

# CMC Markets Stockbroking Limited

ABN 69 081 002 851 and AFSL No. 246381

## Annexure D – Additional Terms for Stock Lending Agreements with Wholesale Clients

to the CMC Invest Terms and Conditions

9 December 2024



## Annexure D – Additional Terms for Stock Lending Agreements with Wholesale Clients

This Annexure D, dated 9 December 2024, applies when the Broker accepts a Wholesale Application from the Client to categorise the Client as a Wholesale Client and the Client has elected to make its International Securities available to the Broker for stock lending by opting in to the Broker's stock lending 'service' (**Broker Stock Lending Service**).

These Additional Terms for Stock Lending Agreements with Wholesale Clients (**Wholesale Terms**) constitute an agreement between the Client and the Broker, trading as CMC Invest, in addition to the CMC Invest Terms and Conditions (as amended from time to time) applying to your Trading Account.

For the avoidance of doubt:

- (a) The Wholesale Terms apply in addition and supplemental to any other terms in the CMC Invest Terms and Conditions. In the event of any inconsistency between these Wholesale Terms, the CMC Invest Terms and Conditions and any other term or document referred to in either document, these Wholesale Terms will prevail.
- (b) The Wholesale Terms shall apply solely with respect to the Client utilising the Broker Stock Lending Service and shall not apply to any other financial service or product that the Broker may provide to the Client from time to time.

### A. General Terms and Conditions

#### 1 Definitions and Interpretation

- 1.1 For the purposes of these Wholesale Terms, the defined terms in the CMC Invest Terms and Conditions have the same meaning in these Wholesale Terms, unless otherwise defined at clause 1.2, below, or unless the context otherwise requires.
- 1.2 The following capitalised terms have the following meanings:
  - (a) **Application Form** means the application form or application forms previously completed by the Client and given to the Broker, requesting that the Broker open one or more Trading Accounts including without limitation any account opened in relation to the Broker Stock Lending Service;
  - (b) **Schedule of Notifiable Consideration, Fees and Other Charges** means the schedule appended to these Wholesale Terms and headed "Schedule of Notifiable Consideration, Fees – Brokerage, other fees and charges";
  - (c) **Wholesale Application** means the application form or application forms completed by the Client (either in writing or electronically) and given to the Broker, requesting that the Broker categorise the Client as a Wholesale Client;
  - (d) **Wholesale Client** means a Client of the Broker who the Broker has at the relevant time categorised as a Wholesale Investor; and
  - (e) **Wholesale Investor** means a Client who is not a retail client pursuant to section 761G(7) and/or section 708(8)(c) of the Corporations Act, on the basis that the Client meets the requirements of the Corporations Act and any relevant policy of the Broker from time to time.
- 1.3 The principals of interpretation set out in clause 2.1 and 2.2 of the CMC Invest Terms and Conditions shall have effect as if set out in full in these Wholesale Terms.

#### 2 Wholesale categorisation

- 2.1 The Broker reserves the right, in its absolute discretion, to accept or reject a Wholesale Application. Such discretion shall be exercised in a fair and reasonable manner, consistent with applicable regulatory requirements and the Broker's internal policies. If the Broker accepts a Wholesale Application, the Client will be notified in writing of their categorisation as a Wholesale Client.
- 2.2 The Broker may tailor its features, services or promotions to suit the varied needs and qualification of its Clients, which will depend on the Client's knowledge and experience, or other relevant criteria for categorisation as a Wholesale Client. The Broker retains the right to modify, suspend, or offer additional services and promotions exclusively to Wholesale Clients (including different categories of Wholesale Clients).
- 2.3 The Broker may periodically review the Client's status as a Wholesale Client to ensure ongoing eligibility. If, at any time, the Broker reasonably believes that the Client no longer satisfies the conditions required to be categorised as a Wholesale Client, or if there are changes in any applicable law mandating a different categorisation, the Broker will notify the Client in writing of their recategorisation. Upon recategorisation, the Client will be subject to the standard terms and conditions applicable to the Broker's non-Wholesale Clients or the Broker will provide the Client with the relevant terms and conditions that reflect their new categorisation.
- 2.4 It is the Client's responsibility to provide complete and accurate information relevant to their categorisation as a Wholesale Client and to promptly notify the Broker of any changes to their circumstances that may affect their categorisation.
- 2.5 The Client acknowledges and understands that being categorised as a Wholesale Client affects the level of regulatory protections that apply compared to retail clients (as defined in the Corporations Act), including but not limited to disclosures, documentation, and recourse to external dispute resolution schemes.

#### 3 Brokerage, fees and commission arrangements

- 3.1 In addition to the brokerage, fees, taxes, stamp duty and other charges (collectively **Fees and Other Charges**) specified in clause 10 of the CMC Invest Terms and Conditions, to the extent Fees and Other Charges may be applicable to the Customer utilising the Broker Stock Lending Service, the Client must pay to the Broker or as the Broker directs such other fees and charges at such rates set out in the Schedule of Notifiable Consideration, Fees and Other Charges.

#### 4 Information, telephone recording and privacy

- 4.1 In addition to the items listed at clause 17.3 of the CMC Invest Terms and Conditions, the Client agrees that information about the Client is collected to manage and administer the products and services provided to the Client in relation to the Broker Stock Lending Service.
- 4.2 In addition to the items listed at clause 17.4 of the CMC Invest Terms and Conditions, the Client agrees that the Broker may use or disclose any information about the Client which is collected by the Broker from the Application Form, from the Client's financial services providers, or otherwise in accordance with an authority or consent given by the Client to assess the application of the Client to be categorised as a Wholesale Client and to manage and administer the products and services provided to the Client in relation to the Broker Stock Lending Service.

### 5 Representations and warranties

- 5.1 In addition to the representations and warranties set out in clause 19.2 of the CMC Invest Terms and Conditions, the Client represents and warrants that at the time the Client completed the Application Form, Wholesale Application and at all times during the term of this Agreement in relation to the Broker Stock Lending Service:
- (a) by applying to the Broker to be categorised as a Wholesale Client, the Client is fully aware that they are giving up recourse to the free external dispute resolution process with the Australian Financial Complaints Authority, and the provision of disclosure documents such as the Product Disclosure Statement or Financial Services Guide; and
  - (b) all information supplied on the Application Form, Wholesale Application or otherwise to the Broker is true, complete and accurate in all respects and the Client will notify the Broker immediately of any change in any information supplied (including but not limited to any change in the Client's name, address, telephone number, facsimile number or email address).

### 6 Default

- 6.1 In addition to the events listed in clause 23 of the CMC Invest Terms and Conditions, it is a Default where the Client fails to remain eligible to qualify as a Wholesale Client, the Broker suspects that the Client may no longer satisfy the requirements to remain a Wholesale Client, or the Broker otherwise determines that it is no longer appropriate to categorise and the Client as a Wholesale Client, in its sole discretion, acting reasonably.

### 7 Complaints and Compensation Arrangements

- 7.1 Clause 30 of the CMC Invest Terms and Conditions does not apply to the provision of any product or service provided to the Client by the Broker in relation to the Broker Stock Lending Service where the Client has been categorized as a Wholesale Client for the purposes of utilizing the Broker Stock Lending Service. In such circumstances the complaints and compensation arrangements set out below will apply. For the avoidance of doubt, unless otherwise agreed between the Broker and the Client, Clause 30 of the CMC Invest Terms and Conditions shall continue to apply to all complaints and compensation arrangements other than in respect of those in respect of the Broker Stock Lending Service. .
- 7.2 The Client can make a complaint orally by calling the Broker or write to the Broker via email or post, through the details provided below. The Client may also appoint a representative to lodge complaints with the Broker, on the Client's behalf:
- Phone: 1300 360 071
- Email: [brokingservice@cmcmarkets.com.au](mailto:brokingservice@cmcmarkets.com.au)
- Mail: GPO Box 5351 Sydney NSW 2001
- 7.3 If the Client's concerns are unable to be resolved at the first point of complaint, a complaint will be raised on the Client's behalf to the Broker's in-house complaints team for further investigation. Additional information and/or supporting documents may be requested to support the Client's complaint.
- 7.4 Upon receipt of all required supporting documents, the Broker's complaints team will conduct a thorough investigation and once completed, a detailed written final response will be provided to the Client.
- 7.5 The Broker will aim to resolve most issues within 30 days of receiving the complaint. However, some matters are more complex and can take longer to resolve. If that is the case, the Broker will keep the Client informed of the Broker's progress, including reasons for the delay.
- 7.6 The Broker will respond to any communication, complaint, claim or dispute in English. Any translation or language assistance provided shall be for convenience only and to the extent there is a conflict between the English version and any translation, the English version shall prevail.
- 7.7 The Client may be excluded from access to the external dispute resolution scheme through the Australian Financial Complaints Authority (AFCA), at AFCA's discretion.

## B. Trading in International Securities

The terms and conditions in Part H of the CMC Invest Terms and Conditions are varied as set out below:

### C. Custodian

Clause 79.1 of the CMC Invest Terms and Conditions is deleted and replaced with the following: "Except to the extent the Client's International Securities have been lent pursuant to Part D of this Agreement:

- (a) the Client appoints the Broker as its Custodian in respect of International Securities and acknowledges that the Broker will hold a beneficial interest in the International Securities on the Client's behalf. The Client authorises the Custodian to appoint a Sub-Custodian. The Custodian will, on request, acknowledge the manner in which the International Securities are held; and
- (b) legal ownership of International Securities will be in the name of the relevant Sub-Custodian, and the relevant Sub-Custodian's name will appear on the share registry."

Clause 79.4 of the CMC Invest Terms and Conditions is deleted and replaced with the following: "Except to the extent the Client's International Securities have been lent pursuant to Part D of this Agreement, the Client will retain beneficial ownership of their International Securities. The Client's International Securities will be held in an account with other Clients' International Securities. The Client acknowledges that they do not have any legal interest in and may not exercise any voting rights attached to the International Securities and agrees that they will not assert any interest in any International Securities or other products or cash in any way that would prevent the transfer of title."

### 1 Fees and Currency Conversions

- 1.1 Clause 81.1 of the CMC Invest Terms and Conditions is deleted and replaced with the following: "The Client is liable for the fees associated with entering into International Securities Transactions in relation to utilizing the Broker Stock Lending Service. These fees may include a foreign exchange spread, conversion fee, market fees and market data fees. Fees are further explained in the Financial Services Guide."

### 2 Tax

- 2.1 Clause 83 of the CMC Invest Terms and Conditions is amended by the addition of the following clause 83.3: "The Client agrees and acknowledges that the Broker does not provide tax advice. The CMC Invest Terms and Conditions (as amended by these Wholesale Terms) should not be construed as, or relied on for, tax advice in Australia or any jurisdiction. The Client should consult its own tax advisers before engaging in any Transaction including without limitation any stock lending transaction entered into between the client and the Broker pursuant to the terms and conditions set out in Part D below."

### D. Terms for Stock Lending

The terms and conditions in this Part D will apply where the Client has elected to make its International Securities available to the Broker for stock lending by opting in to the Broker Stock Lending Service.

#### 1 General

##### 1.1 Definitions

The following definitions apply in this Part D:

**1936 Tax Act** means the *Income Tax Assessment Act 1936* (Cth);

**1997 Tax Act** means the *Income Tax Assessment Act 1997* (Cth);

**Distribution** has the meaning given to that term in section 995-1(1) of the 1997 Tax Act;

**Equivalent Securities** means securities of an identical type, nominal value, description, class and amount to particular Securities borrowed under a Loan;

**Excluded Securities** means shares in any related body corporate of the Broker, or any other securities which the Broker may, acting reasonably, specify as excluded from time to time;

**Income** means any dividends, interest or other distributions of any kind whatsoever directly from any Securities (including any distribution of property and anything covered by the definition of "distribution" in section 26BC(1) of the 1936 Tax Act);

**Income Payment Date**, in relation to any Securities, means the date on which Income is paid in respect of such Securities or, in the case of registered securities, the date by reference to which particular registered holders are identified as being entitled to payment of Income;

**Loan** means a loan of Securities from being held beneficially by the Client to the Broker on or after the date of this Part D. If the Client "opts in" to securities lending then generally its Securities will be available to be lent to the Broker;

**Loan Confirmation** means a document (which may be in electronic form) confirming the key terms in respect of a Loan;

**Securities** means International Securities that are "eligible securities" within the meaning of section 26BC(1) of the 1936 Tax Act which the Broker is entitled to borrow from the Client and which are the subject of a Loan pursuant to this Part D and which are not Excluded Securities;

**Standard Settlement Time** in relation to a Security means the period of time within which transactions in such Securities are customarily required to be settled (as at the date of this document being T+1 (USA and Canada) or T+2 (All other countries));

**Tax** means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a government authority, together with any related interest, penalty, fine or other charge; and

**Tax Act** includes:

- (a) the 1936 Tax Act;
- (b) the 1997 Tax Act; and
- (c) Schedule 1 to the Taxation Administration Act 1953 (Cth).

##### 1.2 Inconsistency

In the event of any inconsistency between the provisions of any Loan Confirmation and this Part D, such Loan Confirmation will prevail for the purpose of the relevant transaction except to the extent that the terms of the Loan Confirmation would cause the Loan to not satisfy the requirements of section 26BC of the 1936 Tax Act (in which case the terms of this Part D prevail to that extent).

##### 1.3 Single agreement

All Loans and associated transactions are entered into in reliance on the fact that this Part D and all Loan Confirmations form a single agreement between the Client and the Broker (collectively referred to as this Part D) and the Client and Broker acknowledge that this single agreement is a securities lending agreement for the purposes of section 26BC(3)(a) of the 1936 Tax Act.

##### 1.4 Rule for interpreting this Part D

The following rules also apply in interpreting this Part D, except where the context makes it clear that a rule is not intended to apply. Notwithstanding the use of expressions such as "borrow", "lend", "redeliver" etc., which are used to reflect terminology used in the market for transactions of the kind provided for in this Part D, all beneficial title to Securities "borrowed" or "lent" in accordance with this Part D shall pass absolutely from the Client to the Broker as provided for in this Part D, with the Broker being only obliged to redeliver Equivalent Securities.

##### 1.5 No assignment

Notwithstanding anything to the contrary in this Agreement (including without limitation clause 31), neither party may assign, declare a trust over or otherwise transfer all or any part of its rights or obligations under Part D of this Agreement or any transaction effected pursuant to Part D of this Agreement.

##### 1.6 Notifiable Consideration

For the purposes of paragraph 26BC(3)(d) of the 1936 Tax Act, the notifiable consideration (being any consideration received by the Lender other than Equivalent Securities) (**Notifiable Consideration**) in respect of any Loan is as per the Schedule of Notifiable Consideration, Fees and Other Charges.

The amount of Notifiable Consideration in respect of any Loan will be provided in a relevant Loan Confirmation applicable to that Loan.

##### 1.7 Broker can borrow

The Broker may from time to time borrow any Securities it holds on the Client's behalf from the Client. If the Client "opts in" to securities lending then generally its Securities will be available to be lent to the Broker.

### 1.8 Loan and Loan Confirmation

The terms of each Loan must be set out in a Loan Confirmation, which must include a requirement to redeliver Equivalent Securities within 350 days after delivery of the original Securities. The Client agrees that any Loan Confirmation may be provided by way of a standing facility on the platform.

## 2 Title, Distributions and Voting

### 2.1 Distributions

#### (a) Cash distributions

- (1) Where Income is paid by the issuer in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a Loan under this Part D, the Broker shall, on the date of the payment of such Income or as soon as reasonably practicable afterwards pay to the Client a sum of money equivalent to the amount that the Client would have been entitled to receive (after any deduction, withholding or payment for or on account of any Tax made by the relevant issuer (or on its behalf) in respect of such Income) had such Securities not been loaned to the Broker and been held by the Broker on behalf of the Client on the Income Payment Date.
- (2) The Broker will promptly notify the Client of the relevant amounts payable from time to time.

#### (b) Corporate actions

For the purpose of this Part D, clause 80 of the CMC Invest Terms and Conditions is amended by the addition of a new clause 80.5 as follows and clause 80.5 is renumbered "80.6" accordingly:

*"80.5 In the event of a Mandatory Corporate Action in relation to Securities which are subject of a Loan by the Client, the Broker will assign the Client to the default position, and where relevant, credit dividend equivalent amounts or other payments into the Client's Cash Account or Bank Account."*

#### (c) 1936 Tax Act sections 26BC(3)(c)(ii) and (v) requirements

Notwithstanding clause 11.1 (b) of this Part D, where, in respect of any Loan of Securities, the relevant issuer company, trustee, government or government authority issues any right or option in respect of the Securities, the Broker must deliver to the Client on the date of such issue (or on such other date as the parties may from time to time agree):

- (1) the right, or option;
- (2) an identical right or option; or
- (3) a payment equal to the value to the Client of the right or option.

### 2.2 Voting

There will be no arrangements with respect to the transfer of voting rights in respect of any borrowed Securities under this Part D.

## 3 Redelivery of Equivalent Securities

### 3.1 Broker's obligation to redeliver Equivalent Securities

The Broker undertakes to redeliver Equivalent Securities in accordance with this Part D and the terms of the relevant Loan.

### 3.2 The Client may call for redelivery of Equivalent Securities

- (a) Subject to the terms of the relevant Loan, the Client may call for the redelivery of all or any Equivalent Securities at any time (by opting out of the Broker's stock lending program) via the Broker's platform, in which case the Broker must redeliver such Equivalent Securities not later than the Standard Settlement Time following the next Business Day after which the Broker receives the Client's instructions for redelivery.
- (b) If the Client sells any Securities the subject of a Loan, this will be taken to be an automatic termination of the Loan in respect of the relevant Securities.

### 3.3 Right of Broker to terminate Loan early

The Broker shall be entitled at any time to terminate a particular Loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Client.

### 3.4 Set off

If a Default occurs as defined by clause 23.1 of the CMC Invest Terms and Conditions or clause 6 of these Wholesale Terms, and the Broker by notice elects to do so, the parties' delivery and payment obligations (and any other obligations they have under this Part D) shall be accelerated so as to require performance at the time such Event of Default occurs (or at any other time specified by the Broker), and in such event:

- (a) the value of the Securities to be delivered (or payment to be made, as the case may be) by each party shall be determined by the Broker, acting reasonably (in each case the **Relevant Value**); and
- (b) on the basis of the Relevant Values so established, an account shall be taken of what is due from each party to the other on the basis that each party's claim against the other in respect of delivery of Equivalent Securities or any cash payment equals the Relevant Value thereof, and the sums due from one party shall be set-off against the sums due from the other party and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing), and such balance shall be payable immediately.

## 4 Stamp Duty, Taxes etc and Loss of Tax Benefits

### 4.1 Stamp Duty

The Broker hereby undertakes promptly to pay and account for any stamp duties or similar taxes (if any), including any associated interest and penalties, chargeable in connection with any transaction effected pursuant to or contemplated by this Part D, and shall indemnify and keep indemnified the Client against any liability arising in respect thereof as a result of the Broker's failure to do so.

### 4.2 Client's acknowledgements

The Client acknowledges:

- (a) it has read and understood all risk disclosures made available to the Customer by the Broker in respect of the Customer opting in to the Broker Stock Lending Service including as displayed on the Broker's Website, the Broker's platform and any written or electronic notification;
- (b) that in the event of the Broker's insolvency, or the insolvency of any third party to whom the Client's Securities may be on-lent or any third party that may hold relevant collateral in respect of any Loan, the Client will likely be an unsecured creditor in respect of any Securities or relevant third party claims the subject of a Loan to the Broker, and as such the Client may be exposed to loss;
- (c) that the Broker does not and will not provide personal financial product advice, or legal, tax, financial or accounting advice or make any financial product recommendations to the Client in respect of the Loans or any other service to be provided by the Broker; and
- (d) that it has given consideration to its objectives, financial situation and needs and has formed the opinion that lending Securities to the Broker as contemplated by this agreement is suitable for its purposes.

### 5 Client's Warranties

5.1 The Client warrants and undertakes to the Broker on a continuing basis, to the extent that such warranties shall survive the completion of any transaction contemplated by this Part D, that:

- (a) it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Part D or from otherwise performing its obligations under this Part D;
- (b) it is acting as principal in respect of this Part D; and
- (c) it has relied upon its own assessment of the suitability of entering into this Part D and has not relied upon any advice, conduct, statement or representation of any kind by or on behalf of the Broker.

### 6 Termination of Part D

6.1 Termination by notice

- (a) The Broker may terminate this Part D in accordance with clause 24.1 of the CMC Invest Terms and Conditions.
- (b) Despite anything else in this Agreement, the Client may terminate this Part D at any time by giving notice in writing or by opting out of the Brokers Stock Lending Service via the Broker's platform, in which case the Broker must redeliver such Equivalent Securities not later than the Standard Settlement Time following the next Business Day after which the Broker receives the Client's termination notice.

6.2 Effect of termination

The obligations of the parties under this Part D will survive the termination of this Part D.

### Schedule of Notifiable Consideration, Fees – Brokerage, other fees and charges

#### Part 1

##### Notifiable Consideration

For the purposes of clause 10.6 the Notifiable Consideration (being any consideration received by the Lender other than Equivalent Securities) shall be an amount equal to 50 percent of the amount of any lending fee received by the Broker in respect of any International Securities of the Client borrowed by the Broker and on lent to any third party pursuant to the Broker Stock Lending Service.

#### Part 2

##### Fees – Brokerage, other fees and charges

There will be nil additional brokerage, fees and other charges payable by the Client to the Broker in respect of the Customer utilising the Broker Stock Lending Service.

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