

CMC Markets NZ Limited

# General Terms and Conditions of Trading

15 December 2022

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## 1 Important information

### 1.1 About this Document

These General Terms and Conditions of Trading ("General Terms"), together with the Product Disclosure Statement ("PDS") and the other documents that form part of the Agreement as described in the PDS govern the terms and conditions under which CMC Markets NZ Limited will provide Products and Services to you.

These General Terms are not intended as a standalone document and you should read these General Terms in conjunction with the PDS, the applicable Terms and the other documents forming part of the Agreement.

These General Terms are dated and effective from the date noted on the cover. The current Agreement including these General Terms supersedes all previous oral or written representations, arrangements, understandings and/or agreements between you and CMC Markets which relate to the Products and Services.

The version of these General Terms published on our Website at the time of entering into a Trade governs that Trade. Information within these General Terms or that otherwise forms part of the Agreement is subject to change from time to time and, where it is not materially adverse to you, may be updated by us by posting it on our Website at [cmcmarkets.co.nz](http://cmcmarkets.co.nz).

Capitalised Terms used in these General Terms are defined in the Glossary or the glossaries contained in the PDS and the applicable Terms.

**The Products described in these General Terms are speculative products, and, when leveraged they can place a significantly greater risk on your investment than non-leveraged investment strategies such as conventional share trading. You may incur losses in addition to any fees and costs that apply. These losses may be far greater than any money you have deposited into your Account or are required to deposit to satisfy any Margin.**

## 2 General Terms

### 2.1 CMC Markets Discretions

We may, acting reasonably, exercise a variety of discretions under these Terms in respect of your trading in Products. These discretions are described in more detail below or are set out in other parts of these Terms. For example where we:

- (a) change the way a Price is calculated;
- (b) change a Buy Price or Sell Price;
- (c) amend the Product Library;
- (d) withhold any payments;
- (e) change the Margin Rate for a Product or require Independent Margin;
- (f) close some or all of your Positions;
- (g) determine what a materially incorrect Price is;
- (h) open an Account;
- (i) close your Account;
- (j) limit the size of your Trades;
- (k) limit the size of your Account balance;
- (l) accept, amend, cancel or reject your Order; and
- (m) pass on any additional costs that CMC Markets incurs in executing your business or maintaining your Account including, but not limited to increased market data fees. We will inform you of any additional charges before they are applied to your Account.

In exercising such discretions we will have regard to our commercial objectives, which include:

- (n) complying with our legal obligations otherwise under our Market Services Licence;
- (o) maintaining our reputation as a product issuer;
- (p) responding to competitive market forces; and
- (q) managing all forms of risk including but not limited to operational risk, credit risk and market risk.

You expressly agree that we are not under any obligation to exercise any discretion in your interests or for your benefit.

Where we exercise our discretions, we may, or where required by law will, give you written or oral notice of our decision.

In addition to our rights to modify, cancel and/or reject your Order(s) and/or Pending Order(s) as noted above, we may in our sole discretion, refuse to accept any instructions for any reason whatsoever including (without limitation) if we believe that such instructions breach (or complying with such instructions would result in a breach of):

- (r) Applicable Law;
- (s) any breach of these General Terms, any Terms or the PDS; and/or
- (t) any of the limitations expressed in section 2.23 ("Intellectual Property").

### 2.2 Circumstances Outside Our Control

A Circumstance Outside Our Control is the actual existence of, or our reasonable belief of the existence or imminence of, any circumstance that is beyond our reasonable control, for which we are not prepared and for which we could not reasonably have been prepared, and which prevents us from being able to provide a Platform, quote Prices and/or perform any of our obligations under the Agreement.

If we reasonably determine that there is a Circumstance Outside Our Control:

- (a) we will give you notice of such determination as soon as it is practicable and in accordance with Applicable Law;
- (b) we will do our best, and it will be our primary goal, to resume our provision of the Platform and/or performance of our obligations under the Agreement as soon as possible. However, there may be some situations where this is not reasonably possible without significant delay, or not possible at all, in which case we will inform you of any proposed course of action that we intend to take, which will be with a view to minimising any adverse impact of the Circumstance Outside Our Control on both you and us;
- (c) provided it is fair and reasonable, we may take an appropriate Reserved Action with a view to minimising any adverse impact of the Circumstance Outside Our Control on both you and us; and
- (d) any failure by us to perform our obligations under the Agreement caused by a Circumstance Outside Our Control will not be considered to be a breach of the Agreement.

Where we are able to resume our provision of the Platform, quoting Prices and/or performance of our other obligations under the Agreement following a Circumstance Outside Our Control:

- (e) the value of any Margin Trade you held immediately before the Circumstance Outside Our Control (which has not been closed, suspended or cancelled by us in accordance with, these General Terms, the PDS and the applicable Terms will be calculated in accordance with the relevant Price as at the time we are able to resume our provision of the Platform, quoting Prices and/or performance of our obligations under the Agreement;
- (f) if any conditions specified by you in respect of an Order or Margin Trade immediately before the Circumstance Outside Our Control (which has not been cancelled or closed by us under a Reserved Actions) have been met, the relevant Margin Trade may be entered into or closed immediately after we resume our provision of the Platform and/or performance of our obligations under the Agreement; and
- (g) you are responsible for re-instating any Order that we cancelled during the Circumstance Outside Our Control, and for cancelling any Pending Order that is yet to be executed.

## 2.3 Changes to the Agreement

We may amend these General Terms, the PDS and any applicable Terms at any time by written notice to you. Any amendments to this PDS or a set of Terms can be found on our Website. If amendments are materially adverse to you, we will issue supplementary or replacement documents.

## 2.4 Your declarations and assurances

When you apply to open an Account, access a Platform, attempt to place an Order, make a payment into or a withdrawal of money from your Account or give us any other instruction, we are entitled to rely on the following declarations and assurances as having been confirmed by you to be true and accurate (and you must notify us immediately in writing if this is not the case):

- (a) your use of a Platform is not for any Improper Use;
- (b) if you are an individual, you are at least 18 years old;
- (c) if you are a body corporate, unincorporated association, trust or partnership you are validly existing in accordance with Applicable Law and have obtained all necessary consents and authorisations under your constitutional or organisational documents;
- (d) except where we have agreed otherwise in writing, you act on your own behalf and not as the agent, attorney, trustee or representative of any other person;
- (e) you are not located in, incorporated in, or a resident of, any jurisdiction where it may be unlawful to access the Platform or enter into Trades, including the United States of America;
- (f) your Orders and/or Trades are not for the purposes of or in connection with any placing, issue, distribution, offer, take-over, merger or other similar corporate finance type transaction;
- (g) you are not connected with the issuer of any Underlying Reference Instrument of a Product in respect of which you have placed an Order or Trade, including as a director, employee, agent, contractor or professional adviser of such issuer;
- (h) you fully own, or in the case of an accepted joint bank account, jointly own, all money you may transfer to us in accordance with the Agreement, and no other person has any interest in such money; and
- (i) that, if you have been classified as a Private Investor for the purposes of trading with us and your use of market data and similar information that we provide or make available, all of the following conditions must be met:
  - (i) you or any Authorised Person do not access market data or similar information in the course of your employment or in connection with any form of trade or business, or otherwise access or use market data or similar information for a purpose other than personal use;
  - (ii) you or any Authorised Person are not registered with any securities agency, regulatory or self-regulatory body for the purposes of the Agreement;
  - (iii) you or any Authorised Person do not engage in a financial service business or are employed as a financial adviser for the purposes of the Agreement; and
  - (iv) you or any Authorised Person do not engage in the business of accessing or aggregating market data or similar information and redistributing or otherwise furnishing that information to any third parties.

## 2.5 Sharing of Spread and other amounts

CMC Markets may profit from the Spread, the application of Holding Costs and other charges on Trades. In addition, we may share the Spread, Holding Costs and other charges or benefits with our Associates or other third parties or receive remuneration from them in respect of Products. We may also share such amounts with Introducing Advisers and referrers for the introduction or referral of Clients to CMC Markets. Details of such remuneration or sharing will be disclosed according to any Applicable Laws.

## 2.6 Our right to deduct money from your Account

Any money due to us under the Agreement, or required to be deducted by Applicable Law (including for tax purposes), may be deducted from any money held by us in respect of your Account (this is our right to make a "Deduction").

## 2.7 Our right of Set-Off in relation to your Accounts

In addition to any other rights we have to refuse or delay your request for a withdrawal from your Account or make a Deduction, we may, at any time at our discretion and without notice to you, apply any positive Cash balance on your Account or on any money due to you from us against any money due to us (or any of our Associates) from you (this is our right of "Set-Off"). We may apply the CMC Currency Conversion Rate to convert the relevant Cash balances and any money due to you or us into the same currency. If we exercise our right of Set-Off, we will give you notice of the Amount of any debt that remains unsatisfied and you must immediately pay such debt to us.

## 2.8 Netting of payment obligations between us and you

If at any time:

- (a) you owe us and we owe you the same amount of money in the same currency, then both your and our obligation will each be automatically satisfied and thus discharged; or
- (b) you owe us and we owe you a different amount of money in the same currency, then whichever of you or us that owes more may pay the excess to the other party and both your and our obligations will be satisfied and discharged.

## 2.9 Debts

Where you have opened more than one Account with us, we will treat your Accounts as aggregated for the purposes of satisfying your obligations to us to pay to us any debit balances you may owe. This means any credit balance, including money deposited as Margin, on one Account may be used to discharge any of debit balances in respect of another Account.

Please note that CMC Markets does not aggregate Accounts for the purpose of calculating your Margin Requirements or Close-Out Level.

## 2.10 Indemnity and liability

You must indemnify us on demand and keep us indemnified against all losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise and including reasonable legal fees) which may be suffered or incurred by us as a result of or in connection with:

- (a) your breach of any of the terms of the Agreement;
- (b) CMC Markets entering into any Trade with you;
- (c) CMC Markets exercising its rights following the happening of a Specified Event; or
- (d) your giving of any representation or warranty that is incorrect or untrue, unless and to the extent only that such losses, taxes, expenses, costs and liabilities are suffered or incurred as a result of CMC Markets' negligence, fraud or dishonesty.

This indemnity will survive termination of your Agreement with us. Importantly, we will not be liable for:

- (e) any direct or indirect loss, expense, cost or liability suffered or incurred by you as a result of or in connection with the provision of Products and/or Services by one of our employees unless such loss, expense, cost or liability is suffered or incurred as a result of the employee's negligence, fraud or dishonesty;
- (f) any loss suffered or incurred by you as a result of any error in any order or instruction which is, or appears to be, from you or any Person authorised by you to give instructions to us; or
- (g) any direct or indirect loss, expense, cost or liability suffered or incurred as a result of your use of the Platform or any loss, expense, cost or liability which is caused by delay.

## 2.11 Limitation of liability in respect of the Platforms

CMC Markets does not accept any liability in respect of the operation of the Platforms, whether for any breach of a provision of any relevant legislation, negligence, injury, death, lost profits, loss of files, data or use, economic loss, loss of reputation or losses or damages incidental or consequential to the operation of the Platforms, except to the extent that it is caused by the negligence, fraud or dishonesty on the part of CMC Markets or its employees, agents or representatives.

You require mobile communications network coverage and internet access to use the applications that enable you to access the Platforms via mobile devices. We are not responsible for any delays, delivery failures, failures in transmission of any Order or any other communication or any other loss or damage resulting from the transfer of data over mobile or other communications networks and facilities outside of our control.

All warranties as to the description, quality, performance or fitness for the purposes of the Client of the Platforms or any component of any such Platform are disclaimed and excluded. Liability for a breach of a condition or warranty in respect of the Products or Services, express or implied, and which cannot be excluded, is limited to the maximum extent permitted by law (at CMC Markets' option) to resupplying the Products or Services or to the cost of resupplying the Products or Services.

While we have taken all reasonable steps to ensure the accuracy and completeness of any features or third party content available on the Website and the Platforms, they are provided on an "as is" and "if available" basis. We exclude any warranties, undertakings or representations (either express or implied) related to such features and third party content to the full extent permitted under Applicable Law, including but not limited to:

- (a) with respect to any third party market data or similar information provided to you in connection with your use of the Website and/or the Platforms:

- (i) we are not responsible or liable if any such market data or similar information is inaccurate or incomplete in any respect;
  - (ii) we do not guarantee the timeliness of market data or similar information;
  - (iii) we are not responsible or liable for any actions that you take or do not take based on such market data or similar information;
  - (iv) you will use such market data or similar information solely for the purposes set out in the Agreement;
  - (v) we provide market data or similar information for general purposes only and market data or similar information should not be used as the sole basis for any investment decision; and
  - (vi) you will use such market data or similar information solely in compliance with Applicable Law;
- (b) with respect to the information contained in the features or third party content; this information is indicative and may be out of date at any given time. All analysis, resulting conclusions and observation are based upon past performance, patterns and data and will not reflect future performance; and
- (c) with respect to any of the features and information provided to you in connection with your use of the Platforms:
- (i) we are not providing trading or investment advice;
  - (ii) we are not responsible if any features or information are inaccurate or incomplete in any respect;
  - (iii) we are not responsible or liable for any actions you take or do not take based on such features and information;
  - (iv) you will use the features and information solely for the purpose for which they are intended; and
  - (v) you will use the features and information solely in compliance with Applicable Law.

## 2.12 Outsourcing

We may use external service providers in relation to any of our operations in accordance with Applicable Law, who may include Associates or other third parties.

## 2.13 Rights and remedies

Our rights and remedies contained in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

Nothing in these General Terms, the PDS or any Terms is intended to confer on any Person other than you or CMC Markets any right to enforce any term of the Agreement.

No delay, waiver or omission on our part in exercising any right, power or remedy provided by law or under the Agreement, or partial or defective exercise thereof, will impair or prevent further or other exercise of such right, power or remedy, or operate as a waiver of such right, power or remedy.

If we agree to waive a term of your Agreement, this will not be construed as waiver of a future breach of the same term, unless agreed by us in writing.

## 2.14 Notices and Communication

Any notice or other communication given or made under or in connection with the matters contemplated by these General Terms, the PDS or the Terms be in writing and will be sent to you/us. All communication between you and us, and all documents and information provided under the Agreement and the other documentation will be in English and you confirm that you possess proper knowledge and understanding of the English language. Any translations are provided for convenience only and you agree that to the extent there is a conflict between the English version and any translation, the English version shall prevail.

Any such notice will be deemed to have been received:

- (a) if delivered personally or by hand, at the time of delivery;
- (b) if posted, within three Business Days of posting;
- (c) if posted on our Website, immediately at the time the information is made available;
- (d) if verbal, whether by phone or face to face, when actually given;
- (e) if by leaving a message on an answering machine or voicemail, one hour after the message was left;
- (f) if sent by facsimile, one hour after completion of its transmission;
- (g) if sent by email, one hour after sending, provided, however, that notice of an Early Termination Date will be deemed to be effective immediately upon being sent by us; and
- (h) if notified on a Platform, at the time of your next login to the Platform following posting of the notification.

You may alter the address (including the email address) to which we send communications to you by giving us written notice. However, such alteration will only be effective on the later of the date specified in the notice and the time it was deemed to be received under this section.

In these General Terms, the PDS or any Terms, where we refer to communication with you in writing, it includes notice sent by email to the last email address notified by you to us and notification on a Platform.

You agree and acknowledge that you are solely responsible for ensuring we have your current address, phone number and email address.

## 2.15 Operating your Account through the Platform

You, an Authorised Person or your Introducing Adviser may use the Platform to monitor Trades at any point in real time, as well as view all Trades, Orders and Account History, including details of any Commission charged. You agree to use a Platform to:

- (a) confirm all Trades entered into with CMC Markets; and
- (b) monitor your obligations to CMC Markets.

You must keep all security information relating to your Account confidential. You are responsible for all Orders and instructions and for the accuracy of all information sent electronically using any Account Sign In Details that have been linked to your Account (for example, by an

Authorised Person). If you suspect or are aware your Account Sign In Details are no longer confidential, you must notify our Client Management Team as soon as possible (see the contact details in the PDS).

### 2.16 CMC Currency Conversion

All Deductions and credits applied to your Account will be in your Account Currency, regardless of the Product Currency. Where the Product Currency is different to your Account Currency, all calculations of Deductions and credits will be undertaken in the Product Currency and converted into your Account Currency at the CMC Currency Conversion Rate and then applied to your Account. This does not mean that you can ignore the potential impact of currency exchange rates when you enter into a Trade that is denominated in a currency other than your Account Currency and you should factor this into your trading decisions.

The Platforms will retain information about the CMC Currency Conversion Rate used for any conversion that results in a change to Account.

### 2.17 Jurisdiction

The law governing all dealings with us is the law of New Zealand.

### 2.18 Foreign jurisdiction

The distribution of the PDS (and any related documents) in jurisdictions outside New Zealand may be restricted by law and therefore Persons into whose possession the PDS (and any related documents) comes should seek advice on and observe any such restrictions. Failure to comply with relevant legislation may violate those laws. The PDS does not constitute an offer or invitation in relation to a Product in any place in which, or to any person to whom, it would not be lawful to make such an offer or invitation.

### 2.19 Illegality

If at any time any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining terms of this Agreement under the law of that jurisdiction nor under the law of any other jurisdiction will be in any way affected.

### 2.20 Communication of Orders

The mere transmission of an Order or instruction by you does not give rise to a binding contract between CMC Markets and you. Any Order made by you is subject to CMC Markets accepting your Order and such Order having been recorded as accepted and confirmed to you by CMC Markets. You will be responsible for all internet Orders and internet instructions, and for the accuracy of all other Orders.

### 2.21 Legal and regulatory requirements

Despite any term of the Agreement in providing our Services, we will be entitled to take any action we consider necessary in our discretion to ensure compliance with the law. By trading Products, you agree to strictly comply with all Applicable Laws. If we reasonably consider you have not done so, we may terminate any Trade with you immediately or withhold payment of any amount to you without notice.

### 2.22 Privacy Statement

We will require you to provide personal information in the course of transacting with us. CMC Markets collects, maintains, uses and discloses personal information in the manner described in the CMC Markets Privacy Statement, which is available on our Website or by calling our Client Management Team.

You agree that we may record all telephone conversations and/or any communications by other means between you and us, and use such recordings, or transcripts of such recordings, as well as any e-mails, recorded chat messages or other communications you send to us through the Platforms, for training purposes, for the purposes of investigating any complaint you may make, or for any other legal or regulatory purposes including as evidence in any dispute or anticipated dispute between you and us. We shall retain records of all telephone conversations for the duration required by Applicable Law.

### 2.23 Intellectual Property.

Unless otherwise indicated, the Platforms, the Website and all of its software, algorithms, design, text, content, data, arrangement, organisation, graphics, compilation, magnetic translation, digital conversion, equipment, and any and all other electronic, computer, technical and information communications technology devices and equipment, networks, servers, applications, codes (including source and object codes) and data centres which are contained in or relate to the Platforms, together with all technical documentation and information necessary for the use of any of the above ("Elements") are protected under applicable Intellectual Property Rights and we and/or our licensors are the owner or the licensee (as applicable) of all such Intellectual Property Rights in the Platforms and the Elements. All such rights are hereby reserved. The posting of the Platforms and any Elements on the Platforms does not constitute a waiver of any right in the Platforms or such Elements. Except as expressly granted in the Agreement, you do not acquire any rights, title or interest in or to the Platforms or the Elements.

We hereby grant you a personal, non-exclusive, royalty-free revocable and non-transferable licence, to access and make personal and non-commercial use of the relevant Platform for the limited purpose of trading in accordance with the Agreement. No other rights are granted in respect of any Platform. In the event you do or attempt to do any of the prohibited matters set out in this section or we reasonably suspect that you have done or attempted to do any of these prohibited matters, the terms of this licence and the Agreement shall be automatically revoked and you shall have no further rights in or to the Platforms or any of the Elements.

You must not:

- (a) copy, reproduce, translate, duplicate, or use a Platform except as expressly provided for in the Agreement;

- (b) permit any other person to copy, reproduce, translate, duplicate or use a Platform except as expressly permitted in the Agreement;
- (c) create or develop any hyperlink or other form of internet weblink to a Platform except with our express prior written consent;
- (d) modify, adapt, alter, translate, enhance, reverse engineer, decompile, decode, disassemble or reverse assemble (except and solely to the extent an Applicable Law expressly and specifically prohibits such restrictions), or create derivative works of a Platform or any of the Elements (or cause or permit any of the foregoing);
- (e) modify, adapt or alter the operation of any Platform in any way (other than as intended by the Agreement);
- (f) distribute, re-distribute, sell, re-sell, transmit, re-transmit, publish, make available, re-produce, sub-licence, transfer, rent, lend, re-circulate, repackage, disclose, display or make commercial use of any Platform, the Website, any of the Elements or any of the materials provided by us in relation to the Agreement (either in whole or in part);
- (g) download or copy your Account information other than if required to do so by an Official Body or for personal use in accordance with the provisions of the Agreement;
- (h) download or copy Account information relating to any other Client;
- (i) carry out any data collection, or use data mining, screen-scraping, optical recognition software, image makers, robots or any other similar or like data gathering and extraction tools on the Platform or the Elements;
- (j) use any software, algorithm, robot, applications, tools, codes or computer or electronic devices or equipment on a Platform for non-human and/or high frequency trading;
- (k) unless specifically agreed to in writing by us, make use of any Platform or any of the Elements for automated purposes;
- (l) knowingly introduce any software viruses, trojans, worms, logic bombs, time bombs, "back doors" or back door devices, "drop dead devices", malware, or any other material, software or code which:
  - (i) is or is likely to be malicious or technologically harmful, destructive, or disabling or anything analogous to the foregoing to a Platform or any of the Elements;
  - (ii) damages, disrupts, impairs, erases or adversely affects the normal operation of a Platform or any of the Elements;
  - (iii) assists in or enables theft or alteration of data or content from a Platform or any of the Elements; or
  - (iv) provides unauthorised access to a Platform or any of the Elements.
- (m) permit or cause unauthorised access or attempt to gain unauthorised access to a Platform or any of the Elements, including the server on which a Platform or any of the Elements is stored or any server, computer or database connected to a Platform or any of the Elements;
- (n) attack a Platform via a denial-of-service attack or a distributed denial-of-service attack; or
- (o) do, or permit, any act or thing (or omit to do any act or thing) analogous to any of the foregoing, and any of the above acts may be a Specified Event that entitles us to take a Reserved Action.

We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of a Platform or to your downloading of any material posted on it, or on any Website linked to it.

## 2.24 Taxation considerations

### 2.24.1 Introduction

The following is a generalised summary of the New Zealand taxation implications which may arise for New Zealand tax resident investors in CFDs under the *Income Tax Act 2007* (Tax Act). The tax implications for non-resident investors are not considered in this summary.

Returns to New Zealand investors will be affected by New Zealand taxation rules under the Tax Act. Despite the information on taxation provided in this section, you should satisfy yourself as to the tax implications of investing in Products. In this regard, we recommend that you consult your own taxation adviser as to your own specific circumstances.

### 2.24.2 Gains and losses from CFDs

The financial arrangements rules will generally apply to CFDs. This means that any gain (whether of an income or capital nature) derived from CFDs is likely to constitute assessable income and be subject to tax. The treatment of expenditure under a financial arrangement will depend on the nature and individual circumstances of the taxpayer. For example, a New Zealand resident company (other than a qualifying company) is ordinarily allowed a deduction for expenditure incurred under a financial arrangement.

For all other entities and natural persons, expenditure is deductible only if the ordinary deductibility criteria under the Tax Act are met. These criteria state that expenditure incurred on any CFD will be deductible only if it is:

- incurred in deriving assessable income and/or excluded income; or
- incurred in the course of carrying on a business for the purpose of deriving assessable income and/or excluded income.

In general it would be expected that an investor would enter into a CFD as part of a business or profit-making undertaking that includes investing in such products with the expectation of deriving assessable income.

Generally, where a CFD spans more than one income tax year, an accruals basis of determining income and expenditure (including losses) may apply. However, a concession may be available for a natural person (not including a trustee of a trust) for whom all financial arrangements to which the person is a party meet certain thresholds prescribed under the Tax Act. In such circumstances, the person is able to recognise income and expenditure under financial arrangements on a realisation basis, rather than on a full accrual basis. Any gain (whether of an income or capital nature) or any expenditure or loss from a CFD when it is sold or matures is still required to be accounted for in accordance with the paragraphs above).



### 2.24.3 Interest payments made to CMC Markets

Interest payments made by you to CMC Markets will only be allowed as a deduction if you satisfy the deductibility criteria under the Tax Act. A New Zealand resident company (other than a qualifying company) is ordinarily allowed a deduction for interest expenses.

### 2.24.4 Interest payments received from CMC Markets

Interest paid by CMC Markets to you will be subject to resident withholding tax (RWT) unless you hold a valid certificate of exemption from RWT. At the date of these Terms, RWT is required to be deducted at the rate of:

- (a) 10.5%, 17.5%, 30% or 33% (as elected) if you provide an IRD number to CMC Markets; or
- (b) 33% if you are a company and provide an IRD number to CMC Markets; or
- (c) 33% if no IRD number is provided.

To the extent that the tax rate at which RWT is deducted does not match your correct tax rate, you will be subject to an end-of-year adjustment for the underpaid or overpaid tax on your interest income.

### 2.24.5 Goods and Services Tax (GST)

At the date of this PDS no GST is applicable to CFD trading. However, this may be subject to change in the future, and at such time you will pay all applicable GST and other taxes in relation to any fee or charge which is subject to GST and all other fees reasonably incurred by CMC Markets in connection with any Contract. Any future imposition of stamp duty or other tax, which may from time to time be levied in respect of Products, will be for the account of, and payable by, you.

### 2.24.6 Tax deductions by CMC Markets

CMC Markets is entitled to deduct or withhold from any payment made under this Agreement or credited to any Account of a client any tax required by law to be deducted or withheld from any such payment or credit.

Should any change in the basis or scope of taxation occur at any time which directly results in us having to make any payment(s) for withholding taxes or similar levies owed or payable by you under Applicable Law in respect of any of your Trades, then we reserve the right to deduct any such payment(s) from your Account or otherwise require you to pay or reimburse us for such payment(s).

### 2.24.7 FATCA

The Foreign Account Tax Compliance Act (FATCA) was enacted by the United States to improve compliance with US tax laws. Under subsequent intergovernmental agreement between the US and New Zealand, New Zealand financial institutions are required to collect certain information on US persons including their social security number. CMC Markets then forwards this information to the IRD on an annual basis. The IRD then provides the information to the IRS.

FACTA doesn't change any substantive tax rights that the United States or New Zealand has in respect of its citizens or residents and is simply an exchange of information between the two governments on US persons.

## 2.25 Interpretation

In these General Terms, the PDS and the Terms, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase has a defined meaning any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
- (c) headings are inserted for convenience only and do not affect the interpretation of these Terms;
- (d) a reference to any party includes a reference to that party's executors, administrators, successors, substitutes and permitted assigns and any person taking by way of novation;
- (e) a reference to any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (f) a reference to the words 'including', 'for example' or 'such as' when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (g) a reference to 'trading' describes any activity that involves entering into a trade by 'opening' a Trade, altering a Trade or terminating a trade by 'closing' a Trade. We have used phrases such as 'trading Products' and 'trade in Products' for simplicity's sake to refer to any opening, establishment, alteration to, and closing of, a Trade;
- (h) if a Confirmation and any other document forming part of the Agreement are inconsistent, the Confirmation will prevail to the extent of that inconsistency;
- (i) the parties agree that the various documents comprising the Agreement constitute one single agreement between the parties. Each transaction contemplated by the various documents comprising the Agreement is entered into (as applicable) in reliance on the fact that each of the documents comprising the Agreement relating to those transactions form a single agreement between the parties, and the parties would not otherwise enter into any transaction contemplated by them; and
- (j) unless otherwise provided for in any document comprising the Agreement, if the day on which or by which a party must do something under the Agreement is not a Business Day, the parties agree that the party may do it on or by the next Business Day.

## 3 Glossary

In addition to the terms defined in the Glossaries of the PDS and the applicable Terms, the following terms are used in respect of the Agreement:

### Elements

All Intellectual Property Rights in the Trading System, our Website and all of its software, algorithms, design, text, content, data (including market data, which is owned by third parties and used by us to create Prices), arrangement, organisation, graphics, compilation, magnetic translation, digital conversion, equipment, and any and all other electronic, computer, technical and information communications technology devices and equipment, networks, servers, applications, codes (including source and object codes) and data centres which are contained in or relate to the Platforms, together with all technical documentation and information necessary for the use of any of the above.

### GST

Goods and Services Tax.

### Improper Use

Any use of the Platform or activity in relation to an Order (including a Pending Order) or a Trade that amounts to:

- (a) an unlawful act or a breach of Applicable Law, whether directly or indirectly;
- (b) a breach of the Agreement;
- (c) a failure to observe reasonable commercial standards of fair dealing; or
- (d) dishonesty or malice.

Examples of Improper Use include:

- (e) acts that amount to insider trading, making misleading statements, market manipulation, market abuse, money laundering, terrorist financing, breach of trade sanctions, fraud or any acts or omissions with analogous effect;
- (f) using any device, hardware, software, algorithm, strategy, collusion or deception, the use of which is intended, whether directly or indirectly, to cause or influence us to provide the Platform or accept any Order or Trade in a way in which or on terms on which we would not otherwise do so;
- (g) using the Platform and Prices other than for the purposes of entering into Trades with us; or
- (h) opening, accessing, using or controlling more than one Account without our knowledge.

### IRD

The Inland Revenue Department.

### Official Body

Any local, state, national or supra-national public body that is relevant to our Platform and our financial trading activities with you, including the New Zealand government, the FMA and other relevant financial services regulatory bodies, the Reserve Bank of New Zealand, the IRD, a fair trading body, the police, Interpol, the courts, the New Zealand Customs Service and/or any other tax authority, which is in existence from time to time.

### Private Investor

Means that you meet all of the conditions set out below:

- (a) Your Account has been opened in a personal capacity. (i.e. the Account has not been opened in connection with a trade or business or in connection with a trust that has a professional trustee);
- (b) You are not currently registered or qualified as a professional securities trader or investment adviser with any national or state exchange, regulatory authority, securities agency, self-regulatory body, professional association or professional body;
- (c) You do not currently act in a capacity as an investment adviser, whether or not you have at some point been qualified to do so; and
- (d) You use your Account solely for the management of your personal funds and not for any other purposes including as a trader to the public or for the investment of corporate funds.

### Tax Act

The Income Tax Act 2007.

### US Person

A current or former citizen or national of, or individual currently or formerly resident in, the United States of America, a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof, a trust if (i) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more US Persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that was a citizen, national or resident of the United States of America

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