

# Institutional Terms and Conditions

21 OCTOBER 2016

By opening a Trading Account with Us through the Intermediary, you agree to the terms contained below.

## 1. How do I open an account?

- 1.1 You will complete the attached Institutional Account Opening Form in order for Us to provide the Services to you. You warrant that the information you give Us in your Institutional Account Opening Form is complete and correct. Any change to that information (including your registered address and email address) must be notified to the Intermediary within 7 Business Days.
- 1.2 We receive your instructions to trade in Financial Products through your Trading Account from your Intermediary. The Intermediary acts as your agent in placing trades on your behalf with Us.

## 2. What acknowledgements do I make to you?

- 2.1 By opening a Trading Account with Us, you acknowledge that:
    - a. You are a Wholesale Client;
    - b. At our reasonable request, you will provide to Us the necessary documentation confirming your status as a Wholesale Client;
    - c. The Financial Product traded by you under these Terms will be held:
      - i. in your name only; or
      - ii. in your name with a designation to another Wholesale Client;
    - d. You will be the legal owner of the Financial Products you buy and sell through Us;
    - e. We do not provide you with settlement services. We are not your CHESS Sponsor. The Financial Products which you buy or sell under these Terms will be settled by a separate legal entity;
    - f. You are authorised to enter into these Terms with Us;
    - g. You are a company that has been validly incorporated under the Corporations Act or the equivalent law in the country in which the company was incorporated;
    - h. You are solvent and none of your directors are currently the subject of bankruptcy proceedings;
    - i. You are our client irrespective of whether or not you are acting on behalf of another. We have rights and obligations to you only under these Terms. We do not have any relationship with, owe obligations to, or are liable for any Loss to any other entity or person;
    - j. We will send you a Trade Confirmation once your trade has been executed on an Approved Market;
    - k. We will send Trade Confirmations to you by email;
  - l. upon receipt of a Trade Confirmation, you will check it to ensure We have accurately followed the instructions relating to your order; and you will contact the Intermediary immediately if you discover that We have failed to follow your instructions;
  - m. You have read and agreed to our Best Execution Policy, contained within these Terms and Conditions;
  - n. We do not provide you with financial product advice. You will rely on your own skill and judgement (and, that of your adviser, where applicable) when placing an order to buy or sell Financial Products with Us;
  - o. In accordance with Market Integrity Rules section 3.4.3, each Trade Confirmation is issued subject to:
    - A. the directions, decisions and requirements of the operator of an Approved Market and the Rules;
    - B. the customs and usages of the Approved Market; and
    - C. the corrections of errors and omissions; and
  - p. You will keep any confidential information that We or the Intermediary provides to you (including brokerage as set out in clause 4) confidential and will not disclose it to another person.
- 2.2 When you open a Trading Account with Us, and where necessary, We may check your details against Our or one of Our Related Body Corporate's sanctions lists.
  - 2.3 If you want to trade in Warrants, Options, or other Financial Products, you may need to agree to a separate set of terms and conditions for these Financial Products. Some of these products may be provided to you by Our Service Providers. You may need to agree to separate terms and conditions with Our Service Providers in order to trade in these Financial Products.
  - 2.4 It is Our practice to record all telephone conversations with you and your Intermediary. You consent to us recording our telephone conversations with you and your Intermediary. In any complaint that you may have about Our Services, We may rely upon these telephone recordings. We will provide you with a copy of any telephone recording We intend to rely upon within a reasonable time of your request.
  - 2.5 We maintain a trust account the purpose of which is for, among other things, receiving funds on your behalf from the settlement of trades and other credits. These funds remain in Our trust account before We transfer them to you (or a person acting on your behalf). We retain any interest that may be earned on funds in the trust account.
  - 2.6 We may receive remuneration from Our Related Bodies Corporate and other third parties. We may share some of this remuneration with others.

### 3. What do I need to know about giving you instructions to trade?

- 3.1 You must ensure that each trade you place through your Intermediary will not breach any Law, the Rules, or any customs and practices of an Approved Market or ASIC.
- 3.2 Any order you place through Us will remain open until it is cancelled by you or Us in accordance with these Terms. An order which is Good for Day will be purged by Us at the end of trading on a Trading Day.
- 3.3 You have certain legal obligations when you trade in Financial Products, in recognition of which, you will not provide the Intermediary with instructions:
  - a. Which would breach the market manipulation rules in the Rules and/or the Corporations Act;
  - b. That would breach the insider trading rules in the Rules and/or the Corporations Act;
  - c. That would result in the creation of a disorderly market or prejudice the integrity or efficiency of the market;
  - d. That would amount to misleading and deceptive conduct in relation to trading in Financial Products;
- 3.4 You will give the Intermediary each order instruction with the intention that it will be transmitted to the market for execution.
- 3.5 We may, at any time, and in Our absolute discretion:
  - a. close your Trading Account;
  - b. refuse your instructions to buy or sell Financial Products;
  - c. cancel your order/s to buy or sell Financial Products; and/or
  - d. restrict your ability to trade in Financial Products through your Trading Account.

