



This Customer Agreement sets forth the terms and conditions governing your Account at GAIN Capital FOREX.com Australia Pty Limited (“FOREX.com”), and all Transactions in this Account with FOREX.com. In this Customer Agreement, “Customer”, “Client” or “you” means the person who has completed and submitted a Client Account Application, and in doing so has agreed to be bound by this Customer Agreement.

**Please read this Customer Agreement carefully as it contains important information concerning your and FOREX.com’s rights and obligations in relation to the services we agree to provide you. Please let FOREX.com know as soon as possible if there is anything which you do not understand. Our contact details are as follows: Level 1, 62 Pitt Street, Sydney, NSW 2000; Telephone 1800 052 278; Facsimile 02 9251 0166; Email [auinfo@forex.com](mailto:auinfo@forex.com).**

**1. GENERAL INFORMATION**

- 1.1 **Information about us.** FOREX.com holds an Australian Financial Services Licence (Number 340255) issued by ASIC. FOREX.com is an Associated Entity of the GAIN Capital Group, LLC and utilises the trading systems, infrastructure, technology, operations and personnel of the group to facilities customer services. GAIN Capital Group, LLC is registered as a Futures Commissions Merchant with the Commodity Futures Trading Commission and is a member of the National Futures Association (NFA ID# 0339826) in the United States.
- 1.2 **Our services.** Subject to the terms and conditions of this Customer Agreement and the FSG-PDS and acceptance of your Customer Account Application to open an Account with us, we will maintain one or more Accounts in your name and will provide general advice, dealing and market making services for foreign exchange transactions and CFD’s and such other Financial Products as we may, in our sole discretion, determine from time to time in future. Unless expressly stated otherwise in writing, all Transactions entered into between us shall be governed by the terms of this Customer Agreement and FSG-PDS, as amended from time to time.
- 1.3 **Our capacity.** We will deal with you as principal and every Order which we may take is accepted and executed on the basis that we act on our own account as principal and not as your agent.
- 1.4 **Your capacity.** You will enter into Transactions as principal unless otherwise agreed in writing by us.
- 1.5 **Language of Communications.** You may communicate with us in English. All FOREX.com standard documents will be available in English. If a document is translated into another language this will be for information purposes only and the English version will prevail.
- 1.6 **Commencement.** This Customer Agreement supersedes any previous agreement between us on the same subject matter and takes effect when you signify your acceptance of this Customer Agreement by executing or completing and submitting the Customer Account Application. By executing or completing and submitting the Customer Account Application you confirm that you have read, understood and agree to be bound by this Customer Agreement with us.
- 1.7 **Amendments.**
  - (a) We may amend or replace any clause or part of this Customer Agreement in whole or in part by giving written notice to you (**Amendment Notice**). Any change will take effect on the date specified on the notice (**Effective Date**).
  - (b) You can expressly agree to the changes set out in the Amendment Notice, or you can be deemed to have accepted all the changes in the Amendment Notice in its entirety from the Effective Date if your conduct subsequent to the date of the Amendment Notice is consistent with you agreeing to the changes (such as by placing an Order with us). Notwithstanding the foregoing, you will also be deemed to have accepted all



the changes as set out in the Amendment Notice in its entirety from the Effective Date, if you do not provide us written notice of your objection within 14 days of receiving the notice.

(c) If you do not wish to accept any amendment made by us, we may require you to close any of your open Transactions and your Account as soon as reasonably practicable and/or restrict you to placing Orders to close your open Transactions..

(d) Any amendment requested by you must be agreed in a formal amendment agreement signed by us.

1.8 **Duty to you.** Nothing in this Customer Agreement purports to exclude or restrict any duty or liability owed by us to you under the Act and Regulations which we are not permitted to exclude or restrict. If there is any conflict between this Customer Agreement and the Act and Regulations, the Act and Regulations will prevail.

1.9 **Duties and responsibilities.** We assume no greater responsibility or fiduciary duty than that imposed by the Act and Regulations or the express terms of this Customer Agreement.

1.10 **No market between users,** Our service does not provide a market amongst or between users of the Trading Platform. Each Transaction you enter into is an individual agreement made between you and us as principal. You cannot transfer, negotiate or assign the Transaction to or with any other person.

## 2. RISK DISCLOSURES

2.1 Prior to entering into any Transaction with you, you will be provided with a FSG-PDS in compliance with the Act and Regulations, which will disclose the risks of investing in Financial Products offered by FOREX.com. Your execution or completion and submission of the Customer Account Application will be treated as your informed acknowledgment that you have carefully read, and are prepared to accept, the risks outlined in the FSG-PDS. If there is anything you do not understand it is recommended that you seek specialist independent financial and/or legal advice, in particular, regarding the suitability of dealing in Financial Products offered by FOREX.com.

2.2 You should note, in particular, that trading on Margin involves significant risks and that:

(a) you can lose more than the net amount deposited into your Account with us and in certain circumstances your losses may be unlimited;

(b) if the prices/rates moves against your position or Initial Margin rates are increased there may be insufficient money in your Account to satisfy Margin requirements and we may automatically liquidate any or all of your positions at a loss;

(c) although FOREX.com enables Clients to manage adverse and favourable movement by the use of stop-loss and limited Orders (for orders with a face value not greater than \$2 million) there is a risk that an order may not be filled if left open outside Trading Hours (e.g. over a weekend) or if there is a Fundamental Announcement or a Manifest Error. In that event Orders may be executed at levels which are worse than the specified price of the stop-loss or limit Order.

You will have no claim against FOREX.com or any of its Associated Entities for any loss which may be suffered in any of the circumstances described in this clause 2.2.

## 3. INTERPRETATION

3.1 Certain terms used in this Customer Agreement are defined at Schedule 1 of this Customer Agreement.

3.2 **Customer/Client.** The expressions “customer” and “client” are used interchangeably in this Customer Agreement and are intended to have the same meaning, whether used in any particular case with or without a capital letter.

- 3.3 **General interpretation.** A reference in this Customer Agreement to a “clause” or “Schedule” will be construed as a reference to, respectively, a clause of or Schedule to this Customer Agreement, unless the context requires otherwise. References in this Customer Agreement to any statute or statutory instrument or Applicable Laws include any modification, amendment, extension or re-enactment. A reference in this Customer Agreement to any “document” will be construed to include any electronic document. References to persons include bodies corporate, unincorporated associations and partnerships/persons, firms, companies, corporations, governments, states or agencies of a state or any associations or partnerships of two or more such persons (whether or not having separate legal personality). The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the Act or Regulations have the same meanings in this Customer Agreement unless expressly defined in this Customer Agreement. Any times or deadlines referred to in this Customer Agreement, whether by reference to specific hours or otherwise, are based on local times in Sydney, Australia (unless otherwise stated).
- 3.4 **This Customer Agreement and the Schedules.** The Schedules form part of this Customer Agreement. We may from time to time send to you further schedules with respect to specific Financial Products which will also form part of this Customer Agreement.
- 3.5 **Headings.** Headings are for ease of reference only and do not form part of this Customer Agreement.
- 3.6 **Time of essence.** Time will be of the essence in respect of all obligations of yours under or in connection with this Customer Agreement and any Transaction.
- 3.7 **Legislation.** In the event of any amendment or substitution of any legislation, rules or law referred to in this Customer Agreement, the reference will be deemed to be a reference to the relevant legislation, rules or laws, as amended or substituted.

#### 4. CLIENT CLASSIFICATION

- 4.1 For the purposes of the services provided by FOREX.com under this Customer Agreement subject to clause 4.2 we will treat you as a Retail Client.
- 4.2 Where we have categorised you as a Retail Client, in certain circumstances you may request to be treated as a Wholesale Client. If you are classified as a Wholesale Client pursuant to your request you will lose the protections afforded to Retail Clients (apart from those also provided to Wholesale Client) under the Act

#### 5. APPLICABLE LAWS

- 5.1 **Subject to Applicable Laws.** This Customer Agreement and all Transactions are subject to Applicable Laws so that: (i) if there is any conflict between this Customer Agreement and any Applicable Laws, the latter will prevail; and (ii) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Laws and whatever we do or fail to do in order to comply with them will be binding on you.
- 5.2 You acknowledge that you are solely responsible for, and that neither FOREX.com nor any of its Associated Associates Entities has any responsibility for, your compliance with any laws, regulations or rules applicable to your use of the services provided by us under this Customer Agreement including, but not limited to, any laws, regulations or rules, in your or any other jurisdiction, relating to tax, foreign exchange and capital control, and for reporting or filing requirements that may apply as a result of your country of citizenship, domicile, residence or tax-paying status.

#### 6. EXECUTION AND ADVICE

- 6.1 **Execution only – no personal advice.** We deal with you on an execution-only basis and will not give personal advice (as defined in the Act) or make personal recommendations or advise on the merits or suitability of purchasing, selling or otherwise dealing in particular investments or executing particular Transactions, their legal,

tax, accounting or other consequences or the composition of any Account or any other rights or obligations attaching to such investments or Transactions. You should bear in mind that merely explaining the terms of a Transaction or Financial Product or its performance characteristics does not itself amount to personal advice on the merits of the investment. If you consider that you have been provided with personal advice, you acknowledge that it is given without authority and you should not rely on it.

