



# **CLIENT AGREEMENT TERMS AND CONDITIONS OF BUSINESS**

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This Client Agreement – Terms and Conditions of Business (“Terms and Conditions”) contain all of the terms and conditions of your agreement for your account provided by Trading Point of Financial Instruments Pty Limited including all transactions in this account with XM.com. In these Terms and Conditions, “Client” and “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 financial products and associated services we agree to provide you. These Terms and Conditions apply even if you do not read them.

Our contact details are as follows:

Level 13  
333 George Street  
Sydney 2000  
NSW  
Australia

Telephone Number: +61286078385  
Fax Number: +61282520854  
Email address: [ausupport@xm.com](mailto: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 and Investments Commission (“ASIC”) and holds an Australian Financial Services Licence (Number 443670) (referred to in these Terms and Conditions as “Company” or “XM.com”). We are required to conduct our business and dealings with you in accordance with the Corporations Act 2001 (Commonwealth) as amended from time to time (“Act”).

**1.2. Our Services:** Subject to these Terms and Conditions and our acceptance of your Account Application Form to open an Account with us, we will maintain one or more accounts in your name and we will provide general advice, dealing and market making services for foreign exchange transactions and Contract For Differences (“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 are governed by the terms of these Terms and Conditions, as amended from time to time.

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

**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 of XM.com’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. Application and Commencement:** 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 (as later amended, waived or superseded). These Terms and Conditions become binding on you when we accept your Account Application form or, if you already have an agreement with us, on the earlier of when we notify you they take effect and when you make any further transaction for your Account (in any case, without further express notice to you of that). These Terms and Conditions supersede any previous agreement between us on the same subject matter.

**1.7. Amendments:** We may amend or replace any clause 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 (“Effective Date”).

**1.7.1.** You can expressly agree to the changes referred to in the amendment notice (in any way we provide with the notice), or you will be deemed to have accepted all the changes referred to 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 referred to in the amendment notice in its entirety as from the Effective Date. If you do not provide us with written notice of your objection within fourteen (14) days of receiving the notice.

**1.7.2.** If you tell us in writing that you do not wish to accept any amendment notified by us, we may require you to close any of your open positions and your account as soon as reasonably practicable or restrict you from placing orders to close your open positions.

**1.7.3.** Any amendment requested by you to which we agree must be agreed in a formal, binding amendment agreement executed by you and 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 and the inconsistent provisions will be deemed to be ineffective without affecting other provisions in these Terms and Conditions.

**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 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 XM.com for all of your accounts, including all financial products 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 a transaction made between you and us, each as principal. You cannot transfer, negotiate or assign the transaction to or with any other person.

## **2. Key risk disclosures**

**2.1.** Prior to entering into any transaction with you, you will be provided with an Financial Services Guide ("FSG") and Product Disclosure Statement ("PDS") in compliance with the Act and Regulations, which will disclose the significant risks of acquiring, holding or disposing of 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 you are prepared to accept, the significant risks outlined in the PDS. If there is anything you do not understand, it is recommended that you seek specialist independent financial 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 in relation to the Financial Products.

**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 move against your position(s) 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 close any or all of your positions at a loss if you fail to comply with a request for additional funds within the time prescribed, including if immediately.

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

**2.2.5.** Payments made to the Company belong to the Company. You do not have any security interest in, or any other right to or interest in, any payment to us. You authorise us by these Terms and Conditions to withdraw from your moneys held in the client money trust account such amount as is needed to meet your payment 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 sub-clause 10.4) 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 sub-clause 2.2.

**2.2.7.** The Client has read these Terms and Conditions and understands that, UNLESS SPECIFICALLY AGREED IN WRITING WITH XM.com AND A STATEMENT OF ADVICE HAS BEEN PROVIDED, XM.com has only provided advice which is general advice, and the Client has considered its objectives and financial situation and has obtained appropriate independent advice prior to entering into the Agreement, 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 such as the Financial Products.

**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 the following expressions have the meanings as given below, unless the context requires a different meaning which is evident from the context:

**Account** means the uniquely assigned account that is created for a client when such client opens a trading account with us.

**Account Application Form** means 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 may refuse 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** means 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 or Regulations and any other information we may make available.

**Act** means the Corporations Act 2001 (Commonwealth).

**Agreement** means the agreement between the Client and XM.com on these Terms and Conditions (as later amended) made on acceptance by XM.com of the Client's application for it.

**Associate(s)** means 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, means 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)** means an individual person or legal entity undertaking a transaction on behalf of another individual person or legal entity, but in the person's own name.

**Applicable Laws** means 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** means a person authorised 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** means the designated base currency for each of your accounts on our Online Trading Facility, which will be US Dollars, or any other currency listed on our website(s), which is determined or stated in advance as the Base Currency of your Account.

**Business Day** means a day on which trading banks in Sydney, Australia are open for business.

**Buy Limit** means 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** means 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 and CFD(s)** means an OTC contract which is a 'contract for differences', whose settlement obligation is a single amount owing calculated by reference to fluctuations in the price of the relevant underlying security or value of 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 recognised or regulated exchange. Trading in CFDs is not subject to delivery of the underlying instrument or any other interest; accordingly, the result of trading in CFDs is the difference between sell and buy CFD transactions only.

**Client** means the person in whose name the Account is opened (please see sub-clause 3.6). A reference to *you* or *your* means the Client.

**Client Money** has the meaning as set out in the FS Provisions regarding client money.

**Currency** includes any unit of currency.

**Effective Date** means the date on which the Agreement on these Terms and Conditions enters 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** has the meaning given to this term in clause 22.

**Financial Product(s)** means Margin FX or CFD.

**Force Majeure** has the meaning as set out in sub-clause 23.13.

**FSG** means 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 the Client's application for an Agreement on these Terms and Conditions, or within a reasonable time thereafter.

**FS Provisions** means 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** means the required payment of funds or lodgement of collateral acceptable by us. 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 in the client money 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** means: (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 or users'



manuals); (d) these Terms and Conditions; (e) the price quotes we provide; and (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 to any of that.

**Intellectual Property Rights** means 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 or under or pursuant to Applicable Laws, Rules and Regulations;

**Limit Order** means an order for a transaction once the limit price is reached. The functionality of our Online Trading Facility (subject to the internet service remaining available over the period in which the Limit Order is outstanding), and will be subject to our size limits remaining in excess of your Limit Order size and our position limits and 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.

**Listed Company** means a company whose securities are listed on a recognized Stock Exchange / regulated market.

**Manifest Error** means a manifest or obvious misquote by us (whether or not based on 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** means the payment of the amount required by the Company for the Client to open positions relating to transactions entered into through an Account and means the total of Initial Margin and Variation Margin. Margin is not paid to the Company unless and until either it has been withdrawn from the client money trust account or it has otherwise been paid to the Company.

**Margin Call** means a mandatory request issued by us to you to increase the amount of Margin paid for the Client's account. If the Margin posted in an account is below the minimum Margin requirement, we may, but have no obligation whatsoever, issue a Margin Call and in this case the Client must increase the amount deposited in the Client's account, 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 may close all open positions. 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 Margin in support of our prevailing Margin requirements for the transactions 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** means the Margin Level required to maintain your open positions, which is currently set at 100% of the Margin required to maintain your open positions. Accordingly, if the equity in your account drops to 100% of the Margin Level required to maintain your open positions, you will receive a Margin Call. This must be paid and it serves as a warning 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** means 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) by adjustments to your account. 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 involves entering into equal and opposite

position with us, which generates a profit or loss on the transaction, which is then settled between us by adjustments to your account. 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 fees, charges and costs.

**Margin Level** means an index calculated as follows:  $\text{Equity} / \text{Margin}$ .

**Margined Transaction** means any CFD or Margin FX transaction liable to Margin requirements.

**Market Disruption** means, with respect to any Financial Product, the occurrence of any event or condition which in our good faith opinion (a) has a material influence on the liquidity of, or volatility of foreign exchange rates for, the relevant underlying instrument; (b) a 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** includes 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 (in our opinion) have or may have a material influence on the settlement of transactions in relevant Financial Products.

**Minors** means persons who are under the age of 18, or otherwise under legal age in their country of residence.

**Online Trading Facility** means, collectively or individually, as the context requires, all website(s), trading platform(s), software or services provided by us, from time to time under or pursuant to these Terms and Conditions.

**Order** means a request to execute a transaction at a price quoted by XM.com as appropriate.

**Over-the-Counter or OTC** refers to 'Over-the-Counter' trading (not on a regulated exchange, or off-exchange); any transaction 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.

**Party** refers to us 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** means 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 after that.

**Pending Order** means 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** means and, collectively, includes 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 or suppliers and/or our Client(s).

**Price Quote(s)** means 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 of this expression, the term "Dealable Quote", means a quote that by its terms is capable of being used for the purpose of executing an order for a transaction, and the term Indicative Quote means a quote other



than a Dealtable Quote. The message update frequency on our Online Trading Facility may be changed at our sole discretion.

**Regulations** means the Corporations Regulations 2001 (Australia).

**Related Party** means each of a related body corporate and a related entity, as defined in the Act.

**Representative(s)** means directors, officers, employees, lawyers, advisers, agents, licensees or other authorised representatives.

**Retail Client** means the client as set out in, or applying for the purposes of, sections 761G and 761GA of the Act.

**Rules** means articles, rules, laws, procedures and customs, as in force from time to time.

**Sell Limit** means an order to execute a transaction with the characteristics of selling 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** means an order to execute a transaction with the characteristics of selling 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** means a notification from us to a Client confirming the Client's entry into a transaction.

