

**Terms and Conditions of Fixed Income  
Solutions, a division of  
BGC Securities (Australia) Pty Ltd**

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**1 Introduction and Commencement**

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- 1.1 These Terms and Conditions as supplemented or amended from time to time, ("**Terms**") define the legally binding contractual basis on which Fixed income Solutions, a division of BGC Securities (Australia) Pty Ltd ABN 87 092 873 142 ("**BGCSA**", "**we**", "**us**" or "**our**") will provide certain services to you ("**client**", "**you**" or "**your**").
- 1.2 These Terms will take effect when you first undertake business with us, and you will be deemed to accept these Terms as amended from time to time, by continuing to use our services.
- 1.3 These Terms supersede any general terms or agreement(s) that we may have sent to or agreed with you previously. Nonetheless, certain of our services are subject to separate terms and conditions and in the event of a conflict and unless stated otherwise, those service-specific terms and conditions shall prevail.

**2 Service Provider and Regulation**

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- 2.1 BGCSA holds an AFSL with licence number 399636. This AFSL authorises BGCSA to carry on a financial services business in Australia by providing certain financial services to Wholesale Clients as set out in its AFSL. The authorisations on the AFSL held by BGCSA as at the date of this document permit BGCSA to provide the following financial services which may be amended from time to time without notice to you:
- 2.1.1 provide financial product advice in respect of derivatives, deposit and payment products, debentures stocks or bonds issued or proposed to be issued by a government, securities, interests in managed investment schemes excluding investor director portfolio services and financial products limited to MDA services;
- 2.1.2 deal in a financial product by issuing, applying for, acquiring, varying or disposing of a financial product in respect of derivatives, deposit and payment products, debentures stocks or bonds issued or proposed to be issued by a government, securities, interests in managed investment schemes excluding investor director portfolio services and financial products limited to MDA services;
- 2.1.3 deal in a financial product by applying for, varying or disposing of a financial product on behalf of another person in respect of derivatives, deposit and payment products, debentures stocks or bonds issued or proposed to be issued by a government, securities, interests in managed investment schemes excluding investor director portfolio services and financial products limited to MDA services; and
- 2.2.4 provide custodial or depository services other than investor directed portfolio services.

- 2.2 We may only provide some of the above listed financial services to you under these Terms, and the scope of the financial services that we provide to you may change from time to time.
- 2.3 You appoint BGCSA as your agent for the purpose of handling and executing orders in accordance with these Terms, and to do all things necessary or incidental to the execution, clearing and settlement of resulting transactions in compliance with applicable law.
- 2.4 Where applicable, you authorise BGCSA to appoint a third party broker to execute orders, regardless of whether BGC is a participant of the market or exchange where the order is to be executed (including without limitation, the ASX). In respect of such orders, the third party broker (and not BGCSA) is responsible for ensuring the execution, clearing and settlement of any resulting transactions in accordance with any terms and conditions which govern their provision of those services and you will be responsible to the third party broker for any such transactions in accordance with those terms and conditions.
- 2.5 Further, we do not provide custodial or depository services to you. We will engage a custodian to provide the custody services to you for any financial products you deal in with us.
- 2.6 We also do not provide personal financial advice to clients. The financial product advice provided by us relates primarily to fixed income financial products and will not be based upon the client's individual financial circumstances, objectives or needs. As such, this financial product advice is deemed general advice and not personal financial advice. Clients should, before acting upon any advice from us, consider whether or not our advice and any proposed investments in financial products are appropriate to the client's individual financial circumstances, objectives or needs.
- We strongly recommend that you seek independent legal, regulatory, tax, business, investment, financial and accounting advice tailored to your specific objectives, financial situation or needs, prior to making any investment decision.***

**3 Our Services**

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- 3.1 We provide brokerage services (electronic & voice) in certain financial markets, other financial services, and non-financial services to you ("**Services**"). The Services to be provided may be revised from time to time and as agreed between us.
- 3.2 These Terms apply to all methods or mechanisms used to provide our Services, including, where applicable, electronic mechanisms and systems.
- 3.3 As part of our Services we may, when you have instructed us to do so, arrange deals for you in illiquid investments. These are investments in which the market is limited or could become so. They can be subject to wide spreads and may be hard to value or on-sell.
- 3.4 From time to time you may request us to provide you with Services and you may indicate to us relevant terms and conditions relating to transactions that you would like to place in relevant financial markets. We will

use diligent and commercially reasonable efforts to locate counterparts to such transactions on your behalf.

- 3.5 For the avoidance of doubt, prices supplied to you by us shall be deemed to be indicative and for reference purposes only (**Indicative Prices**) unless stated otherwise. You understand, acknowledge and agree that final transaction terms may vary from Indicative Prices.
- 3.6 We will comply with our obligations under the Corporations Act when providing our Services to you under these Terms.
- 3.7 You agree to provide us on request with any documents, information, instructions or other assistance reasonably required by us, the custodian, the sub-custodian or any nominees to enable us to perform our obligations under these Terms or any applicable laws or as are reasonably necessary for the provision of Services by us under these Terms.