6.2 **Incidental information – general advice (as defined in the Act).** There will be circumstances where we provide you with general advice such as where we provide general trading recommendations, underlying market commentary or other information and in such cases:

- (a) this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to a personal recommendation or to personal advice;
- (b) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the legal, tax or accountancy consequences of any Transaction;
- (c) where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction; and
- (d) any market data which is specific to CFDs provided by us or third party service providers and displayed on our website or Trading Platform will be displayed for information purposes only. We do not guarantee the completeness or accuracy of such information and will not be liable if any such data or information is inaccurate or incomplete in any respect. Neither we nor any third party providers are responsible or liable for any actions you may take, or do not take based on such data or information. Such data or information is proprietary to us and/or any such third party service provider and you are not permitted to retransmit, redistribute, publish, disclose or display, in whole or in part, such data or information to any third parties, except as may be required by any law or regulation.

## 7. CHARGES AND PAYMENTS

- 7.1 **Charges.** You will pay our charges as agreed with you from time to time or we may deduct such charges from any funds held by us on your behalf. Where your Account was introduced to us by an introducing broker a portion of the charges paid by you may be given to the introducing broker in accordance with clause 16.1 herein. Details of any such charges will be disclosed in the FSG-PDS.
- 7.2 **Currency indemnity.** If we receive or recover any amount in respect of an obligation of yours in a Currency other than that in which such amount was payable, whether pursuant to a judgment of any court or otherwise, you shall indemnify us and hold us harmless from and against any cost (including costs of conversion) and loss suffered by us as a result of receiving such amount in a Currency other than the Currency in which it was due.
- 7.3 **Conversion of foreign Currency amounts.** If you direct FOREX.com to fund Margin from funds denominated in a foreign Currency held on your Account, FOREX.com will be authorised to convert those funds for Margin at a rate of exchange determined by FOREX.com. FOREX.com will not be liable to you for any loss suffered by you as a result of any such conversion.
- 7.4 **Payments net.** Unless we give you written notice to the contrary, all payments and deliveries between us shall be made on a net basis and we shall not be obliged to deliver any asset or make any payment to you or both (as the case may be) unless and until we have received from you the appropriate documents and any cleared funds.
- 7.5 **Remuneration and sharing charges.** We will receive remuneration from, or may share charges with any Associated Entities in connection with Transactions carried out on your behalf. Details of such remuneration or sharing arrangements will be disclosed in the FSG-PDS.

## 8. OUR SECURITY

- 8.1 **Security interest.** As a continuing security for the performance of all your obligations (whether actual or contingent, present or future) to us pursuant to or in connection with this Customer Agreement (“Secured Obligations”) you grant to us, with full title guarantee, a first priority fixed charge over, and security interest in, all non-cash Margin and other collateral (collectively “Collateral”) now or in the future provided by you to us or to our order or under our direction or control or standing to the credit of your Account or otherwise held by us or any of our Associates Entities or our or their nominees on your behalf.
- 8.2 **Further assurance.** You agree to execute such further documents and to take such further steps as we may request from time to time to create, perfect, maintain or protect our charge and security interest referred to in clause 8.1, to be registered as owner of or obtain legal title to all Collateral, to secure further the Secured Obligations, or to enable us to exercise our rights.
- 8.3 **Substitution.** You may not withdraw or substitute any property or asset subject to our charge and security interest referred to in clause 8.1 without our prior written consent.
- 8.4 **General lien.** In addition and without prejudice to any rights to which we may be entitled under this Customer Agreement or any Applicable Laws, we will have a general lien on all property held by us or any of our Associates Entities or our or their nominees on your behalf until the satisfaction in full of all Secured Obligations.

## 9. RIGHT OF SET-OFF

- 9.1 We may at any time set off, without prior notice to you or any other requirement, any obligation (whether or not such obligation is matured or contingent, whether or not arising under this Customer Agreement or under or in connection with any other agreement, transaction or instrument, and regardless of the currency, place of payment or booking office of the obligation) you or any of your Associates Entities may from time to time owe to us or any of our Associates Entities, as reasonably determined by us, against any obligation (whether or not such obligation is matured or contingent, whether or not arising under this Customer Agreement or under or in connection with any other agreement, transaction or instrument, and regardless of the Currency, place of payment of the obligation) we or any of our Associates Entities may then owe to you or any of your Associates Entities, as reasonably determined by us.
- 9.2 For the purpose of any cross-Currency set-off, we may convert either obligation at a rate of exchange determined by us on the relevant date.
- 9.3 If the amount of any obligation is unascertained, we may in good faith estimate that amount and set off in respect of the estimate, subject to us accounting to you when the amount of the obligation is ascertained.
- 9.4 Our rights under this clause 9 will be in addition to any other right of set-off or similar right we may have, whether as a matter of contract, under common law, or otherwise.

## 10. TAXES

- 10.1 You are responsible for all taxes (Australian or foreign) that may arise as a result of or in connection with a Transaction, whether under current or changed law or practice. We shall have no responsibility for any of your tax liabilities, or for providing information or advice in respect of such liabilities and shall not be responsible for notifying you of a change in tax law or practice. You shall indemnify us and hold us harmless for and against all costs, claims, demands and expenses arising as a result of or in connection with any failure by you to reimburse the indemnified party in accordance with this clause.

## 11. MATERIAL INTERESTS AND INFORMATION BARRIERS

- 11.1 **Material interests.** Your attention is drawn to the fact that when we deal with you, we or an Associated Entity or some other person connected with us may have another interest, relationship or arrangement that is material. Without limiting the nature of such interests, examples include where we or an Associated Entity could be:-
- (a) dealing or quoting prices, in the investment, a related investment or an asset underlying the investment, as principal for our (or its) own account or that of someone else. This could include selling to you or buying from you;
  - (b) buying from you and selling immediately to another customer, or vice versa;
  - (c) advising and providing other services to Associates Entities or other customers who may have interests in investments which conflict with your own.
- 11.2 You accept that we and our Associates Entities may have interests which conflict with your interests and may owe duties which conflict with duties which would otherwise be owed to you, and consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Laws.
- 11.3 **No liability to disclose or account.** We will comply with Applicable Laws binding on us but, except as provided by Applicable Laws we shall be under no further duty to disclose any interest to you, including any benefit, profit, commission or other remuneration made or received by reason of any Transaction or any related transaction or position.
- 11.4 **Information Barriers.** Where necessary we maintain arrangements which restrict access by our employees to information relating to areas of our business (and that of Associates Entities) with which, and the affairs of clients with whom, they are not directly concerned. Accordingly, we shall not be required to have regard to or disclose to you or make use of any information which belongs to or is confidential to another client or to us or any Associated Entity, and we may be unable to advise or deal with you in relation to particular investments without disclosing the reason for this.

## 12. CONFLICT OF INTERESTS

- 12.1 **Conflicts Policy.** We are required to have arrangements in place to manage conflicts of interest between us and our clients and between different clients. We operate in accordance with a conflicts of interest policy we have put in place for this purpose in which we have identified those situations in which there may be a conflict of interest, and in each case, the steps we have taken to manage that conflict. A summary of our conflicts policy is available on the website of FOREX.com [ ]
- 12.2 **Disclosure to you.** We shall not be obliged to disclose to you or take into consideration any fact, matter or finding which might involve a breach of duty or confidence to any other person, or which comes to the notice of any of our directors, officers, employees or agents but does not come to the actual notice of the individual or individuals dealing with you.
- 12.3 **No fiduciary duties.** The relationship between you and us is as described in this Customer Agreement. Save as provided in any Applicable Laws, neither that relationship, nor the services we provide nor any other matter, will give rise to any fiduciary or equitable duties on our part or on the part of any of our Associates Entities. As a result, we or any of our Associates Entities involved in doing business with you may act as both market maker, principal and agent and we or any of our Associates Entities may do business with other clients and other investors whether for our own or such Associated Entity's own account.
- 12.4 **Consent.** You accept that we and our Associates Entities may either (i) have interests which conflict with your interest's, or (ii) owe duties which conflict with duties which would otherwise be owed to you, and in either case you consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Laws.



13. **COMPLIANCE**

- 13.1 You must not engage in any conduct which is prohibited by the FS Provisions including but, not limited to the making of false or misleading statement. You must also not engage in arbitrage on the Trading Platform or scalping as referred to in clauses 25.5 and 25.6 of this Client Agreement.