**Stop Loss Order** means an order to execute a transaction 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 intended to limit losses.

**Stop-out** means the situation when, because of the equity in an account reaches the Stop-out Level (i.e. drops below the Margin Level required to maintain open positions) or because your equity has entered into a negative territory, our Online Trading Facility will start automatically to close open positions (starting from the least profitable position and until the Margin Level requirement is met) in order to try to prevent further account losses into the negative territory.

**Stop-out Level** means the level of equity in an account at which our Online Trading Facility will start automatically to close open positions (starting from the least profitable position and until the Margin Level requirement is met) in order to try to prevent further account losses into the negative territory.

**Take Profit Order** means an order to execute a transaction 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 intended to limit profits.

**Trading Platform** means the Company's online trading and account review facility.

**Transaction** means a transaction in a CFD or Margin FX.

**Trust** means the trust identified in the Account Application Form for which the Client is a trustee.

**Trust Deed** means the trust deed governing the Trust, for which the Client is a trustee of Trust, as varied, substituted, supplemented or resettled from time to time.

**Variation Margin** means the required payment of additional funds or lodgement of further collateral acceptable by us.

**Wholesale Client** means the client as set out in, or applying for the purposes of, sections 761G and 761GA of the Act.

**3.2.** Headings are for convenience only and must 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.** Any reference in these Terms and Conditions to any law, statute, regulation or enactment includes references to any statutory modification or re-enactment of them or to any regulation or order made under such law, statute or enactment (or under such modification or re-enactment).

**3.6.** It is a fundamental term of the Agreement that it is, and should be presumed to be, valid and enforceable against you, named as the Client, even if there is a mistake as to the identity of the person purporting to be you, the Client, or as to the person who purported to be the person authorised by or on behalf of you to submit the Account Opening Form and to make the Agreement and the identity of the persons whose details were given to us were verified by us or on our behalf. This applies even if the mistake is due to honest or fraudulent conduct by the person or by the actual Client or by another person acting on their behalf. Despite the foregoing, to the extent any part of the Agreement is held to be void or unenforceable as against the Client due to a mistake as to the identity of the person (Bound Party) who purported to be the Client or who made this Agreement by or on behalf of Client:

**3.6.1.** Bound Party personally indemnifies us for all losses, expenses and costs incurred by us arising out of or in relation to the extent to which the Agreement was held to be void or unenforceable (such indemnity survives termination of the Agreement with Client or any agreement with Bound Party); and

**3.6.2.** The Agreement (apart from the above paragraph, which applies independently) applies to Bound Party as though it is Client and was made with Bound Party from the beginning of the Agreement, despite the mistaken identity and each of the above is a fundamental term despite the mistaken identity.

#### **4. Client classification**

**4.1.** For the purposes of the Financial Products and financial services provided by XM.com under these Terms and Conditions, subject to sub-clause 4.2 we will treat you as a Retail Client.

**4.2.** If we have categorised you as a Retail Client, in certain circumstances you may request to be treated as a Wholesale Client. If we agree to classify you 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 without us being further liable to 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 or citizen of Australia, you are solely responsible for ascertaining whether your Agreement with us including but not limited to any transaction entered into under these Terms and Conditions, is lawful under the applicable laws of the jurisdiction of your residence or citizenship.

## **6. Representations and warranties**

**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 or this Agreement subsists, as follows:

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

**6.1.2.** you have determined that it is 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 powers conferred by these Terms and Conditions;

**6.1.5.** if 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.** if 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 and are binding on them jointly and severally;

**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 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 will 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 and for this, the Client authorises XM.com to pass on or 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 the Agreement on 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 pursuant to these Terms and Conditions, free and clear of any security interest whatsoever;

**6.1.15.** if the Client is a trustee (including as 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.** if 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 the persons for whom it acts and:

- a) such dealings are within the authorised ambit of each underlying principal'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 Products 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, it is authorised to arrange for closing out of all positions entered into prior to the date of such termination as soon as possible.

**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; and

**6.1.18.** it acknowledges that 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 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:

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

**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 identity, 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; and

**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, in 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 (“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 or payments 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. 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 or proposed Authorised Person at credit reference agencies, and your employers and any other relevant persons (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, if 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 is for your personal use only and which you must 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 must 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 the Agreement including all transactions on the Account and agree to be bound by all of these Terms and Conditions. XM.com is authorised to accept instructions and to send confirmations to any one of the joint owners. You appoint any and all of said joint owners as your Agent for receipt of confirmations and waive any right to receive confirmations otherwise. XM.com is not 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 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. If a joint account holder dies, the Account, its property, and any obligations under the Agreement on these Terms and Conditions automatically passes to the surviving Account holder(s). The surviving account holder(s) 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 may 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 require (but is not obliged to require) authorisation 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 sub-clause 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, will 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 require for the Company 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. Product Design and Distribution Arrangements**

**8.1.** XM.com is required, when issuing and/or distributing financial products, to establish, implement and maintain policies and procedures and measures to ensure that the issuing and/or distribution of financial products comply with the relevant design and distribution obligations of the Corporations Act 2001, in a way that it is appropriate and proportionate, taking into account the nature of the financial product, the services(s), the needs and objectives of the Target Market for that financial product.

**8.2.** In general, the Target Market compatible with the financial products issued and/or distributed by the Company is the group of clients with the following objectives, financial situation and needs:

- a) Client qualification: retail Clients only.
- b) Level of trading experience: Clients with prior experience in financial markets and experience in trading leveraged financial products such as CFDs, including demonstration accounts on Trading Point's trading platform.
- c) Level of investment knowledge: Clients who have relevant industry experience, an academic degree in a financial related field, or have attended suitable relevant trading courses.
- d) Financial situation: Clients who have disposable income or capital to invest. Clients must be able to withstand losses from trading without causing distress or material impact to their living standards.
- e) Risk tolerance: CFDs are considered risky financial products, and therefore money used to trade in CFDs should be money that the Client is willing to lose since there is a risk of losing some or all of their capital.
- f) Investment objectives and needs: In most cases, the investment objective is of speculative nature with a short to medium-term investment horizon, whilst accepting the risks associated with trading.

## **9. Client money**

**9.1.** Any money received by XM.com in respect of your Account with XM.com will be treated as "Client Money" in accordance with the applicable FS Provisions regarding Client Money (**Australian Client Money Rules**).

**9.2.** In relation to Client Money, we may hold Client Money in a bank account under trust (**client money 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 will be different from that applying in Australia.

**9.3.** You agree and acknowledge that we can deal with Client Money in accordance with the Australian Client Money Rules, including to discharge your liability to us.

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

**9.4.1.** individual client's money are not separated from each other;

**9.4.2.** all clients' funds are co-mingled in one account;

**9.4.3.** 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.

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

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

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

**9.5.3.** after we have received value for your other payment, we may choose to pay a corresponding amount into the client money 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 9; and

**9.5.4.** 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 money 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 money 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 money trust account. In that period, you will have the benefit of trading on the value of the payment but also you will not have the Australian Client Money Rules protections for the corresponding amount unless and until we make the payment into the client money trust account.

**9.6.** You irrevocably and unconditionally authorise us to transfer any money 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 money trust account to which you are entitled).

**9.7.** 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 (Commonwealth) (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 money will be held by the transferee in accordance with the applicable client money rules of that jurisdiction.

**9.8.** Without prejudice to any other provisions of these Terms and Conditions, we may, in 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 or merge any of your Accounts with us.

**9.9.** Trading in leveraged Financial Products involves significant risk on your invested capital. XM.com follows a 'no negative balance' policy which means that you cannot lose more than your current net contributions (including Client Money). The policy does not avoid you owing for any shortfall arising from an adjustment to remove the credit given to your Account before your payment was received in cleared funds or arising from any clawback from a provider of your payment.

**9.10.** Where your Account is inactive for a period of five (5) years with a positive balance (i.e., there are funds available in your Account) and during that period no transactions have been carried out in relation to the Account or on the instructions of the holder of the Account and we are unable to contact you after we take reasonable efforts to achieve this, we will have the right to cease treating those funds as Client Money and make a deduction from your Account in accordance with sub-clause 20.9. If you later make a valid claim to us, we may pay you any amount owed to you by us.

## **10. Account payments**

**10.1.** The cash balance of your Account:

**10.1.1.** 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

**10.1.2.** 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 amounts to which we are entitled and by the deduction of fees, charges and costs and other amounts properly owing to us under these Terms and Conditions.

**10.2.** You may deposit funds for 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.

**10.3.** 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.

**10.4.** If you give an instruction to withdraw funds from your Account, we will reduce the requested funds immediately from your Account balance and will 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:

**10.4.1.** the withdrawal request includes all necessary information;

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

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

**10.4.4.** 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. Margin Level requirements may be higher in cases as referenced in sub-clause 18.8 so as to avoid any possible withdrawal request to cause the Margin Level in your Account to fall below the minimum required level, as specified in our Online Trading Facility.

**10.5.** When a withdrawal or refund is performed, we may (but under no circumstances are 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. We may, in our sole discretion:

**10.5.1.** decline withdrawals via any specific payment methods we decide from time to time (without prior notice of that);

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

**10.5.3.** require that further documentation be submitted, as required by applicable AML/CTF Laws or any other 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.

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

**10.7.** The Company takes the protection of its Clients very seriously and has various systems, controls and tools set in place for their protection against credit / debit card fraud and to comply with all applicable laws including but not limited to anti-money laundering regulations. The systems, limits and controls that the Company applies for the prevention or identification of credit card fraudulent activity may include, but are not limited to, the following:

- a. limits on the number of transactions allowed within a certain timeframe;
- b. limits on the amounts allowed to be deposited within a certain timeframe;
- c. limits on the amounts allowed to be deposited per transaction;
- d. limits on the amounts allowed to be deposited per registered email address;
- e. limits on the amounts allowed to be deposited based on the country the money is coming from;
- f. limits on the number of credit / debit cards allowed per client;
- g. limits on the deposit attempts allowed per email address;
- h. restrictions on the number of email addresses allowed to be connected with a single credit / debit card;
- i. 3D secure authentication for the processing of transactions; and/or
- j. checks for matching details.

If the Company identifies or the Company's payment service providers identify an actual or reasonably likely violation of the above limits and restrictions or the applicant or Client fails to pass the security and authentication checks, the Company may take any measures it decides is appropriate to prevent possible credit / debit card fraudulent activity and to ensure Company's protection. These measures may include, but are not limited to, any one or more of the following:

- a. investigations, further checks or request, for additional documentation in order to verify the credit / debit card details and ensure that you are the legitimate owner/user of the credit / debit card(s) used;
- b. delay of transaction's processing due to the investigations taking place;
- c. refusal of credit / debit card deposit(s) in question and refund the net amount deposited to the same credit / debit card account and via the same payment method through which the deposit(s) was made;
- d. cancellation of fraudulent transactions as soon as they are detected;
- e. blocking access to our Online Trading Facility, blocking or revoking your Access Codes or terminating your Account(s);
- f. seizing or cancelling any profits or revenues generated directly or indirectly by exercising any such prohibited trading activity and cancel any Account(s) and active Orders associated with the credit / debit card that has been identified as fraudulent; and
- g. denying processing transactions exceeding the limits/restrictions or failure to pass the security and authentication checks.

**10.8.** You acknowledge for the benefit of the Company and its Associates that it is a serious criminal offence to provide false or inaccurate information during your credit / debit card registration. We have developed, and we 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 discretion, and in the manner we deem to be fair and reasonable, having regard to the legitimate interest of all of our clients and to our obligations as a regulated licensee. Subject to any external dispute resolution system whose determination is binding on us our decision will be final and binding on all participants.

**10.9.** If you make a deposit to the client money trust account or make another approved payment, we will, 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 may reject such payment 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 or any other similar rules and regulations applicable to us. We may 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 authorise us to charge this amount.

**10.10.** All foreign currency exchange risk arising from any deposits in 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.

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

**10.12.** 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 authorised representative of you, as our Client. In those instances, if 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 authorised representative of you, as our Client, we may refund/send back the net amount received to the same remitter from, and by the same payment method through which, such funds were received.

## **11. Multiple accounts and positions**

**11.1.** 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.

**11.2.** If the Client opens opposite positions in the same currency cross (for example) on the same account or sub-accounts, such positions will not automatically cancel each other out. The Client is specifically made aware by these Terms and Conditions that unless a position is closed manually, all such positions may be rolled over on a continuous basis and consequently they may all incur a cost for such roll-over.

**11.3.** 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.

**11.4.** Client will not be charged interest on the full negative net free equity on any account. In addition, Client will not be paid interest on the full positive net free equity on any account.

**11.5.** Depending on the trading activity on your Account(s), executed transactions (e.g., closed orders) may be compressed into a single or multiple balance transaction(s) in your trading platform, reflecting your aggregated Profit and Loss amount; you will, however, be able to view and export your full trading history through your Members Area.

## **12. Conflict of interests**

**12.1.** As issuer of Financial Products to you, we have an interest in the products and your trading in them. Since we act as principal to you, we may provide different terms and charge different rates and fees and have different leverage ratios as among our clients, depending on the client classification. Please also see clause 13.

**12.2.** We are not 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.



**12.3.** 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.

### **13. Material interests and information barriers**

**13.1.** 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 if we or an Associate could be:

**13.1.1.** 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;

**13.1.2.** dealing with you and immediately dealing with another customer, or vice versa;

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

**13.2.** 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.

**13.3.** We will comply with Applicable Laws binding on us but, except as provided by Applicable Laws, we are not under any other 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 or any hedging by us.

**13.4.** We maintain adequate and reasonable 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 are not 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 transactions without disclosing the reason for this.

### **14. XM.com representation and services**

**14.1.** The Company seeks to act honestly and to exercise due care and diligence in performing its obligations to you. XM.com will not misuse Client information. XM.com will use reasonable endeavours to execute or to arrange the execution of the Client's instructions on these Terms and Conditions subject to its powers and discretion and to Applicable Laws and Rules.

**14.2.** 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 assessing your applications for an account and 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 Financial Product. 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.

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

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



**14.3.2.** 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;

**14.3.3.** if 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

**14.3.4.** 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 we 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 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.

## **15. Online trading facility**

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

**15.2.** XM.com may amend any of the terms of these Terms and Conditions with effect by giving reasonable notice of that and by continuing to deal with XM.com or to access or use the Online Trading Facility, the Client agrees to any amendments.

**15.3.** 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.

**15.4.** XM.com will 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.

**15.5.** The Client must use the Online Trading Facility software solely for its internal business or investment purposes.

**15.6.** The Client must not distribute the Online Trading Facility to any third party.

**15.7.** 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.

**15.8.** 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 and, in any event, the Client agrees to be responsible for any financial liability for Orders placed or executed through the Online Trading Facility.

**15.9.** 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 and Rules from time to time.

**15.10.** XM.com may, in its sole discretion, institute or change any policies at any time relating to the use of the Online Trading Facility.

**15.11.** 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.

**15.12.** XM.com makes no undertakings, assurances, representations or warranties regarding any services provided by any third party.

**15.13.** The Online Trading Facility may be available in several versions from time to time, which may be differentiated in various aspects including, but not limited to the level of security applied, products and services available, etc. XM.com is not 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.

**15.14.** XM.com does not warrant or undertake that access to or use of the Online 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.

**15.15.** Under no circumstances, including negligence and fiduciary duties, will XM.com, its employees 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 Online Trading Facility. If liability cannot, or may not be excluded, XM.com's liability is limited to re-supplying the services or, if XM.com is permitted to limit by reference to fees, to an amount equal to the amount of fees paid to XM.com by the Client for the use of the Online Trading Facility.

**15.16.** The Client will not 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.

**15.17.** 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.

**15.18.** 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.

**15.19.** 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:

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

**15.19.2.** non-performance; and

**15.19.3.** 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.

**15.20.** 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.

**15.21.** 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.

**15.22.** 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.

**15.23.** XM.com may at any time in its sole discretion terminate or restrict any Client's access to the Online Trading Facility at any time. If XM.com terminates the Agreement or 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.

**15.24.** 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.

**15.25.** The Client's failure to comply with any of the undertakings, or a breach of any warranty or representation or representations by it, may result in civil or criminal liability, as well as termination of the use of the Online Trading Facility.

**15.26.** The Client acknowledges, for the benefit of the Company that the Client is responsible for having 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. If the Online Trading Facility is not operational, the Client agrees it is responsible for contacting XM.com to make alternative order entry arrangements. Such arrangements may be in the form of telephone, or as otherwise agreed.

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

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

**15.27.2.** intercept or attempt to intercept any email correspondence;

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

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

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

## **16. Electronic trading terms**

**16.1.** 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 will only be deemed to have been received and will only then constitute a valid instruction or binding transaction between you and us, if and 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 does not by itself constitute a binding transaction between you and us.

**16.2.** Since we do not control signal power, its reception or routing via the internet or any other means of electronic communication, configuration of our clients' equipment or reliability of its connection, we are not 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 does not give rise to a binding transaction or contract between you and us.

**16.3.** There are a series of inherent risks with the use of the mobile trading technology such as the duplication of Orders or other 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 utilises public communication network circuits for the transmission of messages. We are not 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.

**16.4.** You are obliged to keep your usernames and passwords (**Access Codes**) secret and ensure that unauthorised other persons do not obtain access to our Online Trading Facility. Without limit to any other provisions of these Terms and Conditions, you will be liable for all transactions or contracts executed by means of your Access Codes, even if such may be wrongful or not authorised by you.

**16.5.** 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. If an erroneous price is used as the basis of any Transaction, we may, in our sole discretion, amend or revoke the details of the transaction(s).

**16.6.** There may be restrictions on the total value or number of transactions or both that you may enter into on any one day and also in terms of the total value or number of those transactions or both when using our Online Trading Facility.

**16.7.** The Trading Platform does not support negative prices of financial instruments. In the unlikely event of the price of any financial instrument reaching zero (0) or going below, the Trading Platform will automatically start closing any open positions at the current market price.

**16.8.** The 'Limit Order' functionality of our Online Trading Facility is subject to the internet service remaining available over the period in which the 'Limit Order' is outstanding, and will be subject to our size limits input remaining in excess of your Order size and position limits 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.

**16.9.** You are responsible for providing the computer system(s) to enable you to access or use our Online Trading Facility and for making all appropriate arrangements with any telecommunications suppliers or, if 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 (**Third Party Service Provider**) makes any representation or warranty as to the availability, utility, suitability or otherwise of any such equipment, software or arrangements.

**16.10.** 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.

**16.11.** If 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 must immediately notify us in writing and will not use, in any way whatever, such data, information or software.

**16.12.** When using our Online Trading Facility you must:

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

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

**16.12.3.** carry out virus checks on a regular basis;

**16.12.4.** 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

**16.12.5.** 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.

**16.13.** If you become aware of a material defect, malfunction or virus in your computer system(s) or our Online Trading Facility, you must 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.

**16.14.** All rights in patents, copyrights, design rights, trademarks and any other Intellectual Property Rights (whether registered or unregistered) relating to our Online Trading Facility remain vested in us or our licensors. You must not copy, interfere with, tamper with, alter, amend or modify our Online Trading Facility or any part or parts of it, 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, unless expressly permitted by us in writing.

**16.15.** Without limiting any other terms of these Terms and Conditions, relating to the limitation of liability and provision of indemnities, the following sub-clauses apply to the services we provide via our Online Trading Facility:

**16.15.1. System errors:** We have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You acknowledge that access to our Online Trading Facility may be limited or unavailable due to such system errors, and that we suspend access to our Online Trading Facility for this reason, with or without notice and without giving any reasons.

**16.15.2. 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.

**16.15.3. Viruses from our Online Trading Facility:** We have no liability to you (whether in contract or in tort, including negligence or in any other way) if 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.

**16.15.4. Viruses from your computer system(s):** You must 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 indemnify us by agreeing to pay on demand for any loss that we suffer arising as a result of any such introduction.

**16.15.5.** This clause is subject to any duties or liability imposed on XM.com, or any limitation on our ability to exclude or limit our liability, which is mandatorily imposed by law and cannot be contracted out of or limited by these Terms and Conditions.

**16.16.** We are not liable for any loss, liability or cost whatsoever arising from any unauthorised use of our Online Trading Facility. You indemnify us by agreeing to pay on demand for all losses, liabilities, judgments, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using our Online Trading Facility by using your designated Access Codes (usernames or passwords), whether or not you authorised such use.

**16.17.** Without limiting any other provisions of these Terms and Conditions, we may suspend or permanently withdraw our Online Trading Facility to you or generally to Clients, by giving you at least five (5) calendar days' written notice.

**16.18.** Without limiting any other provisions of these Terms and Conditions, we may, unilaterally and with immediate effect, suspend or withdraw permanently your ability to access and/or use our Online Trading Facility, (or both) or any part of them, without prior notice, if we consider it necessary or advisable to do so, for including without limitation due to:



**16.18.1.** your non-compliance with any Applicable Laws, Rules or Regulations;

**16.18.2.** your breach of any provisions of these Terms and Conditions;

**16.18.3.** the occurrence of an Event of Default;

**16.18.4.** network problems;

**16.18.5.** failure of power supply;

**16.18.6.** maintenance;

**16.18.7.** a Force Majeure Event; and

**16.18.8.** to protect you if there has been a breach of security.

**16.19.** Without limiting any other clause, the use or access of our Online Trading Facility, or any part of it, may be terminated automatically, upon the termination (for whatever reason) of:

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

**16.19.2.** these Terms and Conditions;

**16.19.3.** if any underlying Financial Products relating to any supported Financial Product(s) being withdrawn by any market; or

**16.19.4.** if we determine that we are required to withdraw our Online Trading Facility, in whole or in part, to comply with Applicable Laws, Rules or Regulations.

**16.20.** If there is a termination of the access or use of our Online Trading Facility for any reason, upon our first request, you must, at our option, return to us or destroy all hardware, software, system documentation or other documentation or files we have provided to you in connection with our Online Trading Facility, and any copies of that.

## **17. Orders and confirmations**

**17.1.** You agree that XM.com may on your instructions purchase and sell (by closing out) cash settled CFDs and Margin FX. 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 if there is a system failure by telephoning us.

**17.2.** 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.

**17.3.** Any Order to execute a transaction does not take effect unless actually received and accepted by XM.com. XM.com is 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.

**17.4.** XM.com may, in 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 limiting the generality of the foregoing, XM.com may limit the number of open transactions that you may enter into or maintain in your Account. XM.com may, in its sole discretion, refuse to accept any Order opening a new transaction or increasing an open transaction. Acceptance of your Order will be evidenced by XM.com's confirmation of that Order. The validity of any Order will 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.

**17.5.** 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 being outside a regulated market.

**17.6.** Following the execution of a dealing instruction for your Account, we will confirm that transaction 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 immediately following the execution of the transaction via our Online Trading Facility. Confirmations will 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 Sydney, Australia are open for business) (**Business Day**) following the day on which the Settlement/Trade Confirmation is posted on our Online Trading Facility. If 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 may, in our discretion, be deemed to be non-existent.

**17.7.** We will post details of your Account activity on our Online Trading Facility and you will be able to generate daily and monthly reports of your Account activity as well as a report of each transaction. Updated Account information will normally be updated periodically during our dealing hours and will, in any event, be available within 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 or Regulations and any other information we may make available (**Account Information**). We may in our absolute discretion withdraw or amend any Account Information at any time. 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 from us other than upon specific request (for which you may be charged a fee). You must verify the contents of all Account Information received from us. The Account Information posted on our Online Trading Facility will (save if manifestly incorrect) be conclusive evidence of your transactions, open positions, Margin and cash balances, and will 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.

**17.8.** Stop Loss, Take Profit, Buy Limit, Buy Stop, Sell Limit, Sell Stop on Financial Products are executed at the price on the first current price touch. The Client acknowledges and agrees that under certain trading conditions it can be impossible to execute Orders (Stop Loss, Take Profit, Buy Limit, Buy Stop, Sell Limit, Sell Stop) on any Financial Products at the Order's price. In this case, the Company may execute the Order at the first available price. This may occur, for example, in but not limited to the following cases:

**17.8.1.** around the start of a Trading session;

**17.8.2.** around and during news times;

**17.8.3.** during volatile markets in which prices may move significantly up or down and away from the declared price;

**17.8.4.** when there is rapid price movement in the market, 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;

**17.8.5.** if there is insufficient liquidity for the execution of the specific volume at the declared price.

**17.9.** If the Client's Account shows no balance or no activity (trading/withdrawals/deposits) in the Account for thirty (30) consecutive calendar days, any Pending Order(s) may be deleted.

## **18. Corporate Events and Actions**

**18.1.** In the case where an instrument becomes subject to a corporate event as set out below (sub-clause 17.2), the Company will carry out the appropriate actions to adjust your trading account for the effect of the event on your position, preserving the economic equivalent of the rights and obligations attached to your Transaction and/or Contract with the Company, on the ex-date of the event (i.e., the day the affected instrument's price will incorporate the effect of the event). Subject to this sub-clause, the Company shall take the following actions:

- (a) Adjust the size and/or value and/or number of Orders as deemed appropriate, with the aim to preserve, to the greatest extent possible, the economic equivalent of your open positions;
- (b) Endeavour to communicate the upcoming events and actions through any durable medium, including but not limited to the Company's website;
- (c) Where you have a Pending Order or a Stop Loss and/or a Take Profit attached to your Orders, the Company aims to preserve, to the greatest extent possible, the equivalent of the rights and obligations of your Transaction and/or Contract immediately prior to the corporate event taking place;
- (d) If a corporate event, such as a reverse stock split, results in share ownership below the minimum allowed by our systems, these positions will be rounded down to the nearest allowed trade size, with any value not captured by the position adjustment being reflected as a cash adjustment to your trading account.

Different actions may be followed by the Company in case you owned the underlying instrument; however, the Company will endeavor to preserve economic equivalence to the greatest extent possible.

**18.2.** Subject to sub-clause 17.1, corporate events shall include the following:

- (a) Distribution, by the issuer to the shareholders of the underlying instrument, of additional shares, other share capital, warrants or rights granting dividends that result in a dilutive effect on the market value;
- (b) Stock splits and reverse stock splits that result in a change in the number of shares owned and the share price. A split is a corporate event whereby a firm multiplies the number of existing shares by a certain ratio, e.g. 1:2 (this indicates that every existing share will translate into two shares). In the 1:2 case, the shareholders' shares will double, but given the firm's market capitalization will remain unchanged, the stock price will halve, maintaining economic equivalence; It should be noted that under such an event your positions may be consolidated into a single entry on the terminal which will of course capture the effect of the corporate action on all your positions;
- (c) Dividends; in case where an underlying instrument is granting dividends (equity index or stock), a cash adjustment will be made, equivalent to that paid to clients with an open position in the underlying instrument;
- (d) Delisting/voiding of a tradable instrument that will result in the closing of positions;
- (e) Takeovers or mergers (including spinoffs), depending on their terms may result in a cash adjustment similar to that of dividends;
- (f) Any other event of similar nature to the aforementioned events that may have a concentrating or dilutive effect on the market value of the instrument.

## **19. Margins and leverage**

**19.1.** As a condition of entering into a transaction, we will require the payment to us of an amount for Margin (**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, including sufficient available client money in the client money trust account which can be withdrawn to pay us amounts to which we are entitled.

**19.2.** 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 money so required by XM.com.

**19.3.** If there is an adverse movement in the value of a transaction we will require additional payment from you to supplement the Initial Margin (**Variation Margin**). You may deposit money in the client money trust account (in cleared funds) or make another acceptable payment.

**19.4.** If we execute an Order to make a transaction, involving, for instance, a CFD, you acknowledge that, depending upon the nature of the transaction, you may be liable to make further payments during the transaction or upon the earlier closing out of your position. You will be required to make further payments for Margin for the value of the transaction, instead of paying (or receiving) the whole acquisition (or disposal) price immediately. The movement in the value of your transaction (affected by the underlying market price) will affect the amount of Margin payment you will be required to make.

**19.5.** You must pay us on demand:

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

**19.5.2.** such sums of money for Initial Margin or Variation Margin as we, in our absolute discretion, require from time to time.

**19.6.** 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 Margin in support of our prevailing Margin and cash funding requirements for the transactions they are entering into via our Online Trading Facility. By 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.

**19.7.** 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.

**19.8.** Without prejudice to clause 17.3 above, the Company in 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), including but not limited to, in the following cases:

**19.8.1.** prior to and during Friday market closure;

**19.8.2.** prior to and during any other market closure for any specific or all Financial Products;

**19.8.3.** prior to and during any major news announcements, such as, but not limited to, the Nonfarm Payroll announcement made by the United States Department of Labor; and

**19.8.4.** prior to and during any anticipated abnormal market conditions or Market Disruptions.

**19.9.** You are responsible for maintaining appropriate arrangements with us at all times for the receipt and communication of information regarding Margin. You must promptly deliver any money in respect of any transaction in accordance with the terms of that transaction and with any instructions given by us for the purpose of enabling us to perform our obligations under any corresponding transaction 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 within in the required time, we will be entitled, at our sole discretion, to close out any open transaction without prior notice to you and apply any proceeds of that to payment of any amounts due to us or, as we in our sole discretion, exercise our rights in accordance with clause 22 below.

**19.10.** All initial and subsequent calls for Margin must be made in the currency of the transaction, 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 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).

**19.11.** We may 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.

**19.12.** Our Margin Call policy undertakes that your maximum possible risk is your Account equity. If the equity in your Account drops to 100% 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.

**19.13.** You are solely responsible for monitoring the activity of your Accounts, including, without limitation, whether and when open positions reach Margin Call Level.

**19.14.** The Stop-out Level is the level of your equity in your Account which 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). The Stop-out Level is equal to 50% of the Margin Level required to maintain your open positions. Please note that hedged positions are also subject to margin requirements in case where the equity of your Account has entered into a negative territory; and thus, the automatic Stop-out facility is initiated.

**19.15.** If 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 transaction will be cancelled.

**19.16.** 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.

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

**19.18.** XM.com may at any time and from time to time amend the leverage ratios (i.e., decrease the leverage ratios) in its sole discretion and without any notice on a case by case basis on all or any Accounts of the Client and based on any parameter it chooses, including applying different leverage ratios to different investments or times or in relation to external events such as government announcements or any news. Any change in the leverage ratio may take effect before or after an Order is completed. A decrease in the leverage ratio will affect your Margin Level, Margin Call Level, Stop-out Level and may trigger a Margin Call. We will not be liable to you for any loss arising from any change in the leverage ratios, even if that automatically causes any or all of your trading positions to be closed out or if your Account is treated differently from other Clients' Accounts. Any monitoring by XM.com is for its compliance and risk management and you should not rely on XM.com to monitor your trading or the effect of any change in the leverage ratios applying to your Account.

## **20. Affiliates (Introducers of Business)**

**20.1.** If you were introduced to XM.com by an Affiliate you acknowledge and agree that:

**20.1.1.** you authorised the Affiliate to introduce you to XM.com;

**20.1.2.** a commission may be paid to the Affiliate for introducing you to XM.com.

## **21. Fees, charges and costs**

**21.1.** XM.com does not charge fees on Margin FX or CFD transactions or your Account arising from trading in those Financial Products unless the feature of charging fees is disclosed in the PDS or FSG (as the case may be). The amount of these fees may be displayed in the course of your use of the Online Trading Facility. Fees will be charged to your Account at the time your transaction is executed unless otherwise disclosed or notified to you. XM.com has ceased the offering of zero accounts, however, trading in your existing zero account incurs fees (also called **commissions**).

**21.2.** You may be required to pay us a financing fee at an interest rate if you hold a long CFD position overnight (also called **rollover fee**). Alternatively, you may be entitled to receive a financing fee at an interest rate if you hold a short CFD position overnight. Further information is on the Trading Platform.

**21.3.** 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 is the spot rate for the applicable currency pair, as posted on the Trading Platform at the time of the transaction.

**21.4.** 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.

**21.5.** Unless we give you written notice to the contrary, all payments between us must be made on a net basis and we are not 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.

**21.6.** We may charge you, and demand that you pay for the following fees, charges or costs:

**21.6.1.** 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;

**21.6.2.** any expenses we may incur in connection with replies to inquiries by public authorities, including, without limitation, a reasonable amount to cover the direct and indirect costs incurred by us in relation to forwarding of transcripts and enclosures and for the preparation of copies and to resending to formal or informal enquires and requests from regulators in relation to your Account (whether or not you have breached any law); and

**21.6.3.** Dormant account fees, in the event that no significant trading activity is developed in your Account.

**21.7.** XM.com may charge a Dormant Account Fee as per clause 25.

**21.8.** We may amend, alter, modify, delete or add to any of the fees, charges and costs at any time and in our sole discretion. You will receive reasonable prior notification of such changes (and are required by law).

**21.9.** If your Account(s) remain inactive for (twelve) 12 months, we reserve the right to charge you a one-off account maintenance fee of USD 15 (or currency equivalent), followed by a monthly fee of USD 5 for each month that the Account remains inactive in accordance clause 25. We reserve the right to change the 12-month inactivity period as we deem necessary.

## **22. Taxes**

**22.1.** 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 have no responsibility for any of your tax liabilities, or for providing information or advice in respect of such liabilities and are not responsible for notifying you of a change in tax law or practice. You indemnify us 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.

**22.2.** The Company will not provide any advice to you on any tax issue related to any products or 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 or withholdings as required by Applicable Laws.

**22.3.** If we become liable to pay any tax on your behalf arising from or incidental to transactions executed by you with us you must reimburse us on demand in full for the amount of such tax paid by us. If we become liable to pay any stamp duty, stamp duty reserve tax or any other similar documentary tax or duty in any jurisdiction (collectively referred to as **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 must reimburse us on demand in full for the amount of such Stamp Duty paid by the Company.



**22.4.** Without derogating from your sole and entire responsibility to perform tax payments, you agree that we may deduct tax, as may be required by the Applicable Laws and Regulations, with respect to your trading activity on the Trading Platform. You are aware that we have a right of set-off against any amounts in your trading account with respect to such tax deductions, and you hereby authorize us to withdraw amounts from your trading account with which to pay such taxes. You are aware that amounts that may be withdrawn by you from your Account are "gross amounts", from which we may deduct such taxes, as the case may be, and that you shall have no claim towards us with regard to such deductions.

**22.5.** Should any change in the basis or scope of taxation occur at anytime which results in us having to withhold amounts on account of Taxes owed or payable by you in respect of any Applicable Laws and Regulations in respect of your transactions or your account with us, we reserve the right to deduct the amount of any such payment(s) from your account(s) or otherwise require you to pay or reimburse us for such payment(s).

### **23. Events of default**

**23.1.** The Client acknowledges and agrees that if one of the following events occurs, XM.com may take any such action provided in sub-clause 22.3 below:

**23.1.1.** 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;

**23.1.2.** 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 (if required);

**23.1.3.** 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;

**23.1.4.** 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;

**23.1.5.** you fail to remit funds necessary to enable us to take delivery under any transaction on the first due date;

**23.1.6.** 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 for that, 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);

**23.1.7.** 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;



**23.1.8.** 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;

**23.1.9.** 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;

**23.1.10.** 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 winding-up or administration of the Client (other than for the purposes of amalgamation or reconstruction with our prior written approval);

**23.1.11.** 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;

**23.1.12.** 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;

**23.1.13.** any of your indebtedness or any of 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;

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

**23.1.15.** you fail to comply with any obligations set forth in these Terms and Conditions or in any transaction or contract, including failure to meet Margin requirements;

**23.1.16.** 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;

**23.1.17.** 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;

**23.1.18.** you breached any clause of these Terms and Conditions or any other agreements we have, or had in the past, in place;

**23.1.19.** 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;

**23.1.20.** 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 of it) by any governmental or regulatory authority whether or not that request is legally binding; or

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

**23.2.** If the Client becomes aware of the occurrence of any event referred to in sub-clause 23.1 above, it must notify XM.com immediately.

**23.3.** If any event referred to in sub-clause 22.1 above takes place, XM.com will, in its absolute discretion, without prejudice to any other rights it may have under these Terms and Conditions, be entitled to do any one or more of the following:

**23.3.1.** close out, replace or reverse any transaction, buy, sell, borrow or lend or enter into any other transaction, 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, positions or commitments, deliver any security investment or property to any third party, or otherwise take any action we consider being necessary or desirable in order to close out any transaction;

**23.3.2.** require you immediately to close out and settle such transactions in such manner as we may, at our sole discretion request;

**23.3.3.** enter into any foreign exchange transaction, at such rates and times as we may determine, in order to meet obligations incurred under a transaction;

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

**23.3.5.** 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; or

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

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

**23.3.8.** 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);

**23.3.9.** 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;

**23.3.10.** 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

**23.3.11.** 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.

**23.4.** You authorise us to take all or any measures described in this clause without prior notice to you and you acknowledge and agree that we are not responsible for any consequences of us taking any such steps, unless we have exercised negligence in connection with that. In these circumstances, you must 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.

**23.5.** Without prejudice to our other rights under 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.

**23.6.** Our rights under this clause are 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.

**23.7.** Notwithstanding anything in these Terms and Conditions to the contrary, we are not 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.

#### **24. Exclusions, limitations and indemnity**

**24.1.** 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).

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

**24.3.** Notwithstanding anything in these Terms and Conditions (other than sub-clause 23.1) 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.

**24.4.** 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:

**24.4.1.** be responsible for any loss, damage or cost caused to you by any act, error delay or omission as a result of your inability to open a transaction; and

**24.4.2.** except if 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 from that including without limitation, if such loss, damage or cost is a result of your inability to close a transaction.

**24.5.** 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:

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

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

**24.5.3.** any third-party content accessible on or through our Online Trading Facility.

**24.6.** Neither we, nor our Associates will be liable to you or any Authorised 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 Authorised Person's access to our Online Trading Facility, or for any erroneous communications between you and us.

**24.7.** 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 or data loss. Subject to sub-clause 23.1 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.

**24.8.** 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.

**24.9.** For the avoidance of doubt, and subject to sub-clause 23.1 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.

**24.10.** 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.

**24.11.** 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.

**24.12.** 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.

**24.13.** We may, in our reasonable opinion, determine that an emergency or an exceptional condition exists (**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:

**24.13.1.** 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;

**24.13.2.** 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;

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

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

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

**24.14.** 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:

**24.14.1.** increase your Initial Margin requirements;

**24.14.2.** close all or any of your open positions at such price as we reasonably believe to be appropriate;

**24.14.3.** 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

**24.14.4.** alter the last time for dealing for a particular transaction.

**24.15.** XM.com has no obligation to contact you to advise upon appropriate action in light of changes in the underlying market conditions or otherwise.

**24.16.** Without prejudice to our rights under sub-clauses 23.3 and 23.4, you must 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.

**24.17.** The Client must 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.

**24.18.** XM.com is not 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 Force Majeure Event.

**24.19.** 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.

**24.20.** XM.com makes no representation or warranty as to the results of dealing in the financial products, and is not 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.

**24.21.** These indemnities survive any termination of the Client relationship.

## **25. Dispute resolution**

**25.1.** XM.com has an internal dispute resolution process in place to resolve any complaints you may have, as quickly and fairly as possible. We will follow the “**Complaints Management Policy**” published on our website, which is incorporated herein by reference and form an integral part of these Terms and Conditions of Business; as such, this Complaints Management Policy shall be applicable to all transactions between us and our clients, to the extent that it does not impose and/or does not seek to impose any obligations on us which we would not otherwise have, but for the Corporations Act 2001 (Commonwealth) as amended from the to time.

**25.2.** Clients who wish to file a formal complaint must do so by submitting their complaint to the following email address: [aucomplaints@xm.com](mailto:aucomplaints@xm.com), along with any relevant attachments. We will seek to resolve your complaint within 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.

**25.3.** If you are not satisfied with the resolution outcome of your complaint, you have the right to lodge a complaint with the Australian Financial Complaints Authority (**AFCA**) an approved external dispute



resolution scheme, of which XM.com is a member (membership number 33339). AFCA provides fair and independent financial services complaint resolution that is free to consumers.

#### **Australian Financial Complaints Authority**

Website: <https://www.afca.org.au/>

Email: [info@afca.org.au](mailto:info@afca.org.au)

Telephone: 1800 931 678 (free call)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

**25.4.** Without prejudice to any rights you may have to refer a complaint to the AFCA, as set out in sub-clause 24.3 of these Terms and Conditions, each of the parties irrevocably:

**25.4.1.** 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

**25.4.2.** 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.

**25.5.** A determination by AFCA will be binding on XM.com only if you accept the decision.

#### **26. Dormant and archiving policy**

**26.1.** If there is no activity (trading/withdrawals/deposits/internal transfer) 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 will be deemed as dormant from the last day of the ninety (90) calendar days in which there has been no activity (trading/withdrawals/deposits/internal transfer) in the Account.

**26.2.** Any pending orders may be deleted from dormant accounts.

**26.3.** 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.

**26.4.** Trading accounts with zero balance are deemed as archived on the last day of the ninety (90) calendar days during which there was no activity in trading/withdrawals/deposits/internal transfers/log in to terminal platform on them.

#### **27. Chargebacks**

**27.1.** If you place a chargeback (on purpose or by mistake) for any payment you make for your Account with us, we may charge a "research fee" (not less than USD 150) to your Account upon receiving the chargeback to cover our investigative expenses.

**27.2.** We do not tolerate credit / debit 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 to this, we will 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 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.



## 28. Islamic/ Swap-free accounts

**28.1.** 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 if a request for an Islamic (Swap-free) Account is filed with us, we may require an adequate justification for or proof of the necessity or need of any such conversion. Furthermore, we may refuse the processing of any such request for any reason whatsoever, without being obliged to provide any explanation or justification.

**28.2.** 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 will evaluate the request and any ancillary documentation submitted to us and will inform the client who requested the conversion by e-mail whether the request is accepted or not.

**28.3.** 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).

**28.4.** We may 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; 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 all profits or losses garnered in such client's trading Accounts with us.

## 29. Prohibited trading techniques

**29.1. Circumvention & Reverse Engineering:** You must 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 or computer system(s). If, at our sole discretion, we were to determine that you are in breach of this clause, we may take all action as we see fit, including, without limitation, completely blocking access to our Online Trading Facility, blocking or revoking your Access Codes or terminating your Account. Under these circumstances, we may seize any profits or revenues generated directly or indirectly (or any combination of that) by exercising any such prohibit trading activity and we may inform any interested third parties of your breach of this clause; we have, and will continue to develop any tools necessary to identify fraudulent or unlawful access and use of our Online Trading Facility; any dispute arising from such fraudulent 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 will be final or binding on all participants; no correspondence will be entered into.

**29.2. 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 or computer system(s) with an ultimate or dominant goal to gain unfair advantage and exploit our trading facility; in the event that we determine, at our own discretion, that any such artificial intelligence software has been used, or is being used, we may take all action as we see fit, including, without limitation, completely blocking access to our Online Trading Facility, blocking or revoking your Access Codes or terminating your Account. Under these circumstances, we may seize or cancel any profits or revenues generated directly or indirectly by exercising any such prohibit trading activity or charge you with extra fees, charges or costs arising out of our direct and indirect costs. In addition, we may inform any

regulatory authority and any other interested third parties of your conduct or your breach of this clause; we have, and will continue to develop any tools necessary to identify fraudulent or unlawful access and use of our Online Trading Facility; any dispute arising from such fraudulent 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 will be final or binding on all participants; no correspondence will be entered into.

Moreover, it is absolutely prohibited to use any software in such a way which can cause serious negative impact on the performance of our servers and may prevent us from achieving the best possible result for our clients as regards the execution of their Orders. If we identify any such actual or suspected activity, we may take all action as we see fit, including, without limitation, completely blocking access to our Online Trading Facility, blocking or revoking your Access Codes or immediately terminating your Account (or any combination of that). Moreover, you acknowledge that once your Account has been terminated we may liquidate any outstanding contracts/positions you have with us. In view of the above, please note that you will be strictly prohibited from opening any new trading Account(s) and trade with our Company.

**29.3. Unlawful trading techniques:** Internet, connectivity delays, and price feed errors sometimes create a situation if the price(s) displayed on our Online Trading Facility does not accurately reflect the market rates. The concept of using trading strategies aimed at exploiting errors in prices or concluding trades at off-market prices or by taking advantage of internet delays (commonly known as “arbitrage”, “sniping” or “scalping”, collectively referred to in these Terms and Conditions as **Arbitrage**), cannot exist in an over-the-counter market if 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 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 may, in our sole discretion and without prior notice being required:

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

**29.3.2.** 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);

**29.3.3.** 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; and

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

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 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 or profits or losses garnered as invalid. In these circumstances, XM.com may close/suspend (either temporarily or permanently) all of the Client’s trading accounts and cancel all transactions. In view of the above, please note that you will be strictly prohibited from opening any new trading Account(s) and trade with our Company.

We have, and will continue to develop any tools necessary to identify fraudulent or unlawful access and use of our Online Trading Facility; any dispute arising from such fraudulent 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 will be final or binding on all participants. No correspondence will be entered into.

**29.4. Changes in market conditions:** Please note that we 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. If there is 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.

**29.5. Indemnification:** Without prejudice to any other provisions of these Terms and Conditions, you agree to indemnify us and hold us or 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 or directly or indirectly related with, any fraudulent or unlawful access and use by you of our Online Trading Facility or the prevention or remediation thereof, provided that any such liabilities, losses, damages, costs and expenses would not have arisen, but for our gross negligence, fraud or wilful default.

### **30. Intellectual property**

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

**30.1.1.** our Online Trading Facility;

**30.1.2.** our services;

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

**30.1.4.** these Terms and Conditions;

**30.1.5.** the price quotes we provide; or

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

**30.2.** 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** will 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.

**30.3.** 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 of it 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.

**30.4.** Under no circumstances may you remove any copyright notification from any of our Intellectual Property Assets or unlawfully use any of our Intellectual Property Assets. You must 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 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 must not:

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

**30.4.2.** 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 or any component, in whole or in part;

**30.4.3.** embed our Intellectual Property Assets or any component of them, into other products;

**30.4.4.** use our Intellectual Property Assets or any component of them, in any timesharing arrangement;

**30.4.5.** create function calls or other embedded links from any software program to our Intellectual Property Assets or any component of them;

**30.4.6.** remove or obscure any of our copyright notices or those of any of our third-party licensors from any of our Intellectual Property Assets or any component of them;

**30.4.7.** 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 referred to as **Marks**); or

**30.4.8.** save to the extent permitted by Applicable Laws, Rules or Regulations reverse engineer, decompile, disassemble, or access the source code of any of our Intellectual Property Assets or any component of them.

## **31. Termination**

**31.1.** Without limiting 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 remains in force until terminated by either Party.

**31.2.** Unless required by Applicable Laws, Rules or Regulations either Party may terminate the Agreement (and the relationship between us) by giving seven (7) calendar days' written notice of termination to the other.

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

**31.4.** Upon terminating the Agreement, all amounts payable by you to us will become immediately due and payable including (but without limitation):

**31.4.1.** all outstanding fees, charges and commissions;

**31.4.2.** any dealing expenses incurred by terminating the Agreement; and

**31.4.3.** any losses and expenses realised in closing out any transaction or settling or concluding outstanding obligations incurred by us for you or on your behalf.

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

**31.6.** Termination does not affect the outstanding rights and obligations (in particular, without limitation, relating to the indemnities and limitation of liability clauses and the Miscellaneous and Governing Law clauses) and transactions, which continue to be governed by these Terms and Conditions, until all obligations have been fully performed.

**31.7.** If you involve us, directly or indirectly, in any type of fraud, we may, in our sole discretion and without prejudice to any other rights we may have under these Terms and Conditions, reverse all previous transactions.

**31.8.** We shall terminate this Agreement with all Accounts being inactive for a period of (twelve)12 months.

## 32. Manifest errors

**32.1.** 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.

**32.2.** In respect of any Manifest Error, we may do any of the following (but will not be obliged to):

**32.2.1.** 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

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

**32.3.** 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.

## 33. Personal information

**33.1.** You represent, warrant, undertake and agree that:

**33.1.1.** 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;

**33.1.2.** 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.);

**33.1.3.** you are not an employee of a Listed Company;

**33.1.4.** you will be treated as a **Retail Client**, unless we classify or later reclassify you as a **Wholesale Client**;

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

**33.1.6.** 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 or payment accounts in which you intend to deposit or receive funds from your account;

**33.1.7.** we may obtain information about you from third party service providers when you open an Account or make a deposit for the purpose of validating your identity;

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

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

**33.3.** You expressly acknowledge and agree that if you are an employee of a Listed Company, you are prohibited from entering into this Agreement. In such case, we reserve the right, in our sole discretion, to impose any restrictions deem appropriate on your trading account(s), including the immediate termination of our business relationship, and thus, the close-out of any open Transactions and/or Contracts without prior notice and without being obliged to provide you with any explanation or justification.



**33.4.** You 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 may suspend or terminate your Account promptly and to suspend or prevent you from accessing or using our Online Trading Facility, without prejudice to any other rights and/or remedies we may have under or pursuant to these Terms and Conditions.

**33.5.** 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.

**33.6.** 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 prevails.

**33.7.** We may communicate with you by telephone, email, posts, newsletters issued by us or any other means of communication, whether such communication is personally addressed to you or generally addressed to all our clients or posted on our Online Trading Facility. By agreeing to 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 will be deemed to have been received by you and/or any transaction so executed will be deemed final and binding on your part.

**33.8.** By opening an Account with us, you will be subject to, and you expressly agree to abide by, all of our rules, policies and operating procedures that govern your activities on our Online Trading Facility. We may refuse 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.

**33.9.** We may investigate, at any time, in 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, or any engagement in any activity prohibited by these Terms and Conditions. We will not be responsible:

**33.9.1.** for anything related to trading activities on or through our Online Trading Facility;

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

**33.10.** In particular, but without limitation of the generality of the foregoing, we will not be responsible for any of the following situations:

**33.10.1.** unauthorised real money transactions;

**33.10.2.** unauthorised real money transactions conducted by unauthorised minors;

**33.10.3.** verification that you possess reasonable or sufficient knowledge and experience to use our Online Trading Facility.

**33.11.** 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 reasonable or sufficient knowledge, and we may assess and re-assess your knowledge and experience to use our Online Trading Facility at any time, in our sole discretion.



### **34. Data protection and disclosure of information**

**34.1.** You acknowledge that by entering into this Agreement and opening a trading account with us and using our Online Trading Facility, you will be providing us with personal information/data within the meaning of the Privacy Act 1988 and the General Data Protection Regulation (679/2016), or any other similar applicable law/regulation as may be in force from time to time. You provide your consent to us to process all such information for the purposes of complying with our legal obligations, performing our contractual obligations and administering the relationship between you and us. You acknowledge and agree that this may result in your personal information being sent outside Australia or the European Economic Area ("EEA"). You consent to us processing and disclosing such information in accordance with this Agreement and our Privacy Policy as published on our website(s), as this may be updated from time to time.

**34.2.** We are the Data Controller for the purposes of all applicable Personal Data Protection Legislation. For all information regarding privacy and data protection as well as for the legal bases and purposes of the processing of your personal data and other relevant information, please read the complete terms of our Privacy Policy carefully, before submitting an application for the opening of a trading account with us.

**34.3.** As per the applicable Data Protection Legislation, you have certain rights regarding the Personal Data we collect and hold about you at the time of request. Please refer to our Privacy Policy for more details in relation to these rights and how you may exercise them.

**34.4.** You acknowledge that 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:

- assess and process your Application for the opening of a trading account;
- carry out our contractual obligations under this Agreement;
- administer and carry out our everyday business activities and dealings with you in relation to your trading account(s);
- compile statistical analysis of the pages of our Online Trading Facility visited;
- monitor and analyse our business;
- participate in fraud/crime and money laundering prevention, legal and regulatory compliance;
- market and develop other products and services;
- transfer any of our rights or obligations under this Agreement; and
- process clients' Personal Data for other related purposes.

If you choose to withhold Personal Data (other than special categories of personal data) requested in order for us to be able to provide our services to you, as required by applicable laws and regulations, we may not be able to process your application and/or provide you access to our Online Trading Facility.

**34.5.** We will not obtain or require disclosure of special categories of Personal Data (such as ethnic origin, religion or medical records) but if you choose to provide such Personal Data, we may assume such sensitive data is provided with your consent for processing for the purposes for which such Personal Data was provided, unless otherwise notified by you to us in writing.

**34.6.** You directly provide us with most of the information we collect. You do this by filling out the electronic form(s) (including, without limitation, the Account Opening Application Form(s)) that we post on our Online Trading Facility and by voluntarily providing us with other required documents. Additionally, you provide us with information by trading on our systems, by contacting us or by responding to a promotion; the information we indirectly collect may include logging your Internet Protocol (IP) address, software configuration, operating system and use of Cookies; Cookies are small files containing information that a Website uses to track its visitors which may be sent from us to your computer and sometimes back. Cookies ultimately help us improve your navigation and ease of use of our Online Trading Facility. We may set and access Cookies on your computer, enabling us to learn which advertisements and promotions bring users to our Online Trading Facility. We may use cookies in connection with any of our Products and/or Services and to track your activities on our Online Trading Facility. Such information that we collect and share would be anonymous and not personally identifiable.

**34.7.** We obtain, hold and use the information we collect from you in accordance with data protection and anti-money laundering legislation and only for the purposes for which this information is collected. You

agree that we can rely on, hold and process your information for the purpose of performing our obligations under this Agreement, including verifying your identity as per our legal obligations, administering the relationship with you, managing your Account and contacting you from time to time, recovering amounts payable, considering any of your applications, carrying out risk assessment, complying with regulatory obligations, and undertaking product development and analysis.

Also, the Information you provide us helps us to improve our Services to you, customize your browsing experience and inform you about additional products, services or promotions that may be of interest to you. Should you ever deactivate your Account with us, we will keep your information on file, but only use it to comply with regulatory retention requirements and to contact you occasionally with the option to reactivate your account. Please note that you may opt-out/unsubscribe from receiving such communications by us, at any time, by clicking the “unsubscribe button” that can be found on each of our emails.

**34.8.** In order to provide services to you, you acknowledge that it may be necessary for your information to be transferred to someone who provides a service to us in other countries, including some outside Australia or the European Economic Area (“EEA”), and you consent to such transfer. To the extent we transfer your information outside Australia and the EEA, we will ensure that the transfer is lawful and that Processors in third countries are obligated to comply with the Australian privacy and European data protection standards and to provide appropriate safeguards in relation to the transfer of your data in accordance with GDPR Article 46. Where we make transfers to processors in the US, we may in some cases rely on applicable standard contractual clauses, binding corporate rules, the EU-US Privacy Shield or any other equivalent applicable arrangements.

In view of the above, your personal information may be processed by staff operating outside Australia or the EEA who work for us or for one of our processors. Such staff may be, among others, engaged in the fulfilment of your requests, the processing of your payment details and the provision of support services. By submitting your personal data, you agree to this transfer, storing and processing. The Company will take all steps reasonably necessary to ensure that your data is treated securely and in accordance with this Privacy Policy.

**34.9.** Neither we nor any of our Associates will disclose any Personal Data collected about you to third parties except: (i) to the extent that it is required to do so by under and/or pursuant to any Applicable Laws, Rules and/or Regulations; (ii) where there is a duty to the public to disclose; (iii) where our legitimate business interests require disclosure; or (iv) at your request or with your consent or to Persons described below. Also, we do not disclose or share Information about any of our clients (whether active or inactive) to any non-affiliated third parties other than in the manner and to the entities set forth below:

- a. *Sharing Information with our Associates:*** We may share personal information described above with our Associates for business purposes, such as, but not limited to, servicing client’s Accounts and informing client’s about new products and services, or to aid in the trading activity of our Company, its affiliates, or employees, and as permitted by applicable law. Our Associates may include companies controlled or owned by us as well as companies that have an ownership interest in our company. The information we share with affiliates may include any of the information described above, such as your name, address, trading experience and account information. Our Associates are committed to maintaining the privacy of your information to the same extent we do in accordance with the provisions set forth herein and in our Privacy Policy.
- b. *Sharing Information with Third Parties:*** We do not disclose your personal information to third parties, except as described herein. Third party disclosures made by us in accordance herewith may include sharing such information with non-affiliated companies that perform support services for your Account or facilitate your transactions and/or contracts with us, including those that provide professional, legal, or accounting advice to us or that are acting on behalf of us to investigate your credit standing. Non-affiliated companies that assist us in providing services to you are required to maintain the confidentiality of such information to the extent they receive it and to use your personal information only in the course of providing such services and only for the purposes that we dictate. We may also disclose your personal information to third parties to fulfil your instructions or pursuant to your express consent. We want you to know that we will not sell your personal information.
- c. *Regulatory Disclosure:*** Under limited circumstances, we may disclose your personal information to third parties as permitted by, or required to comply with, Applicable Laws, Rules and/or Regulations

in the jurisdiction of which you are a citizen or a permanent resident, or, in the case of a Legal Entity is formed, incorporated, domiciliation and/or doing business, and/or of the jurisdiction in which we are organized and/or is performing the Services provided hereunder. For example, we may disclose personal information to cooperate with regulatory authorities and law enforcement agencies to comply with subpoenas or other official requests, and as necessary to protect our rights or property. Except as described herein, we will not use your personal information for any other purpose, unless we describe how such information will be used at the time you disclose it to us or we obtain your permission.

We, Our Associates or a Third Party Service Provider may disclose Personal Data about you to those who provide services to us, to any person to whom we, our Associates or a Third Party Service Provider transfers or proposes to transfer any of our or its rights or obligations under these Terms and Conditions, and to licensed credit reference agencies or other organizations that help us, our Associates or Third Party Service Providers and others to make credit decisions and reduce the incidence of fraud or in the course of carrying out identity, fraud prevention or credit control checks.

**34.10.** You consent to us, or our agents acting on our behalf, carrying out such credit and identity checks, including money laundering checks, compliance regulatory reporting and fraud prevention checks, as we may reasonably consider necessary or desirable, including requesting a reference from your bank or any credit reference agency. You understand and agree that any third party referred to in this clause may share any information concerning you with us and other organizations involved in credit reference, the prevention of fraud and/or crime and/or money laundering or for similar purposes or to recover debts involved.

**34.11.** By submitting the Application Form to us, you agree to be bound by the terms of our Privacy Policy as set out on our Website, including authorising us to contact you by email, telephone or post to give you information about carefully selected products or services offered by us, that are similar or related to products or services provided or previously provided to you. You consent to us using your data for this purpose for the period you have an Account with us, and after you close the Account for a period of seven (7) years. If you do not wish to receive such information then you may click on the "unsubscribe" button on any of our emails. Alternatively, please inform us in writing at [audpo@trading-point.com](mailto:audpo@trading-point.com).

**34.12.** Your telephone conversations, e-mails, internet conversations (chat), meetings and other communications with us, our Associates and/or Third Party Providers will be recorded/maintained by us for security purposes, compliance with the applicable laws and regulations, training purposes as well as to maintain and improve the quality of our Services. 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 securely destroyed in accordance with our normal practice. Consequently, you should not rely on such recordings to be available.

**34.13.** We protect your information by using data security technology and using tools such as firewalls and data encryption. We use Secure Socket Layer ('SSL') encryption technology in order to protect certain information that you submit. This type of technology protects you from having your information intercepted by anyone other than us while it is being transmitted to us. We work hard to ensure that our Online Trading Facility is secure and that it meets industry standards. We also use other safeguards such as firewalls, authentication systems (e.g., passwords and personal identification numbers) and access control mechanisms to control unauthorized access to systems and data. We also require that you use your personal Access Codes (personal username and password) every time you access your account online. We restrict access to information at our offices so that only officers and/or employees who need to know the information have access to it.

**34.14.** Please note that we reserve the right to amend, revise, modify, and/or change our Privacy Policy at any time. Should we decide to make any changes to our Privacy Policy, such changes shall be incorporated into our revised Privacy Policy which shall be posted on our Online Trading Facility. We will use reasonable endeavours to contact you and notify you of any change to how we hold, process or disclose information, by posting a notice on our Website or sending you an email to your last known email address. If you do not tell us that you object to this change in writing within 60 days of the notice and you continue to maintain the Account after the expiry of this period of notice then we will regard you as having agreed to it.

**34.15.** Should you have any questions regarding our Privacy Policy, please contact our Data Protection Officer at [audpo@trading-point.com](mailto:audpo@trading-point.com). Please ensure you include your full name and Account number for us to be able to verify your identity and process your request.

**34.16.** We may use 'cookies' or 'IP address tracking devices' to administer our Online Trading Facility, store password and usernames, to monitor visits to pages on our Online Trading Facility from your terminal to personalise our Online Trading Platform to you and to track and facilitate browsing through our Online Trading Facility. A 'cookie' is a piece of data stored on your hard drive containing information about you relating to the use of our Online Trading Facility. IP addresses may be linked to your Personal Data and by tracking these addresses, we would be obtaining such Personal Data. Access to our Online Trading Facility is conditional on acceptance by you of any 'cookies' and 'IP address tracking devices' described in and for the purposes explained in this clause. By accepting these Terms and Conditions, you acknowledge that you understand the broad nature of 'cookies' and 'IP address tracking' devices and the purposes for which they will be used by us.

**34.17.** You acknowledge and accept that any Services provided through our Online Trading Facility involve transmissions over the Internet and that such transmissions are therefore subject to the Internet's inherent risks. Whilst we acknowledge our responsibility to take reasonable security precautions, you also acknowledge and accept that, as with any network, you may also be exposed to unauthorized programs transmitted by third parties, electronic trespassing and/or the failure of information and data to reach their intended destinations and/or erroneous receipt or misdirection of such information. Although, our Associates' and our Third Party Service Providers' security features are designed to reduce these risks, we cannot guarantee their elimination. You therefore acknowledge that no transmission via our Online Trading Facility shall be guaranteed to be confidential and that we shall not be liable for any breach of confidence arising as a result of such events.

**34.18.** 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 and the GDPR. At any time, upon request, you may gain access to the information XM.com holds about you.

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

## **35. FATCA**

**35.1.** The Company, its Associates and service providers may collect, store and process information obtained from the Client or otherwise in connection with the Agreement and the transactions for the purpose of complying with FATCA or other Applicable Laws, Rules or Regulations, including disclosures between themselves and to governmental authorities. The Client acknowledges that this may include transfers of information to jurisdictions which do not have strict data protection, data privacy laws or banking secrecy laws. The Client must ensure that, before it or anyone on its behalf discloses information relating to any third party to the Company, its Associates or service providers in connection with these Terms and Conditions or any transactions that said third party has been provided with such information and given such consents or waivers as are necessary to allow the Company, its Associates and its or their agents and service providers to collect, store, process and disclose the Client's information as described in this clause.

**35.2.** By accepting these Terms and Conditions, you authorise us to provide, directly or indirectly, to any relevant tax authorities or any party authorised to audit or conduct a similar audit of the Company for tax purposes information obtained from the Client or otherwise in connection with the Agreement and the transactions and to disclose to such tax authorities any additional information that the Company may have in its possession that is relevant to your Account.



### **36. Miscellaneous**

**36.1.** XM.com may amend these Terms and Conditions by giving the Client thirty (30) days written notice of any amendments.

**36.2.** If any of the provisions contained in these Terms and Conditions are found to be invalid or unenforceable, such provisions must be deemed to be deleted, and the validity and enforceability of the remaining provisions continues unimpaired.

**36.3.** 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.

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

**36.5.** 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 will be permitted access to such tapes up to 90 days after the date of the relevant telephone conversation (if available) and will be liable to XM.com for all reasonable costs in retrieving and providing such tape.

**36.6.** Subject to Applicable Laws, any communications between us using electronic transactions, including but not limited to, electronic signatures will be binding to the same extent as if they were in writing. By making, submitting, signing or completing online, the Account Application Form you agree to this Agreement being made without signature or execution, that transactions will be made electronically, and 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 form 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.

**36.7.** 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.

**36.8.** XM.com may 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 may take any action with regard to that with no liability whatever for that.

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

XM.com may place temporary or permanent restrictions on the opening of any new positions on any Financial Product which it deems necessary ("Close-Only" mode). This restriction may apply to specific Clients, to a group of Clients determined by XM.com, to types of Financial Products or collectively to all of the Company's Clients, or any combination of any of them, and for such times and of so long as XM.com determines. XM.com may apply, vary and remove any of those restrictions without prior notice. XM.com will reasonably try to give some prior notice of any restrictions if XM.com is actually aware of any scheduled events/news and XM.com intends to apply the restriction around the time of the scheduled event, but the Client must not rely on any such prior notice or, if given, that it is reasonable in the opinion of the Client.

The above restrictions will not affect any open positions of the Client. Client will be able to close their open positions normally.

**36.10.** 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.

### **37. Notices**

**37.1.** All communications relating to these Terms and Conditions must 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 will take effect if delivered, upon delivery; if posted, two (2) 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. If the Client is more than one person, any notice or other communication provided by XM.com to one such person will be deemed to have been provided to all such persons.

**37.2.** 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:

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

**37.2.2.** 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;

**37.2.3.** 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

**37.2.4.** 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.

**37.3.** 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.

### **38. Governing law**

**38.1.** The Agreement on these Terms and Conditions (including all transactions, since they are part of it) is governed by and must be construed in accordance with the laws in force in New South Wales. The Parties submit to the non-exclusive jurisdiction of the courts and tribunals in that State.