

# CLIENT AGREEMENT

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 200

## BETWEEN

Commodity Broking Services Pty Limited  
ACN 110 128 286 of PO Box 111, Warren NSW 2824 (hereinafter called "CBS")

## AND

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(hereinafter called "the Client")

## WHEREAS:

- A. The Client wishes to appoint CBS as its agent to deal in Derivatives, Foreign Exchange, Physical Commodities and Securities contracts in accordance with the Client's instructions.
- B. CBS has agreed to act as agent for the Client for the purpose of dealing in Derivatives, Foreign Exchange, Physical Commodities and Security Contracts on behalf of the Client.
- C. CBS provides an internet Dealing Platform for the Client to execute some contracts on.
- D. This Agreement sets out the terms and conditions on which the Client and CBS have agreed to regulate their dealings in respect of Derivatives, Foreign Exchange, Physical Commodities and Securities Contracts from time to time.

It is hereby **AGREED AND ACKNOWLEDGED**:

## INTERPRETATION

1.1 In this Agreement, unless a contrary intention appears:

"**Agreement**" means this agreement for the provision of services.

"**Close Out**" in relation to a Contract means the act of entering into arrangements to reverse the effect of that Contract including, without limitation, the entry into an opposite Contract;

"**Contract**" means a contract or trade between the Client CBS on behalf of the Client in relation to issuing, applying for, acquiring, disposing or varying a Derivative or a Foreign Exchange Contract;

"**Corporations Act**" means the Corporations Act 2001 or if the Corporations Act should be repealed or cease to any extent to operate, then that legislation that shall be enforced in Australia from time to time in partial or complete substitution for the Corporations Act 2001 and references to specific provisions of the Corporations Act 2001 shall be construed as references to the provisions of that replacement legislation.

"**Deal**" or "**Dealing**" means dealing as defined by section 766C of the Corporations Act

"**Derivative**" means a financial product as defined in section 761D of the Corporations Act

"**Event of Default**" means any of the events listed in clause 9 of this Agreement;

"**Equities Contracts**" means a contract as defined in section 761A of the Corporations Act;

"**Foreign Exchange Contract**" means a contract as defined in section 761A of the Corporations Act;

"**Physical Commodity Contract**" means a contract as defined in section 761A of the Corporations Act;

1.2 The singular includes the plural and vice versa.

1.3 Words importing a gender include every other gender.

1.4 Headings are for convenience of reference only and shall not affect the construction of this Agreement.

1.5 Where the Client is more than one person they shall be jointly and severally liable under the terms of this Agreement.

1.6 A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;

1.7 The word "person" includes a firm, corporation, body corporate, unincorporated association or any governmental authority;

1.8 A reference to a person includes a reference to the person's executors, administrators, legal personal representatives, successors and permitted assigns; and

1.9 A reference to "writing" includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile and electronic mail transmissions.

#### **AUTHORITY TO EXECUTE AGREEMENT**

2.1 The Client represents and warrants that the Client has full power and authority to Deal in products offered by CBS and to perform its obligations under this Agreement and any agreement entered into, by CBS on the Client's behalf or

2.2 The person executing this Agreement has full power and authority to execute this Agreement on behalf of the Client and where the person is a trustee for the Client, the Client is empowered by the relevant trust deed and law to enter into this Agreement.

#### **APPOINTMENT OF CBS**

3. The Client **AGREES AND ACKNOWLEDGES** that:

3.1 The Client appoints CBS as the Client's agent for the purposes of Dealing in accordance with the terms of this Agreement.

3.2 The Client will give instructions to CBS orally or in writing or over an electronic platform. It is the Client's responsibility to ensure that orders sent electronically have in fact been received by CBS.

## **ACKNOWLEDGEMENTS**

4. The Client **AGREES AND ACKNOWLEDGES** that:

4.1 Where the Client is a retail client, the Client has received from CBS:

- (a) a Financial Services Guide prepared by CBS; and
- (b) a Statement of Advice prepared by CBS if, or as, required by the Corporations Act.
- (c) a Product Disclosure Statement relevant to the financial products it wishes to acquire through CBS.

4.2 The Client has received a copy of this Agreement;

4.3 The Client and CBS, are bound by the Corporations Act, the business rules, customs, usages and practices of markets, futures exchange and clearing houses. Nothing in this clause 4.4 shall be construed to change the proper law of this Agreement.

4.4 The Client will take all reasonable steps to obtain and communicate to CBS all information, and deliver or cause to be delivered to CBS all documents with respect to Dealings in Contracts which are requested by a person lawfully entitled to request such information or documents. The Client authorises CBS to pass on all information, and deliver or cause to be delivered all documents to the person so requesting.

4.5 The Client will indemnify and keep indemnified CBS from and against all sums of money, actions, proceedings, suits, claims, demands, damages, costs, expenses and any other amounts whatsoever claimed against CBS resulting from a failure by the Client to comply with clause 4.4.

4.6 Dealing in Derivatives may create an obligation to give or take delivery or make a cash adjustment in accordance with the terms of a Derivatives Contract.

4.7 Dealing by CBS in Derivatives on behalf of the Client may require the buying or selling of foreign currency on behalf of the Client (by entering into a Foreign Exchange Contract) and the exchange rate which shall apply is the exchange rate applicable at the time the Client's money is exchanged.

## **EXECUTION OF ORDERS**

5. The Client **ACKNOWLEDGES** that:

5.1 CBS will use its best endeavours to arrange for the execution of the Client's instructions, but CBS will not be responsible for delays or errors in the transmission of the Client's instructions. However, the exclusion of liability in this clause will not apply to CBS where the delay or error arises by reason of the negligence, fraud or dishonesty of CBS or any of its agents or employees in relation to CBS as an adviser or broker.

5.2 The Client may give instructions to CBS orally, in writing or if approved by CBS over the internet.

5.3 CBS offers an online dealing platform. The Client acknowledges that CBS will not be held responsible for any failings outside of its control concerning the internet and the platform software and that the Client should make all endeavors to make sure that he/she is fully aware of the risks involved in dealing over the internet prior to operating an online account.

## **PRINCIPAL DEALING**

6. The Client **AGREES AND ACKNOWLEDGES** that:

6.1 CBS may Deal as principal on its own account.

6.2 The directors and employees of CBS may Deal on their own account.

## **THE CLIENT'S ACCOUNT**

7. The Client **AGREES AND ACKNOWLEDGES** that:

7.1 The Client must deposit in an account an amount as agreed.

7.2 CBS shall furnish to the Client the confirmations and monthly statements as required by the Corporations Act.

7.2 All Dealing or trading under or pursuant to this Agreement is at the Client's risk.

## **DEPOSITS AND MARGINS**

8. The Client **AGREES AND ACKNOWLEDGES** that:

8.1 CBS may call for payment of deposit or margin (by whatever terms those obligations are described) such money or property (or call for the lodgment of collateral in lieu thereof) in any amount or type as, in their absolute discretion, feel is necessary to protect themselves from the personal obligations incurred by Dealing in Derivatives, Foreign Exchange, Physical Commodities and Security Contracts on behalf of the Client.

8.2 Should the Client fail to meet the call (or lodge collateral) then CBS may (without prejudice to any other rights or powers under this Agreement) in their absolute discretion, and without creating an obligation to do so, Close Out, without notice, all or some of the Client's Contracts.

8.3 The time for payment of margins is of the essence and if no other time is stipulated by when making a call then the Client is required to comply within twenty-four (24) hours.

8.4 The liability to pay deposit or initial margin accrues at the time the Dealing takes place and the trade is executed regardless of the time the call is made.

8.5 Liability to pay margin accrues at the time the margin comes into existence. The liability to pay margin accrues whether or not a call is made, and if a call is made regardless of the time the call is made.

8.6 The Client's liability in respect of margin calls is not limited to the amount, if any, deposited with CBS (as the case may be). The Client is responsible to pay in cash any deficit owing and if the Client defaults in payment of such deficit, CBS may realise any collateral held by it and apply the proceeds against that deficiency.

## **CLIENT'S DEFAULT**

9. The Client AGREES that the occurrence of any of the events outlined in clauses 9.1 to 9.9 will constitute Events of Default (and the Client will notify CBS on the occurrence of any such event) if:

9.1 the Client becomes bankrupt or enters into a composition or arrangement for the benefit of creditors or, being a company, goes into liquidation voluntarily or otherwise (except for the purpose of reconstruction) or enters into any compromise or arrangement with or assignment for the benefit of any of its creditors or members or if any liquidator, receiver, manager, receiver and manager, managing controller or official manager is appointed;

9.2. the Client makes any representation that is incorrect or misleading in any material way with the result that loss or damage is, or is likely to be, suffered by CBS;

9.3. any guarantee of or security for the Client's obligations is, without the consent of CBS, withdrawn or becomes defective or insufficient;

9.4. the Client fails to meet a call for deposit or margin or lodge collateral in lieu thereof or fails to meet any other obligation under this Agreement, including settlement of a Contract;

9.5. the Client, being a natural person, dies or becomes of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

9.6. the Client imposes a moratorium on payments to creditors or ceases or threatens to cease carrying on business;

9.7. in the absence of the Client making alternative arrangements, the Client is not contactable CBS within twenty-four (24) hours in order for CBS to obtain instructions;

9.8 the conduct of the Client is such that a reasonably prudent Australian Financial Services Licensee would be of the view that the Client would be unable to comply with all the Client's obligations under this Agreement, including - without limiting the generality of the foregoing - strict compliance with any time limits; or

9.9 where the Client is a trustee, the trust is terminated or vests or a distribution of capital of the trust is made which would result in there being insufficient assets of the trust to meet the Client's liabilities under outstanding Contracts and this Agreement.

9.10 If any Event of Default occurs CBS shall be entitled in their absolute discretion and without notice to Client, and at such times as CBS, in their absolute discretion may determine, to do all or some of the following:-

- (a) Close Out all or some of a Client's Contracts;
- (b) Close Out, exercise or abandon any option not yet exercised;
- (c) cover option positions by entering into further option contracts or other Derivative Contracts or both;
- (d) take such other action as a reasonably prudent Australian Financial Services Licensee would take in the circumstances to protect the personal obligation incurred when Dealing on behalf of the Client;

(e) sell any or all of the Client's property lodged with CBS, including without limiting the generality of the foregoing, any Approved Securities and the Client agrees that CBS may liquidate the property as quickly as possible and is not obligated to liquidate the property at the best possible price;

(f) exercise any other power or right which CBS may have under this Agreement or in law or equity.

### **COMMISSION, FEES, EXPENSES**

10. The Client **AGREES** to pay:

10.1 Commission at such a rate as is notified by CBS to the Client in writing from time to time.

10.2 All stamp duty, duties and taxes payable on this Agreement or in connection with Dealings in Contracts entered into on behalf of the Client.

10.3 All amounts payable as a result of making or taking delivery or making a cash adjustment in accordance with the terms of a Contract.

10.4 All amounts incurred by CBS as a result of the Client's default under the terms of this Agreement, including without limiting the generality of the foregoing all legal costs and expenses on a solicitor/client basis.

10.5 All commissions and fees payable are outlined in the various PDS'.

### **SEGREGATED ACCOUNTS**

11. The Client **AGREES AND ACKNOWLEDGES** that money and property deposited with CBS by the Client, or on behalf of, the Client, shall be deposited in the CBS Client Segregated Trust Account.

### **RIGHT TO REFUSE TO DEAL**

12. CBS reserves the right to refuse to accept instruction to Deal on behalf of the Client in relation to any Dealings (other than Closing Out existing open positions held on behalf of the Client) or to limit the number of open positions held on behalf of the Client or both. CBS will inform the Client of any refusal at or before the time of the Client placing the order or as soon as possible thereafter. Such refusal shall be without prejudice to any other rights and powers under this Agreement.

### **LIABILITY**

13.1 CBS, its employees, principals, directors or officers is not liable to the Client under this Agreement except by reason of acts or omissions of CBS in contravention of this Agreement which amount to negligence, fraud or dishonesty by CBS.

13.2 The Client hereby indemnifies and hold harmless on a continuing basis, CBS, its employees, principals, directors and officers from and against all damages, losses, costs, expenses (including reasonable legal fees), indebtedness and liability claimed against or suffered by CBS arising from omissions or errors in executing orders or clearing trades on the Client's account or a failure by the Client to comply with its obligations under this Agreement.

13.3 The Client hereby indemnifies and agrees to keep indemnified CBS and its employees, agents or representatives from and against all sums of moneys, actions, proceedings, suits, claims, demands, damages, costs, expenses and any other amounts whatsoever arising out of any default, whether by act or omission, of the Client under this Agreement or anything lawfully done by CBS in accordance with this Agreement or by reason of CBS complying with any direction, request or requirement of a regulatory authority.

13.4 The Client also agrees that CBS shall not be liable to the Client for any losses, costs, expenses, or other damages sustained by the Client in the event of any failure or delay by any futures exchange, market, clearing house, bank or other depository institution where any of the Client's funds or other assets are maintained, or a failure or delay by any member, participant, bank or agent of any of the foregoing, or a failure or delay by any member, participant, bank or agent of any of the foregoing to enforce its rules, to fulfil its obligations, or to make any payment, for any reason whatsoever. The Client waives any claim, cause of action or right as against CBS, or its employees or agents which may arise or occur as a result thereof.

#### **TERMINATION OF AGREEMENT**

14. The Client and **CBS AGREE and ACKNOWLEDGE** that:

14.1 Any party may terminate this Agreement at any time by giving each other party a notice in writing to that effect. However, the obligations of the Client under clause 13 shall survive termination of this Agreement.

14.2 CBS may terminate this Agreement without notice if the Client is in default of any of its obligations under this Agreement or an Event of Default has occurred.

14.3 Unless otherwise agreed in writing between the parties, upon termination of this Agreement CBS will instruct Close Out all the Client's Contracts or abandon or exercise any options not yet exercised.

14.4 Termination shall not release either party from liability for any antecedent breach of any of the terms of this Agreement nor the liability of the Client to pay CBS any moneys payable by the Client under the terms of this Agreement.

PROPER LAW

15. This Agreement shall be governed by and construed in accordance with the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the Courts of New South Wales.

#### **IMPORTANT ACKNOWLEDGEMENT BY CLIENT**

16. The Client has given consideration to the Client's objectives, financial situation and needs and has formed the opinion that Dealing in Derivatives and Foreign Exchange Contracts is suitable for the Client's purposes.

16.1 The Client in the event of a dispute agrees to a conciliatory process offered by the Financial Industry Complaints Service Ltd and will be bound by its rulings.

#### **BEFORE SIGNING:**

1 Have you read the relevant PDS that pertains to the Product you wish to deal? YES/NO

2 Do you fully understand the risks involved in trading? YES/NO

3 Do you have a copy of your Drivers License? YES/NO

4 If you are operating under a Trust do you have a proffered copy of the deeds? YES/NO

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