#### **4 Dealing**

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- 4.1 You may communicate your dealing instructions to us in writing electronically (e.g. email) or verbally which is received on a recorded line. Such instructions must be received by us during normal business hours allowing sufficient time for us to act upon them. You agree that acceptance of an instruction to withdraw or amend an existing instruction is always subject to our receiving the instruction in time for the appropriate action to be taken. You agree that we may in our absolute discretion and for any reason, refuse to accept an order or any other instruction for your account, cancel any order, or generally restrict your ability to trade financial products using your account.
- 4.2 We shall be entitled to rely on and treat as binding any instructions which we believe to be from you or from your agent(s) (whether received by telephone or electronically) and which we have accepted in good faith.
- 4.3 When we accept a dealing instruction from you, we will seek to action it as soon as reasonably practicable.
- 4.4 All dealings with, or on your behalf, are subject to the rules, provisions of the markets, exchanges and relevant associations being used for the trading of your account.
- 4.5 If for any reason a conflict or dispute arises between us in relation to our Services, we will endeavour to resolve these informally. If, however such resolution is not possible and you wish to make a formal complaint, this should be made in writing on a timely basis to our Compliance Department pursuant to clause 27 (Notices) of these Terms. Your formal complaint will then be investigated internally.
- 4.6 In the unlikely event that we aggregate your order with other client orders, the effect of this aggregation may work to your disadvantage on some occasions.

#### **5 Custody**

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- 5.1 If applicable, we will arrange the provision of custody services to you in relation to any financial products arising from your transactions with us. Specifically we

will engage a custodian to hold those financial products on trust for you.

- 5.2 You authorise us to register any registrable financial products in the name of the custodian engaged by us from time to time, their sub-custodian or either of their respective nominees, or to do all things necessary to effect registration.
- 5.3 We will require the custodian to keep a record of what financial products are held by it on trust for you, and to update that record to record dealings in those financial products.
- 5.4 Your financial products will be held separately from the assets of the custodian, the sub-custodian and their respective nominees.
- 5.5 We may claim reimbursement for reasonable expenses payable to third parties and necessarily incurred in relation to the administration of your account, including, without limitation, expenses relating to account keeping expenses and setting up direct debit instructions.
- 5.6 You agree that we may terminate the appointment of a custodian and may engage a new custodian to hold financial products on trust for you or act as the custodian for you. We will give you prior written notification of any change of custodian.
- 5.7 If, at any time, you choose not to use the services of the custodian appointed by us and instead wish to appoint your own custodian, while still retaining our Services under these Terms, we may charge you for our fees and any expenses reasonably incurred to transition your assets to your own appointed custodian. Such fees and/or expenses, if any, will be notified to you.
- 5.8 We shall be entitled (and are irrevocably authorised by you) to take all or any of the following action without prior notice to you:
  - 5.8.1. give proper instructions to the custodian in order to provide our services to you;
  - 5.8.2. request the custodian to take any action that is reasonably necessary to enable us or you to assume control of any claim relating to the financial products;
  - 5.8.3. give proper instructions to the custodian to exercise any of our rights which are granted under or permitted to exist under these Terms.
- 5.9 You acknowledge that each of the custodian, any sub-custodian and their respective nominees, as a trustee, may be entitled to a lien over the financial products held for you by operation of law, subject to the terms of the document under which they are engaged to act.

#### **6 Security Interest**

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- 6.1 You agree to grant a security interest in all of your present and future interest (including any equitable interest) in, to, under or derived from all of the financial products in favour of BGCSA to secure the payment of any amounts, liability or money owing by you to us ("**Security Interest**"). This Security Interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over the financial products.