Where We take such action, We will notify you as soon as practical. We are not liable for any Loss or inconvenience you may suffer as a result of Us taking any action under this clause.

- 3.6 We review every order you place through Us to ensure it meets Our trade requirements and does not breach the Law. You acknowledge that, as a result of such a review (and at Our absolute discretion), certain orders may be subject to manual entry, which may cause a delay in processing that order. There may be a delay in your receipt of a Trade Confirmation for any orders which are the subject of manual review. We will use reasonable endeavours to avoid such delay.
- 3.7 Your order will be executed at the price available on the Approved Market (subject to any limit which you have imposed) which may differ from the price at which the Financial Products were trading when you entered your order.
- 3.8 We use Automated Client Order Processing, therefore your order may match with:
  - a. an order of another of Our clients; or
  - b. one of Our orders when We trade as principal.

You consent to your order being matched with an order of another client or with one of our orders when we are trading as principal. Where your order is matched with an order of another of Our clients, We will charge brokerage on both orders. We will not charge you brokerage where your order is matched with an order We place as principal.

- 3.9 You acknowledge that some or all of the Approved Markets under the Rules, can reject, cancel or amend or require Us to reject, cancel or amend your orders. Where an Approved Market rejects, cancels or amends your order and We are able to partially fill your order, We will do so. We will charge you brokerage for these partially filled orders.
- 3.10 We may cancel an executed order:
  - a. where We consider such an order may negatively affect the integrity or orderly nature of the market; and/or
  - b. pursuant to the Market Integrity Rules, the operating rules of an Approved Market, or the practices and procedures of an Approved Market or ASIC,without your consent. You will not be entitled to any compensation from Us where We take such action, even if it is later determined that your order did not breach the rules referred to in this clause or did not negatively affect the integrity or orderly nature of the market provided that We acted in good faith.

### 4. What fees do I have to pay you for the Trading Account?

- 4.1 You agree to pay Us brokerage attributable to the filled or partially filled orders in Financial Products We execute on your behalf. You also agree to pay Us any fees charged by an Approved Market and/or another third party. Unless otherwise agreed, all such fees will be deducted from settlement funds.
- 4.2 Your Intermediary determines the rate at which We charge you brokerage. The Intermediary will inform you of brokerage, fees and commissions attributable to the services We and the Intermediary provide to you on or before you sign the Account Opening Form. We retain part of the brokerage and pay the balance to the Intermediary.
- 4.3 The brokerage you will be charged under clause 3.8 will be the standard brokerage referred to in clause 4.2.
- 4.4 The Intermediary will provide you with 5 Business Days notice if any fees you are required to pay under these Terms increase.

### 5. What are my settlement obligations?

- 5.1 Where you instruct Us to buy Financial Products, you agree to pay for those Financial Products (including Our fees and fees charged by an Approved Market or another third party) on or before Settlement Date. We are not obliged to transfer to you Financial Products where payment for them (including Our fees, and fees of an Approved Market and/or another third party) remains outstanding.

- 5.2 Where you instruct Us to sell Financial Products, you agree to make good delivery of those Financial Products to enable Us to settle your order by Settlement Date. Where you fail to honour your settlement obligations, We may buy, borrow or otherwise obtain the Financial Products necessary to enable Us to make delivery of the Financial Products the subject of that sell order. You will be responsible for any Loss We incur, including the cost of Us buying, borrowing or otherwise obtaining the Financial Products. We are your agent for such a transaction and are authorised to make advances and spend money as necessary to complete that transaction.
- 5.3 The payment of brokerage, fees, any taxes and any other expenses payable are part of your settlement obligations.
- 5.4 Where you fail to provide Us with funds you owe under these Terms, We can refuse your instructions to transfer Financial Products equal to 120% of the amount We claim you owe Us.
- 5.5 If, after 24 hours from Settlement Date, you have failed to provide Us with the funds necessary to settle a buy order of Financial Products, following a written demand from Us, We may sell any Financial Products We hold on your behalf (including Financial Products held in another Trading Account in your name) as necessary to cover the default. Such a sale will be at your risk and expense.
- 5.6 If We determine that these Terms contain a security interest under the PPSA, you agree to take all steps which We ask you to for the purposes of:
- ensuring that the security interest is enforceable, perfected and effective;
  - enabling Us to apply for registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Us; or
  - enabling Us to exercise rights in connection with the security interest.
- 5.7 You acknowledge that We do not need to give any notice under the PPSA unless the notice is required by the PPSA and cannot be excluded.
- 5.8 Without Our consent, you agree not to provide information of the kind referred to in section 275(1) of the PPSA (that is, generally, information regarding Our security interest) in response to a request made under that section by a person who may have a relevant interest in the Financial Products over which We have a security interest under the PPSA. This clause does not override any obligations of disclosure you may have under the Law.
- 5.9 You agree to pay Us any expenses incurred in Our satisfaction of any debt you owe Us under these Terms (including Our fees, reasonable legal costs, and fees charged by an Approved Market and/or another third party).

