) 对于公司来说，您和您的董事都不是在2007年反洗钱和反恐融资规则文件（第1号）描述中的政治敏感人物。



## 2. 我们的服务

### 签订合约

- 2.1 如果我们接受订单，意味着我们会与您签订合约，但前提是您遵守了协议项下的义务。
- 2.2 以签订协议和合约或订单为目的，我们发出的通知里的所有的金额或利率都是有充分证据核实的，除非可以被证明不正确。
- 2.3 我们作为交易主体角色而不是作为您的代理签订每份合约，您也是作为交易主体角色签订每份合约（除非我们另有书面协议）。如果您充当代理人代表一个交易主体，我们不会接受该交易主体为“客户”（如“公司法”中所定义），除非以书面形式另行约定（无论是否您向我们指明该交易主体）。

### 金融产品咨询

- 2.4 我们给您的任何信息或一般金融产品建议本质上都是一般性的，并且不考虑您的财务状况、需求、个人目标。特别是我们不会告诉您是否应该开立、持有、平仓一个合约。您必须考虑根据自己的财务状况、需求、个人目标来决定开立合约的适当性，并且您自己应寻求的独立财务建议。

### 我们如何提供服务

- 2.5 我们会向您报价，这个报价是我们准备与您交易价格。

### 我们的交易时间

- 2.6 激石平台开放于周日纽约时间（东部时间）下午5:01分，并于周五纽约（东部时间）下午4:55分结束。这意味着您可以在这段时间内查看实时价格并下订单。在以上交易时间以外，您仍然可以访问激石平台，查看您的账户、市场信息、研究、使用我们的其他服务，我们将在这些时间以外为您提供我们自己的服务，但是不会有任何实时价格或交易。
- 2.7 我们没有义务在任何司法管辖区的公众假期，报价基础工具价格或者接受订单，我们合理地认为公众假期会影响相关的基础工具。我们会在激石平台上通知公众假期和受影响的基础工具。

## 3. 您的帐户

### 账户性质

- 3.1 您的帐户是由我们（或代表我们）维护的一个或一系列记录，随时显示您已经或被要求向我们支付的款项、我们已经或被要求向您支付的款项、您与我们签订的合约。



## 您帐户金额的调整

### 3.2 您授权并指示我们：

- (a) 将您的所有费用余额以及根据协议项下您的所有应付款项，借记您的账户；
- (b) 将您的所有存款及根据协议项下我们的所有应付款项，贷记您的账户；和
- (c) 根据协议项下您向我们存入的金额、订单、合约、市场变动，您的账户中的资金将被指定为自由余额或实际保证金。

### 3.3 我们无需事先通知您，在您的账户上借记、贷记、指定自由余额或保证金。

### 3.4 您同意在您的账户上随时存入和保留足够的资金，以支付根据协议您所有的应付款项。您有责任确保您的转账资金有充足的清算时间，来履行您在协议项下的所有付款义务。

## 客户存款资金的使用

### 3.5 我们会将您支付的所有资金存入我们的信托账户，该账户是根据公司法运转的。您同意并确认：

- (a) 您的资金将会与我们信托账户中其他客户的资金存放在一起；
- (b) 我们只会在以下情况从我们的信托账户中提取您的资金：
  - (i) 按照您的书面指示付款；
  - (ii) 作为存款或支付交易一部分而支取收费；
  - (iii) 由于您与我们进行交易向我们支付的我们有权获得的款项；和
  - (iv) 法律另行授权或遵守受监管市场操作规则执行的付款
- (c) 我们有权根据公司法和公司条例将我们的信托账户资金进行投资，其中包括：
  - (i) 以我们目前所授权投资的任何方式进行投资；
  - (ii) 与任何符合资格的货币市场交易商进行存款投资；
  - (iii) 与任何澳大利亚授权存款机构有关的存款利息投资；
  - (iv) 收购现金管理信托权益；
  - (v) 由英联邦、州或领地发行或担保的债券投资；
  - (vi) 在清算和结算机构进行存款投资；
- (d) 除非另有书面协议：
  - (i) 我们完全拥有您在我们的信托账户的资金、我们在对冲交易对手的信托账户的资金、由我们根据公司法投资产生的所有利息和收益。所有利息或收益都是应付给我们的，在我们需要时应该从相关信托账户或投资账户（视情况需要）支付给我们；



- (ii) 在实现客户资金投资后，投资的初始资本必须投资于公司法允许的另一项投资或由我们存入根据公司法运转的信托账户；
- (iii) 如果实现您的资金投资所收到的金额低于投资的初始资本，为了您的利益，我们必须支付差额到信托账户中，除非这个差额是根据协议从投资款项中向我们支付的金额和
- (iv) 根据公司法，我们不会收取投资费用；
- (e) 我们不会将您在我们信托账户的资金，用于履行与交易对手进行对冲的责任，也不会用于履行与其他客户的任何交易责任。我们就这些交易承担的责任所需资金均由我们自己提供。

## 自由余额的提取

- 3.6 如果您的帐户显示您有自由余额，您可以要求我们支付您指定的金额。请注意，如果出现下列情况，我们可自行决定扣留您要求的任何付款（全部或部分）：
- (a) 根据第1.2条的规定，我们必须始终保持的金额；
  - (b) 我们有权扣留根据公司法规定的金额。
- 3.7 如果我们决定根据第3.6（a）条或第3.6（b）条扣留您的任何自由余额，我们将在合理可行的情况下尽快通知您。

## 帐户分开处理

- 3.8 如果您与我们开立了多个账户，除非协议中另有明文规定，我们将视您的账户为完全独立的账户。您在一个账户上存入的任何金额都不会解除您对另一账户的责任，除非我们根据第13条和第21.3条行使我们的权利。
- 3.9 如果您以书面形式提出申请，我们可以自主决定将您的账户视为一个账户。在这种情况下，协议中引用的“您的账户”都将被定义为您的汇总账户。如果我们同意了您的申请，我们会在收到申请之日起7日内通知您，

## 4. 订单

### 基础工具的报价

- 4.1 您可以从我们得到合约报价。
- 4.2 您确认：
- (a) 我们根据本条款提供的任何报价仅供参考；并且
  - (b) 在我们按照协议接受您的订单之前，没有进入合约。



## 提交订单

- 4.3 您可以向我们提交以下订单：
- (a) 提议和我们签订新合约;或者
  - (b) 要求我们关闭未平仓合约
- 4.4 您可以向我们提供口头或书面订单（其中包括通过激石平台提供的订单，如下所述）。我们可以酌情口头或书面承认指示。
- 4.5 订单可以是：
- (a) 当天订单，这意味着您提交的订单将在纽约（东部时间）下午4:55取消;
  - (b) 撤销前有效” 订单，这意味着您提交的订单将仍然可以被我们接受，直到您取消订单或我们接受订单。
- 4.6 在提交订单之前，您有责任确保：
- (a) 实际保证金等于或大于本条款第6条规定要求的保证金; 和
  - (b) 您能遵守第3.4条的要求
- 4.7 提交订单时，您必须列出以下详细信息：
- (a) 您打算成为合约项下的多头还是空头；
  - (b) 合约数量;和
  - (c) 适用于该订单的基础工具和其他我们可能会随时要求提供的信息。

## 接受订单

- 4.8 我们可依酌情权单方面决定接受全部或部分订单。当我们在我们的记录中记载有关合约交易时，就意味着我们接受了订单。
- 4.9 我们接受订单后，订单对您具有约束力。除了向您提供确认之外，您同意我们可以在没提供其他接受通知的情况下接受订单。
- 4.10 如果我们决定不接受订单，我们会通知您。
- 4.11 以下订单可能会提交：
- (a) 以市场上可获得的价格尽快买卖基础工具的市场订单;
  - (b) 当价格达到预定的水平时的限制和停止交易的订单，这些订单适用于所提供的各种基础工具（或这些类型的订单的组合）。
    - (i) 限制订单买入和止损订单卖出提交价格必须低于当前市场价格; 或者
    - (ii) 限制订单卖出和止损订单买入必须高于当前市场价格。



- 4.12 如果达到了卖出定单的买入价或买入定单的卖出价，那么定单将以市场可获得的价格尽快成交。因此，限制和止损订单不能保证在指定的价格或数量下执行。
- 4.13 如果我们在接受该订单前未收到您的取消订单请求，由于接受订单而导致的开仓或平仓，根据协议对您和我们都是有效且具有约束力的。
- 4.14 您确认您的任何修改或取消订单的行为均无效，除非：
- (a) 我们已经以我们可接受的方式收到了您的取消通知;或者
  - (b) 我们已经在我们的账簿和记录中取消了订单。

## 定价错误

- 4.15 由于我们或任何第三方，我们的保证金外汇合约或差价合约的报价可能会出现错误、遗漏、错误引用（“**重大错误**”），这些错误在考虑到市场情况和当时基础工具的报价可能是重大的。重大错误可能包括不正确的价格、日期、时间、保证金外汇合约、差价合约、任何错误、任何不明确的信息。如果一个交易是基于重大错误，我们保留以下不用经过您同意的权利：
- (a) 修改保证金外汇合约或差价合约的条款和细则，以反映我们判定的如果在没有重大错误的情况下，保证金合约或差价合约开仓时的公平价格;
  - (b) 对您的账户进行股权调整，前提是：
    - (i) 如果没有重大错误，调整的价值反映了我们认为在保证金外汇合约或差价合约订立时的公平价格，和;
    - (ii) 我们会在合理的情况下尽快为您提供调整记录。
  - (c) 关闭交易及由其产生的任何未平仓合约;
  - (d) 从一开始就使金合约或差价合约无效; 或者
  - (e) 避免采取行动修改无效除保证金外汇合约或差价合约
- 4.16 在我们意识到重大错误后，我们将合理地、真诚地并在可行的情况下尽快行使第4.15条的权利。在可能的情况下，我们会事先通知您根据本条款我们采取的任何行动，但如果不可行，我们会在事后尽快通知您。在我们没有欺诈或重大过失的情况下，我们不对您发生或遭受的由重大错误产生的任何损失、成本、索赔、要求、费用承担责任（包括利润损失或间接或附带损失），这包括由我们所依赖的信息服务产生的重大错误。
- 4.17 如果发生重大错误并且我们根据第4.15条行使我们的权利，我们可能会在没有通知您的情况下调整您的账户，或要求您将由于重大错误已支付给您的与保证金外汇合约或差价合约有关的所有款项，作为债务到期偿还给我们，并在需要时支付给我们。

## 价格、执行流程和激石平台操纵

- 4.18 如果我们合理地认为您已经操纵了我们的价格、执行流程、激石平台，我们可能会根据第4.16条的规定依绝对自主酌情权作出以下决定，而不再另行通知您：



- (a) 如果交易导致您欠我们资金，则强制执行交易;
- (b) 如果交易导致我们欠您资金，则从一开始就将您的所有交易视为无效，除非您在我们根据本条款通知您的30天内提供确凿证据，来证实您未发生任何违反保证、误传、违反协议项下承诺;
- (c) 扣留任何涉嫌从此类活动中获得的资金;
- (d) 对您的账户进行修改或调整;
- (e) 关闭您的账户;和/或
- (f) 采取我们认为适当的其他行动。

## 5. 没有转让

- 5.1 合约不会将任何基础工具的合法和有利的权益转让给您，并且任何一方均没有获取或交付标基础工具的权利或责任。

## 6. 所需保证金

### 保持所需保证金的义务

- 6.1 我们的保证金要求适用于所有合约的整个期限，您有责任确保所需保证金是始终在您的账户上可以使用的。我们可能会也可能不会通知您您账户上的实际保证金低于所需保证金。如果在合约期间的任何时间，实际保证金不足以支付所需保证金，您必须平仓或转给我们足够的资金。当我们要求您这样做时，您必须立即采取行动并保留转账记录。无论您是否采取此类交易，我们都可依酌情权单方面决定取消订单，或平仓一份或多份合约或合约的一部分，而无需对此承担任何责任。
- 6.2 如果在合约期间的任何时候，实际保证金低于您账户上的所需保证金，这笔不足部分应该立刻支付给我们。未能向我们支付差额将构成违约事件。
- 6.3 我们通过激石平台为您提供账户的信息使用权，以便于您计算所需保证金。在通过电话下单时，您有责任确保您在下单前要求提供有关您账户的所有相关信息，包括有关您当前未平仓合约的所有信息。对于由于您没有要求提供这些信息而可能遭受或产生的任何损失，我们概不负责。
- 6.4 如果在我们控制范围内，我们无法为您提供使用激石平台查看您的账户信息，我们将尽量努力与您联系来要求您存入增加资金，以使您的帐户实际保证金等于所需保证金。您接受如果在极端情况下，您的合约正在或已经迅速地走向不利于您的方向，我们可能无法在行使我们协议项下平仓权利之前联系到您。在任何情况下，我们向您提出的任何要求、联系、电话、通知，并不会使本条款项下您的豁免无效。

## 7. 佣金、收费和其他费用

- 7.1 您必须向我们支付我们随时在我们的网站 [www.pepperstone.com](http://www.pepperstone.com) 上发布的适用佣金和收费。 请访问



问我们的“账户概览”页面，查看适用于您选择的产品的佣金和收费，并从提供的列表中选择相关产品。

- 7.2 如果发生以下情况，我们可以提前30天通知您更改我们的佣金和收费：
- (a) 市场条件，包括竞争行为，意味着我们改变我们的条件是慎重的;
  - (b) 出于商业原因，我们希望改变我们的总成本及定价结构; 或者
  - (c) 您的个人情况的重大改变。
- 7.3 由于我们无法控制的外部环境，有时可能会在不能给您30天通知的情况下，我们被要求更改我们的佣金和收费。发生这种情况时，我们会尽快通知您。这种情况包括：
- (a) 与我们交易对手的关系发生变化，影响我们的成本结构; 和
  - (b) 佣金变化（这包括由于我们以外币收取佣金，由货币大幅波动导致的），以及由我们转给您的有关交易所、结算所、信息提供商或其他第三方供应商收取的费用变化。
- 7.4 根据本条款第7条，您当天产生佣金、收费、其他费用将在当天营业结束时，从您的账户扣除。

## 8. 未平仓合约的利息

### 我们不支付利息给我们为您持有的存款

- 8.1 除非另有书面约定，否则我们没有义务：
- (a) 向您支付任何账户的自由余额或我们持有的任何其他款项的利息; 或
  - (b) 向您收取我们就此类款项或与任何合约有关的利息。

### 违约利息

- 8.2 如果您未能根据协议支付应付给我们的款项，我们可能会以违约利率向您收取未付款项的利息。违约利率是相关基础工具的中央银行目标现金利率加上我们自主决定的3%。违约利息将每天从您的账户中扣除，直到您付清欠款为止。

### 利率的变化

- 8.3 为了您的利益，或由于我们无法控制的外部环境变化，我们可能会在没有通知您的情况下更改此类利率。这种情况包括：
- (a) 对我们产生一定影响的，影响总体利率水平的国内外货币或信贷政策的变化;
  - (b) 对我们产生一定影响的，包括货币和债券市场在内的，影响总体利率水平的的其他事态发展；或

者

(c) 影响我们的成本结构的，我们与交易对手的关系发生的变化。

8.4 在下列情况下，我们可能会发出30天的通知变更此利率：

(a) 市场条件，包括竞争行为，意味着我们改变我们的条件是谨慎的；

(b) 出于商业原因，我们希望改变我们的总成本及定价结构；要么

(c) 您个人情况的重大改变。

## 9. 货币兑换

9.1 我们或您根据协议支付的金额可以是澳元（AUD）、美元（USD）、英镑（GBP）、欧元（EUR）、加拿大元（CAD）、日元（JPY）、新西兰元（NZD）、瑞士法郎（CHF）、新加坡元（SGD）、港币（港元），根据以下条款：

(a) 您账户之间以不同货币计价的转账资金，将按当前即期汇率进行兑换。相关资金将被兑换为您的指定货币（澳元、美元、英镑、欧元、加拿大元、日元、新西兰元、瑞士法郎、新加坡元、港元），减去我们向您收取的最高达1%的兑换费；和

(b) 平仓时，已实现的利润和损失将以当前即期汇率，立即转换为您的指定货币（即澳元、美元、英镑、欧元、加拿大元、日元、新西兰元、瑞士法郎、新加坡元、港元）。

9.2 根据本条款第9条发生的金额，将在货币兑换发生当天营业时间结束时，从您的账户扣除。

9.3 我们可酌情豁免或推迟兑换费用。

## 10. 在指定日期前持有合约的掉期费

10.1 如果合约在指定日期前一天的营业结束时仍被持有，它将会被滚动到新的指定日期。在市场重新开放时，合约会产生由我们根据以下条款确定的掉期费：

(a) 如果您是多头，并且买入掉期率高于卖出掉期率，则我们必须按照买入掉期率减去卖出掉期率的利率，支付未平仓合约的合约价值利息；

(b) 如果您是多头，并且买入掉期率低于卖出掉期率，则您必须按照买入掉期率减去卖出掉期率的利率，支付未平仓合约的合约价值利息；

(c) 如果您是空头，并且卖出掉期率高于买入掉期率，则我们必须按照买入掉期率减去卖出掉期率的利率，支付未平仓合约的合约价值的利息；

(d) 如果您是空头，并且卖出掉期率低于买入掉期率，则您必须按照买入掉期率减去卖出掉期率的利率，支付未平仓合约的合约价值利息。



10.2 掉期费支付是通过调整基础合约的价值来实现的，该金额是根据本条款计算的和掉期费用金额相等。

## 11. 合约平仓

### 反向合约

11.1 如果在任何时候：  
您可以指示我们签订一份与您的一份或多份未平仓合约反向的合约。

### 平仓合约

11.2 合约会在以下情况下被平仓：  
(a) 我们接受了您要求平仓合约的订单（包括根据本条款第11.1订单被视为平仓）；要么  
(b) 由我们根据第21条关闭。

### 在平仓后进行的结算

11.3 如果合同根据第11.2条被平仓，我们必须支付您所有盈利，或者您必须支付您所有损失，如果该款项未根据第7条预付。

## 12. 交易确认

### 和您确认

12.1 如果我们接受订单，我们会向您发送确认书。  
12.2 如果我们未能成功地向您发送确认书，并不影响订单或合同的有效性。  
12.3 如果有以下冲突：  
(a) 协议；和  
(b) 我们关于合约或订单交易的记录，  
则以我们的交易记录为准

### 激石交易平台

12.4 激石平台是一个网上工具，可让您执行并查看某些交易，下载和打印我们提供的有关您账户的确认书和其他报告。  
12.5 您可以访问并使用激石平台：  
(a) 向我们提交订单；  
(b) 接收我们提供的确认书和其他报告；



- (c) 审查您的合约; 和
- (d) 监督您在协议下的义务。

12.6 我们会在激石平台上发布相关信息，提供给您确认书和其他报告。

12.7 除了在激石平台上发布外，我们还可以通过电子邮件发送确认书和其他报告。

12.8 以下条款适用于通过激石平台执行的合同：

- (a) 我们不对您由于系统故障、传输失败或延迟、以及类似的技术性故障所遭受或产生的任何损失、费用、成本、责任承担责任，无论这些故障是否在我们控制的范围之内;
- (b) 由于我们输入的错误或反馈错误、或者我们对您输入系统的信息的错误理解，导致报价错误而致使您可能遭受的任何收益或损失的减少，我们不承担任何责任;
- (c) 我们有权根据错误发生时有关基础工具的市场价值对您的账户进行必要的更正;
- (d) 我们可能会向您提供实时交易价格。由于我们之间的传输延迟，我们提供的价格可能会在最初提供时和收到您的订单时发生变化。
- (e) 激石平台可能有多个版本，这些版本可能在某些方面不一样，包括但不限于应用的安全级别和可用的产品和服务。由于您使用的激石平台版本可能与我们当前最新更新的标准版本不同，我们不对您由此遭受或产生的损失、费用、成本、责任负任何责任，;
- (f) 您对所有订单，和通过激石平台使用您的姓名、密码或任何其他个人身份识别方法来验证了您的身份发送的所有信息的准确性负责，;
- (g) 您必须妥善保管所有密码，并确保第三方不得使用您的交易设施;
- (h) 即使您的密码未经授权或错误使用，您也需要承担通过您的密码执行的合约的责任。和
- (i) 我们发送给您的或在激石平台上或提供给您您的确认书，构成我们对合同的确认，无论激石平台是否确认在您传送指示后立即执行合同

## 错误

12.9 您必须验证从我们收到的每份文件的内容。除非您在收到文件后的3个工作日内以书面形式通知我们，否则我们将认为这些文件是正确和确凿的。

## 13. 我们的权利

13.1 除我们根据协议的其他权利外我们可以在通知或不通知您的情况下，：

- (a) 在我们合理认为在适当情况下平仓或取消全部或部分合约;
- (b) 减少您的头寸限额;
- (c) 拒绝订单;
- (d) 终止协议，包括本条款;



- (e) 调整合约的价格、规模或价值; 或
- (f) 调整保证金要求(杠杆)。

13.2 如果发生以下情况,我们可能会根据第13.1条的规定行使我们的权利:

- (a) 发生违约事件;
- (b) 我们合理地认为存在异常交易条件;
- (c) 我们合理地认为有必要保护我们协议项下权利;
- (d) 由于我们无法控制的原因,有关市场资料不可用,我们无法在相关合约出价;
- (e) 我们依绝对酌情权决定的,并且仅在这种情况下,我们会书面通知您这个决定;
- (f) 我们认为您可能涉及公司法第1042A条所指的“内幕消息”;
- (g) 我们认为您可能违反任何适用的法律;
- (h) 澳大利亚证券与投资委员会或任何其他监管机构或主管部门对我们双方任何一方的要求;
- (i) 您的实际保证金低于您账户所需的保证金;或者
- (j) 关于一个基础工具,您的订单总合约价值和其他订单总合约价值总和,低于最小的和高于最高的我们合理认为的市场价值。

13.3 本条款(第13条)适用在任何时候我们行使平仓全部或部分合约的权利。

13.4 您同意我们可以将您的所有合约以及我们依绝对酌情权决定的相关比例的部分合约平仓。

## 14. 暂停和市场中断

14.1 如果在任何时候:

- (a) 任何交易所的基础工具交易受限或暂停; 要么
- (b) 在任何交易所受限或暂停的交易会导致所有相关指数的交易受限,因此我们无法确定该基础工具价格,则基础工具价格应为被视为在该限制或暂停之前的最后的基础工具价格。

14.2 如果限制或暂停持续5个营业日,我们可能会关闭所有合约。在这种情况下,我们将基于诚信原则确定平仓日期和平仓价值。我们保留在此类限制或暂停期间随时调整受影响的基础工具价格的权利,此调整是由我们合理自主判定的,但会考虑到影响整个交易或相关的基础工具交易的当前市场状况。

## 15. 客户的保证和陈述

15.1 您和每位担保人(如适用)保证并表示:

- (a) 如果您以法人团体的名义完成了申请:



- (i) 您根据您所在的司法管辖区的法律正式授权并有效存在; 和
- (ii) 您拥有适当的权力, 并根据您的组织结构文件获得必要的法人或其他权力
- (b) 如果您以信托受托人的名义填写了申请表:
  - (i) 您是信托的唯一受托人;
  - (ii) 没有采取行动或建议移除您作为信托的受托人;
  - (iii) 您有权根据信托契约签署并遵守协议、合约、订单的义务;
  - (iv) 您拥有完全权利和有效授权(包括信托契约及其章程(如果有))签署协议和合约、提交订单、履行其项下的义务并准许其强制执行;
  - (v) 关于您的根据协议、合约或订单产生的义务, 您有从信托的资产中获得完全赔偿的权利;
  - (vi) 信托基金有足够资金支付您的从信托基金中获得赔偿权利和所有其他义务;
  - (vii) 您在信托契约下没有, 也从未曾违约;
  - (viii) 未采取或提议终止信托的行动;
  - (ix) 您和您的董事及其他管理人员(相关人员)已履行了与信托有关的义务;和
  - (x) 您已仔细考虑了协议、合约、订单的目的, 并相信签署协议、合约、订单均为受益人的利益, 并且同意受托人文件的条款是公平合理的;
- (c) 关于开展业务以及与协议、合约、订单的履行、有效性或可执行性的所有必要同意书的均已取得且完全有效;
- (d) 您没有丧失法定能力, 并且您履行协议或协议项下所有合约或交易是不受限于任何法律或法规;
- (e) 您遵守所有适用法律, 包括但不限于所有税务法律法规、外汇管制要求和注册要求;
- (f) 您提供给我们的信息完整, 准确, 并且不存在任何重大方面的误导;
- (g) 除非在申请表中注明, 否则您不是信托的受托人;
- (h) 存入您账户的资金不受抵押权的限制;
- (i) 您不存在未补救的违约事件;
- (j) 没有任何议案或索赔悬而未决, 其不利决定可能对您或担保人的履行协议、合约和订单下各自义务的能力, 或对任何授予我们的其他权利有重大不利影响; 和
- (k) 就您在协议、合约或订单下的义务而言, 您无权对您自己或者您的资产或收入, 提出基于主权或其他类似诉讼、执行、扣押或其他法律程序的一般豁免权或豁免权的要求。

15.2 每次您下订单时, 上述担保保证和陈述均被视为重复有效。



15.3 您和担保人确认我们已依据本条款（第15条）中的陈述和保证条款签署了协议。

## 16. 承诺和同意

16.1 您和担保人承诺：

- (a) 如果您或担保人提供的任何保证或陈述是错误或误导的，请通知我们；
- (b) 尽一切必要确保不发生违约事件；和
- (c) 向我们提供我们可能随时合理要求的您或担保人的财务或其他信息。

## 17. 赔偿责任和免除责任

### 赔偿

17.1 您会赔偿我们因下列事项产生的任何责任或损失，以及与此相关的所有费用：

- (a) 我们诚信为原则执行与协议、合约或者订单有关的，来自您的办公室或由授权人员提供的传真、电话、电子邮件或书面指令；
- (b) 违约事件；
- (c) 协议、合约或订单；要么
- (d) 我们根据任何监管机构或政府机构的任何指示、请求或要求采取行动。

17.2 您同意根据我们的要求支付本赔偿条款下应付的所有款项。

17.3 本赔偿条款持续有效直到协议终止。

### 免责

17.4 我们不承担因以下原因造成的任何损失或费用：

- (a) 行使或企图行使、未能行使或延迟行使协议项下的权利或补救的行为；
- (b) 不接受您的订单或延迟接受您的订单；或者
- (c) 没有或者延迟在您的账户中指定实际保证金或自由余额。

## 18. 我们和您之间的交易

18.1 我们有权根据口头或书面订单采取行动：

- (a) 任何授权人；



- (b) 任何显示给我们是授权人，尽管该人事实上并非是授权人; 和
  - (c) 使用您的用户名、帐号、用户ID和/或密码进行传输。
- 18.2 您同意及时向我们提供我们合理要求的所有指令。如果您没有及时提供您的指令，我们可以依绝对酌情权决定采取我们认为必要或适当的措施（以您的费用为代价），以保护您和我们自己。此条款也适用于我们无法联系到您的情况。
- 18.3 如果指令是要向您汇款，或者如果我们认为在必要的或适当的时候，我们可能（但我们没有义务）要求您以我们合理要求的形式进行确认。
- 18.4 如果不止您一人签署协议（例如，联名账户持有人）：
- (a) 每个人的责任是连带责任;
  - (b) 我们可以根据任何显示给我们是授权人的指示行事，无论实际上该人是否为授权人;
  - (c) 我们向任何人提供的通知或其他通信被视为已提供给所有签订同一协议的人; 和
  - (d) 如果共同签订协议的任何人发生违约事件，则根据第21条我们的权利将适用。

## 19. 税款

### 印花税

- 19.1 您必须支付和解释任何转让或类似税款，以及与根据协议进行的任何交易相关的贷款担保或其他印花税。您同意赔偿我们并保证我们不会因您未能这样做而承担任何责任。

### 商品及服务税

- 19.2 除非明确规定包括商品及服务税，否则对协议项下任何供应的计算不包括商品及服务税。
- 19.3 如果我们或我们集团公司的任何成员根据协议支付任何商品和服务的消费税，除了支付所有购买该商品和服务外（不包括消费税）之外，您必须：
- (a) 向我们或我们集团公司的相关成员（视情况而定）支付应付商品及服务消费税，而不扣除或抵销任何其他付款;和
  - (b) 您要在全部或部分款项到期支付时支付该款项，除非您可以在收到该商品及服务的税务发票（或调整说明）后才需付款。
- 19.4 本条款中的词汇定义与1999年新税制（商品及服务消费税）法的相同。

### 扣缴

- 19.5 如果您支付任何有关扣缴或扣减的款项，您必须支付给我们适当的额外款项，以确保我们实际收到的金额等于如果没有扣缴或扣减的全部金额。
- 19.6 如果我们支付了任何有关扣缴或扣减的款项，我们将支付给您该付款后您的净额，并且不会向您支付额



外金额。

## 20. 担保和赔偿保证

### 担保人的要求

20.1 您在协议下的义务必须得到以下担保：

- (a) 如果您是公司（包括受托人），由公司的每位董事；和
- (b) 在任何其他情况下，依我们绝对酌情权决定要求提供的这种担保。

### 考虑

20.2 担保人同意，我们根据本担保和赔偿保证条款依靠担保人承担义务并给予权利。

### 担保

20.3 担保人无条件地且不可撤销地向我们保证您遵守与协议有关的义务，包括每笔支付义务。

20.4 如果您没有按照协议及时履行您的义务，则担保人同意在我们要求下遵守这些义务。无论我们是否向您提出要求，我们可能向担保人提出要求。

### 赔偿保证

20.5 如果出现以下情况，担保人应赔偿我们由此产生的任何责任或损失以及所有费用：

- (a) 您没有或无法履行协议项下的义务（包括支付义务）；
- (b) 您在协议下（包括支付义务）的义务被认定为不可执行；
- (c) 担保人根据第20.3条另有规定的义务被认定为不可执行；或者
- (d) 您根据协议所作的陈述或保证，在作出或被视为作出时候，被发现是不正确或误导的。

20.6 担保人同意在我们的要求下根据第20.3条向我们支付任何应付款项。

20.7 在执行这一赔偿权利之前，我们不需要支付费用或付款。

### 担保和赔偿保证的范围

20.8 即使有干扰支付、结算或其他事情，第20.3条中的担保是一项持续义务，并延伸到协议项下您的所有义务。担保人放弃在我们根据本担保和赔偿保证条款向担保人索赔之前，要求我们对您或任何其他人启动诉讼程序或执行其他权利的权利。

### 确认

20.9 担保人确认，在进入此担保和赔偿保证条款之前：

- (a) 获得一份协议副本（以及所有涉及协议义务的文件），并有充分的时间考虑其规定；和



(b) 负责自己了解您的财务状况以及任何其他担保您的与协议有关的义务的人。

## 付款

20.10 担保人同意根据此担保和赔偿保证条款支付款项：

- (a) 全额支付款项，除非法律禁止，不得抵销，反申索或任何扣押或扣除；和
- (b) 以即期付款的货币计算，否则以澳元计算，是立即可用资金。

20.11 如果担保人支付了任何扣缴或扣减的款项，担保人同意支付我们额外的金额，以确保我们实际收到的金额等于我们在没有扣缴或扣减的情况下收到的全部金额。

## 我们的权利是受保护的

20.12 本担保和赔偿保证条款项下我们的权利以及担保人的责任，不受我们或其他任何人的作为和不作为的影响。如下，我们的权利和责任不受任何作为或不作为的影响：

- (a) 改变或取代协议；
- (b) 免除您的义务或给您让步（例如更多的时间支付）；
- (c) 免除任何对您的义务提供担保或赔偿人的义务；
- (d) 在本担保和赔偿之日后，某人成为担保人；
- (e) 对您的义务（包括本担保和赔偿保证条款项下义务）进行担保的担保人义务可能变为不可执行；
- (f) 打算为您担保义务的人没有能担保，或者没有有效地担保；
- (g) 根据协议或法律的执行，共同担保人或共同赔偿人获得解除义务；
- (h) 以任何方式与协议或本担保和赔偿保证条款的关联的人；
- (i) 任何人包括您或担保人的死亡、精神或身体残疾，或清算、行政管理或破产；
- (j) 任何人的成员资格、姓名或业务的变化；要么
- (k) 由我们或任何其他他人默许或延迟。

## 担保人的权利被中止

20.13 只要或可能需要履行与本担保和赔偿保证条款有关的义务，担保人未经我们同意，不得：

- (a) 通过声称您、担保人或其他人有抵消或反申索的权利，来减轻该担保和赔偿担保条款项下的责任；
- (b) 行使任何法定权利来要求享有与协议有关的另一个担保、赔偿、抵押、费用或其他产权负担，或本担保和赔偿保证条款下应付款；
- (c) 根据赔偿权向您或另一名担保人（包括已在申请表上签名为“担保人”的人）索赔一笔款项；或
- (d) 在您的清算，行政管理、破产或另一个担保人的义务（包括已经在申请表格上签名为“担保人”的人）中索赔一笔款项。



## 21. 终止

- 21.1 如果您的所有合约都已关闭，您可以立即通过书面通知我们终止协议，包括本条款和您使用激石平台的相关权利。
- 21.2 我们可以：
- (a) 平仓任何合约; 和
  - (b) 终止协议，包括本条款和您使用激石平台的相关权利，或者：
    - (i) 在任何时候给您7天的通知; 或者
    - (ii) 在违约事件发生后立即终止，或以其他方式保护我们的利益，恕不另行通知。
- 21.3 在任何一方终止的情况下，我们会合并您持有的所有账户，从中扣除应付给您的所有款项，然后转给您所有账户的贷方余额。
- 21.4 协议终止后，除第21.3条规定的权利外：
- (a) 您保证的任何赔偿;
  - (b) 第20条项下的担保和赔偿;
  - (c) 您和担保人的所有保密义务;
  - (d) 您根据第12条对激石平台的义务;
  - (e) 您和担保人提供的陈述和保证;
  - (f) 豁免我们根据协议所承担的责任; 和
  - (g) 协议终止前产生的任何其他权利或义务，继续有全部的效力。

## 22. 一般性条款

### 我们怎样执行权利

- 22.1 我们可以以我们认为适当的方式执行权利、补救措施、同意、拒绝（包括通过执行协议条款）。
- 22.2 如果我们没有完全地或在特定时间内执行权利或补救措施，我们可能会以后执行。
- 22.3 我们的协议项下权利和补救措施是在除法律规定的其他权利和补救措施外的。我们可以按我们选择的任何顺序执行我们的权利和补救措施。



## 抵消

- 22.4 我们可能会根据协议、任何合约或订单，用我们欠您的款项抵销任何您欠我们的款项（不论是否到期付款）。
- 22.5 我们可以采取任何必要的行动来实现本条款下的抵消（包括更改我们向您支付款项的日期）。不管您和我们之间有任何其他协议，本条款都适用。

## 恢复权利

- 22.6 根据有关清算、行政管理、偿付或债权人保护的法律，任何人申请与协议有关的交易（包括付款）是废止或无效。如果要求被提出并坚持、承认或妥协，则：
- (a) 我们立即拥有对您和担保人在我们协议项下交易之前拥有的权利；和
  - (b) 根据我们的要求，您和担保人同意任其所能（包括签署任何文件）在交易之前立即恢复我们持有的任何权利（包括担保）。

## 不能合并

- 22.7 根据协议，我们的权利为附加于、不能合并于、不受影响于本公司持有的任何按揭，费用或其他产权负担或者您对我们的其他义务或者担保人对我们的义务，不管有任何相反的法律法规或产权规定。

## 更多步骤

- 22.8 您同意我们所要求的任何行动（例如获得同意书，签署、编制、完善文件）来：
- (a) 约束您和计划受该协议约束的任何其他人；和
  - (b) 表明您是否遵守协议。

## 修订

- 22.9 我们可能随时更改本条款，并通知您。在这样做时，我们必须遵守适用的法律。
- 22.10 根据第7条，我们可能会提前30天通知您，向您收取额外费用、和/或佣金、或增加协议项下的现行费用和/或佣金。

## 豁免

- 22.11 除非以书面形式，否则本条款或其项下权利不得豁免或更改。

## 转让

- 22.12 在未经我们同意的情况下，您不得转让或以其他方式处理您在协议或合同项下的权利，或者允许其项下权益进行变更。
- 22.13 不用经过任何人同意，我们可以转让或以其他方式处理我们在协议或合同项下的权利。您同意我们可以披露我们认为有必要能帮助我们行使该权利的任何信息或文件。



## 法律不一致

- 22.14 在法律允许的范围内，协议适用于与法律不一致的范围。
- 22.15 如果本条款与PDS之间存在任何不一致之处，PDS将适用。
- 22.16 无效，非法或不可执行的协议条款仅在无效，非法或无法执行的情况下无效，但其余条款不受影响。
- 22.17 我们在协议项下的权利和您在协议项下的责任不受任何可能的法律上的影响。
- 22.18 排除任何现行或未来的法律，如果其运作是为了改变您对协议的义务因而对我们的权利、权力或补救措施（包括延迟或延期）产生不利影响，除非这个排除被法律禁止或无效的。

## 通知和其他通信

- 22.19 在您授权的范围内，我们可能会根据协议和您的授权人通信。
- 22.20 除非协议另有明文规定，否则与协议有关的所有通知、证书、同意、批准、豁免和其他通信：
  - (a) 必须通过电子邮件或我们随时指定的其他方式发送;
  - (b) 必须由发件人（如果是个人）或发件人的授权人签字或签发;
  - (c) 将在发送时被视为接收，除非发件人收到一封自动邮件通知他们该邮件尚未发送出去。
- 22.21 通讯从接收时间开始生效，除非通讯中指定了之后的时间。

## 适用法律

- 22.22 协议受澳大利亚维多利亚州现行法律管辖，您接受该地区法院的非专属管辖权所管辖。

## 保密

- 22.23 各方同意不公开提供任何其他方提供的非公开信息（包括协议的存在或内容），除非：
  - (a) 在提供资料的一方的同意下（不得无理拒绝该同意）;
  - (b) 如果法律、协议、我们的隐私政策的允许或要求，或证券交易所要求;
  - (c) 关于与协议有关的任何法律程序; 或者
  - (d) 与任何人行使权利或处理协议项下的权利或义务有关（包括准备步骤，例如与潜在代理人、或潜在的附属参与者、或其他正在考虑与我们签订与协议有关的合约的人）。

## 同意电话录音

- 22.24 您同意我们可以记录所有电话交谈、互联网对话（聊天）以及您与我们之间的会议，并将这些记录或记录中的笔录副本记录为任何一方的证据（包括但不限于监管机构和/或法庭），由我们全权决定适当的或必要的，就我们与您之间的任何争议或预期争议披露此类信息。



## 净额

- 22.25 如果在某天，协议项下各方应以相同货币支付相同金额，那么在该日期，每一方支付此款项的义务将自动履行并解除。如果付款不是同一种货币，则我们将根据第10条兑换金额。
- 22.26 如果一方应付的总额超过另一方应付的总额，那么应支付较大总额的一方必须向另一方支付超额部分，这样各方的义务会得到履行并解除。
- 22.27 如果协议根据第21条被终止，您和我们同意对对方的索赔通过平仓净额结算被解除。我们将依酌情权自行决定所有受影响合约的平仓价格。其中一方支付的最终金额将是双方支付义务之间的差额。

## 付款货币

- 22.28 协议项下的所有付款必须以澳元或我们同意的任何其他货币支付。

## 任何拖欠我们款项的违约都被视为贷款申请

- 22.29 每次您未能根据协议支付我们应付款项都被视为对我们的贷款申请。

## 纠纷

- 22.30 有关如何根据协议处理投诉的更多信息，请参阅PDS。
- 22.31 你应该注意到，第22.23 和22.24条不会阻止我们在任何其他相关司法管辖区执行任何投诉。

## 23. 披露任何相关利益冲突

- 23.1 我们可能会有在交易双方担任交易主体的利益冲突。

## 24. 隐私

- 24.1 在填写申请表之前，请您仔细阅读协议，包括本条款和我们的隐私政策。申请表格要求您向我们披露个人信息。我们的隐私政策解释了我们如何收集、使用和披露个人信息。
- 24.2 我们会以适当的方式处理您的个人信息，并遵守澳大利亚、英国和欧洲经济区的隐私和数据保护法律法规（如适用）。对于英国和欧洲经济区数据保护法律法规，我们是数据控制者。
- 24.3 “处理”您的个人信息意味着对您的个人信息进行任何操作，包括以任何方式访问、披露、销毁或使用您的个人信息。我们按以下方式处理您的个人信息：
- 我们收集您的个人信息，是为了处理您的申请，如果您的申请被接受，我们用您的个人信息来管理您的投资并向您提供与您的投资相关的服务。如果您不向我们提供您的个人信息，我们可能无法处理您的申请；
  - 为了这样做，我们可能会在保密的基础上披露您的个人信息给我们的代理商、承包商或我们外包服务的第三方服务提供商（本条款称为“服务提供商”）、我们的相关法人团体、我们的专业顾问、或潜在的购买我们的全部或重要部分商务的各方。



- (c) 我们可能会披露您的个人信息给：
- (i) 根据法律的要求或授权的相关监管机构（例如澳大利亚证券与投资委员会或反洗钱监管机构）；
  - (ii) 您向我们提名的财务顾问；和
  - (iii) 您授权下的，推荐您的业务给我们的第三方经纪人或代理人。
- (d) 我们可能会使用您的个人信息向您介绍我们或激石集团的其他公司提供的其他产品和服务，以及客户分析（例如有针对性的广告和创造类似的受众群）。为此，我们可能会将你的信息披露给我们的相关法人团体或其服务提供商；和
- (e) 我们还可能使用您的个人信息来创建匿名统计数据。
- 24.4 您的帐户申请和接受这些条款即表示您同意根据上述第24.3条使用和披露您的个人信息。您有权访问我们持有的有关您的信息，并且同意我们保留收取合理费用的权利。为此，您需要向我们发送书面要求，并向激石的数据保护员提供有关身份验证的信息。您授权我们或我们的代理人，进行我们认为的必要的信用和身份检查。
- 24.5 如果您不同意我们以本条款所述的方式使用或披露您的个人信息用于直接营销目的（根据上述第24.3（d）条），请联系我们的客户支持团队[support@pepperstone.com](mailto:support@pepperstone.com)。这很重要，因为在申请帐户时，您将被视为同意我们为此目的使用和披露您的个人信息。
- 24.6 我们必须以第24.3（a）至（c）条规定的方式使用和披露您的个人信息以向您提供你要求的合约、和有关产品和服务，因此如果您不同意以这种方式使用和披露您的个人信息，可能会影响我们和你进行交易。
- 24.7 如果我们出售我们（全部或部分业务）或进行公司重组，您同意我们披露所持有的与您有关的所有个人信息，用于分析所述的出售、重组、或转让给第三方，并用于您根据本条款同意的同样的目的。
- 24.8 所有激石员工都经过培训，来根据保密原则处理个人信息。
- 24.9 我们持有的所有个人信息都存放在安全的计算机存储设施中或者安全的纸质文件。未经授权的人员不能访问这些存储设施。
- 24.10 我们的网站可能会在您的计算机上安装cookie，以便为您提供更好的服务或增强服务您的客户体验。您可以通过个人浏览器设置关闭这些cookie，但是这样做可能会在一定程度上影响您使用我们的网站。
- 24.11 我们Cookies 政策和隐私政策的完整版本可在我们的网站上获得：请点击[这里](#)。

## 25. 解释

### 25.1 定义

本条款中的一些词语具有以下特殊的含义：

**帐户**是指您在我们这里开设的帐户。

**实际保证金**是指在您的账户的贷方余额中被指定为实际保证金的金额。



**协议**是指本条款、PDS、申请表、确认书以及激石平台或我们网站上的信息，这些协议共同规范我们与您的关系。

**反洗钱与反恐融资法**是指2006年反洗钱与反恐融资法，以及根据该法制定的所有条例、细则和办法，并不时更新、替换或修改。

**申请**是指您根据协议规定的条款和细则向我们申请开户，

**申请表格**是指我们网站上提供的申请表格，必须完成该表格才能开立帐户。

**授权人员**是指由您授权向我们提供指令的人。

**买入掉期率**是指由我们确定的货币或差价合约的掉期利率。

**营业日**指银行在维多利亚州开展一般银行业务的日子（非周六，周日或当地公共假日）。

**差价合约**是指我们根据协议随时向客户提供差价合约；

**客户资金**是指我们的客户根据澳大利亚客户资金规则向我们存入并由我们持有的资金。

**收市**是在美国东部时间下午5点。

**平仓日期**是指合约全部或部分平仓的日期。

**平仓或被平仓**是指根据第11条终止全部或部分合约。

**合约的平仓价格**是指以下方法计算的金额：

*平仓基础工具价格x合约数量（具体根据每个合约规定）。*

**确认书**是指我们通过激石平台或我们认为其他适当的方式发给您的确认消息，确认您根据合约进行的交易。

**合约**是指您与我们之间的场外衍生产品，即支付或接收基础资产价值变动的协议，这会导致长期或短期风险。

**合同数量**是指合同或订单所涉及的名义数量。

**合约价值**是指由我们计算的合约价值或为合约订单的价值。

**商品**是指激石平台或产品列表中提到的石油、天然气或其他商品。

**公司法**是指2001年公司法，并且是随时更新、替换或修改的。

**公司条例**是指公司条例2001，并且是随时更新、替换或修改的。

**成本**包括成本、收费和费用，包括与顾问有关的费用。

**货币**是指我们提名可作为基础合同货币。

**抵押权**是指任何抵押贷款、留置权、押记、质押、由担保方式决定的转让、担保权益、所有权保留、优先权或信托协议、债权、契约、利润预付、地役权或任何其他担保协议，或其他具有同样效力的协议。



以下每一项都是**违约事件**：

- (a) 您没有按照协议规定的方式按时支付应付款项，包括，为避免疑义，在任何时候您的账户的实际保证金低于所需保证金的情况；
- (b) 您没能遵守协议项下的义务（除以上述（a）条款中涵盖的义务外），此行为如果可以得到纠正，但您并没有在7天内纠正此违规行为；
- (c) 发生了或可能发生（或发生一系列事件，这些事件一起发生或可能发生）重大不利影响的事件；
- (d) 法律或诠释的任何更改，使我们落实协议的任何条款均属违法；
- (e) 我们或您被任何监管或授权机构要求终止合约（或部分合约）；
- (f) 您死亡或变为精神不健全；
- (g) 与协议有关的任何陈述或保证，在由您或为您作出或被视为作出时，被发现是不正确或误导的；
- (h) 您超出了您帐户的曝光限额；
- (i) 您或担保人破产；
- (j) 当您是信托的受托人：
  - (i) 您不再是该信托的受托人，或在任何情况下未经你的同意而采取任何步骤委任信托的另一受托人；或
  - (ii) 法院寻求或做出申请或命令以：
    - (A) 免除您作为信托的受托人；
    - (B) 将信托财产提交法院、或由法院管理、或由其控制；要么
    - (C) 发出通知或召开会议，免除您信托的受托人的身分或委任另一人与您共同做为受托人；
- (k) 协议或与协议有关的交易正在或已经（或宣称）完全或部分无效、可撤销或无法执行（本条中的“声称”是指您或任何人代表其中一方声称）；
- (l) 对您的任何财产进行扣押、执行或其他程序，并且没有在7天内移除、解除或支付；
- (m) 由抵押或收费产生的担保对您将成为可执行，且抵押权人或收费人采取措施强制执行抵押或收费；或者
- (n) 我们合理地认为有必要保护我们自己或保护我们的合作伙伴。

**暴露限额**是指我们设定的我们与您的总合约价值的限额。

**自由余额**是指任何时候您账户余额超过所需保证金的余额（如果有的话）。

**担保人**是指申请中任何被确定为担保人的的人。

**初始保证金**请参照在PDS第17.2条中定义。

**流动性提供商**是指我们认为适合达成协议通过交易来管理风险的交易对手，



如果出现以下情况，您将被视为**破产**：

- (a) 您实施破产行为;
- (b) 任命给您破产清算人、或受托人、或类似人员;
- (c) 您是（或者说您是）在行政管理或无力偿债情况下的破产的（每种情况在公司法中都有定义）;
- (d) 您正在进行清算、临时清算、行政管理或清盘，或者为您的财产任命了管理员;
- (e) 您受制于协调、转让、暂停或组合，以防止债权人在任何法令下采取行动或解散；
- (f) 在已作出与您有关的申请或命令（如属申请，则不得在30日内停止，撤回或解雇）、通过决议、提出建议或采取任何其他行动，准备要或可能会导致上述（a），（b）或（c）中的任何一项;
- (g) 您被视为根据公司法第459F（1）条未能遵守法定要求;
- (h) 您是公司法第459（C）（2）（b）条或第585条中所述事件的主体（或者您做出声明，我们从合理推断您是一个主体）;
- (i) 您在无法偿还到期债务;或者
- (j) 根据任何司法管辖区的法律，发生与与您有关和（a）至（g）基本相似的情况。

**上市公司**是指与一个证券相关的的实体，并且适用市场认为是该实体是该证券的发行人。

**多头**是指确认书确认的根据合约在理论上购买了基础工具的当事人。

**亏损**是指合约开仓价值与平仓价值之间的差额，如果您是：

- (a) 多头，合约的平仓价值低于开仓价值; 或者
- (b) 空头，合约的平仓价值高于开仓价值。

**保证金**是指根据协议为了与我们签订或维持一个合约，您必须向我们支付并且保持在您的账户中的一定的金额。

**保证金追加**指通常通过激石平台发给您的通知，要求您充值您账户中作为保证金的金额。

**保证金外汇合约**是指您与我们之间的合约，您可能因货币价格相对波动而赚取利润或遭受损失。

**保证金比率**是指由我们自行决定并在我们的网站上发布的适用于您的合约的百分比。

**保证金要求**是指您需要向我们支付并存入的，进行交易和/或维持未平仓合约的金额。

**开仓价值**意味着：

$$\text{开仓合约基础工具价格} \times \text{合约数量}$$

**开仓基础工具价格**是指我们与您之间达成的协议开立合约时基础工具价格。

**订单**是指您根据协议提出的要约。

**激石平台或交易平台**指签订我们根据协议提供的保证金外汇合约和差价合约的在线软件。

**PDS** 是指产品披露声明，是协议的一部分。

**以前的合同价值**是指以以下方式计算的金额：

- (a) 首次确定的合约价值，开仓价值; 或者
- (b) 在所有其他情况下，最近评估时间的合同价值。

**利润**是指合约开仓价值与平仓价值之间的差额，如果您是：

- (a) 多头，合约的平仓价值高于开仓价值; 或者
- (b) 空头，合约的平仓价值低于开仓价值。

**所需保证金**是指要求账户中保持的贷方金额，计算如下：

- (a) 当下单开立合约时，金额为：  
*开仓价值x保证金比率*
- (b) 在未平仓合约整个期限内：  
*合约价值x保证金比率*

这包括您和我们之间的所有未平仓合约。

**隔夜费用**是指您可能在隔夜持有的期货差价合约中被收取的费用。

**隔夜收益**是指您可能在隔夜持有的期货差价合约中获得利益。

**卖出掉期率**是指由我们确定的货币或差价合约的掉期利率。

**空头**是指确认书中确认为理论上出售基础工具的当事方。

**指定日期**指参照该合约开仓时的未来交割日期。

**掉期收费**是指根据第10条计算的收费。

**掉期率**是指我们经常参考市场利率和融资利率等因素而确定的利率。

**条款**是指本条款和细则。

**基础工具**指我们列出可作为订单或合约基础的工具。基础工具可以是指数、商品、货币、期货合约、金银、权益、加密货币、或其他工具或资产或因素，其价值决定以其为参考的金融产品的价值。

**基础工具价格**是指基本工具单位价格，可以作为合约标的买入或根据具体情况出售。

**基础市场**是指基础工具交易的市場。

**估价时间**是指：

- (a) 基础市场交易时最近的可用价格报价; 和
- (b) 我们依绝对酌情权决定的任何其他时间

**变动保证金**参照PDS第14.4节中的定义。

**网站**是指由域名- pepperstone.com托管的所有页面，并包含客户端门户。



## 25.2 引用一些一般性术语

除非出现相反的含义，否则协议中的（包括本条款）适用于：

- (a) （单数包括复数）单数包括复数，反之亦然；
- (b) （变更或替换）文件（包括本条款）包括其任何变更或替换；
- (c) （法律）法律是指普通法、公平原则和议会制定的法律（议会制定的法律包括州、地区和联邦法律法规及其包括的其他文书，及其合并、修正、重新制定或替换）；
- (d) （人）“人”一词包括个人、事务所、法人团体、合伙企业、合资企业、非法人团体或协会或任何政府机构；
- (e) （两人或两人以上）由两人或两人以上利益达成的协议、陈述或保证，是为了他们的共同利益和他们每个人的个别利益；
- (f) （共同和个别）由两人或两人以上达成的协议、陈述或保证，共同和分别约束他们；
- (g) （定义一群人）一群人或物是指任何两个或两个以上共同体及所有的个体；
- (h) （元）澳元、元、AUD, A\$ or \$ 是指澳大利亚的法定货币；
- (i) （时间的计算）如果一段时间是从某日期或某一行为或事件发生的日期开始计算的，则时间计算不包括该日期；
- (j) （定义一天）一天解释为从午夜开始到24小时以后结束；
- (k) （会计术语）会计术语是指在公司法的会计准则中使用的术语，或者如果与这些准则不一致，则采用澳大利亚普遍接受的会计原则和惯例；
- (l) （含义不受限制）在引入示例时的词语“包括”、“包含”、“例如”或“比如”并不局限于该词在该示例或类似示例中的含义；
- (m) （定义任何事情/行动）任何事情/行动（包括所有/任何款项/金额）都指的是整体及其部分。

25.3 如果协议项下的事件发生在一个非工作日的规定日期，那么此日期将被视为下一个工作日。

25.4 标题（包括条款开头的括号）只是为了方便，不影响对协议的解释。

澳大利亚激石集团有限公司 签发

August 2018



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Level 5, 530 Collins Street  
Melbourne VIC 3000  
AUSTRALIA

Local Call 1300 033 375  
Phone +61 3 9020 0155  
Fax +61 3 8679 4408

[www.pepperstone.com](http://www.pepperstone.com)  
[support@pepperstone.com](mailto:support@pepperstone.com)



# TERMS AND CONDITIONS

*Pepperstone Group Limited*

*August 2018*

Level 5, 530 Collins Street  
Melbourne VIC 3000  
AUSTRALIA

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## 1. APPLICATION

### Applying for an Account

- 1.1 You must complete an Application Form in order to apply for an Account. We will decide whether to accept your Application in our sole discretion.
- 1.2 Unless we agree otherwise, you agree to pay us in cleared funds and maintain those funds with us at all times. We will hold funds in accordance with clause 3.5.
- 1.3 If we accept your Application, we will:
  - (a) establish your Account;
  - (b) if you are required to pay an initial amount under clause 1.2:
    - (i) either deposit the cheque which accompanied your Application Form into our trust account or require you to transfer the amount to our trust account electronically; and
    - (ii) once the funds have been cleared, credit your Account with the initial amount.
- 1.4 Your Account will be active once the steps in clause 1.3 have been completed.
- 1.5 You may apply for more than one Account.

### Term

- 1.6 The Agreements commence when we accept your Application and will remain in force unless terminated in accordance with these Terms.

### Anti-Money Laundering Legislation

- 1.7 You acknowledge that we may require information from you from time to time to comply with the AML/CTF Act. By submitting an Application Form, opening an Account or transacting with us, you undertake to provide us with all information and assistance that we may require to comply with the AML/CTF Act.
- 1.8 We may pass on information collected from you and relating to transactions as required by the AML/CTF Act or other applicable laws and regulations and we are under no obligation to inform you that we have done so. We may undertake any such anti-money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) that we deem necessary or appropriate, and we reserve the right to take any associated action without any liability whatsoever to you.



1.9 You also warrant that:

- (a) you are not aware and have no reason to suspect that:
  - (i) the moneys used to fund your Account have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Australian law, international law or convention or by agreement; or
  - (ii) the proceeds of your investment will be used to finance any illegal activities; and
- (b) neither you nor your directors, in the case of a company, are a politically exposed person as the term is used in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

## 2. OUR SERVICE

### Entry into Contracts

- 2.1 If we accept an Order we will enter into a Contract with you, provided that you comply with your obligations under the Agreements.
- 2.2 A notice given by us stating any amount or rate for the purpose of the Agreements and any Contract or Order is sufficient evidence of the amount or rate unless it is proved to be incorrect.
- 2.3 We enter into each Contract as a principal and not as agent on your behalf. You enter into each Contract as principal (unless we otherwise agree in writing). If you act as an agent on behalf of a principal we will not accept that principal as a 'client' (as defined in the Corporations Act), unless otherwise agreed in writing (whether or not you identify that principal to us).

### Financial product advice

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

### How we provide services

- 2.5 We quote the prices at which we are prepared to deal with you.



## Our trading hours

- 2.6 The Pepperstone Platform opens on Sunday at 5.01pm New York (EST) time and closes at 4:55pm New York (EST) time Friday. This means that you are able to view live prices and place live orders during these hours. You may still access the Pepperstone Platform and view your Account, market information, research and our other services outside of our trading hours, but you will not receive live prices or be able to engage in trading. We provide services to you outside our trading hours at our sole discretion. Trading times of Underlying Instruments may vary within these times. Please check the Pepperstone website ([www.pepperstone.com](http://www.pepperstone.com)) for further information on trading sessions for each Underlying Instrument.
- 2.7 We are under no obligation to quote Underlying Instrument Prices or accept Orders on a public holiday in any jurisdiction which, in our reasonable opinion, affects the relevant Underlying Instrument. We give notice of public holidays and the Underlying Instruments affected on the Pepperstone Platform.

## 3. YOUR ACCOUNT

### Nature of Account

- 3.1 Your Account is a record or a series of records maintained by us (or on our behalf) that shows, at any point in time, the payments you have made or are required to make to us and the payments we have made or are required to make to you, as well as the Contracts you have entered into with us.

### Adjustments to amount on your Account

- 3.2 You authorise and direct us to:
- (a) debit to your Account any Free Balance you withdraw and any amounts payable by you under the Agreements;
  - (b) credit to your Account any amounts deposited by you and any amounts payable by us under the Agreements; and
  - (c) designate the amounts in your Account as either Free Balance or Actual Margin depending on the amounts you deposit with us, your Orders, Contracts and market movements in accordance with the Agreements.
- 3.3 We are not required to notify you before debiting, crediting or designating amounts on your Account.
- 3.4 You agree to deposit and maintain sufficient funds on your Account at all times to satisfy all amounts payable by you under the Agreements. It is your responsibility to ensure that the funds you transfer are cleared in sufficient time to meet all the payment obligations you have under the Agreements.



## Use of funds deposited with us

- 3.5 We deposit any funds paid by you into our trust account, which is an account operated in accordance with the Corporations Act. You agree and acknowledge that:
- (a) your money is not kept separate from the money of other clients in our trust account;
  - (b) we will only withdraw your money from our trust account to:
    - (i) make a payment in accordance with your written directions;
    - (ii) transfer Margin to a Liquidity Provider;
    - (iii) withdraw fees charged as part of a deposit or withdrawal transaction;
    - (iv) pay money to us that we are entitled to as a result of you trading with us; and
    - (v) make a payment that is otherwise authorised by law or in compliance with the operating rules of a licensed market.
  - (c) we are entitled to invest the money in our trust account in accordance with the Corporations Act and Corporations Regulations including in:
    - (i) investments in any manner in which we are, for the time being, authorised to invest in;
    - (ii) investment on deposit with any eligible money market dealer;
    - (iii) investment on deposit at interest with any Australian ADI;
    - (iv) the acquisition of cash management trust interests;
    - (v) investment in a security issued or guaranteed by the Commonwealth or a state or territory; and/or
    - (vi) investment on deposit with a clearing and settlement facility;
  - (d) unless otherwise agreed in writing with you:
    - (i) we are solely entitled to any interest or earnings derived from your money being deposited in our trust account, the trust account of our Liquidity Provider or invested by us in accordance with the Corporations Act. Any interest or earnings are payable to us from the relevant trust account or investment account (as the case requires) as and when we determine;
    - (ii) upon realisation of an investment of your funds, the initial capital invested must either be invested in another investment permitted by the Corporations Act or deposited by us into a trust account operated in accordance with the Corporations Act;



- (iii) in the event that the amount received upon realisation of an investment of your funds is less than the initial capital invested, we must pay an amount equal to the difference into a trust account for your benefit, except where any such difference is the result of amounts paid to us out of the investments in accordance with the Agreements; and
- (iv) we will not charge a fee for investing your money in accordance with the Corporations Act; and
- (e) we do not use your money from our trust account for the purpose of meeting obligations incurred when we hedge with counterparties, nor to meet any trading obligations of other clients. Any obligations that we incur in relation to these transactions are funded from our own money.

### **Withdrawals of Free Balance**

- 3.6 If your Account shows that you have Free Balance, you may ask us to make payment to you in respect of your specified amount. Please note that we may at our discretion elect to withhold any payment requested by you (in whole or in part) if:
  - (a) an amount is required to be maintained with us at all times under clause 1.2; or
  - (b) we are entitled to withhold the amount under the Corporations Act.
- 3.7 We will notify you as soon as reasonably practicable if we decide to withhold any part of your Free Balance under clauses 3.6(a) or 3.6(b).

### **Accounts treated separately**

- 3.8 Where you have opened more than one Account with us, we will treat your Accounts as entirely separate, except as otherwise expressly provided in the Agreements. Any amount standing to your credit on one Account does not, except where we exercise our rights under clause 13 and clause 21.3, discharge any of your liabilities in respect of another Account.
- 3.9 Where you request in writing, we may, in our absolute discretion, agree to treat your Accounts as one Account. In this case, all references to your Account in the Agreements are taken to be your aggregated Accounts. Such a request, if agreed by us, takes effect on the date we notify you, which is to be no later than 7 days from the date of our receipt of your request.

## **4. ORDERS**

### **Quotation of Underlying Instrument Prices**

- 4.1 You may obtain a quote from us for a Contract.



4.2 You acknowledge that:

- (a) any quote provided by us in accordance with this clause is indicative only; and
- (b) no Contract is entered into until your Order is accepted by us in accordance with the Agreements.

## Placing of Orders

4.3 You may, by placing an Order with us:

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

4.4 You may provide us with oral or written Orders (which includes Orders provided via the Pepperstone Platform as described below). We may acknowledge instructions orally or in writing, as appropriate.

4.5 An Order may be:

- (a) a day Order, which means that the Order you place will be cancelled at 22.00 GMT; or
- (b) a "good 'til cancelled" Order, which means that the Order you place will remain capable of being accepted by us, until you cancel the Order or we accept it.

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

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

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

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

## Acceptance of Order

4.8 We may in our sole discretion accept an Order in whole or in part. An Order is accepted by us when we record the transaction concerning the Contract in our records.

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



- 4.10 We will inform you if we decide not to accept an Order.
- 4.11 Orders may be placed as:
- (a) market Orders to buy or sell an Underlying Instrument as soon as possible at the price obtainable in the market; or
  - (b) limit and stop Orders to trade when the price reaches a predefined level, as applicable to the various Underlying Instruments offered (or a combination of these types of Orders).
    - (i) limit Orders to buy and stop Orders to sell must be placed below the current market price; and
    - (ii) limit Orders to sell and stop Orders to buy must be placed above the current market price.
- 4.12 If the bid price for sell Orders or ask price for buy Orders is reached, the Order is filled as soon as possible at the price obtainable in the market. Limit and stop Orders are therefore not guaranteed executable at the specific level or amount.
- 4.13 Where your request to cancel an Order is not received by us prior to acceptance of that Order, the Contract or Close-Out resulting from the acceptance of the Order is valid and binding on you and us under the Agreements.
- 4.14 You acknowledge that any action by you to modify or cancel an Order is ineffective unless:
- (a) we have received a cancellation notice from you in a form acceptable to us; or
  - (b) we have cancelled the Order in our books and records.

## Errors in Pricing

- 4.15 It is possible that errors, omissions or misquotes ("Material Error") may occur in the pricing of Margin FX Contracts or CFDs that we quote, which by fault of either of us or any third party, is materially incorrect when taking into account the market conditions and quotes in Underlying Instruments prevailing at the time. A Material Error may include an incorrect price, date, time or Margin FX Contract or CFD or any error or lack of clarity of any information. If a trade is based on a Material Error, we reserve the right without your consent to do any of the following:
- (a) amend the terms and conditions of the Margin FX Contract or CFD to reflect what we consider to have been a fair price at the time the Margin FX Contract or CFD was entered into, had there been no Material Error;



- (b) apply an equity adjustment to your account, provided that;
    - (i) the value of the adjustment reflects what we consider to have been the fair price at the time the Margin FX Contract or CFD was entered into, had there been no Material Error; and
    - (ii) we provide you with a record of the adjustments as soon as reasonably possible afterwards.
  - (c) Close Out the trade and any open Contracts resulting from it;
  - (d) void the Margin Contract or CFD from the outset; or
  - (e) refrain from taking action to amend or void the Margin FX Contract or CFD.
- 4.16 We will exercise our rights under clause 4.15 reasonably, in good faith and as soon as reasonably practicable after we become aware of the Material Error. Where possible, we will give you prior notice of any action we take under this clause, but if it is not possible, we will give you notice as soon as possible afterwards. In the absence of fraud or gross negligence on our part, we are not liable to you for any loss, cost, claim, demand or expense that you incur or suffer (including loss of profits or indirect or consequential losses), arising from or connected with a Material Error, including where the Material Error arises from an information service on which we rely.
- 4.17 In the event that a Material Error has occurred and we exercise our rights under clause 4.15, we may, without notice, adjust your Account or require that any moneys paid to you in relation to the Margin FX Contract or CFD that is the subject of the Material Error be repaid to us as a debt due and payable to us on demand.

### **Price, execution process and Pepperstone Platform manipulation**

- 4.18 If we reasonably believe that you have manipulated our prices, our execution processes or the Pepperstone Platform, we may in our sole and absolute discretion and subject to clause 4.16, without notice to you:
- (a) enforce the trade(s) against you if it is a trade(s) which results in you owing money to us;
  - (b) treat all your trades as void from the outset if they are trades which result in us owing money to you, unless you produce conclusive evidence within 30 days of us giving you notice under this clause that you have not committed any breach of warranty, misrepresentation or breach of undertaking under the Agreements;
  - (c) withhold any funds suspected to have been derived from any such activities;
  - (d) make any resultant corrections or adjustments to your Account;
  - (e) close your Account; and/or
  - (f) take any other action that we consider appropriate.



## 5. NO TRANSFER

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

## 6. REQUIRED MARGIN

### Obligation to have Required Margin

- 6.1 Our Margin Requirements apply throughout the term of each Contract. It is your responsibility to ensure that the Required Margin is available on your Account at all times. We may or may not notify you that the Actual Margin is less than the Required Margin on your Account. If at any time during the term of a Contract, the Actual Margin is not sufficient to cover the Required Margin, you must Close-Out open Contracts or transfer adequate funds to us. You must action and document any such transfer immediately when we request you to do so. Regardless of whether you action such a transaction, we may cancel any Orders or Close-Out one or more of your Contracts or part of a Contract at our sole discretion, without assuming any responsibility towards you for such an action.
- 6.2 If at any time during the term of a Contract, the Actual Margin is less than the Required Margin on your Account, the shortfall is immediately due and payable to us. A failure to pay the shortfall amount to us will constitute an Event of Default.
- 6.3 We provide you with access to information about your Account to enable you to calculate the Required Margin via the Pepperstone Platform. When placing Orders over the telephone, it is your responsibility to ensure that you request all relevant information in respect of your Account before your Orders are placed, including all information in respect of your current open Contracts. We are not responsible for any losses you may suffer or incur as a result of your failure to request this information.
- 6.4 Where we are not able to provide you with access to the Pepperstone Platform to view your Account information due to circumstances within our control, we will use reasonable endeavours to contact you to request additional funds so that the Actual Margin equals the Required Margin in respect of your Account. You accept that in extreme circumstances where your Contracts are moving or have moved particularly quickly against you, we may not be able to contact you before exercising our rights to Close-Out your Contracts under the Agreements. No demands, contact, calls or notices made or given by us to you in any one or more instances invalidates the waiver given by you under this clause.



## 7. COMMISSIONS, CHARGES AND OTHER COSTS

- 7.1 You must pay us the applicable commissions and charges as published by us from time to time on our website at [www.pepperstone.com](http://www.pepperstone.com). To view the commissions and charges applicable to your chosen product, please visit our 'Accounts Overview' page and select the relevant product from the list provided.
- 7.2 We may vary our commissions and charges with 30 days' prior notice to you if:
- (a) market conditions, including competitive behaviour, mean it is prudent for us to change our conditions;
  - (b) for commercial reasons we wish to change our general cost and pricing structure; or
  - (c) significant particulars of your individual circumstances have changed.
- 7.3 Occasionally we may be required to vary our commissions and charges without providing you with 30 days' notice, due to external circumstances beyond our control. When this happens we will provide you with notice as soon as possible. Such circumstances include:
- (a) changes in the relationship with our counterparties which affect our cost structures; and
  - (b) changes in commissions (including as a result of significant currency fluctuations, due to us charging commission in foreign currency) and charges from exchanges, clearing houses, information providers or other third party providers that are passed on to you by us.
- 7.4 Amounts due under this clause 7 are debited from your Account at Close of Business on the day the commission, charge or other Cost is incurred by you.

## 8. INTEREST ON OPEN CONTRACTS

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

- 8.1 Unless otherwise agreed in writing, we are not obliged to:
- (a) pay interest to you on any Free Balance in any Account or on any other sum held by us; or
  - (b) account to you for any interest we receive on such sums or in connection with any Contract.

### Default interest

- 8.2 If you fail to pay an amount payable to us under the Agreements, we may charge you interest on the unpaid amount at the default interest rate. The default interest rate will be the central bank target cash rate for the relevant Underlying Instrument plus 3% as determined by us. The amount of default interest will be debited from your Account daily until the amount owed to us is paid.



## Changes to interest rates

- 8.3 We may vary such interest rates without notice when changes are to your advantage, or are due to external circumstances beyond our control. Such circumstances include:
- (a) changes in domestic or overseas monetary or credit policies that affect the general interest level in a way that impacts us;
  - (b) other developments in the general interest level, including in the money and bond markets, in a way that impacts us; or
  - (c) changes in the relationship with our counterparties which affect our cost structures.
- 8.4 We may vary such interest rates with 30 days' notice if:
- (a) market conditions, including competitive behaviour, mean it is prudent for us to change our conditions;
  - (b) for commercial reasons we wish to change our general cost and pricing structure; or
  - (c) significant particulars of your individual conditions have changed.

## 9. CURRENCY CONVERSIONS

- 9.1 Any amounts paid by us or you under the Agreements may be payable in Australian Dollars (AUD), United States Dollars (USD), British Pound Sterling (GBP), Euro (EUR), Canadian Dollars (CAD), Japanese Yen (JPY), New Zealand Dollars (NZD), Swiss Franc (CHF), Singapore Dollars (SGD) or Hong Kong Dollars (HKD), on the following terms:
- (a) funds transferred between your Accounts that are denominated in different currencies, will be converted at the current spot rate for the conversion of the relevant funds into your nominated currency (Australian Dollar, United States Dollar, British Pound Sterling, Euro, Canadian Dollar, Japanese Yen, New Zealand Dollar, Swiss Franc, Singapore Dollar or Hong Kong Dollar), minus a conversion fee of up to 1 per cent, which we will charge you; and
  - (b) realised profits and losses will be converted to your nominated currency (being either Australian Dollar, United States Dollar, British Pound Sterling, Euro, Canadian Dollar, Japanese Yen, New Zealand Dollar, Swiss Franc, Singapore Dollar or Hong Kong Dollar) immediately on Closing Out of the Contract at the current spot rate.
- 9.2 Amounts due under this clause 9 are debited from your Account at Close of Business on the day that a currency conversion occurs.
- 9.3 We may waive or defer the conversion calculation fee at our discretion.



## 10. SWAP CHARGE FOR CONTRACTS HELD UNTIL THE SPECIFIED DATE

- 10.1 Where a Contract is held at Close of Business on the day before its Specified Date, it is rolled over to a new Specified Date. On re-opening, the Contract is subject to a Swap Charge determined by us in accordance with the following terms:
- (a) if you are the Long Party and the Bought Swap Rate is higher than the Sell Swap Rate, we must pay you interest on the Contract Value of the open Contract at the rate that is the Bought Swap Rate minus the Sell Swap Rate;
  - (b) if you are the Long Party and the Bought Swap Rate is less than the Sell Swap Rate, you must pay us interest on the Contract Value of the open Contract at the rate that is the Bought Swap Rate minus the Sell Swap Rate;
  - (c) if you are the Short Party and the Sell Swap Rate is higher than the Bought Swap Rate, we must pay you interest on the Contract Value of the open Contract at the rate that is the Bought Swap Rate minus the Sell Swap Rate; or
  - (d) if you are the Short Party and the Sell Swap Rate is lower than the Bought Swap Rate, you must pay us interest on the Contract Value of the open Contract at the rate that is the Bought Swap Rate minus the Sell Swap Rate.
- 10.2 The Swap Charge is paid by adjusting the Underlying Instrument Price by an amount equal to the amount of the Swap Charge, calculated in accordance with this clause.

## 11. CLOSE-OUT OF CONTRACTS

### Close-Out of a Contract

- 11.1 You may instruct us to enter into a Contract which is opposite to one or more of your open Contracts.

### Close-Out of Contracts

- 11.2 An open Contract is Closed-Out:
- (a) on our acceptance of your Order requesting Close-Out of your Contract (including where the Order is deemed to be a Close-Out under clause 11.1); or
  - (b) by us under clause 21.

### Settlement following Close-Out

- 11.3 If a Contract is Closed-Out under clause 11.2, we must pay any Profit and you must pay any Loss to the extent that such payment has not been prepaid under clause 7.



## 12. CONFIRMATIONS

### Reporting to you

- 12.1 If we accept an Order, we will send you a Confirmation.
- 12.2 If we fail to send you a Confirmation, it does not affect the validity of the Order or the Contract.
- 12.3 If there is a conflict between:
  - (a) the Agreements; and
  - (b) our records of the transaction concerning a Contract or an Order, our records of the transaction will prevail.

### Pepperstone Platform

- 12.4 The Pepperstone Platform is an online facility that allows you to execute certain transactions as well as view, download and print the Confirmations and other reports that we provide in relation to your Account.
- 12.5 You may access and use the Pepperstone Platform to:
  - (a) submit Orders to us;
  - (b) receive the Confirmations and other reports we provide;
  - (c) review your Contracts; and
  - (d) monitor your obligations under the Agreements.
- 12.6 Confirmations and other reports are made available to you at the time that we post the relevant information on the Pepperstone Platform.
- 12.7 We may email Confirmations and other reports to you in addition to making them available on the Pepperstone Platform.
- 12.8 The following terms apply to Contracts executed through the Pepperstone Platform:
  - (a) we are not liable to you for any loss, expense, cost or liability suffered or incurred by you due to any failure of the system, transmission failure or delays or similar technical errors, whether or not the error might be due to factors under our control;
  - (b) we are not liable to you for any removal of Profits or Losses you might suffer due to errors in quotes which are the result of our typing errors or feed errors committed or our erroneous perception of information entered into the system by you;
  - (c) we are entitled to make the necessary corrections in your Account according to the market value of the Underlying Instrument in question at the time when the error occurred;



- (d) we may offer real-time tradable prices to you. A price offered by us may change in the time between when we initially offer it and when we receive an Order from you, due to delayed transmission between you and us. If automatic Order execution is offered to you, we are entitled to change the price on which the Order is executed to the market value at the time at which we receive the Order from you;
- (e) the Pepperstone Platform may be available in several versions, which may vary in relation to certain aspects, including but not limited to the level of security applied and products and services available. We are not liable to you for any loss, expense, cost or liability suffered or incurred by you due to your use of a version of the Pepperstone Platform that differs from our current standard version, with all available updates installed;
- (f) you are responsible for all Orders and for the accuracy of all information sent via the Pepperstone Platform using your name, password or any other means of personal identification implemented to identify you;
- (g) you must keep all passwords secret and ensure that third parties do not obtain access to your trading facilities;
- (h) you are liable to us for Contracts executed by means of your password even if such use might be unauthorised or wrongful; and
- (i) the Confirmation that we send or made available to you on the Pepperstone Platform constitutes our confirmation of a Contract, regardless of whether the Pepperstone Platform confirms that the Contract is executed immediately upon transmission of your instructions.

## Errors

- 12.9 You must verify the contents of each document received from us. We will take such documents to be correct and conclusive, unless you notify us in writing to the contrary within 3 Business Days of receiving the document.

## 13. OUR RIGHTS

- 13.1 We may, with or without notice, and in addition to any other rights we may have under the Agreements:
- (a) Close-Out or cancel all or part of your Contracts as we reasonably consider appropriate;
  - (b) reduce your Position Limit;
  - (c) refuse Orders;
  - (d) terminate the Agreements, including these Terms;
  - (e) adjust the price, size or value of a Contract; or
  - (f) adjust the Margin Requirement (leverage).



- 13.2 We may exercise our rights under clause 13.1 if:
- (a) an Event of Default has occurred;
  - (b) we reasonably consider that there are abnormal trading conditions;
  - (c) we reasonably consider it necessary for the protection of our rights under the Agreements;
  - (d) we are unable to make prices in the relevant Contract due to the unavailability of the relevant market information for reasons beyond our control;
  - (e) we decide to do so in our absolute discretion and, in this case only, give written notice of such decision to you;
  - (f) we consider that you may be in possession of 'inside information' within the meaning of section 1042A of the Corporations Act;
  - (g) we consider that you may be in breach of any applicable law;
  - (h) either party is so requested by the Australian Securities and Investments Commission or any other regulatory agency or authority;
  - (i) your Actual Margin is less than the Required Margin in respect of your Account; or
  - (j) the aggregate of the Contract Value for your Orders and the Contract Value for all other orders for an Underlying Instrument is below the minimum or above the maximum values that we reasonably consider appropriate in the market.
- 13.3 This clause 13 applies whenever we exercise our right to Close-Out all or part of any Contract.
- 13.4 You accept that we may Close-Out any of your Contracts and any relevant proportions of those Contracts that we decide in our absolute discretion.

## 14. SUSPENSION AND MARKET DISRUPTION

- 14.1 If, at any time:
- (a) trading in an Underlying Instrument on any exchange is limited or suspended; or
  - (b) trading is limited or suspended on any exchange so as to restrict trading within any relevant index, such that we are prevented from determining the Underlying Instrument Price of an Underlying Instrument, then the Underlying Instrument Price of such Underlying Instrument shall be considered to be the Underlying Instrument Price immediately preceding the limitation or suspension.



- 14.2 If the limitation or suspension continues for 5 Business Days, we may Close-Out any Contract. In such circumstances we will determine the Close-Out Date and the Close-Out Value acting in good faith. We reserve the right at all times during the term of any limitation or suspension to adjust the Underlying Instrument Price of any affected Underlying Instrument in our reasonable discretion, but having regard to the then prevailing market conditions affecting trading as a whole or trading in the relevant Underlying Instrument. You accept that we may Close-Out any of your Contracts and any relevant proportions of those Contracts that we decide in our absolute discretion.

## 15. CLIENT'S WARRANTIES AND REPRESENTATIONS

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

- (a) if you completed the Application in the name of a body corporate:
  - (i) you are duly authorised and validly existing under the laws of your jurisdiction of incorporation; and
  - (ii) you are properly empowered and have obtained the necessary corporate or other authority in accordance with your constitutional and organisational documents;
- (b) if you completed the Application in the name of a trustee:
  - (i) you are the only trustee of the trust;
  - (ii) no action has been taken or proposed to remove you as trustee of the trust;
  - (iii) you have power under the trust deed to enter into and comply with your obligations under the Agreements and any Contract or Order;
  - (iv) you have in full force and effect the authorisations (including under the trust deed and its constitution (if any)) necessary to enter into the Agreements and any Contract and make an Order, perform obligations under them and allow them to be enforced;
  - (v) you have a right to be fully indemnified out of the assets of the trust in respect of obligations incurred by you under the Agreements and any Contract or Order;
  - (vi) the trust fund is sufficient to satisfy that right of indemnity and all other obligations in respect of which you have a right to be indemnified out of the trust fund;
  - (vii) you have not, and never have been, in default under the trust deed;
  - (viii) no action has been taken or proposed to terminate the trust;
  - (ix) you and your directors and other officers (as relevant) have complied with their obligations in connection with the trust; and
  - (x) you have carefully considered the purpose of the Agreements and any Contract or Order and consider that entry into the Agreements and any Contract or Order is for the benefit of the beneficiaries and the terms of the trustee documents are fair and reasonable;



- (c) all necessary consents required in order for you to conduct your business and relevant to the performance, validity or enforceability of the Agreements and any Contract or Order have been obtained and are in full force and effect;
- (d) you are not under any legal disability with respect to, and are not subject to any law or regulation which prevents, your performance under the Agreements or any Contract or transaction contemplated by the Agreements;
- (e) you are in compliance with all laws to which you are subject including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements;
- (f) the information you give us is complete, accurate and not misleading in any material respect;
- (g) unless stated in the Application Form, you are not acting as trustee of a trust;
- (h) no funds deposited in your Account are subject to an Encumbrance;
- (i) you have not committed an Event of Default which continues un-remedied;
- (j) there are no actions or claims pending, the adverse determination of which might have a Material Adverse Effect on your ability or the Guarantor's ability to perform your respective obligations under the Agreements, any Contract or Order, or on any other the rights granted to us; and
- (k) you are not entitled to claim for yourself or any of your assets or revenues, any right of general immunity or exemption on the grounds of sovereignty or otherwise from suit, execution, attachment or other legal process, in respect of your obligations under the Agreements or any Contract or Order.

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

15.3 You and the Guarantor acknowledge that we have entered into the Agreements in reliance on the representations and warranties in this clause 15.

## 16. UNDERTAKINGS AND ACKNOWLEDGMENTS

16.1 You and the Guarantor undertake to:

- (a) notify us if any warranty or representation made by you or the Guarantor is or becomes incorrect or misleading;
- (b) do everything necessary to ensure that no Event of Default occurs; and
- (c) provide us with any financial or other information relating to either yourself or the Guarantor that we may reasonably request from time to time.



## 17. INDEMNITY AND EXCLUSION OF LIABILITY

### Indemnity

- 17.1 You indemnify us against any liability or losses arising from, and any Costs incurred in connection with:
- (a) us acting in good faith in connection with the Agreements or any Contract or Order based on fax, telephone, email or written instructions purporting to originate from your offices or to be given by an Authorised Person;
  - (b) an Event of Default;
  - (c) the Agreements or any Contract or Order; or
  - (d) us acting in accordance with any direction, request or requirement of any regulatory authority or government body.
- 17.2 You agree to pay any amounts due under this indemnity on demand from us.
- 17.3 This indemnity survives termination of the Agreements.

### Exclusion of Liability

- 17.4 We are not liable for any losses or Costs caused by:
- (a) the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under the Agreements;
  - (b) not accepting your Orders or delay in accepting your Orders; or
  - (c) not designating or delay in designating amounts as either Actual Margin or Free Balance on your Account.

## 18. DEALINGS BETWEEN YOU AND US

- 18.1 We are entitled to act on the oral or written Orders:
- (a) of any Authorised Person;
  - (b) of any person who appears to us to be an Authorised Person, notwithstanding that the person is not in fact so authorised; and
  - (c) transmitted using your username, account number, user ID and/or password.



- 18.2 You agree to promptly provide any instructions to us which we may reasonably require from time to time. If you do not provide your instructions promptly, we may, in our absolute discretion, take such steps as we consider necessary or desirable (at your cost) for our own protection or your protection. This provision also applies in situations when we are unable to contact you.
- 18.3 We may (but we are not obliged to) require confirmation in such form as we may reasonably request, if an instruction is to remit money due to you or if it appears to us that such confirmation is necessary or desirable.
- 18.4 If you are more than one person entering into the Agreements (for example, joint account holders):
- (a) the liabilities of each person are joint and several;
  - (b) we may act upon instructions received from any one person who is or appears to us to be such a person, whether or not that person is an Authorised Person;
  - (c) any notice or other communication provided by us to a person is deemed to have been provided to all relevant persons entered into the same Agreements; and
  - (d) our rights under clause 21 apply if an Event of Default occurs in respect of any one of the relevant persons jointly entered into an Agreements.

## 19. TAXES

### Stamp duty

- 19.1 You must pay and account for any transfer or similar duties or taxes, and any loan security or other stamp duties chargeable in connection with any transaction effected under the Agreements. You agree to indemnify us and keep us indemnified against any liability arising as a result of your failure to do so.

### GST

- 19.2 Consideration for any supply under the Agreements is exclusive of GST unless expressly stated to be inclusive of GST.
- 19.3 If GST is payable by us or any members in our group of companies on any supply under the Agreements, in addition to providing any consideration for that supply (which is exclusive of GST), you must:
- (a) pay to us or the relevant member of our group of companies (as the case may be) an amount equal to the GST payable on the supply, without deduction or set-off of any other amount; and
  - (b) make that payment as and when the consideration or part of it must be paid or provided, except that you need not pay unless you have received a tax invoice (or adjustment note) for that supply.



- 19.4 Words in this clause have the same meanings as given to them in A New Tax System (Good and Services Tax) Act 1999 (Cth).

### **Withholding**

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

## **20. GUARANTEE AND INDEMNITY**

### **Requirement for a Guarantor**

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

### **Consideration**

- 20.2 The Guarantor acknowledges that we are acting in reliance on the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

### **Guarantee**

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

### **Indemnity**

- 20.5 The Guarantor indemnifies us against any liability or losses arising from, and any Costs we incur, if:
- (a) you do not, or are unable to, comply with an obligation (including an obligation to pay money) under the Agreements;
  - (b) an obligation you would otherwise have under the Agreements (including an obligation to pay money) is found to be unenforceable;



- (c) an obligation the Guarantor would otherwise have under clause 20.3 is found to be unenforceable; or
- (d) a representation or warranty by you under the Agreements is found to have been incorrect or misleading when made or taken to be made.

20.6 The Guarantor agrees to pay any amounts due under clause 20.3 on demand from us.

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

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

20.8 The guarantee in clause 20.3 is a continuing obligation, despite any intervening payment, settlement or other thing and extends to all of your obligations under the Agreements. The Guarantor waives any right it has of first requiring us to commence proceedings or enforce any other right against you or any other person before claiming from the Guarantor under this guarantee and indemnity.

### **Acknowledgment**

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

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

### **Payments**

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

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

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



## Our rights are protected

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

- (a) which varies or replaces the Agreements;
- (b) which releases you or gives you a concession (such as more time to pay);
- (c) which releases any person who gives a guarantee or indemnity in connection with any of your obligations;
- (d) by which a person becomes a Guarantor after the date of this guarantee and indemnity;
- (e) by which the obligations of any person who guarantees any of your obligations (including obligations under this guarantee and indemnity) may become unenforceable;
- (f) by which any person who was intended to guarantee any of the obligations does not do so, or does not do so effectively;
- (g) by which a person who is co-surety or co-indemnifier is discharged under the Agreements or by operation of law;
- (h) by a person dealing in any way with the Agreements or this guarantee and indemnity;
- (i) by the death, mental or physical disability, or liquidation, administration or insolvency of any person including you or the Guarantor;
- (j) by changes in the membership, name or business of any person; or
- (k) by acquiescence or delay by us or any other person.

## Guarantor's rights are suspended

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

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



## 21. TERMINATION

- 21.1 If all of your Contracts have been Closed-Out, you may terminate the Agreements, including these Terms and your rights associated with the use of the Pepperstone Platform, immediately by giving written notice to us.
- 21.2 We may:
- (a) Close-Out any Contracts; and
  - (b) terminate the Agreements, including these Terms and your rights associated with the use of the Pepperstone Platform, either:
    - (i) at any time by giving you 7 days' notice; or
    - (ii) immediately, following an Event of Default or to otherwise protect our interests, without notice to you.
- 21.3 On termination by any party, we may consolidate all Accounts held by you, and deduct all amounts due to you from any Account, before transferring any credit balances on any Account to you.
- 21.4 After the Agreements have been terminated, in addition to the rights set out at clause 21.3:
- (a) any indemnity granted by you;
  - (b) the guarantee and indemnity granted under clause 20;
  - (c) all of your and the Guarantor's confidentiality obligations;
  - (d) your obligations in relation to the Pepperstone Platform under clause 12;
  - (e) the representations and warranties given by you and the Guarantor;
  - (f) any exclusion of our liability under the Agreements; and
  - (g) any other rights or obligations you have which arise before the Agreements are terminated, continue to have full force and effect.

## 22. GENERAL

### How we may exercise our rights

- 22.1 We may exercise a right or remedy or give or refuse our consent in any way that we consider appropriate (including by enforcing clauses under the Agreements).
- 22.2 If we do not exercise a right or remedy fully or at a given time, we may still exercise it later.
- 22.3 Our rights and remedies under the Agreements are in addition to other rights and remedies given by law independently of the Agreements. We may enforce our rights and remedies in any order we choose.
-



## Set-off

- 22.4 We may set off any amount owing by us to you (whether or not due for payment) against any amount due for payment by you to us under the Agreements, any Contract or an Order.
- 22.5 We may do anything necessary to effect any set-off under this clause (including varying the date for payment of any amount owing by us to you). This clause applies despite any other agreement between you and us.

## Reinstatement of Rights

- 22.6 Under law relating to liquidation, administration, solvency or the protection of creditors, a person may claim that a transaction (including a payment) in connection with the Agreements is void or voidable. If a claim is made and upheld, conceded or compromised, then:
- (a) we are immediately entitled as against you and the Guarantor to the rights under the Agreements to which we were entitled immediately before the transaction; and
  - (b) on request from us, you and the Guarantor agree to do anything (including signing any document) to restore any rights (including the Guarantee) held by us immediately before the transaction.

## No merger

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

## Further steps

- 22.8 You agree to do anything we ask (such as obtaining consents, signing and producing documents and getting documents completed and signed):
- (a) to bind you and any other person intended to be bound under the Agreements; and
  - (b) to show whether you are complying with the Agreements.

## Amendment

- 22.9 We may vary these Terms at any time, with notice to you. In doing so we must comply with any applicable law.
- 22.10 By giving you 30 days' notice, we may charge you additional fees and/or commissions or increase the current fees and/or commissions under the Agreements, in accordance with clause 7.

## Waivers

- 22.11 A provision of these Terms, or right created under them, may not be waived or varied except in writing .



## Assignment

- 22.12 You may not assign or otherwise deal with your rights under the Agreements or a Contract or allow any interest in them to arise or be varied without our consent.
- 22.13 We may assign or otherwise deal with our rights under the Agreements or a Contract without the consent of any person. You agree that we may disclose any information or documents we consider necessary to help us exercise this right.

## Inconsistent law

- 22.14 To the extent permitted by law, the Agreements prevail to the extent they are inconsistent with any law.
- 22.15 If there are any inconsistencies between these Terms and the PDS, the PDS will prevail.
- 22.16 A provision of the Agreements that is void, illegal or unenforceable is ineffective only to the extent of the voidness, illegality or unenforceability, but the remaining provisions are not affected.
- 22.17 Rights given to us under the Agreements and your liabilities under the Agreements are not affected by anything which might otherwise affect them at law.
- 22.18 Any present or future legislation which operates to vary your obligations in connection with the Agreements which adversely affects our rights, powers or remedies (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## Notices and other communications

- 22.19 We may, to the extent of your authorisation, give a communication under the Agreement to your Authorised Person.
- 22.20 Unless expressly stated otherwise in the Agreements, all notices, certificates, consents, approvals, waivers and other communications in connection with the Agreements:
- (a) must be sent by email or such other means as we specify from time to time;
  - (b) must be signed or issued by the sender (if an individual) or an Authorised Officer of the sender;
  - (c) will be taken to be received upon sending, unless the sender receives an automated message informing them that the email has not been delivered.
- 22.21 Communications take effect from the time they are received unless a later time is specified in them.

## Applicable law

- 22.22 The Agreements are governed by the laws in force in the State of Victoria, Australia and you submit to the non-exclusive jurisdiction of the courts of that place.



## Confidentiality

- 22.23 Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of the Agreements) except:
- (a) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
  - (b) if allowed or required by law, the Agreements, our Privacy Policy or required by a stock exchanges.
  - (c) in connection with any legal proceedings relating to the Agreements; or
  - (d) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Agreements (including in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with us in connection with the Agreements).

## Consent to Telephone Recording

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

## Netting

- 22.25 If on any date the same amounts are payable under the Agreements by each party to the other in the same currency, then on that date, each party's obligations to make payment of any such amount will be automatically satisfied and discharged. If the amounts are not in the same currency, the amounts will be converted by us in accordance with clause 10
- 22.26 If the aggregate amount that is payable by one party exceeds the aggregate amount that is payable by the other party, then the party by whom the larger aggregate amount is payable must pay the excess to the other party and the obligations to make payment of each party will be satisfied and discharged.
- 22.27 If the Agreements are terminated under clause 21, you and we agree that the claims we have against each other are finally discharged by means of Close-Out netting. We will determine the Close-Out Values for each affected Contract in our sole discretion. The final amount to be paid by one of the parties will be the difference between the payment obligations of the parties.

## Currency of payments

- 22.28 All payments under the Agreements must be made in Australian dollars or any other currency that we may agree to.



## Any default to make payments to us is deemed to be an application for credit

- 22.29 Each failure by you to pay an amount payable to us under the Agreements is deemed to be an application for credit from us.

## Disputes

- 22.30 Please refer to the PDS for further information on how complaints are to be handled under the Agreements.
- 22.31 You should note that this clause 22.30 and clause 22.31 will not prevent us from commencing proceedings in any other relevant jurisdiction for the enforcement of any complaint determination.

## 23. DISCLOSURE OF ANY RELEVANT CONFLICTS OF INTEREST

- 23.1 We may have a conflict of interest in acting as principal on both sides of a transaction.

## 24. PRIVACY

- 24.1 Before completing the Application Form you should read the Agreements, including these Terms and our Privacy Policy, carefully. The Application form requires you to disclose personal information to us. Our Privacy Policy explains how we collect, use and disclose personal information.
- 24.2 We recognise the need to treat your personal information in an appropriate manner and in accordance with Australian, UK and EEA privacy and data protection laws and regulations (as applicable). For the purpose of UK and EEA data protection laws and regulations, we are the data controller.
- 24.3 "**processing**" your personal information means doing anything with your personal information including accessing, disclosing, destroying or using your personal information in any way. We process your personal information in the following ways:
- (a) we collect personal information from you in order to process your Application, and if your Application is accepted, to administer your investment and to provide you with services related to your investment. If you do not provide us with your personal information we may not be able to process your Application;
  - (b) in order to do these things, we may disclose your personal information on a confidential basis to our agents, contractors, or third party service providers to whom we outsource services (for the purpose of this clause the "**Service Providers**"), to our related bodies corporate, our professional advisers, or to a proposed purchase of the whole or any substantial part of our business;



- (c) we may also disclose your personal information to:
    - (i) relevant regulators (such as the Australian Securities and Investments Commission or anti-money laundering regulators) as required or authorised by law;
    - (ii) your financial advisor, if you have nominated them to us; and
    - (iii) a third party broker or agent that you have authorised to refer your business to us;
  - (d) we may use your personal information to tell you about other products and services offered by us or other members of the Pepperstone group of companies and for client profiling (such as targeted advertising and creating lookalike audiences). In order to do that we may disclose your information to our related bodies corporate, or to their Service Providers; and
  - (e) we may also use your personal information to create anonymised statistical data.
- 24.4 Your application for an Account and acceptance of these Terms constitutes your consent to the use and disclosure of your personal information in accordance with clause 24.3 above. You have a right to access information that we are holding about you and where permissible we reserve the right to charge a reasonable fee. To do so you must write to us and request this information and provide verification of your identity to the Data Protection Officer at Pepperstone. You authorise us, or our agents acting on our behalf, to carry out such credit and identity checks as we deem necessary.
- 24.5 Please contact our support team on [support@pepperstone.com](mailto:support@pepperstone.com) if you wish to opt-out from us using or disclosing your personal information for direct marketing purposes (under 24.3(d) above). It is important that you contact us because, in applying for an Account, you will otherwise be taken to have consented to our use and disclosure of your personal information for this purpose.
- 24.6 We must use and disclose your personal information in the ways set out in clauses 24.3(a) to (c) in order to provide you with a Contract and any related products and services that you have asked for, so if you do not give your consent to your personal information being used and disclosed in this way, it may impact on our ability to do business with you.
- 24.7 In the event that we are subject to a sale of our business (in whole or in part) or undergo a corporate re-organisation, you agree that any personal information that we hold relating to you may be disclosed for the purpose of analysing the said sale or reorganisation, or transferred to a third party and used for the same purpose as you have agreed under these Terms.
- 24.8 All Pepperstone staff are trained to handle personal information confidentially.
- 24.9 All personal information in our possession is held in secure computer-based storage facilities or secure paper-based files. No unauthorised persons are able to access these storage facilities.
- 24.10 Our website may instal cookies on your computer to provide you with a better service or enhance your client experience. You have the option to turn these cookies off via your personal browser settings, although this will affect your ability to view parts of our website.
- 24.11 Our Cookies Policy and full Privacy Policy is available on our website [here](#).



## 25. INTERPRETATION

### 25.1 Definitions

Some of the words in these Terms have particular meanings:

**Account** means your account with us.

**Actual Margin** means the amount standing to the credit of your Account and designated as Actual Margin.

**Agreements** means these Terms, the PDS, the Application Form, the Confirmations and the information that is located on Pepperstone Platform or our website, which together govern our relationship with you.

**AML/CTF Act** means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and all regulations, rules and instruments made under that legislation, as updated, replaced or amended from time to time.

**Application** means your application to us for an Account on the terms and conditions set out in the Agreements.

**Application Form** means the form available on our website which must be completed in order to open an Account.

**Authorised Person** means the persons that you authorise to give instructions to us.

**Bought Swap Rate** means the swap rate for a currency or CFD which is determined by us.

**Business Day** means a day on which banks are open for general banking business in Victoria (not being a Saturday, Sunday or public holiday in that place).

**CFD** means a contract for difference that we offer to our clients from time to time under the Agreements.

**Client Money** means the money that our clients have deposited with us and which is held by us under the Australian Client Money Rules.

**Close of Business** means 5.00pm American EST.

**Close-Out Date** means the date on which all or part of a Contract is Closed-Out.

**Close-Out or Closed-Out** means the termination of all or part of a Contract in accordance with clause 11.

**Close-out Value for a Contract** means the amount calculated as follows:

*Close-out Underlying Instrument Price x Contract Quantity*  
(in each case, as applying to the Contract).

**Confirmation** means a message by us to you conforming your transaction in respect of a Contract, over the Pepperstone Platform or by any other means that we consider appropriate.



**Contract** means an over the counter derivative between you and us which is an agreement to pay or receive the change in value of an Underlying Instrument, which will result in long or short exposure.

**Contract Quantity** means the notional quantity to which the Contract or Order relates.

**Contract Value** means the value of any Contract or Order for any Contract, as calculated by us.

**Commodity** means oil, gas or such other commodity as referred to in the Pepperstone Platform or product schedule.

**Corporations Act** means the Corporations Act 2001 (Cth), as updated, replaced or amended from time to time.

**Corporations Regulations** means the Corporations Regulations 2001 (Cth) as updated, replaced or amended from time to time.

**Costs** include costs, charges and expenses, including those incurred in connection with advisers.

**Currency** means a currency which we nominate as being available to underlie a Contract.

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

Each of the following is an **Event of Default**:

- (a) you fail to pay on time any amount payable by you in the manner required under the Agreements, including, for the avoidance of doubt, any situation where the Actual Margin on your Account at any time is less than the Required Margin;
- (b) you fail to comply with any obligation under the Agreements (other than those covered by sub-clause (a) and, if the non-compliance can be remedied, you fail to remedy the non-compliance within 7 days;
- (c) an event occurs which has or is likely to have (or a series of events occur which, together, have or are likely to have) a Material Adverse Effect;
- (d) any change in law or interpretation which makes it unlawful for us to give effect to any provision of the Agreements;
- (e) we or you are requested to end a Contract (or any part of a Contract) by any regulatory agency or authority;
- (f) you die or become of unsound mind;
- (g) a representation or warranty made, or taken to be made, by or for you in connection with the Agreements is found to have been incorrect or misleading when made or taken to be made;
- (h) you exceed the Exposure Limit on your Account;
- (i) you or a Guarantor becomes insolvent;



- (j) where you are trustee of a trust:
  - (i) you cease to be the trustee of the trust or any step is taken to appoint another trustee of the trust, in either case without your consent; or
  - (ii) an application or order is sought or made in any court for:
    - (A) removal of you as trustee of the trust;
    - (B) property of the trust to be brought into court or administered by the court or under its control; or
    - (C) a notice is given or meeting summoned for the removal of you as trustee of the trust or for the appointment of another person as trustee jointly with you;
- (k) the Agreements or a transaction in connection with the Agreements is or becomes (or is claimed to be) wholly or partly void, voidable or unenforceable ("claimed" in this clause means claimed by you or anyone on behalf of any of it);
- (l) distress, execution or other process is levied against any of your property and is not removed, discharged or paid within 7 days;
- (m) any security created by any mortgage or charge becomes enforceable against you and the mortgagee or chargee takes steps to enforce the security or charge; or
- (n) we reasonably consider it necessary for our own protection or the protection of our associates.

**Exposure Limit** means a limit placed by us on the sum of the Contract Values for all Contracts between us and you.

**Free Balance** means, at any time, the excess (if any) of the balance of your Account at that time over the Required Margin.

**Guarantor** means any person(s) identified as such in the Application.

**Initial Margin** has the meaning referred to in section 15.3 of the PDS.

**Liquidity Provider** means any counterparty with which we have deemed suitable to form an agreement to pass trades to in order to manage risk.

You will be deemed **Insolvent** if:

- (a) you commit an act of bankruptcy;
- (b) a liquidator or trustee in bankruptcy or similar person is appointed to you;
- (c) you are (or state that you are) an insolvent under administration or insolvent (each as defined in the Corporations Act);



- (d) you are in liquidation, in provisional liquidation, under administration or wound up or have had a Controller appointed to your property;
- (e) you are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved;
- (f) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with you, which is preparatory to or could result in any of (a), (b) or (c) above;
- (g) you are taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (h) you are the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or you make a statement from which we reasonably deduce you are a subject);
- (i) you are otherwise unable to pay your debts when they fall due; or
- (j) something having a substantially similar effect to (a) to (g) happens in connection with you under the law of any jurisdiction.

**Listed Entity** means in relation to a Security, the entity that is considered by the applicable market to be the issuer of that Security.

**Long Party** means in respect of any Contract the party identified in the Confirmation as having notionally bought the Underlying Instrument.

**Loss** means, the difference between the Opening Value of the Contract and the Close-Out Value of the Contract if you are:

- (a) the Long Party and the Close-Out Value of the Contract is lower than the Opening Value of the Contract; or
- (b) the Short Party and the Close-Out Value of the Contract is higher than the Opening Value of the Contract.

**Margin** means the amount that you must pay to us and have in your Account to enter into or maintain a Contract with us in accordance with the Agreements.

**Margin Call** means a call normally made on you via the Pepperstone Platform, requesting you to top up the amount of money you have in your Account as Margin.

**Margin FX Contract** means a contract between you and us under which you may make a profit or incur a loss arising from fluctuations in the price of the forging currency.

**Margin Percentage** means the percentage rate applicable to your Contract as specified by us in our sole discretion and published on our website.



**Margin Requirement** means the amount of money that you are required to pay to us and deposit with us for entering into a trade and/or maintaining an open Contract.

**Opening Value** means:

*Opening Underlying Instrument Price x Contract Quantity*

**Opening Underlying Instrument Price** means the Underlying Instrument Price on opening the Contract as agreed between us and you.

**Order** means an offer made by you under the Agreements.

**Pepperstone Platform** or **Trading Platform** means any online software for entering into Contracts in Margin FX Contracts and CFDs made available by us under the Agreements.

**PDS** means the Product Disclosure Statement, which is part of the Agreements.

**Previous Contract Value** means, the amount calculated as follows:

- (a) where the Contract Value is being determined for the first time for a Contract, the Opening Value; or
- (b) in all other cases, the Contract Value at the most recent Valuation Time.

**Profit** means the difference between the Opening Value of the Contract and the Close-Out Value of the Contract if you are:

- (a) the Long Party and the Close-Out Value of the Contract is higher than the Opening Value of the Contract; or
- (b) the Short Party and the Close-Out Value of the Contract is lower than the Opening Value of the Contract.

**Required Margin** means an amount that is required to be standing to the credit of your Account and which is calculated as follows:

- (a) when an Order is placed to open a Contract, an amount that is:  
*Opening Value x Margin Percentage*
- (b) throughout the term of an open Contract:  
*Contract Value x Margin Percentage*

in respect of each such open Contract between you and us.

**Rollover Charges** means a charge you may receive on future based CFDs held overnight.

**Rollover Benefits** means a benefit you may receive on future based CFDs held overnight.

**Sell Swap Rate** means the swap rate for a currency or CFD which is determined by us.

**Short Party** means the party identified in the Confirmation as having notionally sold the Underlying Instrument.



**Specified Date** means the future value date with reference to which that Contract was entered into.

**Swap Charge** means the charge calculated in accordance with clause 10.

**Swap Rate** means the rate determined by us from time to time having regard to, among things, market rates and financing rates.

**Terms** means these Terms and Conditions.

**Underlying Instrument** means the instrument which we list as being available to underlie an Order or Contract. An Underlying Instrument could be an index, Commodity, currency, futures contract, Bullion, equity, Crypto Currency or other instrument or asset or factor the reference to which the value of a financial product is determined.

**Underlying Instrument Price** means the rate at which a single unit of the Underlying Instrument may be bought with or, as the case may be, sold in, as the subject of the Contract.

**Underlying Market** means the market in which an Underlying Instrument is traded.

**Valuation Time** means:

- (a) the most recent available price quote while the underlying market is trading; and
- (b) any other time that we decide in our absolute discretion.

**Variation Margin** has the meaning referred to in section 14.4 of the PDS.

**Website** means any page hosted by the web domain name pepperstone.com and include the client portal.

## 25.2 References to certain general terms

Unless the contrary intention appears, a reference in the Agreements (including these Terms) to:

- (a) (singular includes plural) the singular includes the plural and vice versa;
- (b) (variations or replacement) a document (including this agreement) includes any variation or replacement of it;
- (c) (law) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (d) (person) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;
- (e) (two or more persons) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (f) (jointly and severally) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;



- (g) (reference to a group of persons) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
  - (h) (dollars) Australian dollars, dollars, AUD, A\$ or \$ is a reference to the lawful currency of Australia;
  - (i) (calculation of time) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (j) (reference to a day) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
  - (k) (accounting terms) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
  - (l) (meaning not limited) the words "include", "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  - (m) (reference to anything) anything (including any amount) is a reference to the whole and each part of it.
- 25.3 If an event under the Agreements must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
- 25.4 Headings (including those in brackets at the beginning of clauses) are for convenience only and do not affect the interpretation of the Agreements.

Issued by Pepperstone Group Limited

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Level 5, 530 Collins Street  
Melbourne VIC 3000  
AUSTRALIA

Local Call 1300 033 375  
Phone +61 3 9020 0155  
Fax +61 3 8679 4408

[www.pepperstone.com](http://www.pepperstone.com)  
[support@pepperstone.com](mailto:support@pepperstone.com)