- 6.2 The Security Interest is intended to take effect as a first ranking security subject only to any other security interests which BGCSA agrees in writing rank in priority to it. You acknowledge that we have not agreed to subordinate the Security Interest to any other interest in the financial products, other than in respect of the custodial arrangements expressly contemplated in these Terms.
- 6.3 The Security Interest will immediately become enforceable if an Event of Default (as defined in these Terms) is continuing whether or not any secured interest has become due and payable as a result.
- 6.4 You acknowledge that:
- 6.4.1 we may make a registration of the Security Interest on the Personal Property Securities Register; and
- 6.4.2 we are not required to give any notice to you under the *Personal Property Securities Act 2009 (Cth)* (including a notice of a verification statement) unless the notice is required by such legislation and cannot be excluded.
- 6.5 If the Security Interest has become enforceable, we shall be entitled (and are irrevocably authorised by you) to take all or any of the following actions without prior notice to you:
- 6.5.1. give a proper instruction to the custodian to sell, dispose, realise, transfer or otherwise deal with any or all of the financial products for the purpose of recovering proceeds for the payment of any amounts, liability or money owing by you to us;
- 6.5.2. give a proper instruction to the custodian to close or rescind open positions on your account. We may do so, for example, if any cash or investments have not been delivered by you on or before the relevant settlement day; and
- 6.5.3. take any other steps (whether or not similar to the above) we may consider to be necessary to meet any obligations which you have to comply with under the terms of the Terms, or otherwise to protect our position.
- 6.6 Any costs or losses incurred by us in effecting any or all of paragraph 6.5.1, 6.5.2 or 6.5.3 will be paid by you to us on an indemnity basis.
- 6.7 Any restrictions on our power to sell or otherwise deal with assets of yours charged to us or held by us, under any applicable laws are, to the extent permitted by law, excluded.
- 7.3 We are not obliged to settle any transactions whether we are acting as principal or as agent, or account to you unless and until we (or our settlement agents) have received all necessary documents or cleared funds. Our obligations to deliver investments to you, or to your account, or to account to you for the proceeds of the disposal of investments, are conditional on prior receipt by us of appropriate documents, or cleared funds, from you.
- 7.4 You will indemnify us and our employees and agents against any cost, loss, liability, penalty or expense arising from BGCS arranging transactions for you or on your behalf, including circumstances where you fail to deliver securities or funds to the custodian as and when they are due.
- 7.5 In order to effect transactions for you, you confirm that we may (subject to an obligation to account to you for property of the same nature and description but not necessarily identical to the property originally delivered to us and subject to our other rights under the Terms) without prior notice to you, deposit, charge or pledge any collateral you may deliver to a third party custodian to any exchange, clearing house, broker or other third party on terms that such third party may enforce such deposit, charge or pledge, in satisfaction of any obligations that we may incur to such third party, or of any such obligations incurred by you, or by any other client.
- 7.6 We follow normal market conventions to determine the most appropriate location for trade clearance. Settlement details will be agreed in writing between us from time to time and, in accordance with best practice, confirmations should be matched with trades as soon as possible but no later than 24 hours after each trade. We will not be held liable for trade differences that arise as a result of confirmations not being checked promptly. We are not obliged to settle transactions or accounts to you, unless we or our settlement agents have received all necessary documents, securities, and funds.
- 7.7 We process corporate actions (i.e. dividends, rights issues, share splits etc.) in accordance with established market convention. Where there are inconsistencies in market conventions, we reserve the right to apply the convention we consider most appropriate in the circumstances.

## **7 Settlement**

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- 7.1 Unless otherwise specifically agreed with you, settlement of all transactions with or for you must be made in accordance with the usual terms for settlement of the appropriate exchange, market, or clearing house where applicable and/or market convention.
- 7.2 Unless we expressly agree to the contrary, all amounts of every kind which are payable by you to us and vice versa, in relation to the settlement of trades, will be payable on a cleared, pre-funded cash basis or, where pre-approved, on a delivery versus payment basis.

## **8 Reporting to You**

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- 8.1 We provide Services both by telephone and other means of electronic communication. When required by applicable law to send confirmations or where we choose to send confirmations, we will confirm transactions by any of the following methods:
- 8.1.1. in respect of transactions concluded verbally between us, you will be deemed to have received a trade confirmation, or other notification, from us at the time of the conversation concerning the trade in question; and
- 8.1.2. in respect of transactions concluded electronically, you will be deemed to have received a trade confirmation, or other notification, from us upon receipt of a 'sent'

notification from the relevant trading system which shall be despatched no more than twenty four (24) business hours from the date and time of the transaction.

- 8.2 Notwithstanding the transaction method we will issue to you a written confirmation for information purposes only within twenty four (24) business hours of a transaction being confirmed. You authorise us to:
- 8.2.1. give to you a single confirmation in respect of a series of transactions carried out under an order instead of individual contract notes or confirmations in respect of each transaction in the series; and
- 8.2.2. accumulate and price average two or more transactions in the same financial product, under an order, and provide to you a single confirmation when the entire order is completed.
- 8.3 You will notify us as soon as practicable, but no later than twenty four (24) hours after receipt of if you are not in agreement with the contents of any trade confirmation/notification from us. In the absence of such notification by you, the trade confirmation/notification will (in the absence of manifest error) be binding on you and constitute conclusive evidence of the transaction to which the confirmation relates.

## 9 Wholesale Clients

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- 9.1 We will only provide Services to 'Wholesale Clients' within the meaning of section 761G of the *Corporations Act 2001* (Cth) (**Corporations Act**) (**Wholesale Client**).
- 9.2 You represent and warrant that you satisfy the requirements of the definition of Wholesale Client and will notify us of any change in circumstances which changes or may change your status as a Wholesale Client. We may terminate our Services to you immediately upon such a change or refuse to provide any further Services to you under these Terms, or both.
- 9.3 You represent and warrant to us that, unless otherwise agreed, you are acting as principal and not as an agent or trustee on behalf of another entity when contracting with us.

## 10 Investment Restrictions

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Unless otherwise indicated in writing, we shall assume that there are no restrictions to the type of transaction we may enter into with you or the markets upon which transactions may be effected.