14. **ACCOUNT OPENING**

- 14.1 An Account must be opened prior to entering into any Transaction with FOREX.com. No Orders can be placed until an Account has been opened and cleared funds received. Without prejudice to the foregoing, if FOREX.com permits you to place an Order notwithstanding that an Account has not been opened, or cleared funds received, this shall not limit your liability to FOREX.com pursuant to this Customer Agreement in respect of the Order placed. FOREX.com may, at its absolute discretion, refuse to accept you as a client for whatever reason but will notify you of any such refusal, without giving any reasons, as soon as reasonably practicable.
- 14.2 To comply with the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (AML/CTF Law) we will require you to provide personal information and documentation in relation to your identity, when completing your Account Application. For that purpose we may need to obtain additional information and documentation and we may need to verify, or re-verify information. Under the AML/CTF Law, we may be required to disclose information about suspicious transactions to regulatory authorities and we may not be permitted to inform you of such disclosure. We shall have to liability to you in any of those circumstances.
- 14.3 You must record information regarding your investment knowledge and experience in the Customer Account Application. On the basis of this information and in accordance with the Applicable Laws we will assess whether opening an Account is appropriate for you. If you are classified as a Wholesale Client we will make certain assumptions about the appropriateness of the services to be provided, and we will be entitled to assume that you have the requisite knowledge and experience to enter into Transactions. If you do not consider this to be the case, you must make us aware of this prior to entering into any Transactions and provide us with all relevant information as to the level of your knowledge and experience. It is your responsibility to promptly inform us in writing if at any time during your relationship with FOREX.com you become aware of any information or circumstances which might reasonably indicate that our initial assessment should be changed.
- 14.4 To assess your creditworthiness, manage credit risk and to prevent fraud (or other criminal activity) you acknowledge and agree that we may:
- (a) make periodic searches and enquiries about you and any Related Party at credit reference agencies, and your employers and any other relevant parties (as applicable);
  - (b) disclose information to organisations involved in fraud prevention; and
  - (c) obtain information from and disclose information to other broker-dealers or investment managers which deal in or manage investments for you concerning any payment or security default or concerning any investment which is related to or connected with Transactions which you seek to open with us.
- 14.5 Any limits imposed on your Account by us (including any credit limits) will be set and varied from time to time with regard to your credit status and, where applicable, the amount of funds deposited by you with us. We may, in our sole discretion apply a limit to:
- (a) the size of any Transaction or series of Transactions that you may enter into; and
  - (b) the amount of any loss or liability to which you may be exposed.

Account limits do not limit or represent your liability for losses to FOREX.com, and the funds you may have from time to time on deposit with us as Margin or otherwise do not represent any limit upon your financial liability to us.

When your Account is opened you will have access to our Trading Platform enabled by a password which shall be for your personal use only and which you shall keep secret and not disclose to any third party nor allow any third party to use or otherwise gain access to the Trading Platform in your name or on your Account. You are responsible for all information submitted through your access to the Trading Platform using your password and in the event there is an erroneous entry of information for whatever reason you will be held responsible for all resultant financial obligations or liabilities. You will notify us immediately, but in any event, within 24 hours, if you become aware of the loss, theft or disclosure to any third party, or of any unauthorised use, of your password. For the avoidance of doubt, you are responsible to us for, and you indemnify us against, any losses arising from the unauthorised use of your password.

## 15. ACCOUNT PAYMENT

- 15.1. The cash balance of your Account:
- (a) will be credited from time to time with the amount of each payment received by us from you pursuant to this Customer Agreement; and
  - (b) will be debited from time to time by the amount of each payment made by us to you at your request pursuant to this Customer Agreement and, by the deduction of our charges.
- 15.2 Unless otherwise agreed, you acknowledge and agree that no interest will accrue on any cash balance in your Account and that FOREX.com will not be liable to pay you any such interest.
- 15.3 We will only accept deposits from you by, telegraphic transfer. SWIFT and credit or debit card. No cash will be accepted. Payments may be denominated in Australian Dollars, or any other Currency agreed in advance with us.
- 15.4 **Base currency.** You shall designate a base currency of your Account which shall either be Australian Dollars or any other Currency agreed in advance with us (the "Account Base Currency"). Any sums deposited in your Account, if in a Currency other than the Account Base Currency, may be converted to that Account Base Currency at the conversion rate as determined by us unless alternative instructions from you are accepted by us. If any interest costs and other charges to be debited to your Account are in a Currency other than the Account Base Currency they may be converted to that Account Base Currency at the conversion rate as determined by us.
- 15.5 All payments from your Account will be made on your request in the Account Base Currency unless another Currency is agreed in advance between you and us and will be made by telegraphic transfer, SWIFT or, where payments were made by debit or credit card, and it is permitted, transfer of funds to the relevant credit or debit card account. We shall not be obliged to make any payment to you unless your cash balance remaining after making the payment would be sufficient to cover your Margin in relation to your open Transactions on your Account(s).
- 15.6 No instructions to pay a third party from your Account will be accepted by us unless otherwise agreed in writing by us.
- 15.7 You agree to make payments due to us under this Customer Agreement in accordance with the following terms:
- (a) all electronic or telegraphic transfer or other bank fees in respect of payments by you will be your sole responsibility;
  - (b) any payment made to us will only be treated as received when we receive cleared funds and the funds have been identified by us as your funds;
  - (c) if any payment is not received by us on the due date for payment then, without limitation of any other rights which we may have, we will be entitled to charge interest on the overdue amount at a rate of 1% per month from the date payment was due until the actual date of receipt by us; and



- (d) you indemnify us for and hold us harmless against any costs or expenses (including all legal fees and expenses) which we may incur, either before or after the commencement of any legal action, to recover payments due.

## 16. INTRODUCING BROKERS

16.1 If your Account was introduced to FOREX.com by an introducing broker you acknowledge and agree that:

- (a) you authorised the introducing broker to introduce you to FOREX.com;
- (b) a portion of the remuneration we generate from entering into Transactions with you may be given to the introducing broker and that you can contact the introducing broker or FOREX.com for further information in this respect; and
- (c) any personal advice given to you regarding your Account or your Transactions will be given by the introducing broker and not by FOREX.com.

## 17. MARGIN

17.1 **Initial Margin Arrangements.** As a condition of entering into a Transaction, we will require the deposit of funds or lodgement of Collateral acceptable to us to secure your liability to us for any losses which may be incurred in respect of the Transaction (“Initial Margin”). Initial Margin is due and payable prior to opening a Transaction and we will decline to open any Transaction if you do not have sufficient available cash (cleared funds) in your Account to satisfy the Initial Margin required for that Transaction at the time the Order is placed.

17.2 **Variation Margin Arrangements.** If there is an adverse movement in the value of a Transaction we will require additional security from you in the form of cash deposits or other acceptable Collateral to cover the adverse movement and to supplement the Initial Margin (“Variation Margin”).

17.3 **Changes in Margin requirements.** Initial Margin requirements may be amended from time to time in our sole and absolute discretion. We will give you notice by email of any such variations as soon as reasonably practicable to do so. In addition, such variation will be posted to FOREX.com’s website.

17.4 **Form of Margin.** Margin must be provided by or on behalf of you in cash or other Collateral acceptable to us as determined by us in our sole and absolute discretion. You are obliged to maintain in your Account, at all times, sufficient funds to meet all Margin requirements. In addition, we will be entitled to treat any assets deposited with us by you from time to time (other than assets deposited for safe custody only) as Collateral against your Margin requirements. In all cases we will be entitled in our sole and absolute discretion to determine the value of any Collateral deposited with us. We are entitled to require payment of Margin by you (whether resident in Australia or in another jurisdiction) by telegraphic transfer or any other method of immediate/electronic funds transfer acceptable to us. Only funds received net of any bank charges, which relate to the transfer, will be credited as paid.

17.5 **Cleared and identified funds.** Only cleared funds which have been identified by FOREX.com as money paid by you will be recognised for the purpose of determining your Account balance and in the absence of such cleared and identified funds, they will not be treated as having been paid to the credit of your Account. It may take FOREX.com up to 48 hours to identify a deposit made by or for you and credit that payment to your account. However, in the case of deposits made by credit card, FOREX.com is able to immediately identify the payment and credit the amount to your account.

17.6 **Close-out.** In the event that there is insufficient funds (or Collateral) in your Account to satisfy your Margin obligations, as determined by us in accordance with clauses 17.1 and 17.2 of this Customer Agreement, and regardless of whether or not prior Margin Calls have been issued or not, we may in our sole discretion at any time choose to close or terminate one or more of your open Transactions without notice to you. This will not constitute an Event of Default. However, without prejudice to the foregoing, any Transaction entered into by you or on your

behalf which results in there being insufficient funds to cover any actual or anticipated losses or liabilities in connection with your Account will constitute an Event of Default and we may in our discretion exercise our rights in clause 22 of this Customer Agreement, whether there has been a Margin Call or not.

- 17.7 **Margin Calls.** FOREX.com does not make Margin Calls in the ordinary course of business. FOREX.com may from time to time and in its sole discretion call upon and request that you deposit additional funds or Collateral to secure your Margin obligations to FOREX.com. Any Margin Call, without closing your Account or liquidating your open Transactions, shall not be deemed to be a precedent for future Margin Calls. We are also not obliged to make any Margin Call of you at all or within any specific time period, and any failure or delay on our part to make any Margin Call at any time will not operate as a waiver of any of our rights or remedies under or in connection with this Customer Agreement, whether in respect of such Margin Call or otherwise. We shall be deemed to have made a Margin Call on you if we have left a message requesting you to contact us, or if we are unable to leave a message and have used reasonable endeavors to contact you by telephone. Any message we leave for you requesting you to contact us should be regarded as extremely urgent. We shall not be liable for any losses you may suffer as a result of any failure to respond to an actual or deemed Margin Call. We may in our sole discretion close or terminate one or more of your open Transactions without notice to you immediately and decline to enter into any further Transactions with you if you fail to honour any Margin Call and this shall constitute an Event of Default and we may exercise our rights in clause 23 of this Customer Agreement.
- 17.8 **Negative pledge.** You undertake neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the funds transferred to us.
- 17.9 **Power to charge.** You agree that we may, free of any adverse interest of yours or any other person, grant a security interest over funds provided by you to cover any of our obligations to our hedging counterparty, including obligations owed by virtue of the positions held by us or another of our customers.
- 17.10 **Power of sale.** If an Event of Default occurs, we may exercise the power to close one or more of your open Transactions. We shall be entitled to apply the proceeds of the disposal in satisfaction of your obligations.
- 17.11 **General lien.** In addition and without prejudice to any rights to which we may be entitled under this Customer Agreement or any Applicable Laws, we shall have a general lien on all property held by us or our Associates Entities or our nominees on your behalf until the satisfaction of the your obligations.
- 17.12 Any action taken by us in connection with or pursuant to a CFD or Margin FX Contract or other Transaction by us at a time when any Event of Default specified in clause 22 of this Customer Agreement has occurred (whether or not we have knowledge thereof) shall be entirely without prejudice to our right to refuse any further performance thereafter, and shall not in any circumstances be considered as a waiver of that right or as a waiver of any other rights of ours should any such Event of Default have occurred.

## 18. **ORDERS AND CONFIRMATIONS**

- 18.1 **Placing of instructions.** You agree FOREX.com may on your instructions purchase and sell cash settled CFDs and Margin FX Contracts. Unless otherwise agreed by us Orders for execution of Transactions between you and us are to be given to us electronically through our Trading Platform or where there is a system failure by telephoning us.
- 18.2 **Communication of Orders.** When you place an Order by telephone, you can do so only by talking directly to a representative of FOREX.com during Trading Hours. No message may be left, and no Orders may be placed using answer phone or voicemail facilities or by facsimile or by email. All telephone calls are recorded for the purposes of fraud prevention and quality control and by agreeing to these terms and conditions you agree to such recordings.
- 18.3 FOREX.com makes no warranty, express or implied, that the bid and offer prices quoted on FOREX.com Trading Platform represents the prevailing underlying market prices. Our quoted prices may reflect, at our discretion or the discretion of our Associated Entities, underlying market volatility or additional costs and charges which may result in an increase in the spread.

- 18.4 If your Account is set up as a joint Account, FOREX.com is authorised to act on the instructions of any one owner, without further inquiry, with regard to trading in the Account and the disposition of any and all assets in the Account.
- 18.5 FOREX.com may, at its discretion refuse to accept any Order from you but will notify you of any such refusal, without being obliged to give any reasons, promptly following receipt of your instructions. FOREX.com may cancel any instructions previously given by you provided that FOREX.com has not acted on your instructions. Without prejudice to the generality of the foregoing FOREX.com reserves the right to limit the number of open Transactions that a Customer may enter or maintain in their Account. FOREX.com reserves the right, in its sole discretion, to refuse to accept any Order opening a new Transaction or increasing an open Transaction. Acceptance of your Order will be evidenced by FOREX.com confirmation of that Order. The validity of any Order shall not, however, be affected by any failure or delay in such Order being confirmed. Acceptance of any Order does not constitute any acknowledgment agreement or representation that your Initial Margin requirement in respect of the Order or your existing Order is satisfied.
- 18.6 **Regulated Market.** You acknowledge and agree that by executing or completing and submitting the Customer Account Application that you have given us your prior express consent to execute all Orders outside a regulated market.
- 18.7 **Confirmation of Orders and Account Statements.** We may send you confirmations and account statements electronically or provide you with online access to confirmations and account statements stored on your FOREX.com website Account. You must notify us in writing if you wish to receive confirmations in hard copy rather than electronically. Each confirmation will, in the absence of a Manifest Error, be conclusive and binding on you, unless we receive any objection from you in writing within one (1) Business Day of the date of the relevant confirmation or we notify you of an error in the confirmation within the same period.
- 18.8 **No Best Execution Obligation.** We will deal with you as principal in relation to any Orders and we will not act as your agent or otherwise act on your behalf in relation to any Orders. Rather, we provide you with price quotes and you may place Orders on the basis of those price quotes. Accordingly, while we seek to ensure that our quotes are price competitive we do not owe you any obligation of best execution and do not agree to obtain the best possible price for you.

## 19. CLOSE-OUT OF OPPOSING TRANSACTIONS

- 19.1 In general, to close any Transaction in whole or in part you must enter into a second Transaction in relation to the same product and maturity date as the first Transaction but you must sell if the first Transaction was a purchase and you must purchase if the first Transaction was a sale. The first Transaction will be closed to the extent of the Transaction size of the second Transaction. Where there is more than one open Transaction with the same characteristics the Transaction opened earliest will be closed first. Additionally, should the Trading Platform allow for “hedging” (an Account being long and short the same position) or close out by the customer on a “special instruct” basis (customer identifies Transaction(s) to be closed out), the customer will be responsible for closing open Transaction(s) on a special instruct basis. Our policies and procedures surrounding close out of opposing Transactions are subject to change in our absolute discretion and will be notified to you if such change is made.

## 20. CLIENT MONEY

- 20.1 Any money received by FOREX.com in respect of your Account with FOREX.com shall be treated as “Client Money” in accordance with the applicable FS Provisions regarding Client Money (**Australian Client Money Rules**).
- 20.2 In relation to Client Money, we may hold Client Money in a client trust or segregated account (**Client Money Account**) opened with an approved bank in Australia, United Kingdom or in the United States. Your Client Money may therefore be held in the United Kingdom, United States and in such circumstances the legal and regulatory regime applying to the approved bank with which your bank account is opened is different from that of Australia.

- 20.3 You agree and acknowledge that we can deal with Client Money in accordance with the Australian Client Money Rules, including to withdraw, deduct or apply any amounts payable by you to us under this Customer Agreement from your entitlements in the Client Money Account including, without limitation making a payment for, or in connection with, the margining, adjusting or settling of dealings in Transactions entered into by you, or the payment to discharge your liability to us.
- 20.4 For money deposited in our client trust accounts, you acknowledge that:
- (a) individual client accounts are not separated from each other;
  - (b) all clients' funds are co-mingled into the one account;
  - (c) the client money provisions of the FS Provisions may not insulate any individual client's funds from a default in our client trust account. Such a default may arise from any client's trading; and
  - (d) assets in the client trust account belonging to non-defaulting clients are potentially at risk, even though they did not cause the default.
- 20.5 Notwithstanding clause 20.4(d), no default by any client is likely to occur on the basis that FOREX.com has implemented systems and procedures whereby the potential loss for any one client is limited to the net amount deposited into their account with us.
- 20.6 You irrevocably and unconditionally authorise us to transfer any moneys and/or property we hold on trust for you to any of our Associated Entities or to any third party which acquires the business of FOREX.com to whom we have, in accordance with clause 26.8, assigned or transferred our rights and obligations under this Customer Agreement, including your open Transactions and Account (and you irrevocably direct us to transfer to the assignee, delegate or transferee such money and property in our Client Money Account to which you are entitled).

You should note that if such transfer occurs, your money and/or property will be transferred to a segregated account maintained by the transferee under the Corporations Act 2001 (Cth) (if the transferee is an Australian financial services licensee). If the transferee were not an Australian financial services licensee, but regulated in another jurisdiction, client monies will be held by the transferee in accordance with the applicable client money rules of that jurisdiction.

## 21. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 21.1 **Representations and warranties.** You represent and warrant to us on and as of the date this Customer Agreement comes into effect and on and as of each date on which any Transaction is entered into or remains open, as follows:-
- (a) if you are an individual that you are of sound mind, legal age and legal competence;
  - (b) regardless of any subsequent determination to the contrary, you are suitable to trade Financial Products, offered by FOREX.com and that you are aware of the risks involved with such Transactions. Additionally, we may at our sole discretion, require you to agree to trade on our Demo Trading Platform available to you on the FOREX.com website for a period of time determined by us, to demonstrate to us your knowledge and understanding of our Financial Products and our Trading Platform. FOREX.com may, in its sole discretion, decline to permit any real Transactions to be effected in your Account until you have, in FOREX.com's sole judgment, satisfactorily traded on the Demo Trading System;
  - (c) you are willing and financially able to sustain a total loss of funds deposited with FOREX.com as a result of engaging in Transactions;

- (d) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Customer Agreement and such Transaction and to grant the security interests and powers referred to in this Customer Agreement;
- (e) where applicable, the person or the persons entering into this Customer Agreement and each Transaction on your behalf has or have been duly authorised to do so;
- (f) this Customer Agreement, each Transaction and the obligations created under or in connection with them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any law, order, charge or agreement by which you are bound or which you or any of your assets are subject;
- (g) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default (a “Potential Event of Default”) has occurred with respect to you;
- (h) unless you have informed us otherwise in writing you act as principal and sole beneficial owner (but not as trustee) in entering into and performing this Customer Agreement and each Transaction;
- (i) all details supplied in your Customer Account Application as well as any other information which you provide or have provided to us in respect of your financial position or other matters is accurate, complete and not misleading;
- (j) except as otherwise agreed by us, you are the sole beneficial owner of all funds you transfer under this Customer Agreement, free and clear of any security interest whatsoever; and
- (k) if you are not resident in Australia, you are solely responsible for ascertaining whether any Transaction entered into under this Customer Agreement is lawful under applicable laws of the jurisdiction of your residence.

21.2 **Covenants.** You covenant and agree with us, as follows:

- (a) you will at all times obtain and comply with, and do all that is necessary to maintain in full force and effect, all necessary authority, powers, consents, licences and authorisations to (i) enable you to lawfully perform this Customer Agreement and each Transaction and (ii) without limiting the generality, interests and powers referred to in this Customer Agreement referred to in this clause;
- (b) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to you or, where applicable, any Credit Support Provider;
- (c) you will promptly notify us if (i) you become aware of any detail supplied in your Customer Account Application or any other information provided to us in respect of your financial position or other matters being inaccurate, incomplete or misleading when supplied or provided or (ii) any such detail or information subsequently becomes inaccurate, incomplete or misleading;
- (d) you will at all times use all reasonable steps to comply with all Applicable Laws in relation to this Customer Agreement and any Transaction; and
- (e) upon demand, you will promptly provide us with such information as we may reasonably require or request in relation to any of the matters referenced in this clause 21 or, without limiting the generality of the foregoing, to ensure compliance with any Applicable Law.

## 22. EVENTS OF DEFAULT

### 22.1 If at any time:

- (a) you fail to comply fully and by the required time with any obligation to make any payment when due under this Customer Agreement or to make or take delivery of funds or any Collateral under or in connection with this Customer Agreement or any Transaction;
- (b) we have reasonable grounds to believe that (i) you are in breach of any covenant or agreement set out in this Customer Agreement or (ii) any representation or warranty made by you in this Customer Agreement or otherwise with respect to or in connection with any Transaction, is or was untrue, false or misleading when made, repeated or deemed to be made or repeated;
- (c) any action is taken or any event occurs, in each case which we believe might have an adverse effect upon your ability to perform any of your obligations under or in connection with this Customer Agreement or any Transaction;
- (d) we believe that exercising any of our rights and remedies in clause 22.2 is necessary or desirable to prevent or address what might be a violation of the Act or any other Applicable Law or to ensure that good practice is followed;
- (e) we believe that exercising any of our rights and remedies in clause 22.2 is otherwise necessary or desirable for our own protection, whether from the perspective of financial exposure, reputational risk, or otherwise;
- (f) you die, become or are adjudged to be of unsound mind, are or become unable to pay your debts as they fall due, are or become bankrupt or insolvent within the meaning of any Insolvency Law, any indebtedness of yours is not paid on the due date therefore or is or becomes subject to being declared due and payable under any agreement or instrument evidencing or governing such indebtedness before it would otherwise have been due and payable, any suit, action or proceeding is commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, all or any part of the property, undertaking or assets (tangible and intangible) of you;
- (g) you are dissolved, or, if your capacity or existence is dependent upon a record in a formal register, such registration is removed or ends, any proceeding is commenced seeking or proposing your dissolution, removal from such a register or the ending of such a registration, or you take any corporate or other action in preparation or furtherance of any of the foregoing;
- (h) you commence any voluntary proceeding (i) seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any Insolvency Law or (ii) seeking the appointment of an Insolvency Officer with respect to you or any substantial part of your assets or any substantial part of its assets, or you take any corporate or other action in preparation or furtherance of any of the foregoing;
- (i) an involuntary proceeding is commenced against you, (i) seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any Insolvency Law or (ii) seeking the appointment of an Insolvency Officer with respect to you or any substantial part of your assets or any substantial part of its assets;
- (j) you disaffirm, disclaim or repudiate any Insolvency Officer acting on behalf of either you or any Credit Support Provider disaffirms, disclaims or repudiates any obligation under or in connection with this Customer Agreement, any Transaction;



- (k) any charge, security interest or lien created, purported to be created or otherwise contemplated by this Customer Agreement fails or ceases to be effective as such charge, security interest or lien to secure the performance of the Secured Obligations or otherwise for our benefit;
- (l) any actual or potential default, event of default, termination or similar event (however described) occurs in relation to you under any other agreement or instrument between us or issued or delivered to us;

then, in each such case, we may (but we will not be obliged to) exercise any or all of our rights and remedies set out in clause 22.2.

22.2 Upon occurrence of an Event of Default we may by notice specify a date for the termination of any or all outstanding Transactions, except that the occurrence of an Event of Default of a type specified in subparagraph (a), (f), (h), (i) or (j) of clause 22.1 will result in the automatic termination of any or all open Transactions. If any or all outstanding Transactions are terminated pursuant to the preceding sentences, we will be entitled, without prior notice to you and without limitation of any other rights or remedies we may have under this Customer Agreement or otherwise, to take any or all of the following actions:

- (a) instead of returning to you assets equivalent to those credited to your Account, to pay to you the fair value of such assets at the time such termination is effective;
- (b) to sell or otherwise liquidate, or to cause to be sold or otherwise liquidated, any or all of your Collateral in our possession or in the possession of any nominee or third party appointed under or in connection with this Customer Agreement, in each case as we may in our sole and absolute discretion select and at such price or prices, at such time or times and in such manner as we in our sole and absolute discretion think fit (without being responsible for any diminution in price or other loss), in order to realise funds sufficient to cover any amount due by you to us, including any and all costs related to the sale or other liquidation, which will be borne by you;
- (c) to treat any or all open Transactions as having been repudiated by you, to close out, replace or reverse any or all such Transactions, to enter into any other Transaction or to take, or refrain from taking, such other action, all at such price or prices, at such time or times and in such manner as we in our sole and absolute discretion consider necessary or appropriate to cover, reduce or eliminate our actual or potential loss or liability under or related to any of your contracts, positions or commitments;
- (d) to make a claim under, enforce, or exercise any other right or remedy under or in connection with, any Credit Support Document;
- (e) to enforce any charge, security interest or lien created or otherwise contemplated by this Customer Agreement or to exercise our right of set-off provided in this Customer Agreement or any other right of set-off or similar right we may have, whether as a matter of contract, under common law, or otherwise; or
- (f) to close any or all of your Accounts.

22.3 We will not lose any of our rights or remedies under or referenced in this clause 22 by reason of any failure or delay on our part in exercising them, and no such failure or delay will constitute a waiver of any such right or remedy. Under no circumstances will we be under any obligation to exercise any such right or remedy or, if we do exercise any such right or remedy, to do so at a time or in a manner that takes into account your interests or is otherwise beneficial to you.

22.4 Any action taken or not taken by us in connection with or pursuant to any Transaction at any time after the occurrence of any Event of Default (whether or not we have knowledge of such event) will be entirely without prejudice to our right to take or not take any similar action or to refuse to take any further action at any time thereafter, and does not in any circumstances constitute as a waiver of that right or any other rights or remedies of ours should any such Event of Default have occurred.

- 22.5 You agree to give us notice of any event of a type specified in clause 22.1 immediately upon becoming aware of its occurrence.
- 22.6 Notwithstanding anything in this Customer Agreement to the contrary, we will not be obliged to make any payment or delivery otherwise required to be made by us to you pursuant to or in connection with this Customer Agreement or any Transaction for as long as an Event of Default has occurred and is continuing.
- 22.7 Without limiting the generality of the foregoing provisions of this clause 22, FOREX.com will have the power in respect of any Collateral (other than in the form of cash) provided to us to secure your obligations and liabilities to FOREX.com under this Customer Agreement immediately and without prior notice to you, and without limiting our rights and remedies under any separate Collateral agreement or otherwise, to:
- (a) exchange all or any part of any Collateral into another form of Collateral acceptable to us as Collateral and/or into such Currencies as we decide;
  - (b) sell or realise value from or exercise any right attaching to any Collateral as we may think fit and treat money as it were the proceeds of a sale or disposal;
  - (c) enter into such contracts as we see fit in order to hedge, preserve, enhance or stabilise the relative value of any Collateral;
  - (d) apply all or any part of any cash in your Account or proceeds of realisation of Collateral to paying the costs of realisation as well as towards restoring the Collateral to the level we require or toward your Secured Obligations and pay any balance to you or other persons entitled to it;
  - (e) appoint a receiver and collect and receive all interest, dividends, other distribution, proceeds of repayment or redemption and other payments and receipts of, on or in respect of any or all of your assets; and
  - (f) generally exercise all rights and remedies of secured creditors under applicable law.
- 22.8 If at the time we exercise our rights any of your obligations are contingent in nature, then we may if we so decide convert a contingent obligation into a cash equivalent obligation and/or apply any Collateral and/or the proceeds realised from any Collateral as we consider necessary in our sole opinion to provide for the discharge or settlement of obligations.
- 22.9 These terms apply whether or not you enter into, or have entered into, a separate Collateral agreement with us.
- 22.10 To the maximum extent permitted by any Applicable Law, statutory restrictions on the exercise by us of our power of sale over Collateral will not apply. You are not entitled to release our security interest over an item of Collateral by repaying an amount while leaving other items of Collateral subject to our security interest. We retain our security interest over all Collateral until all your obligations have been discharged or settled to our satisfaction.
- 22.11 Our rights and remedies under or referenced in this clause 22 will be in addition to any other rights or remedies we may have, whether as a matter of contract, under common law, or otherwise.

## 23. **TERMINATION**

- 23.1 You may terminate this Customer Agreement at any time by giving at least 3 Business Days' prior written notice to us.
- 23.2 We may terminate this Customer Agreement at any time by giving at least 10 Business Days' prior written notice to you, except that we may terminate this Customer Agreement immediately if you fail to observe or perform any provision of this Customer Agreement, upon the occurrence of any Event of Default, or at any time at which you have no open Transactions in your Account.

- 23.3 Termination will be without prejudice to accrued rights and remedies and the existence and enforceability of any open Transaction, which will remain open until closed in accordance with this Customer Agreement.
- 23.4 At any time after termination of this Customer Agreement, we may, without notice, close out all of your open Transactions.
- 23.5 Upon termination of this Customer Agreement, any and all amounts payable by you to us will become immediately due and payable, including:
- (a) all outstanding fees and other charges;
  - (b) any losses incurred by us as a result of or in connection with such termination; and
  - (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.
- 23.6 Any and all provisions that by their terms or nature are intended to apply after termination of this Customer Agreement will survive such termination, and each Transaction that is open at the time of termination will continue to be governed by this Customer Agreement and any additional understandings or agreements between us in relation to such Transaction, in each case until any and all obligations in respect of such Transactions have been fully performed.

#### 24. **MANIFEST ERRORS**

- 24.1 When determining whether a situation amounts to a Manifest Error, we may take into account any information in our possession, including information concerning all relevant underlying market conditions and any error in, or lack of clarity of, any information source or announcement. We will, when making a determination as to whether a situation amounts to a Manifest Error, act fairly towards you but the fact that you may have entered into, or refrained from entering into, a Transaction in reliance on an Order placed with us (or that you have suffered or may suffer any loss) will not be taken into account by us in determining whether there has been a Manifest Error.
- 24.2 In respect of any Manifest Error, we may (but will not be obliged to):
- (a) amend the details of each affected Transaction to reflect what we in our sole and absolute discretion consider to be the correct or fair terms of such Transaction absent such Manifest Error; or
  - (b) declare any or all affected Transactions void, in which case all such Transactions will be deemed not to have been entered into.
- 24.3 We will not be liable to you for any loss (including any incidental, indirect or consequential loss) you or any other person may suffer or incur as a result of or in connection with any Manifest Error (including any Manifest Error by us) or our decision to maintain, amend or declare void any affected Transaction, except to the extent that such Manifest Error resulted from our own willful default or fraud, as determined by a competent court in a final, non-appealable judgment.

#### 25. **EXCLUSIONS, LIMITATIONS AND INDEMNITY**

- 25.1 **General.** Nothing in this Customer Agreement will exclude or restrict any duty or liability owed by us to you under Applicable Laws.
- 25.2 **General exclusion.** Notwithstanding anything in this Customer Agreement (other than clause 25.1) to the contrary, neither we nor any of our Associates Entities nor any of our or their directors, officers, employees or agents (collectively, "Protected Persons"), will be liable for any Loss (including any incidental, indirect or consequential Loss), whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by

you or any other person under or in connection with this Customer Agreement, any Transaction or any of our dealings with you (including any Order in respect of a Transaction not accepted by us), and irrespective of whether or not you or any other person have been informed of the possibility of such Loss, in each case except to the extent that such Loss arises directly from our own willful default or fraud, as determined by a competent court in a final, non-appealable judgment. Without limiting the generality of the foregoing, under no circumstances will any liability we may have to you extend to any loss of profits, loss of goodwill, loss of business opportunity or reputational damage. The foregoing will not, however, limit our liability for death or personal injury resulting from our negligence.

- 25.3 **If at any time you** are unable, for whatever reason, to communicate with us, we do not receive any communication sent by you, or you do not receive any communication sent by us under this Agreement, we will not:
- (a) be responsible for any loss, damage or cost caused to you by any act, error delay or omission resulting therefrom where such loss, damage or cost is a result of your inability to open a Transaction; and
  - (b) except where your inability to communicate with us results from our fraud, willful default or negligence, be responsible for any loss, damage or cost caused to you by any act, error, omission or delay resulting therefrom including without limitation, where such loss, damage or cost is a result of your inability to close a Transaction.
- 25.4 Access to the Trading Platform is provided “as is”. FOREX.com makes no warranties (express or implied), representations, or guarantees as to merchantability, fitness for any particular purpose or otherwise with respect to the Trading Platform, its content, any documentation or any hardware or software provided by FOREX.com. Technical difficulties could be encountered in connection with the Trading Platform. These difficulties could involve, among others, failures, delays, malfunction, software erosion or hardware damage, which difficulties could be the result of hardware, software or communication link inadequacies or other causes. Such difficulties could lead to possible economic and/or data loss. Subject to clause 25.1 of this Customer Agreement, in no event will FOREX.com or its Associates Entities or any of their employees be liable for any possible loss (including loss of profit or revenue whether direct or indirect), cost or damage including, without limitation, consequential, unforeseeable, special or indirect damages or expense which might occur as a result of or arising out of using, accessing, installing, maintaining, modifying, deactivating or attempting to access the Trading Platform or otherwise. FOREX.com further reserves the right, in its sole discretion to unwind an executed Transaction or adjust the price of executed Transactions (including Transactions that have been confirmed or settled) to a fair price if the Transaction was mispriced because of technical difficulties with the Trading Platform.
- 25.5 **Prohibition on arbitrage.** Internet, connectivity delays, and price feed errors sometimes create a situation where the price displayed on the Trading Platform do not accurately reflect prices/rates. The concept of arbitrage, or taking advantage of these internet delays, cannot exist in an over-the-counter Financial Product where the client is buying or selling directly from the market maker. FOREX.com does not permit the practice of arbitrage on the Trading Platform. You acknowledge and agree to this and we rely on your acceptance of this. Transactions that, in our opinion, rely on price latency arbitrage opportunities may be revoked by us without liability to you. FOREX.com reserves the right to make the necessary corrections or adjustments on the Account involved. Accounts that rely on arbitrage strategies may at FOREX.com sole discretion be subject to FOREX.com intervention and FOREX.com approval of any Orders. Any dispute arising from such quoting or execution errors will be resolved by FOREX.com in their sole and absolute discretion.
- 25.6 **Prohibition on scalping.** Scalping is prohibited. Scalping is where a client opens and subsequently closes a Transaction within a 2 minute timeframe. Any Transaction made which, in our absolute discretion, is determined to be in contravention of this prohibition may be revoked by us at our sole discretion without liability to you and any loss suffered as a result of such revocation is for your account.
- 25.7 FOREX.com shall have no obligation to contact you to advise upon appropriate action in light of changes in the underlying market conditions or otherwise.

- 25.8 You agree to indemnify and hold FOREX.com, its Associates Entities and any of their directors, officers, employees and agents harmless from and against any and all liabilities, losses, damages, costs and expenses, including legal fees incurred as a result of your breach of this Agreement or in connection with the provision of the services under this Customer Agreement to you provided that any such liabilities, losses, damages, costs and expenses have not arisen as a result of our negligence, fraud or willful default.
- 25.9 **Trading losses.** For the avoidance of doubt, and subject to clause 25.1 of this Customer Agreement, in no circumstances will we or any other Protected Person be liable or responsible to you for any losses you may incur or suffer as a result of entering into Transactions.
- 25.10 **Tax implications.** Without prejudice to any other disclaimer or limitation of liability contained in this Customer Agreement, neither we nor any other Protected Person will have any liability or responsibility for any adverse tax implications of any Transaction.
- 25.11 **Delays or changes in the underlying market.** Without prejudice to any other disclaimer or limitation of liability contained in this Customer Agreement, neither we nor any other Protected Person will have any liability or responsibility by reason of any delay in accepting any Order placed by you or executing any Transaction or any change in the underlying market conditions.
- 25.12 **Fundamental Announcement.** We may determine in our absolute discretion, for a period determined by us before and after a Fundamental Announcement to not quote prices/rates on the Trading Platform which means you will not be able to enter into Transactions in that period. We will determine in our absolute discretion what we deem to be a Fundamental Announcement.
- 25.13 **Force Majeure.** We may, in our reasonable opinion, determine that an emergency or an exceptional condition exists (a “Force Majeure Event”), in which case we will, in due course, take reasonable steps to inform you. A Force Majeure Event will include, but is not limited to, the following:
- (a) any act, event or occurrence (including without limitation any act of God, strike, riot or civil commotion, act or terrorism, war, industrial action, acts and laws of any governmental or supra national bodies or authorities) that, in our opinion, prevents us from maintaining orderly trading in one or more of the Financial Products offered by FOREX.com in respect of which we ordinarily deal in Transactions;
  - (b) the suspension or closure of any underlying market or the abandonment or failure of any event on which we base, or to which we or an Associate Entity in any way relate, our quote, or the imposition of limits or special or unusual terms on trading or on any such event;
  - (c) the occurrence of an excessive movement in the level of any Transaction or our anticipation (acting reasonably) of the occurrence of such a movement;
  - (d) any breakdown or failure of transmission, communication or computer facilities, interruption of power supply, or electronic or communications equipment failure;
  - (e) failure of any relevant supplier, or hedging counterparty of ours, for any reason, to perform its obligations.
- 25.14 If we determine that a Force Majeure exists, we may, at our absolute discretion, without notice and at any time, take one or more of the following steps:
- (a) increase your Initial Margin requirements;
  - (b) close all or any of your open Transactions at such price as we reasonably believe to be appropriate;

- (c) suspend or modify the application of all or any of the clauses of this Agreement to the extent that the Force Majeure Event makes it impossible or impracticable for us to comply with the clause or clauses in question; or
- (d) alter the last time for dealing for a particular Transaction.

25.15 **Indemnity.** Without prejudice to our rights under clauses 25.2 and 25.3, you will pay to us such sums as we may from time to time require in any of your Accounts with us and, on a full indemnity basis, any Losses, taxes, imposts and levies which we or any other Protected Person may incur or suffer in connection with or related to any of your Accounts or any Transaction or as a result of any misrepresentation by you or any violation by you of any of your obligations under this Customer Agreement (including in connection with any Transaction) or the enforcement of any of our rights or remedies under or in connection with this Customer Agreement or any Transaction.

25.16 **Claims from your customers.** To the extent that you place any Order or enter into any Transaction for the account of any customer of yours, you will indemnify, protect and hold us, any Associated Entity and all other Protected Persons harmless from and against any and all Losses resulting from or arising out of any claims made by any customer of yours against us or any other Protected Person.

## 26. MISCELLANEOUS

26.1 **Notices generally.** Unless otherwise agreed or provided in this Customer Agreement, all notices, instructions and other communications sent or given by us to you under or in connection with this Customer Agreement or any Transaction may be verbal or in writing and may be sent or given to your last known home address, place of work, telephone number (including by leaving messages on a telephone answering machine or voice mail system), fax number, e-mail address or other contact details. All notices, instructions and other communications sent or given by you to FOREX.com under or in connection with this Customer Agreement or any Transaction must be sent or given in writing to our address specified on the cover page of this Customer Agreement (or any other address subsequently notified to you for such purpose), addressed to the attention of our Compliance Department.

26.2 **Receipt of notices.** Any notice, instruction or other communication sent or given by us will be deemed to have been duly sent or given upon the earlier of (i) actual receipt by you or (ii) the time specified below, as applicable:

- (a) if delivered in person, when left at your last known home or work address;
- (b) if sent or given by leaving a message on a telephone answering machine message or voice mail system, one hour after the message was so left;
- (c) if sent or given by prepaid post or overnight courier, in the ordinary course of the post or such overnight courier and in any event on the next day (or the third day in the case of international air mail) after posting (excluding Saturdays, Sundays and public holidays); and
- (d) if sent or given by e-mail, one hour after sending, provided no “not sent” or “not received” message is received from the relevant e-mail provider.

Any notice, instruction or other communication sent or given by you will be deemed to have been duly sent or given upon actual receipt by us.

26.3 **Intellectual Property and Confidentiality.** All copyright, trademark, trade secret and other intellectual property rights in the Trading Platform shall remain at all times the sole and exclusive property of FOREX.com and/or its service providers and you shall have no right or interest in the Trading Platform except for the right to access and use the Trading Platform as specified herein. You acknowledge that the Trading Platform is confidential and has been developed through the expenditure of substantial skill, time, effort and money. You will protect the confidentiality of FOREX.com and/or its service providers by allowing access to the Trading Platform only by its employees and agents on a need to access basis. You will not publish, distribute, or otherwise make information



available to third parties any information derived from or relating to the Trading Platform. You will not copy, modify, de-compile, reverse engineer, and make derivative works of the Trading Platform or in the manner in which it operates.

- 26.4 **Joint Accounts and/or Trust Accounts.** If more than one natural person executes this Agreement, all such natural persons agree to be jointly and severally liable for the obligations assumed in this Agreement. If this Agreement is executed by a trust, unincorporated association, partnership, custodian or other fiduciary, such customer agrees, subject to clause 25.1 of this Customer Agreement, to indemnify, defend, save and hold free and harmless FOREX.com for any liabilities, claims, losses, damages costs and expenses, including attorneys' fees, resulting directly or indirectly from breach of any fiduciary or similar duty or obligation or any allegation thereof, including attorneys' fees.
- 26.5 **Electronic communications.** Subject to Applicable Laws, any communications between us using electronic signatures will be binding to the same extent as if they were in writing. By signing or completing online, the Customer Account Application you give your consent to the receipt of communications by electronic means, notwithstanding that certain communications may otherwise be required to be made using a durable medium under Applicable Laws. Without limiting the generality of the foregoing, Orders placed or other instructions given by electronic means will constitute evidence of such Orders or instructions. If you no longer wish to communicate in this way, you must revoke your consent in writing in accordance with clause 26.1. If you do not wish to communicate via electronic means at all, you must inform us of your wishes prior to you signing the Customer Account Application.
- 26.6 **Change of address.** You agree to immediately notify us in writing of any change of your address or other contact details, such notification to be given in accordance with clause 26.1.
- 26.7 **Third party rights.** A person who is not a party to this Customer Agreement has no rights to enforce any terms of this Customer Agreement.
- 26.8 **Assignment.** This Customer Agreement is for the benefit of and binding upon both of us and our respective successors and permitted assigns. You may not and will not assign, charge or otherwise transfer, or purport to assign, charge or otherwise transfer, this Customer Agreement, any rights or obligations hereunder or any interest herein (including any indirect, beneficial, synthetic or economic interest), in each case without FOREX.com's prior written consent (which may be withheld or delayed in the sole and absolute discretion of FOREX.com), and any attempted or purported assignment, charge or transfer in violation of this sentence will be void. No assignment, charge or transfer by you will relieve you of any of your obligations or liabilities hereunder. We may transfer this Customer Agreement or any rights or obligations hereunder, including your open Transactions and Accounts, to any of our Associated Entities or to any third party which acquires the business of FOREX.com, without your consent.
- 26.9 **Rights and remedies.** The rights and remedies provided or referenced in this Customer Agreement are cumulative and not exclusive of any other rights or remedies we may have, whether as a matter of contract, under common law, or otherwise. We will be under no obligation to exercise any right or remedy at all or in a manner or at a time or in a manner that takes into account your interests or is otherwise beneficial to you. No failure or delay by us in exercising any of our rights or remedies under or in connection with this Customer Agreement or any Transaction will operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy will prevent further exercise of that right or remedy or the exercise of another right or remedy.
- 26.10 **Partial invalidity.** If, at any time, any provision of this Customer 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 provisions of this Customer Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 26.11 **Entire Customer Agreement.** This Customer Agreement together with the schedules attached constitutes the entire agreement between the parties with respect to the subject matter of this Customer Agreement and supersedes all

prior or contemporaneous oral or written communications, proposals, agreements and representations with respect to such subject matter.

- 26.12 **Recording of calls.** We may record telephone conversations between us without use of a warning tone, including for the purpose of ensuring that the material terms of each Transaction and any other material information are promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of Orders placed or other instructions given.
- 26.13 **Our records.** Our records will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any proceeding because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with any of your recordkeeping obligations, notwithstanding the fact that records may be made available to you on request in our sole and absolute discretion.
- 26.14 **Co-operation for proceedings.** You agree to co-operate with us to the full extent possible in the defence or prosecution of any proceeding.

## 27. DATA PROTECTION AND DISCLOSURE OF INFORMATION

- 27.1 By opening an Account with us and by placing Orders and entering into Transactions, you acknowledge that you will be providing personal information (possibly including sensitive data) within the meaning of the privacy laws to us, and you consent to the processing of that information by us for the purposes of performing our obligations under this Customer Agreement and administering the relationship between you and us, including the disclosure of the information to Associates Entities.
- 27.2 We have security procedures covering the storage and disclosure of your personal information to prevent unauthorised access and to comply with our legal obligations.
- 27.3 You are entitled to ask us for details of the personal information that we hold about you, the purposes for which they are being or are to be processed, and the recipients or classes of recipients to whom such information is or may be disclosed. If you would like to obtain any such information, please contact us. We may charge a fee (details of which are available upon request) for providing this information to you. If you make a written request to us, we will also correct, delete and/or block personal information from further processing if that information proves to be inaccurate.
- 27.4 We shall be entitled to disclose information concerning you or your Account(s) (including without limitation information concerning late payment) to any regulator of your business or, to your employer or to any other person we accept as seeking a reference or credit reference in good faith provided that it is lawful for us to do so under any relevant laws.

## 28. DISPUTE RESOLUTION

- 28.1 **Governing law.** This Customer Agreement and all Transactions will be governed by and construed in accordance with the laws of New South Wales, Australia.
- 28.2 **Complaints.** If you have any complaint about FOREX.com performance under this Customer Agreement, you should direct that complaint to our Complaints Officer, who will investigate the nature of the complaint in accordance with FOREX.com's complaints handling procedure to try to resolve it. A copy of FOREX.com complaints handling procedure is available on request. You may be eligible to refer a complaint about FOREX.com's performance under this Customer Agreement to the Australian Financial Ombudsman Service ("FOS"). Information and rules relating to the FOS can be accessed on [www.fos.org.au](http://www.fos.org.au).
- 28.3 **Jurisdiction.** Without prejudice to any rights you may have to refer a complaint to the FOS, as further set out in clause 28.2 of this Customer Agreement, each of the parties irrevocably:



- (a) agrees that the courts of New South Wales will have jurisdiction to settle any proceedings and submits to the jurisdiction of such courts (provided that this will not prevent us from bringing any proceedings against you in the courts of any other jurisdiction); and
- (b) waive any objection which it may have at any time to proceeding brought in any such court and agrees not to claim that such proceeding has been brought in an inconvenient forum or that such court does not have jurisdiction over it.

## Schedule 1 – Definitions

1. In this agreement the following words and phrases have the following meanings:

Account	means any account of yours opened with us for the purposes of executing Transactions with us in Margin Foreign Exchange Contracts or CFDs or other Financial Products offered by us;
Account Base Currency	has the meaning set out in clause 15.4;
Act	means the <i>Corporations Act 2001 (Cth)</i> ;
Applicable Laws	means the Act and the Regulations and any other rules or policies of a relevant regulatory authority and any other applicable laws, rules and regulations as in force from time to time;
Associated Entity	means an associated entity as defined in the Act (including, but not limited to a Related Party);
ASIC	means Australian Securities and Investments Commission, as provided for in and regulated by the Australian Securities and Investments Commission Act 2001;
Business Day	Means:  (a) for the purpose of Margin Foreign Exchange Contracts, a day on which foreign exchange markets are open for business in New York, U.S.A.; and  (b) for the purpose of CFDs, a day when the markets in the underlying assets to which the CFD relates, are open for the conduct of business in London.
Closing Date	means the date on which the close-out of an open Transaction is effective;
Commodity CFD	means a CFD whose value fluctuates by reference to the fluctuations in value of the underlying asset being a commodity futures contract traded on the relevant futures exchange upon which that futures contract is traded or, if the value of the underlying commodity futures contract is not available from the relevant futures exchange, then FOREX.com's valuation of the underlying commodity futures contract at FOREX.com's discretion.;
Currency	will be construed so as to include any unit of currency;
Customer/Client	means the Customer referred to in the opening paragraph of this Customer Agreement. The expressions "customer" and "client" are used interchangeably in this agreement as described in clause 3.2.
Customer Account Application	means the application and other forms supplied by FOREX.com to open your Account;
Event of Default	means any of the events of default as listed in clause 22.1;
Exceptional Market Event	the suspension, closure, liquidation, imposition of limits, special, or unusual terms, excessive movement, volatility or loss of liquidity in any relevant Market, or where



FOREX.com reasonably anticipates any of the above circumstances are about to occur;

Expiry Date	means the expiry date and time of an open Transaction as determined by FOREX.com;
Expiry Transaction	means a Transaction which had a set contract period at the end of which the expiry transaction expires automatically;
Financial Product	means a financial product as defined in the FS Provisions, including, but not limited to a derivative or a foreign exchange contract;
Force Majeure Event	has the meaning set out in clause 25.10;
Fundamental Announcement	means an announcement which refers to economic events and indicators which examine the underlying forces that affect the interests of an economy, an industrial sector, a currency or a company. This quantitative and qualitative information indicates the overall economic status of a country, industry sector, currency or company. Examples of such fundamental announcements include but are not limited to the following (and there are other macroeconomic announcements which also constitute fundamental announcements): unemployment data; trade balance information; consumer price index (CPI); retail sales data; consumer confidence; manufacturing data; building data; housing data; industrial production; GDP; inflation data; Reserve Bank announcements (being announcements by the Reserve Bank of Australia, Bank of England, European Central Bank, U.S. Federal Reserve, and/or Bank of Japan).
FS Provisions	means those provisions of the Act and Regulations which regulate Financial Products and financial services, including in particular, but not limited to Chapter 7 of the Act, and the corresponding Regulations;
FSG-PDS	means a combined Financial Services Guide and Product Disclosure Statement which has been or will be provided to the Customer by or on behalf of FOREX.com on or before the time of acceptance of this Customer Agreement, or within a reasonable time thereafter;
Hedging Disruption	means circumstances where FOREX.com is unable, after using commercially reasonable (but no greater) efforts, to (i) acquire, establish, re-establish, substitute, maintain, unwind, or dispose of any transaction or asset it deems necessary to hedge any risk related to or in connection with the relevant Transaction or (ii) realise, recover or remit the proceeds of any such transaction or asset;
Initial Margin	has the meaning set out in clause 17.1;
Insolvency Law	means, with respect to any person, any bankruptcy, insolvency, liquidation, winding up or similar law (including any corporate or other law with potential application in the event of insolvency) applicable to such person;
Insolvency Officer	means any trustee, receiver, liquidator, administrator, or other similar official appointed pursuant to an Insolvency Law;
Manifest Error	means a manifest or obvious misquote by us or any market liquidity provider, official or other source of our prices or rates on which we have relied in connection with any Transaction, having regard to current underlying market conditions at the time an Order is placed.
Margin	means the total of Initial Margin and Variation Margin;

Margin Call	means a demand for such cash amounts or other assets to be lodged as Collateral to be used to meet Margin obligations as FOREX.com may require for the purpose of protecting itself against loss or risk of loss on present, future or contemplated Transactions under this Customer Agreement;
Margin Foreign Exchange Contract (or Margin FX Contract)	means a rolling spot foreign exchange contract between a client and FOREX.com in relation to an agreed currency pair.
Market Index CFD	means a CFD whose value fluctuates by reference to the fluctuations in value of the index futures contract on the relevant futures exchange upon which that futures contract is traded.
Opening Contract Value	means in respect of any Transaction, the Contract Quantity multiplied by the Opening Price;
Opening Price	means in respect of any Transaction, the price specified in an Order acceptance of which gives rise to that Transaction;
Order	means a request to open or close a Transaction at a price quoted by FOREX.com as appropriate;
Protected Person	has the meaning set out in clause 25.2;
Regulations	means the Corporations Regulations 2001 (Australia);
Related Party	means each of a related body corporate and a related entity, as defined in the Act;
Retail Client	has the meaning set out in section 761G and 761GA the Act;
Rules	means articles, rules, laws, procedures and customs, as in force from time to time;
Secured Obligation	has the meaning set out in clause 8.1;
Spread	means the difference between the lower (bid) and higher (ask) figures of a quoted two-way price for a Financial Product;
Trading Hours	means the period commencing at 5:00pm on Sunday New York time (Monday morning Sydney time) and ending at 5:00pm on Friday New York Time (Saturday morning Sydney time), but excluding specified holiday periods, as notified in advance by FOREX.com from time to time;
Trading Policies and Procedures	means the trading policies and procedures found on [ <a href="http://forex.com/au/forex_trading_handbook.html">http://forex.com/au/forex_trading_handbook.html</a> ];
Trading Platform	means the FOREX.com online trading and account review facility;
Transaction	means a transaction in a CFD or Margin Foreign Exchange Contract or any other contractual arrangement entered into between you and us including any transaction liable to Margin, unless otherwise stated;
Value Date	the day that a Currency or other product would be physically delivered (or payable) if FOREX.com did not automatically roll over client positions at the end of each Business Day;





Wholesale Client

has the meaning set out in section 761G and section 761GA of the Act;