



XM

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**CLIENT AGREEMENT
TERMS AND CONDITIONS
OF BUSINESS**

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These Terms and Conditions set forth the terms and conditions governing your Account at Trading Point of Financial Instruments Pty Limited ("XM.com"), and all Transactions in this Account with XM.com. In these Terms and Conditions, "Customer", "Client" or "you" means the person who has completed and submitted an Account Application Form, and in doing so has agreed to be bound by these Terms and Conditions.

Please read these Terms and Conditions carefully as they contain important information concerning your and XM.com's rights and obligations in relation to the services we agree to provide you. Please let XM.com know as soon as possible if there is anything which you do not understand. Our contact details are as follows:

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167 Macquarie House
Macquarie Street
Sydney 2000
NSW
Australia

Telephone Number: +61286078385

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Email: ausupport@xm.com

1. GENERAL INFORMATION

1.1. Information about us: Trading Point of Financial Instruments Pty Ltd (ACN 164 367 113), operating under the business name XM.com, is regulated by the Australian Securities & Investments Commission ("ASIC") and holds an Australian Financial Services License (Number 443670) (hereinafter the "Company" or "XM.com"). We are required to conduct our business and dealings with you in accordance with the Corporations Act 2001 (Cth) as amended from time to time ("Act").

1.2. Our Services: Subject to the terms and conditions of these Terms and Conditions and the Product Disclosure Statement (hereinafter "PDS") and Financial Services Guide (hereinafter "FSG") and acceptance of your Account Application Form to open an Account with us, we will maintain one or more Accounts in your name and will provide general advice, dealing and market making services for foreign exchange transactions and CFDs and such other Financial Products as we may, in our sole discretion, determine from time to time in future. Unless expressly stated otherwise in writing, all Transactions entered into between us shall be governed by the terms of these Terms and Conditions, PDS and FSG, as amended from time to time.

1.3. Our Capacity: We will deal with you as principal.

1.4. Your Capacity: You will enter into Transactions as principal unless otherwise agreed in writing by us.

1.5. Language of Communication: You may communicate with us in English. All the Company's standard documents will be available in English. If a document is translated into another language this will be for information purposes only and the English version will prevail.

1.6. Commencement: These Terms and Conditions supersede any previous agreement between us on the same subject matter and takes effect when you signify your acceptance of these Terms and Conditions by executing or completing and submitting the Account Application Form. By executing or completing and submitting the Account Application Form you confirm that you have read, understood and agree to be bound by these Terms and Conditions with us.

1.7. Amendments: We may amend or replace any section or part of these Terms and Conditions in whole or in part by giving written notice to you. Any change will take effect on the date specified on the notice (hereinafter “Effective Date”).

1.7.1. You can expressly agree to the changes set out in the amendment notice, or you can be deemed to have accepted all the changes in the amendment notice in its entirety from the Effective Date if your conduct subsequent to the date of the amendment notice is consistent with you agreeing to the changes (such as by placing an Order with us). Notwithstanding the foregoing, you will also be deemed to have accepted all the changes as set out in the amendment notice in its entirety from the Effective Date, if you do not provide us written notice of your objection within 14 days of receiving the notice.

1.7.2. If you do not wish to accept any amendment made by us, we may require you to close any of your open Transactions and your Account as soon as reasonably practicable and/or restrict you to placing Orders to close your open Transactions.

1.7.3. Any amendment requested by you must be agreed in a formal amendment agreement signed by us.

1.8. Duty to you: Nothing in these Terms and Conditions purports to exclude or restrict any duty or liability owed by us to you under the Act and Regulations which we are not permitted to exclude or restrict. If there is any conflict between these Terms and Conditions and the Act and Regulations, the Act and Regulations will prevail.

1.9. Duties and Responsibilities: We assume no greater responsibility or fiduciary duty than that imposed by the Act and Regulations or the express terms of these Terms and Conditions.

1.10. Investments: The particular investments which are available to trade from the Company are listed on the Company’s Online Trading Facility and updated from time to time. These Terms and Conditions govern your relationship with the Company for all investments traded with the Company.

1.11. No market between users: Our service does not provide a market amongst or between users of the Online Trading Facility. Each Transaction you enter into is an individual agreement made between you and us as principal. You cannot transfer, negotiate or assign the Transaction to or with any other person.

2. RISK DISCLOSURES

2.1. Prior to entering into any Transaction with you, you will be provided with an FSG and PDS in compliance with the Act and Regulations, which will disclose the risks of investing in Financial Products offered by the Company. Your execution or completion and submission of the Account Application Form will be treated as your informed acknowledgment that you have carefully read, and are prepared to accept, the risks outlined in the FSG and PDS. If there is anything you do not understand it is recommended that you seek specialist independent financial and/or legal advice, in particular, regarding the suitability of dealing in Financial Products offered by the Company.

2.2. The Client represents and warrants to XM.com that:

2.2.1. They have received, read, understood and accepted the risk disclosures provided herein in relation to the Financial Products to be traded and contained herein;

2.2.2. The Client acknowledges, recognises and understands that trading and investment in the Financial Products involves a significant amount of risk which may result in significant loss, and is appropriate only for persons who can assume risk of loss of their invested capital;

2.2.3. If the prices/rates moves against your position or Initial Margin rates are increased there may be insufficient money in your Account to satisfy Margin requirements and you may be called upon to pay substantial funds on short

notice to maintain your positions or we may automatically liquidate any or all of your positions at a loss if you fail to comply with a request for additional funds within the time prescribed;

2.2.4. Whether you make a profit or a loss will depend on fluctuations in the underlying security or commodity which are outside the Company's control;

2.2.5. Payments to the Company for Margin belong to the Company. You do not have any security interest in, or any other right to or interest in, any payment of Margin to us. You authorise us by these Terms and Conditions to withdraw from your moneys held in the client moneys trust account such amount as is needed to meet your Margin obligations to us. If you pay us (other than by deposit into the client moneys trust account) more than needed for your Margin obligations, we will treat all of it as payment for Margin. If the amount of Margin paid to the Company is in excess of the required amount of Margin, you may request payment of the excess (see clause 9.4) or we may at our discretion do that from time to time.

2.2.6. You will have no claim against the Company or any of its Associates for any loss which may be suffered in any of the circumstances described in this section 2.2.

2.2.7. The Client has read these Terms and Conditions and understands that, **UNLESS SPECIFICALLY AGREED WITH XM.com AND UNLESS A STATEMENT OF ADVICE HAS BEEN PROVIDED**, XM.com has only provided general advice, and the Client has considered its objectives and financial situation and has obtained appropriate independent advice prior to entering into these Terms and Conditions, and has formed the opinion that dealing in the Financial Products is suitable for the Client's needs and purposes;

2.2.8. The Client is willing and able, financially and otherwise, to assume the risk of trading in high risk investments.

2.2.9. The Client acknowledges that neither XM.com nor any associated entity guarantees the performance of any given financial product or account nor that any financial product or account will achieve a particular rate of return.

3. DEFINITIONS AND INTERPRETATION

3.1. In these Terms and Conditions unless a different intention is expressed, the following terms (as subsequently modified by amended legislation or regulation) shall mean:

"Account", when used in these Terms and Conditions, unless the context otherwise requires, shall mean, the uniquely assigned account that is created for a client when such client opens a trading account with us;

"Account Application Form", when used in these Terms and Conditions, unless the context otherwise requires, shall mean the account opening documentation and forms posted on our Online Trading Facility, which need to be completed by prospective clients for the purpose of opening an Account with us; we reserve the right to refuse and/or decline your account opening application(s), at our sole discretion and for any reason, without being obliged to provide any explanation or justification;

"Account Information", when used in these Terms and Conditions, unless the context otherwise requires, shall mean information including, but not limited to, Settlement/Trade Confirmations with ticket numbers, purchase and sale rates, utilised Margin available for Margin trading, statements of profits and losses, as well as current open positions, any other information required to be provided under Applicable Laws, Rules and/or Regulations and any other information we may make available;

"Act", when used in these Terms and Conditions, unless the context otherwise requires, shall mean the Corporations Act 2001 (Cth);

"Associate(s)", when used in these Terms and Conditions, unless the context otherwise requires, shall mean any entity or person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common

control with such company or Person; for purposes of this definition, the term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to a company or person in these Terms and Conditions, shall mean the possession, directly or indirectly through one or more intermediaries, of the

power to direct or cause the direction of management policies of such company or person, whether through ownership of voting securities or otherwise;

“**Agent(s)**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an individual person or legal entity undertaking a transaction on behalf of another individual person or legal entity, but in his/its own name;

“**Applicable Laws**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the Act and the Regulations and any other rules or policies of a relevant regulatory authority and any other applicable laws, rules and regulations as in force from time to time;

“**Authorized Person**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a person authorized by a client under a limited power-of-attorney, in accordance with these Terms and conditions, to represent such client and give instructions to us;

“**Base Currency**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the designated base currency for each of your Accounts on our Online Trading Facility, which shall be US Dollars, or any other currency listed on our website(s), which is determined and/or stated in advance as the base currency of your Account;

“**Business Day**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a day on which trading banks in Sydney, Australia are open for business;

“**Buy Limit**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an Order to purchase a Financial Product at or below a specified price; it is triggered when the market price touches or goes below the ‘buy limit’ price;

“**Buy Stop**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an Order to buy a Financial Product, which is entered at a price above the current offering price; it is triggered when the market price touches or goes through the ‘buy stop’ price);

“**CFD Contract**” or “**CFD(s)**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a contract which is a ‘contract for differences’ by reference to fluctuations in the price of the relevant underlying security or index; trading in CFDs is trading on the outcome of the price of an underlying exchange instrument (e.g. an equity, currency or futures), whereby such trading does not occur on a recognized or regulated “exchange”; trading in CFDs is not subject to delivery of the underlying exchange instrument and/or any other interest; accordingly, the result of trading in CFDs is the difference between sell and buy CFD transactions only;

“**Client**” or “**Customer**”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean shall mean “you” or “your” and, in more general terms, any person (a) who is interested in Transactions and/or Contracts, (b) who enters or has entered our Online Trading Facility, and/or (c) who has submitted to us all required Account Application Form(s) - including in each instance, without limitation, an original certified unexpired government-issued identification evidencing nationality, residence and bearing a photograph (e.g., driver’s license, passport, Government residency card, or similar identification), and a valid recent official utility (water, gas, electricity, etc.) bill or bank statement, in each instance not more than three (3) months old, showing name and address, as required under any relevant AML/CTF Laws, obligations and/or procedures applicable to us, and whom has been accepted as a client by us in accordance with the terms of these Terms and Conditions, in the manner set forth herein, and to whom services will be provided by us;

“**Client Money**”, when used in these Terms and Conditions, unless the context otherwise requires, shall have the meaning as set out in the FS Provisions regarding client money;

“Currency”, when used in these Terms and Conditions, unless the context otherwise requires, shall be construed so as to include any unit of currency;

“Effective Date”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the date on which these Terms and Conditions enter into effect, as indicated on the confirmation e-mail sent by us to a client, indicating that such client’s Account Application Form(s) has/have been accepted;

“Event of Default”, when used in these Terms and Conditions, unless the context otherwise requires, shall have the meaning given to this term in section 21;

“Financial Product(s)”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean Margin FX or CFD;

“Force Majeure”, when used in these Terms and Conditions, unless the context otherwise requires, shall have the meaning as set out in section 22.13;

“FSG”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the Financial Services Guide which has been or will be provided to the Client by or on behalf of XM.com on or before the acceptance of these Terms and Conditions, or within a reasonable time thereafter;

“FS Provisions”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean those provisions of the Act and Regulations which regulate Financial Products and financial services, including in particular, but not limited to Chapter 7 of the Act, and the corresponding Regulations;

“Initial Margin”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the required payment of funds or lodgment of collateral acceptable by us to manage your liability to us for any losses which may be incurred in respect of the Transaction. Initial Margin is due and payable prior to opening a Transaction and we will decline to open any Transaction if you have not paid sufficient Margin or you do not have sufficient available cleared funds the client moneys trust account for your Account to satisfy payment of the Initial Margin required for that Transaction at the time the Order is placed;

“Intellectual Property Assets”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean: (a) our Online Trading Facility; (b) our services; (c) any other of our platforms or software (including, without limitation, demos and any relevant system documentation and/or users' manuals); (d) these Terms and Conditions; (e) the price quotes we provide; and/or (f) any pricing data or other information transmitted via our Online Trading Facility or otherwise, including, without limitation, all Intellectual Property Rights, directly or indirectly pertaining thereto;

“Intellectual Property Rights”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean all intellectual property rights such as; patents, trademarks, service marks, word marks, copyrights, database rights, topography rights, industrial design, know-how, trade secrets, trade names, logos, designs, symbols, emblems, insignia, slogans, marketing materials and other identifying materials, in all forms whether or not registered or capable of registration and any other rights relating to intellectual property in accordance with and/or under and/or pursuant to Applicable Laws, Rules and Regulations;

“Limit Order”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the functionality of our Online Trading Facility that will be subject to the Internet service remaining available over the period in which the limit Order is outstanding, and will be subject to size limits input by our dealer(s) remaining in excess of your Order size and such dealer’s position limits and/or any other limits determined by us to be applicable to you (whether or not disclosed to you) and your still being able to facilitate the Order at the time the limit price is reached.

“Manifest Error”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a manifest or obvious misquote by us or any market liquidity provider, official or other source of our prices or rates on

which we have relied in connection with any Transaction, having regard to current underlying market conditions at the time an Order is placed.

“Margin”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the payment of the amount required by the Company for the Client to open positions relating to Transactions and/or Contracts entered into through an Account and shall mean the total of Initial Margin and Variation Margin and Margin is not paid to the

Company unless and until either it has been withdrawn from the client moneys trust account or it has otherwise been paid to the Company;

“Margin Call”, used in these Terms and Conditions, unless the context otherwise requires, shall mean a mandatory request issued by us to increase the amount of Margin paid for the Client’s Account in order to manage the risk of the open positions relating to Transactions and/or Contracts entered into through an Account; when the Margin posted in an Account is below the minimum Margin requirement, we may, but shall have no obligation whatsoever, issue a Margin Call and in this case the client must increase the amount deposited in the Client’s Account (for withdrawal as payment of Margin), otherwise pay the Company by an approved method, close out the Client’s position(s) or a combination of that; if the Client does not do any of the aforementioned and the Account reaches the defined Stop-out Level, we shall be entitled to close all open positions relating to the Transactions and/or Contracts entered into through the Account; in that regard, it should be noted that our Online Trading Facility operates with an automated risk monitoring, Margin Call and Stop-out facility designed to monitor the overall utilization of clients’ available collateral in support of our prevailing Margin and cash funding requirements for the Transactions and/or Contracts they are entering into via our Online Trading Facility; using this automated risk monitoring, Margin Call and Stop-out facility, we will, unless otherwise stated, apply initial, maintenance or close out Margin call at the prevailing Margin Call or Stop-out levels, as stated from time to time on our Online Trading Facility;

“Margin Call Level”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the Margin Level required to maintain your open positions, which is currently set at 50% of the Margin required to maintain your open positions; accordingly, if the equity in your Account drops to 50% of the Margin Level required to maintain your open positions, you will receive a Margin Call; this is a warning message that the equity in your Account is not enough to support your open positions; at this point, you will not be able to take any new position and you will have the option to deposit sufficient money in order to maintain your open positions or to close out some or all of your position(s); when you have losing positions, your Margin Level will go down and may become close to the Margin Call Level; when you have winning positions, your Margin Level will go up and the Margin Call Level may become more remote;

“Margin FX”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an over-the-counter derivative product which enables traders to leverage a small margin deposit for a much greater market effect in relation to currencies. A foreign exchange contract involves the exchange of one currency for another. Margin FX differs from spot and forward foreign exchange trading in that they are legally classified as derivatives rather than foreign exchange contracts, and are cash settled (i.e. no physical delivery is available). Margin FX trading generally involves taking forward positions in a foreign currency and instead of those contracts being settled by exchange of the relevant currencies, the positions are “closed out”. Closing out, when used in these Terms and Conditions, involves entering into equal and opposite position with us, which generates a profit or loss on the transaction, which is then settled between us. The resulting profit or loss of the trade is the net result of the difference between the opening and closing exchange rates of each transaction, adjusted for transaction costs.