## 11 Our Charges

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- 11.1 We charge clients for our Services in one of two ways as set out below. How you are charged will be notified to you separately:
- 11.1.1 **Spread** - Where you instruct us to sell or buy a financial product, we will make a spread (**Spread**) from the difference between the purchase price and sale price (e.g. by purchasing the financial product at a price and

then selling it to you at a higher price or vice versa). The price quoted to you by us for the purchase or sale of a financial product is net of our margin. The Spread may depend upon the liquidity, credit rating, size and duration of the financial product as well as settlement risk and will therefore vary from product to product. These transactions may be executed and settled over-the-counter ("**OTC**") or on an exchange such as the Australian Securities Exchange (ASX);

- 11.1.2 **Brokerage Fee** – Alternatively, we may charge a brokerage fee for our brokerage services (**Fee**). The Fee will be levied in accordance with the rates in effect at the time the Fees are incurred or as otherwise notified to you verbally or in writing prior to dealing. Any alteration to these Fees will be notified to you at or before the time of the change.
- 11.2 We may share our Fees with, or receive remuneration from, intermediaries introducing business to us, associated companies, or other third parties and will provide details to you on request.
- 11.3 All Fees payable by you shall either (i) be due upon receipt of the applicable invoice or (ii) at the time of the applicable transaction, without set-off, counterclaim or deduction. We will not be held liable for trade differences that arise as a result of confirmations or monthly summaries not being checked on a prompt basis by you.
- 11.4 All Fees are exclusive of any applicable taxes for which you shall be additionally liable at the applicable rates from time to time (if applicable).
- 11.5 In the event that you default in payment of an invoice or settlement of a transaction in connection with our Services under these Terms, or as a result of termination of these Terms with immediate effect as set out in clause 25, we have absolute discretion, without prior reference to you, to offset, or net balances that we owe you against any other balance, transaction, settlement or sums that you have outstanding with us or any of our related bodies corporate (together the "**BGC Group**").
- 11.6 In connection with us providing Services to you, you agree to pay expenses such as transfer fees, registration costs, taxes, and other similar transaction-related expenses, before the time specified for settlement where relating to a transaction or otherwise when requested for payment or falling due under these Terms.

## 12 Conflicts of Interest

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- 12.1 When we enter or arrange a transaction for you we, an associated company, or some other person connected with us may have an interest, relationship, or arrangement that is material in relation to the transactions, investments or service concerned and you agree that we shall not be obliged under these Terms to disclose this to you or to account to you for any profit. However, our employees are required to comply with a policy of independence and disregard any such interest when entering into a transaction for you.

- 12.2 When we enter or arrange a transaction for you, we will be subject to the provisions of our Conflicts Policy and any internal arrangements which have been put in place to monitor our trade dealings.
- 12.3 You agree that we are not and will not be a fiduciary of you or your associates, whether arising out of the Services or otherwise.

### 13 Disclosure

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- 13.1 You consent to disclosure by us to each Relevant Authority, such information relating to services provided to you pursuant to these Terms as may be requested by them or we may otherwise be required to disclose.
- 13.2 In these Terms, **Relevant Authority** means any relevant governmental, statutory, revenue or other regulatory body, relevant exchange or other trading facility (including any clearing house or market whether or not operated by an exchange), depository or agency whether in the jurisdiction in which you operate or any other jurisdiction, including any such body, depository or agency to whom we have agreed to provide information about or in relation to you, these Terms or the Services.

### 14 Confidentiality and recordings

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- 14.1 You and BGCSA both agree to, unless required by applicable law or in order to execute a transaction hereunder, keep confidential all information relating to these Terms (including the Fee), and any other confidential or proprietary information which you or we may become aware about the other, except to the extent that such information has become public knowledge otherwise than in breach of these Terms, or disclosure is required by law or a relevant regulatory body, or disclosure is made in confidence to each of your or our professional, legal or accounting advisors, provided that such advisors are made aware of the provisions of this clause 14.1.
- 14.2 In accordance with applicable law, we may record all telephone conversations in both the front and back office. These recordings shall remain the property of BGCSA and may be retained at our discretion, but shall at all times remain subject to the confidentiality provisions contained in these Terms and shall not be disclosed without your prior consent, except to the extent that (i) prior consent has been provided, (ii) the information is already in the public domain, (iii) the disclosure is required by any market or regulatory organisation or any court of law having competent jurisdiction, (iv) the disclosure is necessary to carry out our obligations under these Terms or (v) the disclosure is made to BGCSA's related bodies corporate or professional advisors or agents or other representatives).

### 15 Personal Information

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- 15.1 In providing the Services, we may collect Personal Information (as defined in the *Privacy Act 1988*, Cth). The Personal Information that we collect will relate to individuals related to you, including your agents or employees, contract signatories, Authorised Persons

(as defined in clause 17) and other representatives of you. You represent that you made those individuals aware of this clause 15 and have their permission for us to collect and handle their Personal Information as described here.