## 6. What are my obligations with respect to anti-money laundering and sanctions?

- 6.1 You agree that We may delay, block or refuse to process any transaction without incurring any liability if We suspect that:
- The transaction may breach any Laws or foreign laws or regulations;
  - The transaction involves a natural person that is himself/herself sanctioned or is connected, directly or indirectly, to a person (natural, corporate or governmental) that is sanctioned under economic and trade sanctions imposed by any country; or
  - The transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, unlawful conduct.
- 6.2 You agree to provide all information to Us which We reasonably require in order to manage money laundering, terrorism financing and/or economic and trade sanctions risk or to comply with Laws and foreign laws and regulations. You agree that We may disclose any information concerning you to any law enforcement, regulatory agency or court where required by any such law in any country.
- 6.3 You authorise the use and disclosure of information provided by you to Us for electronic verification of your identity through an external agency, to the extent required by the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*, as amended from time to time or by the Australian Transaction Reports and Analysis Centre, the authority regulating that Act.

## 7. Who is liable if I or you suffer loss?

- 7.1 Subject to the provisions of the *Competition and Consumer Act 2010* (Cth), *Corporations Act*, *Australian Securities and Investments Commission Act 2001* (Cth), *Fair Trading Act 1987* (NSW) and any other rights implied by law which cannot be excluded by agreement:
- We make no warranty for merchantability or fitness for purpose with respect to the Services (including warranties about accuracy, availability and completeness of the Services), including the services provided by Our Service Providers;
  - We exclude liability in contract, tort (including negligence) and any other claim relating to your use of the Services;
  - While We use reasonable endeavours to avoid disruptions, failures and errors to the Services, We exclude liability for any Losses arising directly or indirectly out of:
    - a disruption to or failure of the Services;
    - any delay in providing the Services to you; and
    - effecting an order received from the Intermediary on your behalf which is unclear or incomplete.
  - We also exclude liability for any Losses you suffer arising directly or indirectly out of:
    - your breach of any of these Terms;
    - a change in any law (including the Rules);
    - one or more of the Approved Markets suspending Our trading (however We will notify you of such an event as soon as possible);

- iv. any act or omission of the Intermediary, including its inability to provide Us with your instructions; and
- v. an Approved Market using its powers under the Rules to cancel or amend or require Us to cancel or amend your orders.

7.2 We will not be liable for indirect or consequential Losses which includes loss of an opportunity.

7.3 You understand that We engage Service Providers to assist Us in providing the Services to you. We will indicate on any service you receive that is provided by one of Our Service Providers that this is the case. You acknowledge that:

- a. We are not associated with these Service Providers;
- b. We act solely in the capacity of a distributor when We disseminate services from Our Service Providers; and We do not guarantee the timeliness, accuracy or completeness of those services. We also do not guarantee that the service you receive from Our Service Providers will be consistent with the way in which that service was described in the explanatory material; and
- c. We will not be liable to you for any Loss you suffer as a result of your reliance upon or use of the services or information of one of Our Service Providers.

7.4 Our liability to you for the Services will be limited to:

- a. where We provide goods, the replacement or repair of those goods; and
- b. where We provide services, the re-supply of those services.

7.5 You agree to indemnify Us, Our employees, contractors, agents and Related Bodies Corporate for any Losses incurred arising directly or indirectly out of:

- a. your use of the Services;
- b. your failure to comply with these Terms; and
- c. your failure to comply with any law (including the Rules),

however your liability will be reduced proportionately to the extent that a negligent, wilful or fraudulent act of Ours, Our employees, contractors, agents or Related Bodies Corporate contributed to the Loss.

## 8. In what circumstances will you close my account?

8.1 We may close your Trading Account without providing any reason for doing so by giving you 5 Business Days notice.

8.2 We may close your Trading Account immediately if you have breached these Terms.

8.3 Closure of your Trading Account will be without prejudice to any rights you or We have at the time the Trading Account is closed.

8.4 Where We close your Trading Account, We will not be liable to you for any Loss you may suffer directly or indirectly as a result of that closure.

## 9. Are there any other terms which apply to me?

9.1 We can vary these Terms by providing you with notice, effective 5 Business Days from the date the notice is sent.

9.2 Unless otherwise expressed in these Terms, words defined in the Corporations Act or the Rules have the same meaning in these Terms.

9.3 Apart from Us assigning or novating to a Related Body Corporate, We will not assign, novate or create an interest in Our rights and obligations under these Terms without first obtaining your consent. You agree not to assign, novate or create an interest in your rights and obligations under these Terms to another person.

9.4 Apart from a clause in these Terms which specifically contradicts this clause, no provision of these Terms can be waived or changed unless you receive a notice in writing from Us indicating that it is made by one of Our officers who has authority to waive part of these Terms.

9.5 If any part of these Terms is illegal, invalid or unenforceable as a result of a Law, that part will be severed from these Terms and the other parts of these Terms will remain in force.

9.6 You agree to the non-exclusive jurisdiction of the courts of New South Wales.

## 10. Execution of your orders on an Approved Market (Best Execution Policy)

In accordance with Part 3.1 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, we are required to take reasonable steps to obtain the best outcome for you when handling and executing your orders on an Approved Market. The best outcome is:

- a. for a buy order, the lowest purchase price plus transaction costs; and
- b. for a sell order, the highest sale price less transaction costs.

To meet our obligations to you, all valid orders to be executed on an Approved Market are sent to a market router which considers available trading platforms and determines which trading platform provides the best outcome for you.

Trading platforms considered with respect to achieving the best outcome are:

- i. ASX TradeMatch;
- ii. ASX CentrePoint; and
- iii. Chi-X Australia.

Orders entered during the opening and closing auction phases of ASX TradeMatch are sent directly to ASX TradeMatch so long as this venue provides the client with the best outcome.

We place orders on an Approved Market in time priority. This means the first valid order that is received at a given price for a particular Financial Product will be the first order that is submitted to the market router. Amendments to an existing order may adjust the order priority.

You can provide us with an order in writing to handle and execute a particular order in a manner which is inconsistent with you obtaining the best outcome. We will take reasonable steps to handle and execute in accordance with such an order, which may result in you not obtaining the best outcome. If you are a Wholesale Client, you may provide us with standing orders to handle orders in a manner which is inconsistent with the best outcome.

You consent to your order being matched with an order of another client or with one of our orders when we are trading as principal. If your order is matched with an order of another client, we charge brokerage on both orders. We do not charge brokerage if your order is matched with an order we place as principal.

We may fill your order by entering into multiple Market Transactions and accumulating those transactions on a single Contract Note. In these circumstances the Contract Note will show the volume weighted average price of the Market Transactions. If you ask we will provide you with a statement setting out the individual prices of each Market Transaction.

## 11. What do your Defined Terms mean?

**Approved Market** means:

- a. the ASX Market;
- b. the Chi-X Australia Market; and
- c. any other market that we determine is an Approved Market.

**Best Execution Policy** means Our policy for placing your trades into Approved Markets, a copy of which is contained within these Terms and Conditions.

**Financial Products** means:

- a. financial products (as defined by Part 7.1, Division 3 of the Corporations Act) traded on an Approved Market;
- b. interests in an unlisted managed investment scheme;
- c. certain derivatives which are not traded on an Approved Market; and
- d. any other financial product (as defined in the Corporations Act) which We notify to you or your Intermediary.

**Intermediary** means the Australian Financial Services Licensee referred to on the Account Opening Form and includes its representatives.

**Law** means all applicable law in force in Australia, including common law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances, and the Rules, including any amendment, modification or re-enactment of any of them.

**Loss** means any expense, cost, liability, claim, damages, fees, taxes, duties, penalties, interest, reasonable legal costs and judgment.

**Market Integrity Rules** means the ASIC Market Integrity Rules (ASX Market) 2010, ASIC Market Integrity Rules (Chi-X Australia Market) 2011, ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 as amended from time to time, and any other market integrity rules of an Approved Market.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Rules** means the Market Integrity Rules, the ASX Settlement Operating Rules, the ASX Clear Operating Rules, the ASX Listing Rules, and operating rules of an Approved Market, as amended from time to time.

**Service Provider** means third party service providers (including an Approved Market) whose services We rely upon so that We can provide the Services to you.

**Services** means the execution and clearing services We provide to you as referred to in these Terms.

**Settlement Date** means the date by which an order is scheduled to settle, that is the date by which the seller is required to deliver Financial Products, and the date by which the buyer is required to pay for Financial Products.

**Terms** means this agreement between you and Us.

**Trade Confirmation** or contract note means the note We send to you confirming that your order has been executed to an Approved Market.

**Trading Account** means your trading account with Us through which you can place buy and sell orders.

**We, Our** or **Us** means Share Investing Limited, ABN 93 078 174 973, Australian Financial Services Licence No. 238277.