“Margin Level”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an index calculated as follows: Equity/Margin;

“Margined Transaction”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean any CFD or Margin FX Transaction and/or Contract liable to Margin;

“Market Disruption”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean, with respect to any Financial Product, the occurrence of any event or condition which in our good faith opinion has a (a) material influence on the liquidity of, or volatility of foreign exchange rates for, the relevant underlying product; (b) material influence on the settlement of transactions in relevant underlying products and, therefore, on the settlement of

related Financial Products; or (c) impairs our ability to provide price quotes which reflect the supply and demand for relevant Financial Product, due to the fact that the settlement of the relevant underlying product is impaired.

Market Disruption shall include but not be limited to, the imposition by any government authority, central bank or multinational organization of material restrictions or limitations on the trading, transfer or settlement of transactions in any underlying product(s) (such as, the imposition of price controls, currency exchange controls, mandatory exchange rates with respect to a particular underlying product or a Force Majeure Event), which have or may have a material influence on the settlement of Transactions and/or Contracts in related Financial Products;

“Minors”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean persons who are under the age of 18, or otherwise under legal age in their country of residence;

“Online Trading Facility”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean, collectively and/or individually, as the context requires, all website(s), trading platform(s), software and/or services provided by us, from time to time under and/or pursuant to these Terms and Conditions;

“Order”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a request to open or close a Transaction at a price quoted by XM.com as appropriate;

“Over-the-Counter” or “OTC”, when used in these Terms and Conditions, unless the context otherwise requires, shall refer to ‘Over- the-Counter’ trading (not on a regulated “exchange”, or “off-exchange”); any Transaction and/or Contract concerning a commodity, security, currency or other financial product or property, including any option, future, or CFD, which is NOT traded on a regulated stock or commodity exchange, but is traded Over-the-Counter, whether through a market maker, as described hereinabove, or otherwise;

“Party”, when used in these Terms and Conditions, unless the context otherwise requires, shall refer to us and/or our client(s), as the case may be, as it appears from the context in which this term is used in these Terms and Conditions; we and our client(s) may, collectively, be referred to in these Terms and Conditions as the “Parties”;

“PDS”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the Product Disclosure Statement which has been or will be provided to the Client by or on behalf of XM.com on or before the acceptance of these Terms and Conditions, or within a reasonable time thereafter;

“Pending Order”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an Order to be executed at a later time at the price specified in the Order; we will monitor a Pending Order and when the price provided by us reaches the price specified in the Order, the Order will be executed at the best available price;

“Personal Data”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean and, collectively, include any information relating: (i) to an identified or (ii) to a directly or indirectly identifiable, natural or legal person, including, but not exclusively, any data on us, our employees, directors, shareholders, prospects, contacts and/or suppliers and and/or our Client(s);

“Price Quote(s)”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an electronic message disseminated via our Online Trading Facility containing a ‘Transactional Ask Price’ and a ‘Transactional Bid Price’ as well as other parameters such as indication of whether the Price Quote is considered as a ‘Dealable Quote’ or an ‘Indicative Quote’; for the purposes hereof, the term “Dealable Quote”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a quote that by its terms is capable of being used for the purpose of effecting a Transaction, and the term “Indicative Quote”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a quote other than a Dealable Quote; the message update frequency on our Online Trading Facility may be changed at our sole discretion;

“Regulations”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the Corporations Regulations 2001 (Australia);

“Related Party”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean each of a related body corporate and a related entity, as defined in the Act;

“Representative(s)”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean directors, officers, employees, lawyers, advisers, agents, licensees or other authorized representatives;

“Retail Client”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the client as set out in sections 761G and 761GA of the Act;

“Rules”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean articles, rules, laws, procedures and customs, as in force from time to time;

“Sell Limit”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an Order to sell a Financial Product at a specified price or better; it is triggered when the market price touches or goes through the ‘sell limit’ price;

“Sell Stop”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an Order to sell a Financial Product when it reaches a certain price; it is triggered when the market price touches or goes below the ‘sell stop’ price;

“Settlement/Trade Confirmation”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a notification from us to a client confirming the client’s entry into a Transaction and/or Contract;

“Stop Loss Order”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an Order to close a previously opened position at a price less profitable than the price at the time of placing the limitation and is an Order to limit losses;

“Stop-out”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the situation where, because of the equity in an Account reaches the Stop-out Level (i.e. drops below the Margin Level required to maintain open positions), our Online Trading Facility will start automatically to close trading positions (starting from the least profitable position and until the Margin Level requirement is met) in order to prevent further account losses into the negative territory;

“Stop-out Level”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the level of equity in an Account where our Online Trading Facility will start automatically to close trading positions (starting from the least profitable position and until the Margin Level requirement is met) in order to prevent further account losses into the negative territory; for standard account holders the Stop-out Level is equal to 20% of the Margin Level required to maintain open positions. For micro account holders the Stop-out Level is 20% of the Margin required to maintain open positions;

“Take Profit Order”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean an Order to close a previously opened position at a price more profitable than the price at the time of placing the limitation and is an Order to limit profits;

“Trading Platform”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the XM’s online trading and account review facility;

“Transaction”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean a transaction in a CFD or Margin Foreign Exchange Contract or any other contractual agreement entered into between you and us including any transaction liable to Margin;

“Trust”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean where the Client is a trust, the trust identified in the Account Application Form;

“Trust Deed”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the trust deed governing the Trust, where the Client is a Trust, as varied, substituted, supplemented or resettled from time to time;

“Variation Margin”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the required payment of additional funds or lodgment of further collateral acceptable by us to cover the adverse movement in the value of a Transaction and to supplement the Initial Margin;

“Wholesale Client”, when used in these Terms and Conditions, unless the context otherwise requires, shall mean the client as set out in sections 761G and 761GA of the Act;

3.2. Headings are for convenience only and shall not affect the construction and interpretation of these Terms and Conditions.

3.3. The singular includes the plural and vice versa.

3.4. Reference to a person or individual includes bodies corporate, unincorporated associations, partnerships and individuals.

3.5. If there is any conflict between the terms of these Terms and Conditions and the relevant operating rules, the operating rules shall prevail.

3.6. Any reference in these Terms and Conditions to any law, statute, regulation or enactment shall include references to any statutory modification or re-enactment thereof or to any regulation or order made under such law, statute or enactment (or under such modification or re-enactment).

4. CLIENT CLASSIFICATION

4.1. For the purposes of the services provided by XM.com under these Terms and Conditions, subject to section 4.2 we will treat you as a Retail Client.

4.2. Where we have categorised you as a Retail Client, in certain circumstances you may request to be treated as a Wholesale Client. If you are classified as a Wholesale Client pursuant to your request, then you will lose the protections afforded to Retail Clients (apart from those also provided to Wholesale Client) under the Act.

5. APPLICABLE LAWS

5.1. Subject to Applicable Laws

These Terms and Conditions and all Transactions are subject to Applicable Laws so that:

5.1.1. if there is any conflict between these Terms and Conditions and any Applicable Laws, the latter will prevail; and

5.1.2. we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Laws and whatever we do or fail to do in order to comply with them will be binding on you.

5.2. You acknowledge that you are solely responsible for, and that neither XM.com nor any of its Associates has any responsibility for, your compliance with any laws, regulations or rules applicable to your use of the services provided by us under these Terms and Conditions including, but not limited to, any laws, regulations or rules, in your or any other jurisdiction, relating to tax, foreign exchange and capital control, and for reporting or filing requirements that may apply as a result of your country of citizenship, domicile, residence or tax-paying status.

5.3. If you are not resident in Australia, you are solely responsible for ascertaining whether any transaction entered into under these Terms and Conditions is lawful under applicable laws of the jurisdiction of your residence.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1. You represent and warrant to us on and as of the date these Terms and Conditions come into effect and on and as of each date on which any Transaction is entered into or remains open, as follows:

6.1.1. if you are an individual that you are of sound mind, legal age and legal competence;

6.1.2. regardless of any subsequent determination to the contrary, you are suitable to trade Financial Products, offered by XM.com and that you are aware of the risks involved with such Transactions.

6.1.3. you are willing and financially able to sustain a total loss of funds deposited with XM.com as a result of engaging in Transactions;

6.1.4. all necessary authority, powers, consents, licences and authorisations and has taken all necessary action to enable you lawfully to enter into and perform these Terms and Conditions and such transactions and to grant the security interests and powers referred to in these Terms and Conditions;

6.1.5. where applicable, the person or the persons entering into these Terms and Conditions and each transaction on the client's behalf has or have been duly authorised to do so;

6.1.6. these Terms and Conditions, each Transaction and the obligations created under or in connection with them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any law, order, charge or agreement by which you are bound or which you or any of your assets are subject;

6.1.7. where the Client is more than one person, that all decisions made, and instructions issued, pursuant to these Terms and Conditions, are made on a fully informed and agreed basis by all the parties to the account;

6.1.8. all information supplied to XM.com by the Client is, or at the time it is supplied will be, accurate in all material respects and the Client will not omit or withhold any information which would make such information inaccurate in any material respect;

6.1.9. the Client will provide to XM.com, on request, more information or documents regarding its financial and business affairs and/or identity, as XM.com may reasonably require;

6.1.10. the Client will take all reasonable steps to obtain and communicate to XM.com all information, and shall deliver or cause to be delivered to XM.com all documents with respect to dealings in the Financial Products which are requested by any person having the right to request such documents and information. The Client authorises XM.com to pass on/deliver all such information and documents to any such person.

6.1.11. the Client is not insolvent, and if the Client is a corporate client, no resolution has been passed and no petition has been presented or order made for the Client's winding up or liquidation or the appointment of a receiver or a receiver and manager or an administrator or other insolvency official to the Client or any of its assets;

6.1.12. no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default has occurred with respect to you;

6.1.13. unless you have informed us otherwise in writing you act as principal and sole beneficial owner (but not as trustee) in entering into and performing these Terms and Conditions and each Transaction;

6.1.14. except as otherwise agreed by us, you are the sole beneficial owner of all funds you transfer under these Terms and Conditions, free and clear of any security interest whatsoever;

6.1.15. where the Client is a trustee (including the trustee of a superannuation fund):

- a) the Trust has been duly constituted, is valid and complies with all Applicable Laws;
- b) the Trust Deed has been executed and stamped, in accordance with the laws of the relevant State or Territory of Australia;
- c) the Client is the only trustee of the Trust;

- d) property of the Trust has not been resettled, set aside or transferred to any other Trust or settlement and the Trust Deed has not been terminated and the date or any event for the vesting of the Trust's property has not occurred;
- e) the Trust Deed specifically empowers and authorises dealings in Financial Products, and such dealings are within the authorised ambit of the Trust's investment strategy;
- f) all obligations under, and transactions contemplated by, these Terms and Conditions constitute binding obligations and are lawfully enforceable against the Trust and its property in accordance with their terms;
- g) it has an unrestricted right to be fully indemnified or exonerated out of the Trust's property in respect of any losses or liabilities incurred by it in its dealings with XM.com, and the Trust's property is sufficient to satisfy that right of indemnity or exoneration;
- h) it has complied with its obligations in connection with the Trust;
- i) there is no conflict of interest on the Client's part in entering into these Terms and Conditions and performing its obligations under it or the transactions contemplated by it; and
- j) if the Client is a superannuation fund, it complies with all requirements outlined in the Superannuation Industry (Supervision) Act (1993).

6.1.16. where the Client is an investment manager or a responsible entity, the investment management agreement or constitution specifically empowers and authorises dealings in the financial products, by the Client and on behalf of their underlying clients; and

- a) such dealings are within the authorised ambit of the/each underlying client's investment strategy;
- b) it will enter into transactions pursuant to the applicable investment management agreement as investment manager or responsible entity and not otherwise;
- c) it will only deal in Financial Product transactions when the funds or other assets under its control are sufficient to meet the obligations which arise in connection with such dealing;
- d) in the event of termination of the Client's appointment as investment manager or responsible entity of the Client, it is authorised to arrange for closing out of all contracts entered into on behalf of the Client prior to the date of such termination as soon as possible; and
- e) repeats each of these representations and warranties in relation to both itself and its underlying clients.

6.1.17. if you are not resident in Australia, you are solely responsible for ascertaining whether any Transaction entered into under these Terms and Conditions is lawful under applicable laws of the jurisdiction of your residence.

6.1.18. XM.com relies on representations and warranties made by the Client. These representations and warranties and those contained elsewhere in these Terms and Conditions, survive the entering into of these Terms and Conditions and are repeated in respect of each financial product transaction.

6.2. You undertake and agree with us, as follows:

6.2.1. you will at all times obtain and comply with, and do all that is necessary to maintain in full force and effect, all necessary authority, powers, consents, licences and authorisations to:

- a) enable you to lawfully perform these Terms and Conditions and each Transaction; and
- b) without limiting the generality, interests and powers referred to in these Terms and Conditions referred to in this section;

6.2.2. you will promptly notify us of the occurrence of any Event of Default with respect to you;

6.2.3. you will promptly notify us if:

a) you become aware of any detail supplied in your Account Application Form or any other information provided to us in respect of your financial position or other matters being inaccurate, incomplete or misleading when supplied or provided or;

b) any such detail or information subsequently becomes inaccurate, incomplete or misleading.

6.2.4. you will at all times use all reasonable steps to comply with all Applicable Laws in relation to these Terms and Conditions and any Transaction.

7. ACCOUNT OPENING AND IDENTIFICATION

7.1. An Account must be opened prior to entering into any Transaction with XM.com. No Orders can be placed until an Account has been opened and cleared funds received. XM.com may, at its absolute discretion, refuse to accept you as a client for whatever reason but will notify you of any such refusal, without giving any reasons, as soon as reasonably practicable.

7.2. To comply with the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (herein after “AML/CTF Law”) we will require you to provide personal information and documentation in relation to your identity, when completing your Account Application Form. For that purpose we may need to obtain additional information and documentation and we may need to verify, or re-verify information. Under the AML/CTF Law, we may be required to disclose information about suspicious transactions to regulatory authorities and we may not be permitted to inform you of such disclosure.

7.3. You must record information regarding your investment knowledge and experience in the Account Application Form. On the basis of this information and in accordance with the Applicable Laws we will assess whether opening an Account is appropriate for you. If you are classified as a Wholesale Client we will make certain assumptions about the appropriateness of the services to be provided, and we will be entitled to assume that you have the requisite knowledge and experience to enter into Transactions. If you do not consider this to be the case, you must make us aware of this prior to entering into any Transactions and provide us with all relevant information as to the level of your knowledge and experience. It is your responsibility to promptly inform us in writing if at any time during your relationship with the Company you become aware of any information or circumstances which might reasonably indicate that our initial assessment should be changed.

7.4. To assess your creditworthiness, manage credit risk and to prevent fraud (or other criminal activity) you acknowledge and agree that we may:

7.4.1. make periodic searches and enquiries about you and any Related Party at credit reference agencies, and your employers and any other relevant parties (as applicable);

7.4.2. disclose information to organisations involved in fraud prevention; and

7.4.3. obtain information from and disclose information to other regulated entities which deal for you concerning any payment or security default or concerning any investment which is related to or connected with Transactions which you seek to open with us.

7.5. Any limits imposed on your Account by us will be set and varied from time to time with regard to your credit status and, where applicable, the amount of funds deposited by you with us. We may, in our sole discretion apply a limit to:

7.5.1. the size of any Transaction or series of Transactions that you may enter into; and

7.5.2. the amount of any loss or liability to which you may be exposed.

7.6. When your Account is opened you will have access to our Online Trading Facility enabled by a password which shall be for your personal use only and which you shall keep secret and not disclose to any third party nor allow any third party to use or otherwise gain access to the Trading Platform in your name or on your Account. You are responsible for all information submitted through your access to the Trading Platform using your password and in the event there is an erroneous entry of information for whatever reason you will be held responsible for all resultant financial obligations or liabilities. You will notify us immediately if you become aware of the loss, theft or disclosure to any third party, or of any unauthorised use, of your password. For the avoidance of doubt, you are responsible to us for, and you indemnify us against, any losses arising from the unauthorised use of your password.

7.7. If the Account is held by more than one (1) person, all of the joint holders are jointly and severally liable to the Company for any and all obligations arising out of Transactions in the Account and agree to be bound by all terms and conditions of these Terms and Conditions signed by each party. XM.com is authorised to accept instructions and to send confirmations to any one of the joint owners, and You hereby further appoint any and all of said joint owners as your Agent for receipt of confirmations and hereby waives any right to receive confirmations otherwise. XM.com shall not be responsible for notifying any other account holder of any Transactions made in a joint account by another account holder on the account. Any one or more of the joint owners shall have full authority for the Account and risk in the name of the joint account.

7.8. Joint accounts will be registered as JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP ("JTWROS"). ACCOUNT PROCEEDS MAY BE PAID OR DELIVERED TO EITHER ACCOUNT HOLDER DURING THE LIFETIME OF BOTH OR TO THE SURVIVOR AFTER THE DEATH OF ONE OF THEM. This is the only type of joint account that is offered by XM.com In the event of the death of a joint account holder, the Account, its property, and any obligations under these Terms and Conditions automatically passes to the surviving Account holder(s). The surviving account holder(s) shall continue to be liable to XM.com for any loss related to the account in any way. Upon receipt of a certified document evidencing death or legal incapacity of one of the parties, the remaining party or parties shall continue this account in their name as sole or joint owners with all the terms and conditions of said account continuing in full force and effect.

7.9. Any joint account holder may ask the Company to convert the joint account into a sole Account. The Company may (but shall not be obligated to) require authorization from all account holders before doing so. Any person removed from the Account will continue to be liable for all obligations and liabilities under these Terms and Conditions relating to the period before they were removed from the Account.

7.10. You will be prompted to provide us with any personally identifiable information that we may request when you register with us, as well as additional information and documentation as stated in section 7.2 above;

7.11. Upon the death of an Account owner and if the legal heirs of such account owner would like to withdraw the remaining balance in the Account, to the extent there is any, such legal heirs should present to us with official legal documents from the applicable governmental authorities in the jurisdiction of the deceased to our satisfaction, and we, in our sole discretion and upon checking such documents, shall make the decision whether to allow such withdrawal(s).

7.12. XM.com will carry out its Client identification and verification procedures in accordance with the AML/CTF Law. You declare that:

7.12.1. You are not aware and have no reason to suspect that the monies used to fund your Transactions have been or will be derived from or related to any money laundering, terrorism financing or similar activities illegal under the applicable law or regulations or otherwise prohibited under any international convention or agreement (AML/CTF Law);

7.12.2. You are not aware and have no reason to suspect the proceeds of your Transactions will be used to finance any illegal activities;

7.12.3. You will provide all additional information and assistance that the Company or its Associates to comply with AML/CTF Law.

7.13. You acknowledge that XM.com may refuse any Order or instruction from you if it is concerned that the request or Transaction may breach any obligation of, or cause XM.com or its Associates to commit or participate in any breach of AML/CTF Law and neither XM.com nor its Associates will incur liability to you in doing so.

8. CLIENT MONEY

8.1. Any money received by XM.com in respect of your Account with XM.com shall be treated as “Client Money” in accordance with the applicable FS Provisions regarding Client Money (herein after “Australian Client Money Rules”).

8.2. In relation to Client Money, we may hold Client Money in a trust bank account under trust (hereinafter “client moneys trust account”) opened with an approved bank in Australia or any other country. Your Client Money may therefore be held in a bank outside Australia in such circumstances the legal and regulatory regime applying to the approved bank with which your bank account is opened is different from that of Australia.

8.3. You agree and acknowledge that we can deal with Client Money in accordance with the Australian Client Money Rules, including to withdraw, deduct or apply any amounts payable by you to us under these Terms and Conditions from your entitlements in the client moneys trust account including, without limitation making a payment for, or in connection with, the margining, adjusting or settling of dealings in Transactions entered into by you, or the payment to discharge your liability to us.

8.4. For money deposited in our client trust accounts, you acknowledge that:

8.4.1. individual client’s moneys are not separated from each other;

8.4.2. all clients’ funds are co-mingled in the one account;

8.4.3. the client money provisions of the Australian Client Money Rules may not protect any individual Client’s funds from being used for a purpose permitted by the Australian Client Money Rules and not related to a default by that Client;

8.5. If you pay us by an approved method other than deposit into the client moneys trust account, you acknowledge that:

8.5.1. your choice of your payment provider (if approved by us) is at your risk;

8.5.2. your payment to us by your payment provider means we have received payment and so do not hold any of that as your moneys, on trust or otherwise;

8.5.3. after we have received value for your other payment, we may choose to pay a corresponding amount into the client moneys trust account, as payment to you following revaluing your account by recognising the value for your payment, and so may be dealt with, and are subject to the client money provisions of the Australian Client Money Rules, as described in this clause 8; and

8.5.4. the time between we receive value for your other payment and the time we can make a payment to you by depositing funds into the client moneys trust account depends on the payment systems (which is outside of our control) and our operations so, while we aim to make intra-day transfers (to make a deposit into the client moneys trust account), due to matters outside of our control you may be allowed to trade on your Account for a period until we are able to make the deposit into the client moneys trust account. In that period you will have the benefit of trading on the value of the payment but also will not have the Australian Client Money Rules protections for the corresponding amount unless and until we make the payment into the client moneys trust account.

8.6. You irrevocably and unconditionally authorise us to transfer any moneys we hold on trust for you to any of our Associates or to any third party which acquires the business of XM.com to whom we have assigned or transferred our rights and obligations under these Terms and Conditions, including your open Transactions and Account (and you irrevocably direct us to transfer to the assignee, delegate or transferee such money and property in our client moneys trust account to which you are entitled).

8.7. You should note that if such transfer occurs, your money will be transferred to an account maintained by the transferee under the Corporations Act 2001 (Cth) (if the transferee is an Australian financial services licensee). If the transferee is not an Australian financial services licensee, but is regulated in another jurisdiction, client monies will be held by the transferee in accordance with the applicable client money rules of that jurisdiction.

8.8. Without prejudice to any other provisions of these Terms and Conditions, we may, at our sole discretion, from time to time and without your prior authorisation, set-off any amounts held on your behalf against your obligations to us and/or merge any of your Accounts with us.

8.9. Trading in leveraged Financial Products involves significant risk on your invested capital. However, XM.com follows a 'no negative balance' policy which means that you cannot lose more than your invested capital.

9. ACCOUNT PAYMENTS

9.1. The cash balance of your Account:

9.1.1. will be credited from time to time with the amount of each payment received by us from you pursuant to these Terms and Conditions; and

9.1.2. will be debited from time to time by the amount of each payment made by us to you at your request pursuant to these Terms and Conditions, by withdrawals for payment of Margin and by the deduction of our charges or other amounts properly owing to us under these Terms and Conditions.

9.2. You may deposit funds into your Account at any time. Deposits and other payments will only be accepted by a payment method (e.g. bank wire transfer, e-wallets etc.) in the same name as the Client's name. Under no circumstances will third party or anonymous payments be accepted.

9.3. Unless otherwise agreed, you acknowledge and agree that no interest will accrue on any cash balance in your Account, that XM.com will not be liable to pay you any such interest and XM.com is entitled to any interest earned on those funds.

9.4. If you give an instruction to withdraw funds from your Account, we will reduce the requested funds immediately from your Account balance and shall use our best efforts to process the specified withdrawal request within one (1) Business Day following the day on which the withdrawal request has been accepted, provided that the following requirements are met:

9.4.1. the withdrawal request includes all necessary information;

9.4.2. the instruction is to make a payment through a payment method in your name (e.g. bank wire transfer, e-wallets etc.);

9.4.3. you have provided full identification documentation to support your withdrawal request; and

9.4.4. in cases where there are open positions in the Account, the Margin Level in your Account does not fall below the minimum required level specified in our Online Trading Facility.

9.5. When a withdrawal or refund is performed, we reserve the right (but shall under no circumstances be obliged) to remit the funds to the same remitter from, and by the same payment method through which such funds were initially received by us. In that connection, we reserve the right, at our sole discretion:

9.5.1. to decline withdrawals via certain specific payment methods;

9.5.2. to require another payment method as the one indicated in any withdrawal request, in which instance a new withdrawal request may have to be submitted; and/or

9.5.3. to require that further documentation be submitted, as required by applicable AML/CTF Laws and/or any other similar Rules and Regulations applicable to us, before proceeding with any withdrawal request.

It is your responsibility to notify us if you have changed your payment provider since your earlier use of that payment provider. If we cannot use the payment method because you have changed your details, or closed your account or there is (in our view) a problem with the payment provider, we may choose to use another payment method which you have also used to pay us.

9.6. If we accept any payments to be made by a debit card, credit card or any other payment method in respect of which processing fees may be charged, we reserve the right to levy a transfer charge.

9.7. If you make a deposit to the client moneys trust account or make another approved payment, we shall, without prejudice to any other provisions of these Terms and Conditions, use our best efforts to credit your Account with the amount of such payment within one (1) Business Day following the day on which the payment has been accepted, if we are satisfied that you are the payer of the funds. At any given time, if we are not satisfied that you are the payer, we reserve the right to reject such payment and/or return the payment to the remitter net of any transfer fees or other charges. You may be required to submit additional documentation as required by applicable AML/CTF Laws and/or any other similar rules and regulations applicable to us. We reserve the right to charge a “handling fee” (not less than USD 50) to your Account upon confirming that the payment received was not made by you (i.e. third party deposit) to cover our expenses to prove that you engaged in a third party deposit or other payment, and you hereby authorize us to charge this amount.

9.8. All foreign currency exchange risk arising from any deposits in and/or withdrawals from your Account, or resulting from the compliance by us with our obligations or the exercise by us of our rights under these Terms and Conditions, will be borne by you.

9.9. You agree that any funds transmitted to our bank accounts, or other approved payment, by you or, where permitted, on your behalf, will be credited to your Account with us at the value date of when the received by us and net of any charges/fees charged by the bank account providers, the payment providers and/or any other intermediary involved in such transaction process.

9.10. Before accepting any such funds into our bank accounts or accepting other payment, and crediting any such payment to your Account with us, we must be fully satisfied that you, as our client, are the payer of such funds, or that such funds have been transmitted to us by an authorized representative of you, as our client; in those instances where we are not satisfied that you, as our client, are the payer of such funds, or that such funds have been transmitted to us by an authorized representative of you, as our client, we reserve the right to refund/send back the net amount received to the same remitter from, and by the same payment method through which such funds were received.

10. MULTIPLE ACCOUNTS

10.1. The Client is able to open multiple accounts denominated in the same currency as or in currencies other than that of the main trading account. The operation of multiple accounts may mean that the Client incurs additional costs.

10.2. If the Client opens opposite positions in the same currency cross (for example) on the same account, such positions will cancel each other out. However if the Client operates several accounts (or sub-accounts) and opposite positions are opened on different accounts (or sub-accounts), such positions will not cancel each other out. The Client is specifically made aware that unless closed manually, all such positions may be rolled over on a continuous basis and thereby consequently all incur a cost for such roll-over.

10.3. Keeping opposite positions open on different accounts will result in both positions being continuously rolled over (and thereby continuously being charged the “tom-next rate”) until manually closed.

10.4. If the Client has opened more than one account, Margin or collateral held for one account will not automatically serve as Margin coverage on the other account(s). The Client may therefore receive margin calls and stop-outs on one account despite having additional Margin for other accounts.

10.5. However, if the Client has Margin held for one account, XM.com is entitled to transfer or apply Margin for one account to another account, even if such transfer or set-off will necessitate the closing of margin trades on the account from which the Margin was applied.

10.6. Interest is calculated on the basis of the net free equity of each individual account or sub-account. When operating several accounts, Client will therefore be charged interest on the full negative net free equity on any account despite having a positive net free equity on another account. When operating several accounts Client should use caution when using more than one account, and understand that the rate of interest paid on positive balances differs from the rate of interest charged on negative balances.

11. CONFLICT OF INTERESTS

11.1. We are required to have arrangements in place to manage conflicts of interest between us and our clients and between different clients. We operate in accordance with section 23 of the PDS we have put in place for this purpose.

11.2. We shall not be obliged to disclose to you or take into consideration any fact, matter or finding which might involve a breach of duty or confidence to any other person, or which comes to the notice of any of our directors, officers, employees or agents but does not come to the actual notice of the individual or individuals dealing with you.

11.3. The relationship between you and us is as described in these Terms and Conditions. Save as provided in any Applicable Laws, neither that relationship, nor the services we provide nor any other matter, will give rise to any fiduciary or equitable duties on our part or on the part of any of our Associates.

12. MATERIAL INTERESTS AND INFORMATION BARRIERS

12.1. Your attention is drawn to the fact that when we deal with you, we or an Associate or some other person connected with us may have another interest, relationship or arrangement that is material. Without limiting the nature of such interests, examples include where we or an Associate could be:

12.1.1. dealing or quoting prices, in the investment, a related investment or an asset underlying the investment, as principal for our (or its) own account or that of someone else. This could include selling to you or buying from you;

12.1.2. buying from you and selling immediately to another customer, or vice versa;

12.1.3. advising and providing other services to Associates or other customers who may have interests in investments which conflict with your own.

12.2. You accept that we and our Associates may have interests which conflict with your interests and may owe duties which conflict with duties which would otherwise be owed to you, and consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Laws.

12.3. We will comply with Applicable Laws binding on us but, except as provided by Applicable Laws we shall be under no further duty to disclose any interest to you, including any benefit, profit, commission or other remuneration made or received by reason of any Transaction or any related transaction or position.

12.4. Where necessary we maintain arrangements which restrict access by our employees to information relating to areas of our business (and that of Associates) with which, and the affairs of Clients with whom, they are not directly concerned. Accordingly, we shall not be required to have regard to or disclose to you or make use of any information which belongs to or is confidential to another Client or to us or any Associate, and we may be unable to advise or deal with you in relation to particular investments without disclosing the reason for this.

13. XM.com REPRESENTATION AND SERVICES

13.1. The Company seeks to act honestly, exercise due care and diligence. XM.com will give priority to Client interests and undertakes that it will not misuse Client information. XM.com will use reasonable endeavours to execute or arrange the execution of the Client's instructions.

13.2. We deal with you on an execution-only basis and will not give personal advice (as defined in the Act) or make personal recommendations or advise on the merits or suitability of purchasing, selling or otherwise dealing in particular investments or executing particular Transactions, their legal, tax, accounting or other consequences or the composition of

any Account or any other rights or obligations attaching to such investments or Transactions. You should bear in mind that merely explaining the terms of a Transaction or Financial Product or its performance characteristics does not itself amount to personal advice on the merits of the investment. If you consider that you have been provided with personal advice, you acknowledge that it is given without authority and you should not rely on it.

13.3. There will be circumstances where we provide you with general advice such as where we provide general trading recommendations, underlying market commentary or other information and in such cases:

13.3.1. this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to a personal recommendation or to personal advice;

13.3.2. we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the legal, tax or accountancy consequences of any Transaction;

13.3.3. where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction; and

13.3.4. any market data which is specific to CFDs provided by us or third party service providers and displayed on our website or Online Trading Facility will be displayed for information purposes only. We do not guarantee the completeness or accuracy of such information and will not be liable if any such data or information is inaccurate or incomplete in any respect. Neither we nor any third party providers are responsible or liable for any actions you may take, or do not take based on such data or information. Such data or information is proprietary to us and/or any such third party service provider and you are not permitted to retransmit, redistribute, publish, disclose or display, in whole or in part, such data or information to any third parties, except as may be required by any law or regulation.

14. ONLINE TRADING FACILITY

14.1. The Client acknowledges that it has read, understood and agreed to the terms and conditions associated with dealing via our Online Trading Facility as set out in these Terms and Conditions.

14.2. XM.com may amend any of the terms of these Terms and Conditions and by continuing to deal with XM.com or to access or use the Online Trading Facility, the Client agrees to any amendments.

14.3. XM.com agrees to grant the Client access to one or more electronic terminals, including terminal access through the Client's internet browser, for the electronic transmission of orders to the Client's account with XM.com.

14.4. XM.com shall permit the Client electronically to monitor the activity and positions in its account by providing an Online Trading Facility. The Online Trading Facility may be a proprietary service offered by XM.com or a third party system.

14.5. The Client agrees to use the Online Trading Facility software solely for its internal business or investment purposes.

14.6. The Client agrees that it shall not distribute the platform to any third party.

14.7. The Online Trading Facility provided by XM.com may be used to transmit, receive and confirm the execution of orders, subject to market conditions and applicable operating rules and regulations. Regardless of any online confirmation received upon placement of an instruction via the Online Trading Facility, such transaction is not confirmed by XM.com until XM.com provides confirmation.

14.8. XM.com consents to the Client's access and use in reliance upon the Client having adopted procedures to prevent unauthorised access to and use of the Online Trading Facility, in any event, the Client agrees to any financial liability for trades executed through the Online Trading Facility.

14.9. The Client may send and receive email messages and otherwise use the Online Trading Facility as permitted in accordance with these Terms and Conditions, our policies and any Applicable Laws.

14.10. XM.com reserves the right, in its sole discretion, to institute or change any policies at any time relating to the use of the Online Trading Facility.

14.11. The Online Trading Facility is provided on an “as-is” basis and XM.com makes no express or implied representations or warranties to the Client regarding its operation or usability.

14.12. XM.com makes no representations or warranties regarding any services provided by any third party.

14.13. The Online Trading Facility may be available in several versions, which may be differentiated in various aspects including, but not limited to the level of security applied, products and services available etc. XM.com shall not be liable to the Client for any loss, expense, cost or liability suffered or incurred by the Client due to the Client using a version different from the standard version with all available updates installed.

14.14. XM.com does not warrant that access to or use of the on-line trading facility will be uninterrupted or error-free, or that the service will meet any particular criteria with respect to its performance or quality. XM.com expressly disclaims all implied warranties, including without limitation warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security or accuracy.

14.15. Under no circumstances, including negligence, will XM.com, its employees and/or service providers be liable for any direct, indirect, incidental, special or consequential damages including, without limitation, business interruption or loss of profits that may result from the use of or inability to use the on-line trading facility. Where liability cannot be excluded, XM.com’s liability shall be limited to an amount equal to the amount of fees paid to XM.com by the Client for use of the Online Trading Facility.

14.16. The Client agrees not to hold XM.com and any of its service providers (for whom it acts as agent in this regard) liable for any form of damage arising as a result of the unavailability of the Online Trading Facility.

14.17. The Client agrees that the use of the Online Trading Facility is at the Client’s risk and the Client assumes full responsibility for any losses resulting from the use of or materials obtained via the Online Trading Facility.

14.18. XM.com, its directors, officers, employees, agents, contractors, Associates, third party vendors, information providers, and other suppliers providing information or data services do not warrant that the Online Trading Facility will be uninterrupted or error free nor do we or they make any warranty as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through the use of the Online Trading Facility or the results obtained from its use.

14.19. XM.com and its service providers will not accept any form of liability including any loss or damage to the Client or to any other person for:

14.19.1. any inaccuracies, errors or delays or omissions of any data, information or message or transmission or delivery of any such data, information or message;

14.19.2. non-performance;

14.19.3. interruptions in data, information or message transmission, due to any negligent act or omission, including any “force majeure” event or any other cause, whether or not within XM.com’s control;

14.20. Force majeure events include amongst other things, floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, actions of any government, communications or power failure, equipment or software malfunction.

14.21. The use and storage of any information provided or made available to the Client through the use of the Online Trading Facility is for the use of the Client and is the Client’s sole risk and responsibility.

14.22. The Client is responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Online Trading Facility, and for all communications service fees and charges incurred by the Client in accessing the Online Trading Facility.

14.23. XM.com may at any time at its sole discretion terminate or restrict any Client's access to the Online Trading Facility at any time. Should XM.com terminate these Terms and Conditions or access to the trading platform the Client will be liable for all fees charges and obligations incurred under these Terms and Conditions prior to termination.

14.24. The Client acknowledges that from time to time, and for any reason, the Online Trading Facility may not be operational or otherwise available for the Client's use due to servicing, hardware malfunction, software defect, service or transmission interruption or other cause.

14.25. The Client's failure to observe any of the undertakings or representations may result in civil or criminal liability, as well as termination of the use of the Online Trading Facility.

14.26. The Client acknowledges that the Client has alternative arrangements in place at all times, for the transmission and execution of orders, if for any reason, circumstances prevent the transmission and execution of all, or any portion of, the Client's orders through the Online Trading Facility. In the event the Online Trading Facility not being operational, the Client agrees to contact XM.com to make alternative order entry arrangements. Such arrangements may be in the form of telephone, or as otherwise agreed.

14.27. The Client may not under any circumstance use the Online Trading Facility to do any of the following:

14.27.1. publish, post, distribute or disseminate defamatory, infringing, obscene or other unlawful or offensive material or information;

14.27.2. intercept or attempt to intercept any email correspondence;

14.27.3. use the Online Trading Facility in any manner that may adversely affect its availability or its resources to other users;

14.27.4. send correspondence electronically or otherwise to other users for any purpose other than personal communication; or

14.27.5. act, or fail to act in a manner which may result in the violation of any laws or regulations.

15. ELECTRONIC TRADING TERMS

15.1. You acknowledge the electronic nature of our services via our Online Trading Facility and the inherent risk that communications by electronic means may not reach their intended destination or may do so much later than intended for reasons outside our control. Accordingly, any instruction sent by you or on your behalf via our Online Trading Facility or by e-mail shall only be deemed to have been received and shall only then constitute a valid instruction and/or binding Contract between you and us, when such instruction has been recorded as executed by us and confirmed by us to you through a Settlement/Trade Confirmation, and the mere transmission of an instruction by you or on your behalf shall not by itself constitute a binding Contract between you and us.

15.2. Since we do not control signal power, its reception or routing via Internet or any other means of electronic communication, configuration of our clients' equipment or reliability of its connection, we shall not be liable for any claims, losses, damages, costs or expenses, including attorneys' fees, caused directly or indirectly, by any breakdown or failure of any transmission or communication system or computer facility belonging to us, nor for any loss, expense, cost or liability suffered or incurred by you as a result of instructions being given, or any other communications being made, via the internet. You will be solely responsible for all Orders, and for the accuracy of all information, sent via the internet using your access codes. We will not execute an Order until we have confirmed the Order to you and transmission of an Order by itself shall not give rise to a binding Transaction and/or Contract between you and us.

15.3. There are a series of inherent risks with the use of the mobile trading technology such as the duplication of Orders/instructions, latency in the prices provided, and other issues that are a result of mobile connectivity. Prices displayed on our mobile platform are solely an indication of the executable rates and may NOT reflect the actual executed price of the Order. Our mobile feature utilizes public communication network circuits for the transmission of messages. We shall not be liable for any and all circumstances in which you experience a delay in Price Quote or an inability to

trade caused by network circuit transmission problems or any other problems outside our direct control, which include but are not limited to the strength of the mobile signal, cellular latency, or any other issues that may arise between you and any internet service provider, phone service provider, or any other service provider. Please also note that some of the features available on Online Trading Facility may not be available on our mobile feature.

15.4. You are obliged to keep your usernames and passwords (hereinafter “Access Codes”) secret and ensure that third parties do not obtain access to our Online Trading Facility. Without prejudice to any other provisions of these Terms and Conditions, you will be liable for all Transactions and/or Contracts executed by means of your Access Codes, even if such may be wrongful.

15.5. Unless otherwise indicated or agreed upon any prices shown on our Online Trading Facility are indicative at the time shown based on data that is subject to constant change. The execution price is that which is confirmed to you on the Settlement/Trade Confirmation issued (whether on screen or otherwise) after your Order is executed, although this price may in certain cases differ from the price appearing on the screen at the time the Order was placed. In the event that an erroneous price is used as the basis of any transaction, we reserve the right, at our sole discretion, to amend or revoke the details of the Transaction(s) and/or Contract(s) in question.

15.6. There may be restrictions on the total value and/or number of Transactions and/or Contracts that you can enter into on any one day and also in terms of the total value and/or number of those Transactions and/or Contracts when using our Online Trading Facility.

15.7. The ‘Limit Order’ functionality of our Online Trading Facility will be subject to the Internet service remaining available over the period in which the ‘Limit Order’ is outstanding, and will be subject to size limits input by our dealer(s) remaining in excess of your Order size and such dealer’s position limits and/or any other limits determined by us to be applicable to you (whether or not disclosed to you) and your still being able to facilitate the Order at the time the limit price is reached.

15.8. You will be responsible for providing the computer system(s) to enable you to access and/or use our Online Trading Facility and for making all appropriate arrangements with any telecommunications suppliers or, where access to our Online Trading Facility is provided through a third party server, any such third party, necessary in order to obtain access to our Online Trading Facility; neither we nor any company maintaining, operating, owning, licensing, or providing services to us in connection with, our Online Trading Facility (a “Third Party Service Provider”) makes any representation or warranty as to the availability, utility, suitability or otherwise of any such equipment, software or arrangements..

15.9. You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time and for the implementation and regular use of up-to-date virus detection/scanning programs; in the event you become aware of a material defect, malfunction or virus in your computer system(s) or in our Online Trading Facility, you will immediately notify us of such defect, malfunction or virus and cease all use of our Online Trading Facility until you have received permission from us to resume.

15.10. In the event that you receive any data, information or software via our Online Trading Facility, other than that which you are entitled to receive pursuant to these Terms and Conditions, you will immediately notify us in writing and will not use, in any way whatsoever, such data, information or software.

15.11. When using our Online Trading Facility you must:

15.11.1. ensure that your computer systems are maintained in good order and are suitable for use with our Online Trading Facility;

15.11.2. run such tests and provide such information to us as we shall reasonably consider necessary to establish that your computer systems satisfy the requirements notified by us to you from time to time;

15.11.3. carry out virus checks on a regular basis;

15.11.4. inform us immediately of any unauthorised access to our Online Trading Facility or any unauthorised Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and

15.11.5. not at any time leave the computer terminal from which you have accessed our Online Trading Facility or let anyone else use such computer terminal until you have logged off from our Online Trading Facility.

15.12. In the event you become aware of a material defect, malfunction or virus in your computer system(s) or our Online Trading Facility, you will immediately notify us in writing of such defect, malfunction or virus and cease all use of our Online Trading Facility until you have received permission from us to resume use.

15.13. All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to our Online Trading Facility remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify our Online Trading Facility or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble our Online Trading Facility, nor purport to do any of the same or permit any of the same to be done.

15.14. Without prejudice to any other terms of these Terms and Conditions, relating to the limitation of liability and provision of indemnities, the following sections shall apply to the services we provide via our Online Trading Facility:

15.14.1. System errors: We shall have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You acknowledge that access to our Online Trading Facility may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to our Online Trading Facility for this reason;

15.14.2. Delays: Neither we nor any third party software provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you via our Online Trading Facility;

15.14.3. Viruses from our Online Trading Facility: We shall have no liability to you (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into your computer system(s) via our Online Trading Facility or any software provided by us to you in order to enable you to use our Online Trading Facility, provided that we have taken reasonable steps to prevent any such introduction;

15.14.4. Viruses from your computer system(s): You will ensure that no computer viruses, worms, software bombs or similar items are introduced into our Online Trading Facility, computer system(s) or network(s) and you will indemnify us on demand for any loss that we suffer arising as a result of any such introduction.

15.15. We shall not be liable for any loss, liability or cost whatsoever arising from any unauthorised use of our Online Trading Facility. You shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using our Online Trading Facility by using your designated Access Codes (usernames and/or passwords), whether or not you authorised such use.

15.16. Without prejudice to any other provisions of these Terms and Conditions, we may suspend or permanently withdraw our Online Trading Facility, by giving you five (5) calendar days' written notice.

15.17. Without prejudice to any other provisions of these Terms and Conditions, we shall be entitled, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to access and/or use our Online Trading Facility, or any part thereof, without prior notice, where we consider it necessary or advisable to do so, for example due to:

15.17.1. your non-compliance with any Applicable Laws, rules and/or regulations;

15.17.2. breach of any provisions of these Terms and Conditions;

15.17.3. on the occurrence of an Event of Default;

15.17.4. network problems;

15.17.5. failure of power supply;

15.17.6. maintenance; or

15.17.7. to protect you when there has been a breach of security.

15.18. In addition, the use and/or access of our Online Trading Facility, or any part thereof, may be terminated automatically, upon the termination (for whatever reason) of:

15.18.1. any licence granted to us which relates to the operation of our Online Trading Facility; or

15.18.2. these Terms and Conditions. The use and/or access of our Online Trading Facility may be terminated immediately, in whole or in part, if any underlying Financial Products relating to any supported Financial Product(s) is/are withdrawn by any market and/or if we are required to withdraw our Online Trading Facility, in whole or in part, to comply with Applicable Laws, Rules and/or Regulations.

15.19. In the event of a termination of the access and/or use of our Online Trading Facility for any reason, upon our first request, you shall, at our option, return to us or destroy all hardware, software, system documentation and/or other documentation or files we have provided to you in connection with our Online Trading Facility, and any copies thereof.

16. ORDERS AND CONFIRMATIONS

16.1. You agree that XM.com may on your instructions purchase and sell cash settled CFDs and Margin FX Contracts. Unless otherwise agreed by us Orders for execution of Transactions between you and us are to be given to us electronically through our Trading Platform or where there is a system failure by telephoning us.

16.2. When you place an Order by telephone, you can do so only by talking directly to a representative of XM.com. No message may be left, and no Orders may be placed using answer phone or voicemail facilities or by facsimile or by email. All telephone calls are recorded for the purposes of fraud prevention and quality control and by agreeing to these terms and conditions you agree to such recordings.

16.3. Any Order to execute a Transaction shall not take effect unless actually received by XM.com. XM.com shall be entitled to rely upon any instruction given or purporting to be given by you or any other person on your behalf without further enquiry as to the genuineness, authority or identity of any such person giving or purporting to give such instructions.

16.4. XM.com may, at its discretion refuse to accept any Order from you but will notify you of any such refusal, without being obliged to give any reasons, promptly following receipt of your instructions. XM.com may cancel any instructions previously given by you provided that XM.com has not acted on your instructions. Without prejudice to the generality of the foregoing XM.com reserves the right to limit the number of open Transactions that a Client may enter or maintain in their Account. XM.com reserves the right, in its sole discretion, to refuse to accept any Order opening a new Transaction or increasing an open Transaction. Acceptance of your Order will be evidenced by XM.com confirmation of that Order. The validity of any Order shall not, however, be affected by any failure or delay in such Order being confirmed. Acceptance of any Order does not constitute any acknowledgment agreement or representation that your Initial Margin requirement in respect of the Order or your existing Order is satisfied.

16.5. You acknowledge and agree that by executing or completing and submitting the Account Application Form that you have given us your prior express consent to execute all Orders outside a regulated market.

16.6. Following the execution of a dealing instruction for your Account, we will confirm that Transaction and/or Contract as soon as we reasonably can by posting a trade confirmation ("Settlement/Trade Confirmation") on our Online Trading Facility, but failure to do so will not affect the validity of the transaction. Settlement/Trade Confirmations will normally be available instantly following the execution of the Transaction via our Online Trading Facility. Confirmations shall be

deemed to be conclusive and binding on you if not objected to immediately upon receipt with such objection confirmed in writing (including e-mail or electronic mail) no later than close of business on the business day (being a day, other than a Saturday, Sunday or public holiday, when banks in Australia are open for business) (a "Business Day") following the day on which the Settlement/Trade Confirmation is posted on our Online Trading Facility. In the event that you believe to have entered into a Transaction or Contract, which should have produced a Settlement/Trade Confirmation or otherwise a posting on your Account, but you have not received such confirmation, you must inform us immediately when you ought to have received such confirmation. In the absence of such information, the Transaction and/or Contract may, at our reasonable discretion, be deemed to be non-existent.

16.7. We will post details of your Account activity on our Online Trading Facility and you will be able to generate daily and monthly of your Account activity as well as a report of each executed Transaction and/or Contract. Updated Account information normally will be updated periodically during our dealing hours and will in any event be available no more than twenty-four (24) hours after any activity takes place on your Account. Posting of Account Information via our Online Trading Facility will be deemed delivery of Settlement/Trade Confirmations and Account statements. Account information will include Settlement/Trade Confirmations with ticket numbers, purchase and sale rates, utilised Margin available for Margin trading, statements of profits and losses, as well as current open positions, any other information required to be provided under Applicable Laws, Rules and/or Regulations and any other information we may make available (hereinafter "Account Information"). We may in our absolute discretion withdraw or amend any Account Information at any time. Unless otherwise determined and stated "in the terms agreed upon by mutual consent of the Parties", you agree that we are under no obligation to provide confirmations in hard copy or by e-mail rather than through our Online Trading Facility. By accepting these Terms and Conditions you agree not to receive any Account Information in printed form us other than upon specific request. You must verify the contents of all Account Information received from us. The Account Information posted on our Online Trading Facility shall (save if manifestly incorrect) be conclusive evidence of your Transactions and/or Contracts, open positions, Margin and cash balances, and shall be conclusive and binding on you, if not objected to immediately upon receipt with such objection confirmed in writing (including e-mail or electronic mail) no later than close of business on the Business Day following the day on such information is posted on our Online Trading Facility.

16.8. Stop Loss, Take Profit, Buy Limit, Buy Stop, Sell Limit, Sell Stop on Financial Product contracts are executed at the declares by the Client price on the first current price touch. But under certain trading conditions it may be impossible to execute Orders (Stop Loss, Take Profit, Buy Limit, Buy Stop, Sell Limit, Sell Stop) on any Financial Products contract at the declared price. In this case, the Company has the right to execute the Order at the first available price. This may occur, for example, at the following cases:

16.8.1. Trading session start moments;

16.8.2. During news times;

16.8.3. During volatile markets where prices may move significantly up or down and away from declared price; Where there is rapid price movement, if the price rises or falls in one Trading Session to such an extent that under the rules of the relevant exchange, trading is suspended or restricted;

16.8.4. If there is insufficient liquidity for the execution of the specific volume at the declared price.

17. MARGINS

17.1. As a condition of entering into a Transaction, we will require the payment to us to meet your liability to us for any losses which may be incurred in respect of the Transaction ("Initial Margin"). Initial Margin is due and payable prior to opening a Transaction and we will decline to open any Transaction if you do not have sufficient available Margin in your Account, or sufficient available client moneys in the client moneys trust account which can be withdrawn to pay us as Margin (or a combination of both) to satisfy the Initial Margin required for that Transaction at the time the Order is placed.

17.2. The amount required by XM.com and the time at which it is required will be at the absolute discretion of XM.com. XM.com is not obliged to permit any offset of any moneys so required by XM.com.

17.3. If there is an adverse movement in the value of a Transaction we will require additional payment from you to cover the adverse movement and to supplement the Initial Margin (“Variation Margin”). You can deposit moneys in the client moneys trust account (in cleared funds) or make another acceptable payment. If you deposit moneys in the client moneys trust account we will withdraw the required amount as payment to us for Margin.

17.4. Where we effect or arrange a Transaction and/or Contract, involving, for instance, a CFD, you should note that, depending upon the nature of the Transaction or Contract, you may be liable to make further payments when the Transaction and/or Contract fails to be completed or upon the earlier settlement or closing out of your position. You will be required to make further payments for Margin for the value of the investment, instead of paying (or receiving) the whole purchase (or sale) price immediately. The movement in the value of your investment (affected by the underlying market price) will affect the amount of Margin payment you will be required to make.

17.5. You shall pay us on demand:

17.5.1. any amount necessary for maintaining a positive balance in any and all of your Accounts with us; and

17.5.2. such sums of money for Initial Margin or Variation Margin as we, in our absolute discretion, may require.

17.6. You accept that our Online Trading Facility operates with an automated risk monitoring, Margin Call and Stop-out facility designed to monitor the overall utilization of clients’ available collateral in support of our prevailing Margin and cash funding requirements for the Transactions and/or Contracts they are entering into via our Online Trading Facility; using this automated risk monitoring, Margin Call and Stop-out facility, we will, unless otherwise stated, apply initial, maintenance or close out Margin call at the prevailing Margin Call or Stop-out levels, as stated from time to time on our Online Trading Facility.

17.7. We may change our Margin requirements at any time. Any requirement for Margin payments must be satisfied within such time as may be specified by us or, if none is specified, immediately. One Margin call does not preclude another.

17.8. Without prejudice to clause 17.3 above, the Company at its sole discretion may temporarily require higher Margin for placing new Orders for any specific or all Financial Products (compared to the normal margin requirements of the Client’s account) in the following cases:

17.8.1. Prior to and/or during Friday market closure;

17.8.2. Prior and/or during to any other market closure for any specific or all Financial Products;

17.8.3. Prior and/or during to any major news announcements, such as, but not limited to, the Nonfarm Payroll announcement made by the United States Department of Labor;

17.8.4. Prior and/or during to any anticipated abnormal market conditions and/or Market Disruptions.

17.9. You are responsible for maintaining appropriate arrangements with us at all times for the receipt and communication of information regarding Margin. You shall promptly deliver any money in respect of any Transaction or Contract in accordance with the terms of that Transaction or Contract and with any instructions given by us for the purpose of enabling us to perform our obligations under any corresponding Transaction or Contract entered into between us and a third party. If you fail to provide us with Margin, deposits or other payable amounts in accordance with the terms of any Transaction or Contract within in the required time, we will be entitled, at our sole discretion, to close out any open Transaction or Contract without prior notice to you and apply any proceeds thereof to payment of any amounts due to us and/or, as we deem fit at our sole discretion, exercise our rights in accordance with section 21 below.

17.10. All initial and subsequent calls for Margin shall be made in the currency of the Transaction and/or Contract, or in the currency of your Account as we determine, in such amounts as we may in our absolute discretion require; we are authorised to convert funds held for your account as Margin into and from such foreign currency at a rate of exchange determined by us on the basis of the then prevailing money market rates. In such circumstances, we will not be liable to

you for any loss suffered by you as a result of such action (although, we will use reasonable endeavours to only convert such funds as may prudently be required to cover the position in respect of the relevant transaction).

17.11. We reserve the right to return to you at any time, with or without reasons and without being obliged to provide you with any justification of explanation, any assets paid to us by way of Margin, collateral, deposits or otherwise.

17.12. You accept that our Online Trading Facility operates with an automated risk monitoring, Margin Call and Stop-out facility designed to monitor the overall utilization of your available collateral in support of our prevailing Margin and cash funding requirements for the Transactions and/or Contracts you are entering into via our Online Trading Facility; using this automated risk monitoring, Margin Call and Stop-out facility, we will, unless otherwise stated, apply initial, maintenance or close out Margin call at the prevailing Margin Call or Stop-out levels, as stated from time to time on our Online Trading Facility.

17.13. Our Margin Call policy guarantees that your maximum possible risk is your Account equity. If the equity in your Account drops to 50% of the Margin Level required to maintain your open positions ("Margin Call Level"), you will receive a Margin Call. This is a warning that the equity in your Account is not enough to support your open positions.

17.14. All clients are fully and personally responsible for monitoring the activity of their Accounts, including, without limitation, whether and when their open positions reach Margin Call Level.

17.15. The Stop-out Level is the level of your equity where our Online Trading Facility will start automatically to close trading positions (starting from the least profitable position and until the Margin Level requirement is met) in order to prevent further account losses into the negative territory. The Stop-out Level is equal to 20% of the Margin Level required to maintain your open positions.

17.16. In the case where a Limit Order is entered at the same price that would trigger a Stop-out, the Stop-out will be executed when that price is touched (or gaps through the price) and all Pending Orders attached to that trade will be cancelled.

17.17. The currency of the payment you make to us for Margin must be the currency of the relevant underlying Transaction (if applicable) or as we may in our discretion reasonably decide from time to time.

17.18. A MARGIN CALL OR, AS THE CASE MAY BE, STOP-OUT, WHEN TRIGGERED, WILL TAKE PRECEDENCE OVER OTHER ORDER TYPES.

18. INTRODUCING BROKERS

18.1. If your Account was introduced to XM.com by an introducing broker you acknowledge and agree that:

18.1.1. you authorised the introducing broker to introduce you to XM.com;

18.1.2. a portion of the remuneration we generate from entering into Transactions with you may be paid to the introducing broker and that you can contact the introducing broker or XM.com for further information in this respect; and

18.1.3. any personal advice given to you regarding your Account or your Transactions will be given by the introducing broker and not by XM.com.

19. FEES AND EXPENSES

19.1. XM.com does not charge fees on Margin FX or CFD transactions. Other fees and charges, once disclosed and agreed, will be charged to your Account at the time your transaction is executed.

19.2. You will pay our charges as agreed with you from time to time or we may deduct such charges from any funds held by us on your behalf.

19.3. XM.com does not charge a conversion fee when converting currencies to your Base Currency. When there is a conversion from a term currency to your Base Currency the exchange at the spot rate for the applicable currency pair is posted on the Trading Platform at the time of the transaction.

19.4. If you direct XM.com to fund a payment for Margin from funds denominated in a foreign Currency held on your Account, XM.com will be authorised to convert those funds for the payment for Margin at a rate of exchange determined by XM.com. XM.com will not be liable to you for any loss suffered by you as a result of any such conversion.

19.5. Unless we give you written notice to the contrary, all payments and deliveries between us shall be made on a net basis and we shall not be obliged to deliver any asset or make any payment to you or both (as the case may be) unless and until we have received from you the appropriate documents and any cleared funds.

19.6. We shall be entitled to demand that the following fees and/or expenses are paid separately by you:

19.6.1. all extraordinary disbursements resulting from our client relationship e.g. telephone, telefax, courier, and postal expenses in the event that you request hardcopy Settlement/Trade Confirmations, Account statements etc. which we could have delivered in electronic form;

19.6.2. any expenses we may incur in connection with replies to inquiries by public authorities, including, without limitation, a fee determined by us in relation to forwarding of transcripts and enclosures and for the preparation of copies;

19.6.3. transaction fees, in the event that no significant trading activity is developed in your Account;

19.6.4. any expenses we may incur in connection with auditor's comments/reports if such is requested by you;

19.7. XM.com reserves the right to charge a Dormant Account Fee as per section 24.

19.8. Fees must be paid to us immediately upon execution of the trade, and will be deducted from your account in accordance with the Terms and Conditions.

19.9. We reserve the right to amend, alter, modify, delete or add to any of these fees and charges at any time and at our sole discretion. You will receive proper notification of such changes.

20. TAXES

20.1. You are responsible for all taxes (Australian or foreign) that may arise as a result of or in connection with a Transaction, whether under current or changed law or practice. We shall have no responsibility for any of your tax liabilities, or for providing information or advice in respect of such liabilities and shall not be responsible for notifying you of a change in tax law or practice. You shall indemnify us and hold us harmless for and against all costs, claims, demands and expenses arising as a result of or in connection with any failure by you to reimburse the indemnified party in accordance with this clause.

20.2. The Company shall not provide any advice to you on any tax issue related to any services. You are advised to obtain individual and independent counsel from your financial advisor, auditor or legal counsel with respect to tax implications of the respective services. You are responsible for the payment of all taxes that may arise in relation to your Transactions. The Company may make deductions and/or withholdings as required by Applicable Laws.

20.3. In the event that we become liable to pay any tax on your behalf arising from or incidental to Transactions executed by you with us you shall reimburse us on demand in full for the amount of such tax paid by us. In the event that we become liable to pay any stamp duty, stamp duty reserve tax or any other similar documentary tax or duty in any jurisdiction (collectively "Stamp Duty") in respect of any shares purchased or otherwise acquired by us or an Associate in order to hedge any Margined Transaction between us and you, you shall reimburse us on demand in full for the amount of such Stamp Duty paid by the Company.

21. EVENTS OF DEFAULT

21.1. The Client acknowledges and agrees that where one of the following events occurs, XM.com may take any such action provided in section 21.3 below:

21.1.1. the Client fails to meet a call for Margin or make any other payment when due under these Terms and Conditions or to make or take delivery of any property when due under, or to observe or perform any other provision of these Terms and Conditions and such failure continues for one Business Day after notice of non-performance has been given;

21.1.2. the Client is not contactable by XM.com (and has not made alternative arrangements) within the time specified by XM.com in order for XM.com to obtain instructions (where required);

21.1.3. we have reasonable grounds to believe that:

- a) you are in breach of any undertaking or agreement set out in these Terms and Conditions; or
- b) any representation or warranty made by you in these Terms and Conditions or otherwise with respect to or in connection with any Transaction, is or was untrue, false or misleading when made, repeated or deemed to be made or repeated;

21.1.4. any action is taken or any event occurs, in each case which we believe might have an adverse effect upon your ability to perform any of your obligations under or in connection with these Terms and Conditions or any Transaction;

21.1.5. you fail to remit funds necessary to enable us to take delivery under any Transaction and/or Contract on the first due date;

21.1.6. you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to these Terms and Conditions are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrance takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible);

21.1.7. you commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each a “custodian”) of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing, and in the case of a reorganisation, arrangement or composition, we do not consent to the proposals;

21.1.8. an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a custodian of you or any substantial part of your assets and such involuntary case or other procedure either:

- a) has not been dismissed within five (5) Business Days of its institution or presentation; or
- b) has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure;

21.1.9. an application is made in respect of you for an interim order or if a bankruptcy petition is presented in respect of you or, in the case of a partnership, in respect of one or more of the partners, or if a company, a receiver, trustee, administrative receiver or similar officer is appointed;

21.1.10. in the case of a legal entity, a petition is presented for your winding-up or administration, or an order is made or a resolution is passed for the your winding-up or administration of the Client (other than for the purposes of amalgamation or reconstruction with our prior written approval);

21.1.11. any distress, execution or other process is levied against any of your property and is not removed, discharged or paid within seven (7) calendar days;

21.1.12. any security created by any mortgage or charge becomes enforceable against you and the mortgagee or custodian takes steps to enforce the security or charge;

21.1.13. any of your indebtedness or any the indebtedness of any of your subsidiaries becomes immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity by reason of your or any of your subsidiaries' default, or you or any of your subsidiaries fail to discharge any indebtedness on its due date;

21.1.14. you (or any custodian acting on behalf of you) disaffirm, disclaim or repudiates any obligation under these Terms and Conditions;

21.1.15. you fail to comply with any obligations set forth in these Terms and Conditions or in any Transaction and/or Contract, including failure to meet Margin requirements;

21.1.16. you are dissolved, or, if your capacity or existence is dependent upon a record in a formal register, the registration is removed or ends, or any procedure is commenced seeking or proposing your dissolution, removal from such a register, or the ending of such a registration;

21.1.17. we consider it necessary or desirable to prevent what we consider is or might be a violation of any Applicable Laws, Rules and Regulation or good standard of market practice;

21.1.18. you violated any clause of these Terms and Conditions and/or any other agreements we have, or had in the past, in place;

21.1.19. any Event of Default (however described) occurs in relation to you under any other agreement between us which you are a party to or any other event specified for any Event of Default (however described) occurs in relation to you under any other agreement between us which you are a party to or any other event specified for;

21.1.20. it becomes or may become unlawful for XM.com to maintain or give effect to all or any of the obligations under these Terms and Conditions or otherwise to carry on its business or if XM.com or the Client is requested not to perform or to close out a transaction (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding; or

21.1.21. XM.com considers it necessary to do so for its own protection.

21.2. If the Client becomes aware of the occurrence of any event referred to in clause 14.1 above, it shall notify XM.com immediately.

21.3. If any event referred to in section 21.1 above takes place, XM.com shall at its absolute discretion, without prejudice to any other rights it may have under these Terms and Conditions, be entitled to:

21.3.1. close out, replace or reverse any Transaction and/or Contract, buy, sell, borrow or lend or enter into any other Transaction and/or Contract, or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate to cover, reduce or eliminate our loss or liability under or in respect of any of your Transactions, Contracts, positions or commitments, deliver any security investment or property to any third party, or otherwise take any action we considers being necessary or desirable in order to close out any Transaction and/or Contract;

21.3.2. require you immediately to close out and settle such Transactions and/or Contracts in such manner as we may, at our sole discretion request;

21.3.3. enter into any foreign exchange transaction, at such rates and times as we may determine, in order to meet obligations incurred under a Transaction and/or Contract;

21.3.4. invoice back all or part of any assets standing to the debit or credit of any Account;

21.3.5. instead of returning to you investments equivalent to those credited to your account, to pay to you the fair market value of such investments at the time we exercise such right; and/or

21.3.6. take all action as we see fit, including, without limitation, completely blocking access to our Online Trading Facility, blocking and/or revoking your Access Codes and/or terminating your Account(s).

21.3.7. cancel any outstanding orders in order to close the Client's account;

21.3.8. convert any amount owed by the Client to XM.com into Australian currency at any time on or after payment is due (until payment is received in full);

21.3.9. charge the Client with all of the costs, expenses and losses incurred by XM.com as a result of entering into, or closing out transactions pursuant to these Terms and Conditions;

21.3.10. to enforce any charge, security interest or lien created or otherwise contemplated by these Terms and Conditions or any other right of set-off or similar right we may have, whether as a matter of contract, under common law, or otherwise; and

21.3.11. to take any such action a reasonably prudent person would take in the circumstances to protect the personal obligation incurred when dealing on behalf of the Client.

21.4. You hereby authorize us to take all or any measures described in this section without prior notice to you and you acknowledge and agree that we shall not be responsible for any consequences of us taking any such steps, unless we have exercised gross negligence in connection herewith. In these circumstances, you shall execute such documents and take such other action as we may reasonably request in order to protect our rights under these Terms and Conditions or within the scope of any other agreements between you and us.

21.5. Without prejudice to our other rights under and/or pursuant to these Terms and Conditions, we may, at any time and without notice, combine or consolidate all or any of your Accounts with us and off-set any amounts owed to or by us in such manner as we may determine at our sole discretion.

21.6. Our rights under this section shall be in addition to, and not in limitation or exclusion of, any other rights which we may have (whether by agreement, operation of law or otherwise), and does not in any circumstances constitute as a waiver of that right or any other rights or remedies of ours should any such Event of Default has occurred.

21.7. Notwithstanding anything in these Terms and Conditions to the contrary, we will not be obliged to make any payment or delivery otherwise required to be made by us to you pursuant to or in connection with these Terms and Conditions or any Transaction for as long as an Event of Default has occurred and is continuing.

22. EXCLUSIONS, LIMITATIONS AND INDEMNITY

22.1. Nothing in these Terms and Conditions will exclude or restrict any duty or liability owed by us to you under Applicable Laws (as may be amended or replaced from time to time).

22.2. Our obligations under these Terms and Conditions do not constitute personal obligations of our directors, officers, shareholders, partners, members, employees, Associates, Representatives, or Agents.

22.3. Notwithstanding anything in these Terms and Conditions (other than section 22.1) to the contrary, neither we nor any of our Associates nor any of our or their directors, officers, employees or agents, will be liable for any loss (including any incidental, indirect or consequential loss), whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you or any other person under or in connection with these Terms and Conditions, any

Transaction or any of our dealings with you (including any Order in respect of a Transaction not accepted by us), and irrespective of whether or not you or any other person have been informed of the possibility of such loss, in each case except to the extent that such loss arises directly from our own wilful default or fraud, as determined by a competent court in a final, non-appealable judgment. Without limiting the generality of the foregoing, under no circumstances will any liability we may have to you extend to any loss of profits, loss of goodwill, loss of business opportunity or reputational damage. The foregoing will not, however, limit our liability for death or personal injury resulting from our negligence.

22.4. If at any time you are unable, for whatever reason, to communicate with us, we do not receive any communication sent by you, or you do not receive any communication sent by us under these Terms and Conditions, we will not:

22.4.1. be responsible for any loss, damage or cost caused to you by any act, error, delay or omission resulting therefrom where such loss, damage or cost is a result of your inability to open a Transaction; and

22.4.2. except where your inability to communicate with us results from our fraud, wilful default or negligence, be responsible for any loss, damage or cost caused to you by any act, error, omission or delay resulting therefrom including without limitation, where such loss, damage or cost is a result of your inability to close a Transaction.

22.5. Without prejudice to any other provisions in these Terms and Conditions, access to our Online Trading Facility is provided "as is" and neither we, nor our Associates make any representations or warranties of any kind whatsoever regarding:

22.5.1. the availability, currency, accuracy or completeness of our Online Trading Facility;

22.5.2. the results to be obtained by you or anyone else from the use of our Online Trading Facility; and

22.5.3. any third party content accessible on or through our Online Trading Facility.

22.6. Neither we, nor our Associates will be liable to you or any Authorized Person for the correctness, quality, accuracy, security, completeness, reliability, performance, timeliness, pricing or continued availability of our Online Trading Facility, or for any failure of any connection or communication service to provide or to maintain your or any Authorized Person's access to our Online Trading Facility, or for any erroneous communications between you and us.

22.7. Technical difficulties could be encountered in connection with the Online Trading Facility. These difficulties could involve, among others, failures, delays, malfunction, software erosion or hardware damage, which difficulties could be the result of hardware, software or communication link inadequacies or other causes. Such difficulties could lead to possible economic and/or data loss. Subject to section 22.1 of these Terms and Conditions, in no event will XM.com or its Associates or any of their employees be liable for any possible loss (including loss of profit or revenue whether direct or indirect), cost or damage including, without limitation, consequential, unforeseeable, special or indirect damages or expense which might occur as a result of or arising out of using, accessing, installing, maintaining, modifying, deactivating or attempting to access the Online Trading Facility or otherwise. XM.com further reserves the right, in its sole discretion to unwind an executed Transaction or adjust the price of executed Transactions (including Transactions that have been confirmed or settled) to a fair price if the Transaction was mispriced because of technical difficulties with the Trading Platform.

22.8. You agree to indemnify and hold XM.com, its Associates and any of their directors, officers, employees and agents harmless from and against any and all liabilities, losses, damages, costs and expenses, including legal fees incurred as a result of your breach of these Terms and Conditions or in connection with the provision of the services under these Terms and Conditions to you provided that any such liabilities, losses, damages, costs and expenses have not arisen as a result of our negligence, fraud or wilful default.

22.9. For the avoidance of doubt, and subject to section 22.1 of these Terms and Conditions, in no circumstances will we be liable or responsible to you for any losses you may incur or suffer as a result of entering into Transactions.

22.10. Without prejudice to any other disclaimer or limitation of liability contained in these Terms and Conditions, neither we nor any of our Representatives will have any liability or responsibility for any adverse tax implications of any Transaction.

22.11. Without prejudice to any other disclaimer or limitation of liability contained in these Terms and Conditions, we will not have any liability or responsibility by reason of any delay in accepting any Order placed by you or executing any Transaction or any change in the underlying market conditions.

22.12. We may determine in our absolute discretion, for a period determined by us before and after a fundamental announcement to not quote prices/rates on the Trading Platform which means you will not be able to enter into Transactions in that period. We will determine in our absolute discretion what we deem to be a fundamental announcement.

22.13. We may, in our reasonable opinion, determine that an emergency or an exceptional condition exists (a “Force Majeure Event”), in which case we will, in due course, take reasonable steps to inform you. A Force Majeure Event will include, but is not limited to, the following:

22.13.1. any act, event or occurrence (including without limitation any act of God, strike, riot or civil commotion, act or terrorism, war, industrial action, acts and laws of any governmental or supra national bodies or authorities) that, in our opinion, prevents us from maintaining orderly trading in one or more of the Financial Products offered by XM.com in respect of which we ordinarily deal in Transactions;

22.13.2. the suspension or closure of any underlying market or the abandonment or failure of any event on which we base, or to which we or an Associate in any way relate, our quote, or the imposition of limits or special or unusual terms on trading or on any such event;

22.13.3. the occurrence of an excessive movement in the level of any Transaction or our anticipation (acting reasonably) of the occurrence of such a movement;

22.13.4. any breakdown or failure of transmission, communication or computer facilities, interruption of power supply, or electronic or communications equipment failure;

22.13.5. failure of any relevant supplier, or hedging counterparty of ours, for any reason, to perform its obligations.

22.14. If we determine that a Force Majeure exists, we may, at our absolute discretion, without notice and at any time, take one or more of the following steps:

22.14.1. increase your Initial Margin requirements;

22.14.2. close all or any of your open Transactions at such price as we reasonably believe to be appropriate;

22.14.3. suspend or modify the application of all or any of the clauses of these Terms and Conditions to the extent that the Force Majeure Event makes it impossible or impracticable for us to comply with the clause or clauses in question; or

22.14.4. alter the last time for dealing for a particular Transaction.

22.15. XM.com shall have no obligation to contact you to advise upon appropriate action in light of changes in the underlying market conditions or otherwise.

22.16. Without prejudice to our rights under sections 22.3 and 22.4, you will pay to us such sums as we may from time to time require in any of your Accounts with us and, on a full indemnity basis, any losses, taxes, imposts and levies which we or any of our Representatives may incur or suffer in connection with or related to any of your Accounts or any Transaction or as a result of any misrepresentation by you or any violation by you of any of your obligations under these Terms and Conditions (including in connection with any Transaction) or the enforcement of any of our rights or remedies under or in connection with these Terms and Conditions or any Transaction.

22.17. The Client will indemnify and keep indemnified XM.com and its employees, contractors or agents from and against any cost, expense, claim, action, suit, loss, damage or other amounts whatsoever arising out of any default, whether by act or omission, of the Client under these Terms and Conditions or anything lawfully done by XM.com in

accordance with these Terms and Conditions or by reason of XM.com complying with any direction, request or requirement of an exchange or its clearing house or other regulatory authority.

22.18. XM.com shall not be responsible or liable in any way for any delay or error in the transmission or execution of any dealing by it under these Terms and Conditions caused by the Client or any other third party, including but not limited to trading floor or exchange system operational failure or action, bank delay, postal delay, failure or delay of any fax or electronic transmission or delay caused by accident, emergency or act of god.

22.19. No warranty is provided by XM.com in relation to information or advice sourced from third parties, and all information or advice provided by XM.com to the Client is for the private use of the Client and is not to be communicated to any third party without the prior written consent of XM.com.

22.20. XM.com makes no representation or warranty as to the results of dealing in the financial products, and shall not be liable for any damage or loss suffered or incurred by the Client arising out of or in connection with any advice, forecast, or opinion to the Client in relation to price movements or positions or to the likely profitability of any transaction.

22.21. These indemnities shall survive any termination of the Client relationship.

23. DISPUTE RESOLUTION

23.1. These Terms and Conditions and all Transactions will be governed by and construed in accordance with the laws of New South Wales, Australia.

23.2. XM.com has an internal dispute resolution process in place to resolve any complaints or concerns you may have, as quickly and fairly as possible in the circumstances. Any complaints or concerns should be directed to the Director (by telephone, facsimile, or letter) at the address and telephone/fax numbers provided in section 2 of the PDS. We will seek to resolve your complaint within seven (7) days or such further time period that may reasonably be required given the nature of the complaint. We will investigate your complaint, and provide you with our decision, and the reasons on which it is based, in writing.

23.3. If you are dissatisfied with the outcome, you have the right to lodge a complaint with the Financial Ombudsman Service (hereinafter “FOS”) (contact details below), an approved external dispute resolution scheme, of which XM.com is a member.

Financial Ombudsman Service

Address: GPO Box 3 MELBOURNE VIC 3001

Telephone: 1300 780 808

Facsimile: 03 9613 6399

Website: www.fos.org.au

Email: info@fos.org.au

23.4. Without prejudice to any rights you may have to refer a complaint to the FOS, as further set out in section 23.3 of these Terms and Conditions, each of the parties irrevocably:

23.4.1. agrees that the courts of New South Wales will have jurisdiction to settle any proceedings and submits to the jurisdiction of such courts (provided that this will not prevent us from bringing any proceedings against you in the courts of any other jurisdiction); and

23.4.2. waive any objection which it may have at any time to proceeding brought in any such court and agrees not to claim that such proceeding has been brought in an inconvenient forum or that such court does not have jurisdiction over it.

23.5. A determination FOS will be binding on XM.com only if you accept the decision.

24. DORMANT AND ARCHIVING POLICY

24.1. In the event that there is no activity (trading/withdrawals/deposits) in all of your Accounts for a set period of at least ninety (90) calendar days we will regard your Accounts to be dormant. An Account shall be deemed as dormant from the last day of the ninety (90) calendar days in which there has been no activity (trading/withdrawals/deposits) in the Account.

24.2. All remaining bonuses / promotion credits / XM Points will be automatically removed from dormant Accounts.

24.3. Dormant Accounts will be charged with a monthly dormant fee of USD 5 (five United States Dollars) or the full amount of the free balance in the Account if the free balance is less than USD 5 (five United States Dollars). There will be no charge if the free balance in the Account is zero.

24.4. Accounts with zero balance will be archived after period of ninety (90) calendar days.

25. CHARGEBACKS

25.1. If you place a chargeback with your credit card company (on purpose or by mistake) for any payment you make for your Account with us, we reserve the right to charge a “research fee” (not less than USD 150) to your Account upon receiving the chargeback by our merchant provider to cover our investigative expenses to prove that you did make the payment, and you hereby authorize us to charge this amount to your credit card.

25.2. We do not tolerate credit card or other fraud, and all fraud, without exception, will be prosecuted through criminal proceedings in your local jurisdiction to the fullest extent of the law. In addition, we will pursue civil legal action in your local jurisdiction seeking any loss of income related to the fraud, including business, legal fees, research and investigation costs, employee down time and loss of revenues.

25.3. We employ advanced risk modelling to detect fraudulent transaction clues across our services. Fraudulent transactions are immediately cancelled after being detected. Any active Orders associated with the same fraudulent card or account will also be cancelled immediately. We also actively leverage external, cross-industry resources -- such as worldwide fraud blacklists -- to prevent fraudulent users from accessing our Online Trading Facility in the first place.

25.4. We consider credit card or other account charge backs to be fraudulent if you make no reasonable effort to work with us to resolve any problems with your deposit. All frivolous chargebacks not only cost our employees time away from our usual and customary matters of conducting normal business, but also cost us money, therefore:

25.4.1. when we detect questionable activity related to a deposit or other payment that is being made into or for an Account, we will mark the deposit or other payment with a “customer review in progress” status and perform fraud detection checks on the deposit or other payment to reduce your exposure to risk; during this time you will not be able to access your Account.

25.4.2. In general, we complete reviews within four (4) to six (6) hours; certain deposits posing a higher potential risk may require more time, however, since our Compliance Department performs even more extensive fraud detection checks. We may also contact you directly as a backup precaution. If we determine that a deposit or other payment is high-risk or does not comply with our fraud and security policies, the deposit or other payment will immediately be cancelled and the funds or other payment will immediately be paid to the credit card or other account from which the payment was initially made. Furthermore, in such instances, we reserve the right, at our sole discretion, to close any and all of your Account(s) with us immediately. Any active Orders associated with the same fraudulent credit card, other payment account or Account with us will also be cancelled immediately.

25.4.3. You agree that if you choose to do business with us and you file a charge back with your credit or other card company, but you do not win the charge back argument, you agree to pay us, in addition to the research fee mentioned above, a “administrative processing fee” (not less than USD 150) for our time responding to the matter. You hereby authorize us to charge this amount to your credit or other card. If this charge is rejected, we will pursue legal action to recoup losses for our time associated with responding to the charge back in addition to any other fees explained above. You agree to reimburse us or any Representative we may appoint for any legal expenses incurred to deal with your actions.

25.4.4. In addition, we will attempt to recover fraudulently disputed charges plus additional costs via a third-party collection agency and your account will be reported to all credit bureaus as a delinquent collection account. This may severely damage your credit rating for at least the next seven (7) years. At this point, we will no longer accept a settlement of your debt and will only accept payment in full. In addition to this, we may file a report with your local police department, and pursue all fraudulent activities through your local jurisdiction for prosecution to the fullest extent of the law. Furthermore, in such instances, we reserve the right, at our sole discretion, to take all action as we see fit, including, without limitation, completely blocking access to our Online Trading Facility, blocking and/or revoking your Access Codes and/or terminating your Account. Under these circumstances, we reserve the right to seize any profits and/or revenues generated directly or indirectly by exercising any such prohibit trading activity and we shall be entitled to inform any interested third parties of your breach of this clause; any active Orders associated with the same fraudulent credit or other card and/or Account will also be cancelled immediately; we have, and will continue to develop any tools necessary to identify credit/debit card fraud; any dispute arising from such fraudulent activity will be resolved by us in our sole and absolute discretion, in the manner we deem to be the fairest to all concerned; that decision shall be final and/or binding on all participants; no correspondence will be entered into.

25.4.5. We take fraud very seriously. We log IP strings on all deposits or other payments made to our accounts - any orders coming back as a chargeback due to fraudulent activities will be diligently pursued through criminal proceedings in your local jurisdiction for prosecution to the fullest extent of the law.

26. ISLAMIC/SWAP-FREE ACCOUNTS

26.1. We offer the possibility to open Islamic (Swap-free) Accounts with us. Swap-free trading accounts are available only to those clients who cannot use swaps owing to their religious beliefs. Accordingly, in all instances where a request for an Islamic (Swap-free) Account is filed with us, we reserve the right to require an adequate justification for and/or proof of the necessity or need of any such conversion. Furthermore, we reserve the right to refuse the processing of any such request for any reason whatsoever, without being obliged to provide any explanation or justification.

26.2. While a client may file a request for an Islamic (Swap-free) trading account at any time, the filing of any such request entails that all of such client's other real trading Accounts with us will be converted into Swap-free trading accounts also, without any further notice being required. Conversion of a real trading Account to a Swap-free trading account is performed by our Back-Office Department only upon the request and consent of those clients who complete and submit a request for an Islamic (Swap-free) Account. Upon the receipt of such a duly signed and executed request, we shall evaluate request and any ancillary documentation submitted to us and shall inform the client who requested the conversion by e-mail whether the request is accepted or not.

26.3. clients are not allowed to use Swap-free Accounts to make profits from Swaps and may not request the payment of any Swap amounts that have been lost as a result of converting their real trading Account(s) into one or more Swap-free Account(s) for the period during which their real trading Account(s) has/have been converted into one or more Swap-free account(s).

26.4. We reserve the right to revoke the Swap-free status granted to any real trading Account at any time without being obliged to provide any explanation or justification. Furthermore, in the event that we detect any form of abuse, fraud, manipulation, cash-back arbitrage, carry trades, or other forms of deceitful or fraudulent activity in regard to any Swap-free Account of any client, we reserve the right, at any time, (a) with immediate effect, to revoke the Swap-free status from any and all real trading Accounts of such client that have been converted to a Swap-free trading Account; (b) to correct and recover any un- accrued Swaps and any related un-accrued interest expenses and or costs pertaining to any and all of such client's Swap-free trading Accounts during the period for which such Accounts were converted into Swap-free trading Accounts; and/or (c), with immediate effect, to close all trading Accounts of such client with us, nullify all trades carried out in such client's trading Accounts with us and cancel and all profits or losses garnered in such client's trading Accounts with us.

27. PROHIBITED TRADING TECHNIQUES

27.1. Circumvention & Reverse Engineering: You shall not unlawfully access or attempt to gain access, reverse engineer or otherwise circumvent any security measures that we have applied to our Online Trading Facility and/or computer system(s). If, at our sole discretion, we were to determine that you are in breach of this section, we reserve the right to take all action as we see fit, including, without limitation, completely blocking access to our Online Trading Facility, blocking and/or revoking your Access Codes and/or terminating your Account. Under these circumstances, we

Tel: +612 8607 8385 - **Fax:** +612 8252 0854 / **Email:** auinfo@xm.com - **Web:** www.xm.com/au

Address: Level 13, 167 Macquarie House, Macquarie Street, Sydney 2000, NSW, Australia

reserve the right to seize any profits and/or revenues generated directly or indirectly by exercising any such prohibit trading activity and we shall be entitled to inform any interested third parties of your breach of this section; we have, and will continue to develop any tools necessary to identify fraudulent and/or unlawful access and use of our Online Trading Facility; any dispute arising from such fraudulent and/or or unlawful trading activity will be resolved by us in our sole and absolute discretion, in the manner we deem to be the fairest to all concerned; that decision shall be final and/or binding on all participants; no correspondence will be entered into.

27.2. Artificial Intelligence Software: It is absolutely prohibited to use any software , which we determine, at our sole discretion, to have as its purpose to apply any kind of artificial intelligence analysis to our Online Trading Facility and/or computer system(s) relating to the use of our services; in the event that we determine, at our own discretion, that any such artificial intelligence software has been used, or is being used, we reserve the right to take all action as we see fit, including, without limitation, completely blocking access to our Online Trading Facility, blocking and/or revoking your Access Codes and/or terminating your Account. Under these circumstances, we reserve the right to seize any profits and/or revenues generated directly or indirectly by exercising any such prohibit trading activity and we shall be entitled to inform any interested third parties of your breach of this clause; we have, and will continue to develop any tools necessary to identify fraudulent and/or unlawful access and use of our Online Trading Facility; any dispute arising from such fraudulent and/or or unlawful trading activity will be resolved by us in our sole and absolute discretion, in the manner we deem to be the fairest to all concerned; that decision shall be final and/or binding on all participants; no correspondence will be entered into.

27.3. Unlawful trading techniques: Internet, connectivity delays, and price feed errors sometimes create a situation where the price(s) displayed on our Online Trading Facility do(es) not accurately reflect the market rates. The concept of using trading strategies aimed at exploiting errors in prices and/or concluding trades at off-market prices and/or by taking advantage of internet delays (commonly known as “arbitrage”, “sniping” or “scalping” hereinafter, collectively, referred to as “Arbitrage”), cannot exist in an over-the-counter market where the client is buying or selling directly from the principal; accordingly, we reserve the right, at our sole discretion, NOT to permit the abusive exploitation of arbitrage on our Online Trading Facility and/or in connection with our services; any Transactions or Contracts that rely on price latency arbitrage opportunities may be revoked, at our sole discretion and without prior notice being required; furthermore, in those instances, we reserve the right, at our sole discretion and without prior notice being required:

27.3.1. to make the necessary corrections or adjustments on the Account(s) involved (including, without limitation, adjusting the price spreads available to the client);

27.3.2. to restrict the Account(s) involved access to streaming, instantly tradable quotes (including, without limitation, providing manual quotations only and submitting any orders to our prior approval);

27.3.3. to retrieve from the Account(s) involved any historic trading profits that we can document as having been gained through such abuse of liquidity at any time during the client relationship;

27.3.4. to terminate the client relationship and/or close all Accounts involved (including, without limitation all other accounts held by the same account holder with us immediately by giving written notice; and/or

Any indication or suspicion, in XM.com’s sole discretion, of any form of arbitrage (including but not limited to risk free profiting), abuse (including but not limited to the Client’s trading activity patterns that indicate that the Client solely aims to benefit financially without being genuinely interested in trading in the markets and/or taking market risk), internal hedging in coordination with other parties, abuse of our ‘no negative balance’ policy, fraud, manipulation, cash-back arbitrage or any other forms of deceitful or fraudulent activity, will constitute all Transactions carried and/or profits or losses garnered as invalid. In these circumstances, XM.com reserves the right to close/suspend (either temporarily or permanently) all of the Client’s trading accounts and cancel/or all transactions.

We have, and will continue to develop any tools necessary to identify fraudulent and/or unlawful access and use of our Online Trading Facility; any dispute arising from such fraudulent and/or or unlawful trading activity will be resolved by us in our sole and absolute discretion, in the manner we deem to be the fairest to all concerned; that decision shall be final and/or binding on all participants; no correspondence will be entered into.

27.4. Changes in market conditions: Please note that we shall have no obligation to contact you to advise upon appropriate action in light of changes in market conditions (including, without limitation, Market Disruptions) or

otherwise. You acknowledge that the Over-the-Counter market in leveraged Financial Products is highly speculative and volatile and that, following execution of any transaction, you are solely responsible for making and maintaining contact with us and for monitoring open positions and ensuring that any further instructions are given on a timely basis. In the event of any failure to do so, we can give no assurance that it will be possible for us to contact you and we accept no liability for loss alleged to be suffered as a result of any failure by you to do so.

27.5. Indemnification: Without prejudice to any other provisions of these Terms and Conditions, you agree to indemnify us and hold us any of our Associates, harmless from and against any and all liabilities, losses, damages, costs and expenses, including, without limitation, legal fees and expenses incurred in connection with and/or directly or indirectly related with, any fraudulent and/or unlawful access and use by you of our Online Trading Facility and/or the prevention and/or remediation thereof, provided that any such liabilities, losses, damages, costs and expenses would not have not arisen, but for our gross negligence, fraud or wilful default.

28. INTELLECTUAL PRROPERTY

28.1. All copyrights, trademarks, patents, trade secrets and other title, ownership rights and Intellectual Property Rights in and/or relating to:

28.1.1. our Online Trading Facility;

28.1.2. our services;

28.1.3. any other of our platforms or software (including, without limitation, demos and any relevant system documentation and/or users' manuals);

28.1.4. these Terms and Conditions;

28.1.5. the price quotes we provide; and/or

28.1.6. any pricing data or other information transmitted via our Online Trading Facility or otherwise, (hereinafter, collectively, referred to as "Intellectual Property Assets"), are our sole and exclusive property and/or, as the case may be, of our the third party service provider(s) which granted us the right to supply them ("third party licensors").

28.2. Our Online Trading Facility (including, without limitation, any other of our platforms or software) may incorporate third party data, text, images, software, multi-media materials and other content ("third party content") and references to the term "Intellectual Property Assets" shall be taken to include all materials, content and services made available from time to time via our Online Trading Facility, whether viewed on screen or downloaded to another computer including, without limitation, third party content.

28.3. All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to our Online Trading Facility remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify our Online Trading Facility or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble our Online Trading Facility, nor purport to do any of the same or permit any of the same to be done.

28.4. Under no circumstances shall you remove any copyright notification from any of our Intellectual Property Assets or unlawfully use any of our Intellectual Property Assets. You will not publish, distribute, or otherwise make any of our Intellectual Property Assets available to third parties any information derived from or relating to our Intellectual Property Assets, website(s), services, Online Trading Facility and/or software provided. Except as otherwise specifically agreed in writing or to the extent necessary for you to view our Online Trading Facility in accordance with these Terms and Conditions, you shall not:

28.4.1. copy, interfere with, tamper with, alter, amend or modify any of our Intellectual Property Assets and/or any component thereof, in whole or in part (except to make backup copies solely for disaster recovery purposes);

28.4.2. display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, time-share, lend or transfer or in any way exploit our Intellectual Property Assets and/or any component thereof, in whole or in part;

28.4.3. embed our Intellectual Property Assets and/or any component thereof, into other products;

28.4.4. use our Intellectual Property Assets and/or any component thereof, in any timesharing arrangement;

28.4.5. create function calls or other embedded links from any software program to our Intellectual Property Assets and/or any component thereof;

28.4.6. remove or obscure any of our copyright notices or those of any of our third party licensors from any of our Intellectual Property Assets and/or any component thereof;

28.4.7. use any of our trademarks, service marks, trade names, domain names, logos, or other identifiers, or those of any of our third party licensors (collectively “Marks”); or

28.4.8. save to the extent permitted by Applicable Laws, Rules and/or Regulations reverse engineer, decompile, disassemble, or access the source code of any of our Intellectual Property Assets and/or any component thereof.

29. TERMINATION

29.1. Without prejudice to any other provisions of these Terms and Conditions, in particular, but without limitation, those pertaining to Events of Default, our client relationship under these Terms and Conditions shall remain in force until terminated by either Party.

29.2. Unless required by Applicable Laws, rules and/or regulations either party may terminate these Terms and Conditions (and the relationship between us) by giving seven (7) calendar days written notice of termination to the other.

29.3. We may terminate these Terms and Conditions immediately, however, if you fail to observe or perform any provision of these Terms and Conditions or in case of an Event of Default, other than in the case of Force Majeure.

29.4. Upon terminating these Terms and Conditions, all amounts payable by you to us will become immediately due and payable including (but without limitation):

29.4.1. all outstanding fees, charges and commissions;

29.4.2. any dealing expenses incurred by terminating these Terms and Conditions; and

29.4.3. any losses and expenses realised in closing out any Transaction or Contract, or settling or concluding outstanding obligations incurred by us on your behalf.

29.5. On termination, we shall complete all Transactions and/or Contracts that are already entered into or under execution and these Terms and Conditions shall continue to bind both Parties in relation to such Transactions and/or Contracts. We shall be entitled to deduct all amounts due to us before transferring any credit balances on any Account(s) to you and we shall be entitled to postpone such transferring until any and all Transactions and/or Contracts between you and us are closed. Furthermore, we shall be entitled to require you to pay any charges incurred in transferring your investments.

29.6. Termination shall not affect then outstanding rights and obligations (in particular, without limitation, relating to the indemnities and limitation of liability clauses and the Miscellaneous and Governing Law sections) and Transactions and/or Contracts which shall continue to be governed by these Terms and Conditions and the particular clauses agreed upon by and between you and us in relation to such Transactions and/or Contracts, until all obligations have been fully performed.

29.7. In the event that you involve us, directly or indirectly, in any type of fraud, we reserve the right, at our sole discretion and without prejudice to any other rights we may have under these Terms and Conditions, to reverse all

previous Transactions and/or Contracts, which would or could place our interests and/or any of our (other) clients' interests at risk.

30. MANIFEST ERRORS

30.1. When determining whether a situation amounts to a Manifest Error, we may take into account any information in our possession, including information concerning all relevant underlying market conditions and any error in, or lack of clarity of, any information source or announcement. We will, when making a determination as to whether a situation amounts to a Manifest Error, act fairly towards you but the fact that you may have entered into, or refrained from entering into, a Transaction in reliance on an Order placed with us (or that you have suffered or may suffer any loss) will not be taken into account by us in determining whether there has been a Manifest Error.

30.2. In respect of any Manifest Error, we may (but will not be obliged to):

30.2.1. amend the details of each affected Transaction to reflect what we in our sole and absolute discretion consider to be the correct or fair terms of such Transaction absent such Manifest Error; or

30.2.2. declare any or all affected Transactions void, in which case all such Transactions will be deemed not to have been entered into.

30.3. We will not be liable to you for any loss (including any incidental, indirect or consequential loss) you or any other person may suffer or incur as a result of or in connection with any Manifest Error (including any Manifest Error by us) or our decision to maintain, amend or declare void any affected Transaction, except to the extent that such Manifest Error resulted from our own wilful default or fraud, as determined by a competent court in a final, non-appealable judgment.

31. PERSONAL INFORMATION AND DATA PROTECTION

31.1. You hereby represent, warrant, undertake and agree that:

31.1.1. you are at least 18 years old, or the age of legal consent for engaging in financial investment activities under the laws of any jurisdiction that applies to you;

31.1.2. you are not politically exposed person, as defined in the AML/CTF Legislation, and you do not have any relationship (e.g., relative, associate etc.);

31.1.3. you shall be treated as a "Retail Client", unless we shall classify or reclassify you as a "Wholesale Client";

31.1.4. you are of sound mind and you are capable of taking responsibility for your own actions;

31.1.5. all the details that you have submitted to us or any details given to us when opening an Account and making a deposit are true, accurate, complete and match the name on the payment card and/or payment accounts in which you intend to deposit or receive funds from your account;

31.1.6. you have verified and determined that your use of our Online Trading Facility does not violate any Laws or Regulations of any jurisdiction that applies to you.

31.2. If any of the above statements is untrue or inaccurate with respect to you, please inform our Customer Support team immediately and we shall inform you if/how you may continue to access and/or use our services.

31.3. You hereby expressly acknowledge and agree that the penalty for providing untrue, inaccurate, misleading or otherwise incomplete information is your immediate breach of these Terms and Conditions. As such, we reserve the right to suspend and/or terminate your Account promptly and to suspend and/or prevent you from accessing and/or using our Online Trading Facility, without prejudice to any other rights and/or remedies we may have under and/or pursuant to these Terms and Conditions.

31.4. From time to time you may be requested to provide us with certain documents to verify the details of the credit card used by you to deposit funds to your account. Subject to our satisfaction from such documentation checks, you may or may not be permitted to deposit further funds by recurring credit card or other means of payment.

31.5. We may elect to provide you with documentation, information and communications in various languages. By accepting these Terms and Conditions you acknowledge and confirm that our official language is English, and in the event of any discrepancy or inconsistency between any documentation, information and communications in any language other than English and the same in English, the English documentation, information and communications shall prevail.

31.6. We reserve the right to communicate with you by telephone, email, posts, newsletters issued by us and/or any other means of communication, whether such communication is personally addressed to you or generally addressed to all our clients and/or posted on our Online Trading Facility. By accepting these Terms and Conditions, you acknowledge and confirm, without prejudice to any other Terms of these Terms and Conditions, that all such means of communications on our end are deemed to be acceptable and that any information or notification so provided shall be deemed to have been received by you and/or any transaction so executed shall be deemed final and binding on your part.

31.7. By opening an Account with us, you will be subject to, and you hereby expressly agree to abide by, all of our rules, policies and operating procedures that govern your activities on our Online Trading Facility. We reserve the right to refuse and/or decline our services to any person and to close the Account of any person, at any time, at our sole discretion, and for any reason, without being obliged to provide any explanation or justification. All data relating to persons who open an Account with us will remain our sole and exclusive property and by entering into these Terms and Conditions you acquire NO right to any such information, except as expressly stated herein.

31.8. We further reserve the right to investigate, at any time, at our sole discretion, and for any reason, without being obliged to provide you with any explanation or justification, any activity that may violate these Terms and Conditions, including, but not limited to, any use of software applications to access our Online Trading Facility, and/or any engagement in any activity prohibited by these Terms and Conditions. We shall NOT be responsible:

31.8.1. for anything related to trading activities on or through our Online Trading Facility; nor

31.8.2. for the manner in which you conduct your trading activity on or through our Online Trading Facility.

31.9. In particular, but without limitation of the generality of the foregoing, we shall NOT be responsible for any of the following situations:

31.9.1. unauthorized real money transactions;

31.9.2. unauthorized real money transactions conducted by unauthorized Minors;

31.9.3. physical verification that you possess the proper knowledge and/or experience to use our Online Trading Facility.

31.10. We will not be responsible in any way (including for damages and losses caused by the use of our Online Trading Facility) if you use our Online Trading Facility without the proper knowledge, and we reserve the right to assess and re-assess your knowledge and experience to use our Online Trading Facility at any time, at our sole discretion.

32. DISCLOSURE OF INFORMATION

32.1. When submitting your Account Application Form to open an account with XM.com, you will be providing XM.com with your personal information, which is the data controller for the purposes of all personal data protection legislation.

32.2. XM.com will maintain records of all Transactions and activities on your Account(s), including, but not limited to, details of liquidations on your Account(s). The Company may also collect information about you from publicly available sources such as company registers. We will also collect and hold information about you when you complete an online application or other type of form or operate and deal on your Account through XM.com's website. Your personal information will be held by us in accordance with National Privacy Principles in the Privacy Act 1988. At any time, upon request, you may gain access to the information XM.com holds about you.

32.3. As indicated hereinabove, in relation to our Privacy Policy, we may collect, use and disclose personal data about you, including personal data you may voluntarily disclose to us in any manner, so that we can:

- 32.3.1.** carry out our obligations under these Terms and Conditions;
- 32.3.2.** carry out our everyday business activities and dealings with you;
- 32.3.3.** compile statistical analysis of the pages of our Online Trading Facility visited;
- 32.3.4.** monitor and analyse our business;
- 32.3.5.** participate in crime prevention, legal and regulatory compliance;
- 32.3.6.** market and develop other products and services;
- 32.3.7.** transfer any of our rights or obligations under these Terms and Conditions; and
- 32.3.8.** process Clients' personal data for other related purposes. If you choose to withhold non-sensitive personal data requested, we may not be able to give you access to our Online Trading Facility.

32.4. You have certain rights of access to the Personal Data we collect and hold about you at the time of request, or to have inaccurate information corrected, under applicable personal data protection legislation. If you wish to exercise such rights (solely at your own cost and expense), you should contact us in writing, and you may be requested to provide further information to assist us in complying with such request;

32.5. We, our Associates and/or Third Party Service Providers may record or monitor telephone conversations between you and us for security, compliance with the law, training purposes and to maintain and improve the quality of our services. Such telephone conversations may be used by us as evidence in the event of any dispute between us, in accordance with the provisions set out hereinabove. Any recordings shall be and shall remain our sole property and will be accepted by you as conclusive evidence of their content as recorded by us. You agree that we may deliver copies of transcripts of such recordings to any court, regulatory or government authority, including without limitation, in disputes which may arise between you and us. However, technical reasons may prevent us from recording a conversation, and recordings or transcripts made by us will be destroyed in accordance with our normal practice. Consequently, you should not rely on such recordings to be available.

32.6. By accepting these Terms and Conditions, you acknowledge that you have read, understood and accepted our Privacy Policy posted on our website.

33. MISCELLANEOUS

33.1. XM.com may amend these Terms and Conditions by giving the Client thirty days written notice of any amendments.

33.2. In the event that any of the provisions contained in these Terms and Conditions are found to be invalid or unenforceable, such provisions shall be deemed deleted, and the validity and enforceability of the remaining provisions shall continue unimpaired.

33.3. If a party fails to exercise or delays in exercising any right under these Terms and Conditions, by doing so it does not waive such right. The rights provided in these Terms and Conditions do not exclude other rights provided by law.

33.4. The Client may not assign or otherwise transfer its rights or obligations under these Terms and Conditions or any Transaction, without the express written consent of XM.com.

33.5. The Parties agree to the electronic recording by either party of telephone or internet conversations between the Parties with or without an automatic tone warning device, and the use of such recordings as evidence by either Party in any dispute or anticipated dispute between the Parties or relating to dealings between the parties. Clients shall be

permitted access to such tapes up to 90 days after the date of the relevant telephone conversation, and shall be liable to XM.com for all reasonable costs in retrieving and providing such tape.

33.6. Subject to Applicable Laws, any communications between us using electronic signatures will be binding to the same extent as if they were in writing. By signing or completing online, the Account Application Form you give your consent to the receipt of communications by electronic means, notwithstanding that certain communications may otherwise be required to be made using a durable medium under Applicable Laws. Without limiting the generality of the foregoing, Orders placed or other instructions given by electronic means will constitute evidence of such Orders or instructions. If you no longer wish to communicate in this way, you must revoke your consent in writing. If you do not wish to communicate via electronic means at all, you must inform us of your wishes prior to you signing the Account Application Form.

33.7. The Client acknowledges and agrees that XM.com is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's identity and credit standing. If such searches are carried out, XM.com may keep records of the contents and results of such searches in accordance with all current and Applicable Laws.

33.8. XM.com reserves the right to collect such information as is necessary from the Client to meet its obligations under applicable anti-money laundering laws and regulations. XM.com may pass on information collected from the Client and relating to transactions as required by applicable anti-money laundering laws and regulations and is under no obligation to inform the Client it has done so. XM.com may undertake all such anti-money laundering checks in relation to the Client (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by XM.com, and reserves the right to take any action with regard thereto with no liability whatsoever therefore.

33.9. XM.com reserves the right to provide all such information regarding the Client in relation to its obligations to, or requests (whether legally binding or not) by a relevant regulatory body.

33.10. The rights and remedies provided or referenced in these Terms and Conditions are cumulative and not exclusive of any other rights or remedies we may have, whether as a matter of contract, under common law, or otherwise. We will be under no obligation to exercise any right or remedy at all or in a manner or at a time or in a manner that takes into account your interests or is otherwise beneficial to you. No failure or delay by us in exercising any of our rights or remedies under or in connection with these Terms and Conditions or any Transaction will operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy will prevent further exercise of that right or remedy or the exercise of another right or remedy.

34. NOTICES

34.1. All communications relating to these Terms and Conditions shall be in writing and delivered by hand or sent by post or telex, facsimile, or, electronic mail to the party concerned at the relevant address. Any such communication shall take effect if delivered, upon delivery; if posted, two business days after it is posted to the party's last known address; if sent by facsimile, or electronic mail, at the time of transmission (and receipt of confirmation); by telex, upon receipt of the answer back. Where the Client is more than one person, any notice or other communication provided by XM.com to one such person shall be deemed to have been provided to all such persons.

34.2. Any notice, instruction or other communication sent or given by us will be deemed to have been duly sent or given upon the earlier of (i) actual receipt by you or (ii) the time specified below, as applicable:

34.2.1. if delivered in person, when left at your last known home or work address;

34.2.2. if sent or given by leaving a message on a telephone answering machine message or voice mail system, one hour after the message was so left;

34.2.3. if sent or given by prepaid post or overnight courier, in the ordinary course of the post or such overnight courier and in any event on the next day (or the third day in the case of international air mail) after posting (excluding Saturdays, Sundays and public holidays); and

34.2.4. if sent or given by e-mail, one hour after sending, provided no “not sent” or “not received” message is received from the relevant e-mail provider.

34.3. Any notice, instruction or other communication sent or given by you will be deemed to have been duly sent or given upon actual receipt by us.

35. GOVERNING LAW

35.1. These Terms and Conditions are governed by and construed in accordance with the laws in force New South Wales, and the Parties submit to the non-exclusive jurisdiction of the courts and tribunals in that State.