- 15.2 This Personal Information we collect from you is required in order for us to provide you with our Services. If you do not provide us with the Personal Information requested, we will not be able to provide you with the Services.
- 15.3 We collect Personal Information for the purposes of managing the provision of Services and to enable us to process client requests and instructions, verify details, maintain and update records, understand your needs and manage our contact with you. This includes:
- 15.3.1. accepting requests for Services and delivering these requests;
  - 15.3.2. ensuring that that we are transacting with you as agreed;
  - 15.3.3. meeting our regulatory obligations in providing the Services, including requests for information from a Relevant Authority, complying with anti-money laundering obligations described in clause 16 below; and
  - 15.3.4. engaging in lawful direct marketing activities, whether by email, telephone or otherwise.
- 15.4 Personal Information may be transferred to a Relevant Authority, a member of the BGC Group or any other third party with whom we engage directly to enable the provision of the Services ("**Transferees**"). These Transferees may be located in Australia or other countries.

### 16 Anti-Money Laundering

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- 16.1 When we provide the Services to you, we must comply with our obligations under legislation relating to money laundering and terrorism financing including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ("**AML/CTF Act**"). Our obligations under the AML/CTF Act include ensuring that we have properly identified all of our customers before providing certain services to them and engaging in ongoing due diligence of our customer's activities in respect of the Services that we provide.
- 16.2 You agree that we may delay, block or refuse any request or transaction, including any payment or delivery, without incurring any liability if we suspect the transaction or request:
- 16.2.1. may breach any laws or regulations that apply in Australia or in any other country, or cause us to breach or participate in any breach of any law or regulation relating to money laundering, terrorism financing or economic trade or sanctions risk including without limitation the AML/CTF Act; or
  - 16.2.2. involves any person (natural, corporate or governmental) that is itself subject to sanctions or is connected, directly or indirectly, to any person that is subject to sanctions imposed by Australia or any other country including under the *Charter of the*

*United Nations Act 1945 (Cth)* or the *Autonomous Sanctions Act 2011 (Cth)* or equivalent legislation; or

- 16.2.3. may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in Australia or any other country.
- 16.3 You must provide us with all information, documentation and assistance that we request from time to time in order to manage our money laundering, terrorism financing or economic sanctions risk or to comply with any laws or regulations in Australia or any other country including the *Australian Anti-Money Laundering and Counter Terrorism Act 2006* ('**AML/CTF Act**').
- 16.4 If you are acting through an agent, we may require that certain information be provided in respect of your agent so that we can comply with our obligations under the AML/CTF Act including verifying the identity of the agent before providing Services to you.
- 16.5 You agree that we may take any action that we believe necessary to comply with any law relating to money laundering, terrorism financing or economic or trade sanctions including disclosing any information that we hold about you to the Australian Transaction Reports and Analysis Centre ('**AUSTRAC**'), any Australian or foreign law enforcement, regulatory agency or court or to our service providers whether in Australia or outside Australia.

## **17 Authorised Persons**

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- 17.1 You acknowledge and agree that:
  - 17.1.1. we may execute any orders and instructions given by a person whom we reasonably believe to be an Authorised Person;
  - 17.1.2. if there is more than one Authorised Person, we may act on the instructions of any individual Authorised Person;
  - 17.1.3. we may require further written Instructions from you about orders and instructions given by an Authorised Person; and
  - 17.1.4. we are not liable in respect of any of your or our acts or omissions in reliance on any order or instruction given by a person whom we reasonably believe to be you or an Authorised Person, and you are bound by and accept the consequences of any such order or instruction, regardless of whether it was properly authorised by you.
- 17.2 In these Terms, **Authorised Person** means a person authorised by you or a representative of you.

## **18 Representations and Warranties**

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- 18.1 You represent and warrant that:
  - 18.1.1. you have the power, authority and capacity to enter into these Terms and the transactions contemplated under these Terms;

- 18.1.2. your obligations in connection with the Terms are valid, binding on and enforceable against you;
- 18.1.3. all information you have given, or shall give, to us is true, accurate and complete as at the date of these Terms and at the time of any transaction and any changes to such information will be promptly notified to us;
- 18.1.4. at the date of these Terms and at the time of any transaction we may enter into with or for you: all cash, securities or other assets transferred to the custodian pursuant to these Terms are your sole and beneficial property and will be transferred to or held by the custodian free and clear of any lien, charge or other encumbrance and you will not charge, assign or otherwise dispose of or create any interest therein;
- 18.1.5. you are not relying on any communication (written or oral) by or on behalf of us or any of our related bodies corporate as investment advice or as a recommendation to enter into any transaction or give any order or instruction under these Terms;
- 18.1.6. you have consulted in relation to these Terms, and will consult in relation to transactions entered under it, with your own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent you have deemed necessary and you have made, and will make, your own investment and trading decisions based on your own judgement and any advice from such advisors as you have deemed necessary;
- 18.1.7. by procuring and using the Services you are not contravening the laws of the jurisdiction in which you reside, work or are domiciled;
- 18.1.8. each transaction you enter into under these Terms will not violate or cause us to be involved in any violation of applicable law including the restrictions on market manipulation and insider dealing contained in Chapter 7, Part 7.10 of the Corporations Act;
- 18.1.9. no Event of Default (as defined in clause 19) with respect to you has occurred and is continuing, and no such event or circumstance will occur as a result of entering into or performing obligations under these Terms and each transaction;
- 18.1.10. you have adequate resources to enter into and perform any transaction which you decide to undertake;
- 18.1.11. you will ensure that all relevant investments or any documents of title and/or transfer forms and/or any relevant payments are delivered, paid or transferred to us, or to whomever we may direct, in sufficient time on or before the contractual settlement date to enable us to settle the transaction in accordance with market requirements; and
- 18.1.12. when you enter into transactions with us, unless otherwise agreed in writing, you and

only you will contract as a counterparty and no party other than you have or will have any interest in any transaction or in any account that we hold on your behalf.

18.2 Each of the representations and warranties in this clause 18 is deemed to be repeated each time you give us orders and instructions, each time these Terms are amended and each time payment is made to us for our Services. You agree to notify us as soon as practicable if any representation or warranty made by you is incorrect, false or misleading in a material respect.

## 19 Events of Default

19.1 Each of the following is an event of default (**Event of Default**):

- 19.1.1. you do not pay any amount due to us when you are required to pay it under these Terms;
- 19.1.2. you fail to perform any of your obligations when you are required to perform them under these Terms;
- 19.1.3. you admit you are unable to, or intend not to, perform any or all of your obligations when you are required to perform them under these Terms;
- 19.1.4. you make a representation or warranty to us (whether or not contained in these Terms) which is untrue or misleading or which ceases to be true in any material respect, when made or repeated or deemed to be made or repeated;
- 19.1.5. you cease to be a Wholesale Client;
- 19.1.6. you fail to comply in any material respect with the Corporations Act and any other applicable law, or you act or omit to act in a way which involves us in not complying with applicable law;
- 19.1.7. one or more events occur which cause a material adverse change in the assets, financial condition or creditworthiness of you or the principal, fund, trust or scheme (as the case may be) on whose behalf you act which we reasonably believe may affect your ability to perform your obligations under these Terms or any transaction; or
- 19.1.8. you appoint an administrator, or engage in a compromise, scheme of arrangement (other than a solvent scheme), winding up, dissolution, deregistration, assignment for the benefit of creditors, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or you become, or appear to be, unable to pay your debts as they become due.

19.2 If you commit an Event of Default, in addition to our rights under clause 6 (Security Interest) we may do any or all of the following, without limitation and without giving prior notice to you:

- 19.2.1. buy any or all financial products which may be short in your account or which we in our sole discretion consider may be required to offset any position held by or on behalf of you in any account;
- 19.2.2. sell, buy or borrow sufficient financial products the subject of a transaction, or any other financial products which are held for you in any account, in order to settle the relevant transaction or give instructions to a third party custodian to do so;
- 19.2.3. take possession or custody of, or sell, any or all of your financial products or other assets held in your account or any other accounts you have with us or any of our related bodies corporate or give instructions to a third party custodian to do so;
- 19.2.4. give instructions to a third party custodian cancel any outstanding orders or instructions;
- 19.2.5. close your account or any other account of yours with third party custody providers;
- 19.2.6. exercise any other power or right or perform any other obligations which we may have under applicable law, the Terms or in law or equity or give instructions to a third party custodian to do so;
- 19.2.7. purchase any property contracted by us on behalf of you to be sold; and
- 19.2.8. take such other action, or refrain from taking such other action, whether or not incidental to any action under this clause 19.2, which we consider reasonable or necessary to protect our position.

19.3 If we reasonably take any action, or refrain from taking any action, in accordance with this clause 19, such act or inaction shall be at your risk and expense (as if you instructed us to take that act or refrain from action) which expense shall include, without limitation:

- 19.3.1. brokerage, fail fees, stamp duties and GST;
- 19.3.2. any other reasonable expenses incurred by us in acting under this clause 19 or in accordance with applicable law or the rules of any Relevant Authority; and
- 19.3.3. interest on the outstanding moneys from the date the moneys are due until the date on which payment is received by us at the rate of two percentage points above the overdraft rate charged by our principal banker for amounts over \$100,000. This interest is payable by you without prejudice to our rights under the any operating rules of a financial market.

19.4 We may, subject to the Corporations Act, act on our own behalf as vendor or purchaser in any transaction effected pursuant to this clause 19 without incurring any liability of any kind to you and may, subject to the Corporations Act, buy or sell any property dealt with in accordance with this clause 19 free of any equity or right of redemption in the purchaser.

- 19.5 You will at all times be liable for payment of any debit balance owing in your account and in the event that the proceeds of any action taken by us are insufficient for the payment of all of your liabilities, you shall promptly pay, upon demand, the deficit, together with interest at the rate provided for in clause 19.3.3 and all costs of collection or enforcement or other action taken by us (including reasonable legal fees on an indemnity basis) and all other amounts due under these Terms. You shall be entitled to any surplus which may result from action taken by us after all your liabilities and all costs of collection or enforcement or other action taken by us (including reasonable legal fees on a solicitor-client basis) and all other amounts due to us have been met.
- 19.6 We are entitled to retain any financial products or sums due to you pending payment of any sums due to us or our related bodies corporate and to set off sums due to us or our related bodies corporate against amounts that we hold for you in any account, whether under these Terms or otherwise.
- 19.7 We shall have absolute discretion in determining which financial products are to be sold and which contracts are to be settled or closed-out pursuant to this clause 19.

## 20 GST status

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- 20.1 If you notify us in writing that:
- 20.1.1. you are not an Australian resident; or
  - 20.1.2. you will not be in Australia at the time the Services are supplied by us to you,
- then you represent and warrant that unless you notify us otherwise, the Services which we supply to you will:
- 20.1.3. be for your sole use and not for the benefit of any third party; and
  - 20.1.4. not be used by you to carry on an enterprise in Australia.
- 20.2 You agree to indemnify us and keep us indemnified against any GST (including any penalties or interest applied) which is paid or payable by us in providing Taxable Supplies to you.
- 20.3 If you have provided your TFN(s), ABN(s) or relevant exemption(s) to us, you authorise us to provide the TFN(s), ABN(s) or relevant exemption(s) to any of our Affiliates in relation to the financial products held or to be held by you.
- 20.4 All fees charged for our Services are exclusive of GST. If any supply made under or in connection with these Terms is a Taxable Supply, the supplier of the Taxable Supply (**Supplier**) may increase the fee otherwise provided for by the GST Amount. The Supplier may recover the GST Amount from the party liable to pay the fee (**Recipient**), and the GST Amount is payable at the same time the fee is payable, subject to the Supplier issuing a tax invoice (or adjustment note if applicable) to the Recipient. This clause 20 does not apply to the extent that the consideration is expressly agreed to be GST inclusive.
- 20.5 In this clause 20:
- 20.5.1. **GST** means goods and services tax, consumption tax, value-added tax or any similar impost or duty which is or may be levied or become payable under any GST Law in connection with the supply of goods or services;
  - 20.5.2. **GST Amount** means the amount calculated by multiplying the GST exclusive fee by the prevailing rate of GST;
  - 20.5.3. **GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulations made under the Act; and
  - 20.5.4. **Taxable Supply** has the meaning set out in the GST Law.

## 21 Liability

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- 21.1 Neither we nor any person connected with us nor any of our directors, officers, employees, representatives or agents (collectively, "**Representatives**") shall be liable for:
- 21.1.1 any loss of opportunity relating to the value of your account nor for any reduction in the value of your account as a result of market movements;
  - 21.1.2 any taxation consequences of any transaction nor shall we be liable for taxation charges arising for any reason;
  - 21.1.3 any loss or damage sustained by you as a result of or in connection with the Services and the provisions of these Terms (except insofar as and then only to the extent of any direct loss or damage caused solely by our fraud or dishonesty as adjudged by a court of competent jurisdiction, or any failure to comply with all applicable regulation and legislation), including resulting from or caused by:
    - (i) you giving orders or instructions under these Terms or otherwise;
    - (ii) us refusing to act on your orders or instructions;
    - (iii) your default under these Terms;
    - (iv) anything lawfully done by us, in accordance with these Terms or at your request;
    - (v) us complying with or making reasonable efforts to comply with any direction, request or requirement of any applicable law or any regulatory authority or policy or guidance of a regulatory authority; (vi) failure of a financial market; or (vii) any events or circumstances which we cannot reasonably control.



- 21.2 To the maximum extent permitted by law, we are not liable for the acts or omissions of the custodian that we engage on your behalf or for any acts or omissions of any sub-custodian or any nominee of the custodian or sub-custodian.
- 21.3 We shall not be liable for any loss or damage that you may suffer if the custodian, the sub-custodian or any of their nominees, is or becomes insolvent. We will not have to deliver to you or any nominated person any financial products which are not able to be delivered to us because the custodian the sub-custodian or any of their nominees, is or becomes insolvent.
- 21.4 You acknowledge that we will not be liable and that we will have no responsibility for any liability in respect of unpaid calls or any other sums, cost or expenses payable in respect of any financial products held on your behalf.
- 21.5 Except to the extent mandated by applicable law, we shall not be liable to you by reason of any representation (unless fraudulent) or any implied warranty, condition, or other term, or any duty at common law, or under these Terms, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses, or other claims (caused by the negligence or otherwise of us or our Representatives ) which arise out of or in connection with the provision of the Services by us to you, and our entire liability shall not exceed the amount of the Fees payable for the provision of the applicable transaction in question.
- 21.6 We shall not be liable to you or be deemed to be in breach of these Terms by reason of any delay in performing, or any failure to perform, any obligations in relation to the Services provided by us, if the delay or failure was due to any cause beyond our reasonable control.
- 21.7 You irrevocably and unconditionally agree to indemnify us, our related bodies corporate, our Representatives and the Representatives of our related bodies corporate and to keep us fully and effectively indemnified (whether before or after termination of these Terms) against any claim, loss, damage, liability, or cost or expenses of any kind which may be incurred by us or our related bodies corporate as a direct or indirect result of our acting or omitting to act under these Terms. However, this indemnity shall not apply to any loss or liability arising or resulting from our gross negligence, fraud or dishonesty or any contravention by us of the regulatory rules to which we are or may be subject.
- 21.8 We do not exclude or limit the application of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of the Terms to be void. We exclude all conditions, warranties or terms implied by statute, general law or custom except to the extent that such exclusion would contravene any statute or cause this provision to be void. Our liability for a breach of any provision implied by law which cannot be excluded is limited to an amount not exceeding the sum of the Fees paid and payable to us for Services provided to you during the relevant financial year.

## **22 Assignment**

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You may not assign any of your rights or obligations under the Terms to any other person without our prior written Terms. We may assign our rights or obligations to any of our associated companies or to any person or entity who may acquire the whole or any part of our business or assets.

## **23 Time of the Essence**

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Time shall be of the essence with respect to any payment, delivery or other obligation you may have to us under the Terms.

## **24 Force Majeure**

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We shall not be in breach of our obligations under these Terms if there is any total or partial failure of performance of our duties and obligations arising out of or caused by, directly or indirectly, circumstances beyond our control, including, without limitation work stoppages, pandemic, epidemic, natural catastrophes, earthquake, fire, act of government or state, war, terrorism, civil unrest or commotion, military disturbances, insurrection, embargo, inability to communicate with market makers for whatever reason, loss or malfunctions of utilities, communications, computer services, dealing or settlement systems, prevention from or hindrance in obtaining any energy or other supplies, labour disputes of whatever nature or late or mistaken delivery or payment by any bank or counterparty or any other reason (whether or not similar in kind to any of the above).

## **25 Term and Termination**

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- 25.1 These Terms shall commence upon you providing us with instructions to act and shall remain in full force and effect until terminated in accordance with these Terms.
- 25.2 You may terminate the Terms at any time by written notice to us subject to you having no outstanding obligation to us. We may terminate the Terms at any time by written notice to you.
- 25.3 We may charge you for our fees and any expenses reasonably incurred in assisting with the transition of your assets upon termination. Such fees and/or expenses, if any, will be notified to you but will not be less than A\$500 per line of bonds.
- 25.4 Termination shall not affect your obligation to settle transactions effected prior to the date of termination and shall not prejudice any right or obligation that may already have arisen. We shall also continue to have the right to disclose information where required to a Relevant Authority.

## **26 Variation and Severance**

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- 26.1 We reserve the right to modify the Terms from time to time without notice and at our sole discretion, by updating the applicable web page. It is your responsibility to review the Terms periodically. We

shall however, endeavour to provide you with written notice in the event that any significant modifications or amendments have been made to the Terms.

- 26.2 All such modifications, amendments or additions shall be effective on the date of their inclusion within the Terms and your continued use of the Services after any modifications by us shall constitute your acceptance of such modifications, amendments or additions.
- 26.3 If any provision of the Terms is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not. This clause does not apply where enforcement of the provision of the Terms in accordance with this clause would materially affect the nature or effect of the parties' obligations under the Terms.

## 27 Notices

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- 27.1 A notice or other communication under the Terms (**Notice**) must be in writing and in English and addressed as follows:
- 27.1.1. To **BGCSA**:
- Compliance Department  
Level 24  
363 George Street  
Sydney NSW 2000  
Australia  
[Compliance-Sydney@bgcpartners.com](mailto:Compliance-Sydney@bgcpartners.com)
- 27.1.2. To **You** - as provided by you in writing to us.
- 27.2 With the exception of dealing instructions to us (which must be communicated in accordance with clause 4) all notices shall be deemed given: (i) on the date personally given when given in person, (ii) 1 day after having been posted as specified when given by post, (iii) when received by the recipient when given by email.

## 28 Electronic communications

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- 28.1 In relation to any communications provided in connection with the Terms in electronic form, you acknowledge and agree that:
- 28.1.1. you consent to receive any such communication electronically including by email (and that you may not receive a physical copy of the relevant communication);
- 28.1.2. appropriate computer equipment and software, internet access and a specific email address provided and designated by you are required;
- 28.1.3. internet and email services may be subject to certain information technology risks and disruption; and
- 28.1.4. you must:
- (i) inform us as soon as practicable upon a change in your designated email address; and

- (ii) save an electronic copy in your own computer storage or print a hard copy of the relevant materials for future reference.

## 29 Governing law and jurisdiction

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- 29.1 These Terms, including questions of its validity and construction, shall be governed and construed in accordance with the laws of the State of New South Wales in Australia (**New South Wales**).
- 29.2 You agree that the Courts of New South Wales shall have exclusive jurisdiction to settle any disputes, which may arise out of or in connection with these Terms. Nothing contained in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction.