

**TradeDirect365**

**Client Agreement**

**1<sup>st</sup> July 2019**

**Important Notice**

This Client Agreement has been prepared by Finsa Pty Limited (ACN: 158 065 635) trading under the registered business name of TradeDirect365 (TD365, we, our, us).

TD365 offers Contracts for Difference (CFDs) and Spread Trades (otherwise known as Single Currency Trading), collectively referred to as CFD Products, on the basis of and subject to the information and representations contained in this Client Agreement, the Product Disclosure Statement (PDS), the Financial Services Guide (FSG) and the Market Information Sheets. No other information or representation is authorised nor is any person authorised by TD365 to make any representation other than what is contained in these documents.

You should ensure that you have received, read and understood the contents of this Client Agreement, the PDS, the FSG and the Market Information Sheets before submitting an Application Form.

**Warning**

CFD Products are speculative products which are not suitable for all investors. CFD Products are leveraged investments and by investing in them you are exposed to much greater risk of financial loss than other types of conventional investments such as share trading. You may incur a loss equal to the amount you invest. See the PDS for more information on risks.

You should obtain your own financial, legal, taxation and other professional advice as to whether CFD Products are an appropriate investment for you.

**Instructions**

By submitting an Application Form, you are confirming that you accept and agree to be legally bound by the terms of this Client Agreement.

1.	<b>Introduction</b>	5
2.	<b>Definitions and Interpretation</b>	5
3.	<b>Sole Discretion</b>	6
4.	<b>Trading with TD365</b>	6
5.	<b>Opening an Account</b>	7
6.	<b>Quotes</b>	8
7.	<b>Placing an Order</b>	9
8.	<b>Types of Orders</b>	11
9.	<b>Duration of Orders</b>	12
10.	<b>Execution of Orders</b>	13
11.	<b>Guaranteed Stop Orders (GS Orders)</b>	14
12.	<b>Amending and Cancelling Orders</b>	15
13.	<b>Manifest Error</b>	16
14.	<b>Sniping and Market Abuse</b>	16
15.	<b>Closing or Suspending your Account</b>	18
16.	<b>Corporate Actions and Adjustments</b>	18
17.	<b>Suspensions, De-listings and Change in Law</b>	20
18.	<b>Closing Open Positions</b>	20
19.	<b>Expiry and Roll-Over of Open Positions</b>	21
20.	<b>Margin Requirements</b>	22
21.	<b>Margin Calls</b>	22
22.	<b>Account Settlement and Set Off</b>	23
23.	<b>Client Money</b>	26
24.	<b>Fees and Charges</b>	27
25.	<b>Overnight Financing</b>	28
26.	<b>Telephone Recording</b>	29
28.	<b>Tax</b>	29
29.	<b>Events of Default</b>	29
29.	<b>Client Risk Acknowledgment</b>	31
30.	<b>Warranties &amp; Undertakings</b>	31
31.	<b>Limitation of Liability and Indemnities</b>	33
32.	<b>Force majeure</b>	35
33.	<b>Conflicts of Interest</b>	36
34.	<b>Counterparties and Introducing</b>	36
35.	<b>Cooling off</b>	37
36.	<b>Complaints and Disputes</b>	37

37.	Privacy _____	37
38.	Amendments _____	39
39.	Termination _____	39
40.	Notices _____	40
41.	No Waiver _____	40
42.	Assignment _____	41
43.	Miscellaneous _____	41
44.	Governing Law _____	42
45.	Entire Agreement _____	42
46.	Glossary _____	42

## 1. Introduction

- 1.1. This Agreement is between Finsa Pty Limited (ACN: 158065635, AFSL 422661) of Level 36, Governor Phillip Tower, One Farrar Place, Sydney, NSW 2000, trading under the registered business name of TradeDirect365 ("TD365", "we", "us", "our") and you ("you", "yourself", "your", or the "Client").
- 1.2. Finsa Europe Ltd, a company registered in the UK with company number 07073413 and whose registered office is 9<sup>th</sup> Floor, 30 Crown Place, London, EC2A 4ES, acts as a service provider to Finsa Pty Limited.
- 1.3. This Agreement, the PDS, the FSG, the Application Form and the Market Information Sheets contain the terms and conditions upon which TD365 will provide its financial services and CFD Products to you.
- 1.4. This Agreement will come into immediate effect when your Account is opened.

## 2. Definitions and Interpretation

- 2.1. Capitalised terms used in this Agreement are defined in the Glossary set out in section 46.
- 2.2. In this Agreement, unless the context otherwise requires:
  - a. if there is any conflict between the Agreement and the Governing Legislation, the Governing Legislation will prevail;
  - b. a reference to a person includes any other entity recognised by law and vice versa;
  - c. words importing the singular number include the plural number and vice versa;
  - d. words importing one gender include every gender;
  - e. any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
  - f. every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligation or derives any benefit binds or endures for the benefit of those persons jointly and each of them severally; and
  - g. clause headings are for reference purposes only.
- 2.3. We may take any action as we consider reasonably necessary to ensure compliance with the Governing Legislation and whatever we do or fail to do in order to comply with them will be binding on you.

### 3. Sole Discretion

- 3.1. Unless otherwise agreed between the parties or stated in this Agreement, any valuations, calculations or determinations made under this Agreement are to be made by TD365 in its sole and absolute discretion, acting reasonably.

### 4. Trading with TD365

- 4.1. Under its AFSL, TD365 is authorised to provide the following services to retail and wholesale clients:

- a. to deal in, make a market in and provide general financial product advice on derivatives; and
- b. to deal in, make a market in and provide general financial product advice on foreign exchange contracts.

- 4.2. TD365 may enter into the following types of CFD Transactions with you:

- a. spot or forward CFD Products on securities, baskets of securities, stock or other indices, currencies (foreign exchange), options, treasury products and commodities; and
- b. such other investment products as TD365 may offer from time to time.

- 4.3. The CFD Transactions provided by us are over the counter (OTC) which means they are traded directly with us and are not traded on an Exchange.

- 4.4. TD365 will accept all Orders and enter into all CFD Transactions as principal and not as your agent.

- 4.5. You enter into all CFD Transactions as principal unless otherwise agreed between you and us.

- 4.6. TD365 will deal with you on an execution-only basis at all times. We will not provide you with any advice on the merits or suitability of you entering into this Agreement or buying, selling or otherwise dealing in CFD Transactions and we will not provide you with any investment advice although we may at our sole and absolute discretion provide you with generic or factual information on the nature, the terminology and the procedures involved in CFD Transactions. Should you consider that you are provided with investment advice you acknowledge that it is given without the authority of us and should not be relied upon.

- 4.7. Where we do provide general trading recommendations, market commentary, guidance on shareholding disclosure or other information:

- a. this is incidental to your dealing relationship with us;

- b. we do so solely to enable you to make your own investment decisions and do not make personal recommendations or provide advice;
  - c. we give no representation, warranty or guarantee as to the accuracy or completeness of such information; and
  - d. where the information is in the form of a document containing a restriction on the person or category of persons for who that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction.
- 4.8. TD365 will not provide any advice to you on any tax, legal or accountancy issues related to CFD Transactions or otherwise in accordance with this Agreement. You are advised to obtain independent advice (including, without limitation, tax, legal or accountancy advice) where you consider it appropriate to do so.

## 5. Opening an Account

- 5.1. An Account must be opened prior to entering into any CFD Transactions. No Orders can be placed until an Account has been opened and clear funds received.
- 5.2. In order to open an Account, you must complete the Application Form. You must complete all mandatory sections and any information provided by you in the Application Form must be true and correct. Any incorrect or unclear information may result in either outright rejection or, at the very least, a delay in the opening of your Account. You may also undertake a client suitability assessment or such other assessments as prescribed by us from time to time, and we reserve the right to reject your application, or impose such other conditions for the opening of an Account in our sole and absolute discretion.
- 5.3. By submitting the Application Form, you are authorising TD365 to make such searches and enquiries about you as it sees fit to verify the information that you have supplied, to manage credit risk and to prevent fraud (or other criminal activity).
- 5.4. TD365 may make periodic checks of your details to verify that the details supplied by you have not changed. However, you must immediately notify TD365 in writing as to any material change in your financial circumstances or any change to the information you have previously supplied to us (including, without limitation, change of employment, address, contact details and email). In our absolute discretion, we may accept such notification over the telephone or by email. You are responsible and liable for any losses that may be incurred by misdirection of communications to you due to incorrect or out of date contact details supplied by you or your failure to notify us of any changes to your contact details.
- 5.5. TD365 may accept or reject an Application Form in its sole and absolute discretion.
- 5.6. TD365 will not be liable in any way to you for any loss you suffer from dealing with us, if it is discovered that:

- a. the information you have supplied to us in the Application Form or otherwise is in any way incorrect or incomplete; or
  - b. your experience, knowledge and understanding was in fact contrary to the information supplied in the Application Form and that you do not in fact have the necessary experience, knowledge or understanding to enter into CFD Transactions.
- 5.7. When we open an Account, we will provide you with a user name, account number and password for that Account.
- 5.8. Your Account will be denominated in Australian Dollars or in the currency requested by you when applying for this account provided that this is acceptable to TD365 ("Base Currency"). If any Realised Profit, Realised Loss, Commission, Overnight Financing or other charges are to be credited or debited to your Account in a currency other than your Base Currency, we will automatically convert such amounts in accordance with clause 22.1.
- 5.9. You authorise TD365 to telephone or otherwise contact you at any time whatsoever in order to discuss any aspect of your Account.
- 5.10. As part of our client due diligence on opening your Account we shall undertake a Know Your Customer evaluation ("KYC"). You consent to us processing your personal data as submitted on your Application Form either electronically or on paper to third party agencies.
- 5.11. From time to time we may conduct checks as to your continuing appropriateness and soundness with regards to your trading activities and CFD Transactions. If we believe that your activities are disproportionate, misleading or false relative to the information that you have provided us in your original assessment questions, you agree that we may be entitled to ask further questions or take other action on your Account.
- 5.12. After opening your Account, and from time to time during the lifetime of your Account, we may ask for a further proof of address, identity, or proof of country of residence from you.

## 6. Quotes

- 6.1. TD365 will use reasonable endeavours to provide a Quote for each of the CFD Products that it offers during Trading Hours. All Orders will be executed on the basis of the Quote and no other price will be relevant to the execution of the Order.
- 6.2. TD365 may determine the Transaction Sizes from time to time in its sole and absolute discretion.
- 6.3. All Quotes are set at our sole and absolute discretion and are typically based on a price for an Underlying Instrument to which that CFD Product relates and are typically



sourced from an Exchange or Liquidity Provider. The Quote may be higher or lower than the price for the Underlying Instrument to which the CFD Product relates due to a number of factors, including, without limitation, interest rate costs, dividends, scrip issues, stock splits, competitor quotes or size of the Transaction.

- 6.4. TD365 may provide a Quote for a CFD Product in circumstances where (a) the Underlying Instrument to which it relates is not actually trading on an Exchange or with a Liquidity Provider; or (b) it is outside the normal trading hours for such Underlying Instrument. In these circumstances, the Quote will be based on a price that we, in our sole and absolute discretion, believe is fair and reasonable.
- 6.5. A Quote may change at any time before your Order has been executed.
- 6.6. A Quote made to you over the telephone is only valid at the point in time you are given a firm Quote and may not be available on any subsequent telephone call or even later in that same telephone conversation. Quotes made to you over the telephone that have been given as 'indication only' are not valid and cannot be executed unless otherwise agreed by us. Quotes that have been qualified or Quotes that you have been told are no longer valid before you place your Order are not tradable.
- 6.7. All Quotes on the Trading Platform are indicative only and on receipt of an Order we may, in our reasonable discretion, reject or accept your Order.
- 6.8. In our sole and absolute discretion, a Quote given over the telephone with a Dealer may differ from the Quote available on the Trading Platform.
- 6.9. Due to the nature of online trading systems and the potential unreliability of Exchange and Liquidity Provider price feeds we may in our sole and absolute discretion amend, remove or delete Orders and any associated CFD Transactions which have been made on the Trading Platform or otherwise which, in the reasonable opinion of TD365, do not reflect the actual Underlying Instrument, Exchange or market prices to which the CFD Transaction relates at the time the Order was executed.
- 6.10. You acknowledge and accept a Quote can widen due to various factors affecting the liquidity of the Underlying Instrument including, but not exclusive to: economic data, governmental decisions, or market holidays. We reserve the right to re-Quote you if we deem that your CFD Transaction(s) are being attempted or have been successful contrary to liquidity or prescribed tolerances available in the Underlying Instrument and you agree to indemnify us against any Losses incurred should you not wish to accept our re-Quote.

## 7. Placing an Order

- 7.1. TD365 is not obliged to accept any Order from you and it will notify you of any refusal as soon as reasonably practicable.

- 7.2. TD365 may accept an Order from you at any time but will only execute an Order during Trading Hours unless otherwise agreed by us.
- 7.3. Orders must be made on the telephone by talking directly to a Dealer or via our Trading Platform. We have no obligation to accept Orders via any other medium including, without limitation, via email, letter, or verbal conversations over non-recorded telephone lines.
- 7.4. When placing an Order over the telephone, you must give your name and Account number or username and the instruction must either be to buy a CFD Transaction at the Ask Price (also referred to as 'going long') or to sell a CFD Transaction at the Bid Price (also referred to as 'going short'). Without this information, no Order will be accepted even if it is to close an Open Position.
- 7.5. TD365 will treat all Orders as a buy or a sell instruction without reference to whether such Orders are intended to open or close or part close a CFD Transaction. Any Orders made by the Client with reference to opening or closing or part closing a CFD Transaction are not binding on TD365. It is the Client's responsibility to ensure that an Order actually closes or opens a CFD Transaction.
- 7.6. If you place an Order to open a long CFD Transaction in relation to a specific Underlying Instrument on an Account where at that time you already have a short CFD Transaction in relation to the same Underlying Instrument on that Account, or place an Order to open a short CFD Transaction in relation to an Underlying Instrument where you already have a long CFD Transaction in relation to the same Underlying Instrument, we will treat your Order to open the new position as an Order to close the existing position to the extent of the size of the Order and, if the Order is greater in size than the existing position, then the existing position will be closed in full and a new CFD Transaction opened in relation to the excess size of the Order unless you select the "Hedging" button on the deal ticket. If you select this option, we will treat your Order as an Order to open a separate new Open Position.
- 7.7. When dealing over the telephone, the Order will only be accepted by us when the Dealer confirms that the Order has been accepted. The verbal acceptance of an Order by a Dealer shall not affect either our rights or your rights in the event of a Pricing Error or a Manifest Error.
- 7.8. Before access is permitted to the Trading Platform, you will be obliged to enter your username and password.
- 7.9. When you place an Order on the Trading Platform, you will receive confirmation of that Order on screen. The validity of an Order will not be affected by a failure or delay in the notification of the Order placement. Please check the onscreen confirmation immediately on receipt to see that it accurately reflects your instructions. Unless we receive notice from you, immediately disputing the confirmation (or the contract terms it reflects) we shall assume that the terms of the CFD Transaction contained in the confirmation are accurate and binding on you. Non-receipt of a Confirmation shall

not affect the validity of a CFD Transaction, and you should contact us as soon as possible if you have not received a confirmation.

- 7.10. Your username, password and Account number are extremely sensitive pieces of information. Any Order placed or CFD Transaction entered into on your Account either over the telephone or on the Trading Platform using either your username, Account number or your password will be deemed as valid Orders and CFD Transactions. You must not disclose your username, Account number or password to any person (except in accordance with clause 7.11). You must immediately inform us if you are aware or suspect that a third party has had access to your username, Account number or password or that any person other than you or your Authorised Person is dealing on your Account.
- 7.11. Any persons authorised to give Orders or instructions on your behalf as your Authorised Person are those notified by you to us and may be varied by written notice to TD365. We will not be bound by any such variation until written notice is received from you and confirmed by us. We may act upon the oral or written instructions of any person whom you have notified to TD365 as being your Authorised Person and where TD365 has not received from you a notice of revocation of that person's appointment as your Authorised Person regardless of whether or not that person is in fact authorised to provide those instructions.
- 7.12. We reserve the right to aggregate Orders. Aggregating an Order means that we combine your Order with the Orders of other Clients for execution as a single Order. We may do this only if we reasonably believe that this is in the overall best interests of Clients. However, on occasions, aggregation may result in you obtaining a less favourable price in relation to any particular Order. You acknowledge and agree that we shall not, under any such circumstances, have any liability to you as a result of any such working or aggregation of your Orders.

## 8. Types of Orders

8.1. You may place the following types of Orders:

- a. **Trade:** this is an instruction by you to either buy or sell a CFD Transaction at the current Quote;
- b. **Order to Open:** this is an instruction by you to buy or sell a CFD Transaction at a price outside the current Quote;
- c. **Limit Order:** this is an instruction by you to:
  - i. buy a CFD Transaction to close a short Open Position at a price which is lower than the current Quote; or
  - ii. sell a CFD Transaction to close a long Open Position at a price which is higher than the current Quote.

You may set a Limit Order at the following times: (1) when you place a Trade; or (2) when you place an Order to Open which then acts as a contingent take profit instruction to close the Open Position once the Order to Open has been executed;

- d. **Stop Loss Order:** this is either an instruction by you to:
- i. buy a CFD Transaction to close a short Open Position at a price which is higher than the current Quote; or
  - ii. sell a CFD Transaction to close a long Open Position at a price which is lower than the current Quote.

You may set a Stop Loss Order at the following times: (1) when you execute a Trade which then acts as a stop loss instruction to close the Open Position at a certain level; or (2) when you place an Order to Open which then acts as a contingent stop loss instruction once the Order to Open has been executed. A Stop Loss Order is not guaranteed and is subject to Gapping as set out in clause 10.3;

- e. **Guaranteed Stop Order (GS Order):** is an instruction by you to buy or sell a CFD Transaction to close an Open Position at a specified price and such an instruction is guaranteed to be executed by TD365 at the price specified by you. GS Orders are dealt with in more detail in clause 11;
- f. **Trailing Stop Order:** is an instruction by you that operates in a similar way to a Stop Loss Order with the extra functionality of automatically tracking favourable movements in the Quote of the relevant CFD Transaction. Trailing Stop Orders move in increments as specified by you but in minimums of 1. A Trailing Stop Order is not guaranteed and is subject to Gapping as set out in clause 10.3; and
- g. any other type of Order described on the TradeDirect365 website or in the Market Information Sheets from time to time.

8.2. Some Order types may not be available for certain CFD Products. This information will be listed on the TradeDirect365 website or in the Market Information Sheets, and it remains your sole responsibility to familiarise yourself with the Order types.

## 9. Duration of Orders

9.1. You may choose one of the following duration periods for an Order to Open:

- a. **"Good until cancelled":** means that the Order to Open will remain in effect until cancelled by you in accordance with this Agreement or is executed by us in whole and an Open Position is created, or we no longer offer that CFD Product; and

- b. **"Good until Date"**: means that the Order to Open will remain in effect until the time and date requested by you or until it is executed by us in whole and an Open Position is created or until we no longer offer that CFD Product.
- 9.2. All Limit Orders are deemed to be Good until cancelled and will remain in effect until cancelled by you in accordance with this Agreement or until the Limit Order is executed by us or the Open Position to which the Limit Order relates is closed by you or otherwise closed in accordance with this Agreement.
- 9.3. A Stop Loss Order will remain in effect unless and until you give instructions to close the Open Position to which the Stop Loss Order relates or if the Open Position is otherwise closed in accordance with this Agreement or the relevant Open Position is Rolled-over. GS Orders are dealt with in clause 11.
- 9.4. The duration of the Orders may vary or may not be available for certain CFD Products. This information will be set out in the Market Information Sheets or on the TradeDirect365 website.

## 10. Execution of Orders

- 10.1. An Order will be executed when the Quote reaches the price specified in your Order or trades through the price specified in the Order.
- 10.2. It is solely your responsibility to ensure that you know at all times as to whether any Order has been executed or is still active and if you are in any doubt whatsoever as to the status of an Order it is your sole responsibility to contact us immediately, in the first instance by telephone, in order to obtain clarification.
- 10.3. Unless otherwise stipulated, the execution of an Order is not guaranteed and is subject to Gapping. In such instances, the Order will be executed at a price based on what TD365 is or would reasonably be able to obtain in the relevant Underlying Instrument at the relevant time, or in the case of an excessive Order size relative to the liquidity of that Underlying Instrument, at a price that reflects the average price at which TD365 is or would be able to execute an order in the Underlying Instrument at the relevant time.
- 10.4. If an Order to Open is subject to Gapping on its execution and the price at which such Order has been executed results in any associated Limit Order or Stop Loss Order being triggered, then the Open Position will immediately be closed at the prevailing Quote.
- 10.5. Where a series of Orders are made to open or close CFD Transactions, TD365 may execute such Orders in any sequence that it reasonably determines. If this results in subsequent Orders having insufficient Trading Resources for execution, then these Orders will be cancelled. TD365 will not look at sequences that may result in one Order being executed and another failing. TD365 will fill Orders as and when they are seen by its Dealers and at its sole and absolute discretion.

- 10.6. If we were entitled to execute a Stop Loss Order at any time prior to you closing or part closing an Open Position, TD365 may, in its reasonable discretion, adjust the price at which the Open Position was closed to reflect the Stop Loss Order price.
- 10.7. Many markets can often be very fast moving. You accept and acknowledge that a price quoted on the data feed you receive for a given Instrument is informational and that where you enter into an Order at what appears to be the market price per the data feed, the market may have moved by the time your CFD Transaction is executed. You agree that your CFD Transaction is valid and legally binding where the price you attempt to trade has varied because of the underlying market movement by the time of acceptance of the CFD Transaction.

## 11. Guaranteed Stop Orders (GS Orders)

- 11.1. We offer GS Orders on certain CFD Products from time to time as set out in the Market Information Sheets. We reserve the right to amend maximum order sizes and the minimum difference in price from the current Quote that a price may be specified in our sole and absolute discretion.
- 11.2. We guarantee that GS Orders will be executed at the price you specified and at no other price, irrespective of the Quote going through the level set in the GS Order.
- 11.3. You may place a GS Order in the following circumstances:
- a. when placing an Order during Trading Hours; and
  - b. in respect of any Open Position when such GS Order is made during Trading Hours.
- 11.4. We reserve the right to reject any GS Order in our sole and absolute discretion.
- 11.5. You will pay us a premium to place a GS Order but only when it is executed. We will charge you the premium as set out in the Market Information Sheets or as otherwise notified to you.
- 11.6. You may amend your GS Orders during Trading Hours and any other time that we may agree with you provided that the GS Order has not been executed..
- 11.7. You may cancel your GS Order during Trading Hours and any other time that we may agree with you.
- 11.8. When an Open Position has been closed by you or otherwise in accordance with this Agreement, any GS Order attached to that Open Position will automatically be cancelled.
- 11.9. If you have a GS Order on an Open Position that has closed automatically on the Futures Settlement Date or has been Rolled-over, your GS Order will be cancelled. In

the case of a Roll-over you will need to create a new GS Order for the new Open Position and you may be required to pay a premium for that new GS Order.

11.10. TD365 reserves the right to amend the size and level of any GS Order at its absolute discretion where:

- a. an Open Position is subject to a corporate action or Adjustment Event in accordance with clause 16;
- b. an Open Position is subject to a dividend adjustment in accordance with clause 16; or
- c. the GS Order may have an adverse impact on TD365 as determined by us from time to time.

## 12. Amending and Cancelling Orders

- 12.1. TD365 may allow an Order to be amended by you at any time before it has been executed by TD365. Any confirmation of an Order amendment by us to you shall not be binding on us if the Order had been liable for execution before the amendment was made. We shall not be liable for any losses in respect of CFD Transactions entered into in such circumstances.
- 12.2. A GS Order may be amended and cancelled in accordance with clauses 11.6 and 11.7.
- 12.3. Subject to clause 12.2, you may cancel any Order at any time unless and until the Order has been executed in whole or in part or the Order has been actioned for execution in accordance with clause 10.1. If an Order has been executed in whole or in part, it will not be possible for you to cancel the Order to the extent that it has been executed.
- 12.4. It is your responsibility to cancel any Order that you no longer require. Any uncancelled Order placed by you may be filled by TD365 and may therefore cause losses for which you will be liable.
- 12.5. In the case of Stop Loss Orders, if the related Open Position is closed by you the Stop Loss Order will be deemed to be automatically cancelled. If the Stop Loss Order associated with any Open Position was actionable before you attempted to close or closed the Open Position, TD365 may at its reasonable discretion adjust the Closing Price of that Open Position to reflect the Stop Loss Order price.
- 12.6. TD365 will not be responsible for losses or potential losses sustained by you arising directly or indirectly as a result of a rejected or cancelled Order and shall not be responsible or liable for losses made with other companies on any investments undertaken directly or indirectly in reference to an Order which is subsequently rejected or cancelled by TD365.



## 13. Manifest Error

- 13.1. A “Manifest Error” means a clear, obvious or manifest error including a misquote by us or with a third party as determined by us in good faith.
- 13.2. In respect of a Manifest Error, neither party will be bound by any affected Quote, Order or CFD Transaction and either party may declare such Quote, Order or CFD Transaction (as applicable) void within a reasonable timeframe of us determining that there is a Manifest Error.
- 13.3. 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 Order or CFD Transaction, except to the extent that such Manifest Error resulted from our own wilful default or fraud.

## 14. Sniping and Market Abuse

- 14.1. “Sniping” means any trading or purported trading by you to exploit errors in prices or misquotes and includes, without limitation, where you are:
  - a. taking advantage or attempting to take advantage of Pricing Errors or misquotes; or
  - b. engaged in any other forms of abusive trading;
- 14.2. If we, in our sole and absolute discretion, reasonably determine that Sniping has occurred or is occurring on your Account we are entitled to take one or more of the following countermeasures including, without limitation:
  - a. adjust the Quote, Transaction Sizes and Spreads available to you;
  - b. adjust or close any or all Open Positions;
  - c. restrict your access to streaming Quotes on the Trading Platform, including providing telephone Quotes with a Dealer only;
  - d. recover from your Account or you any historic trading profits that have been gained through or reasonably appear to have been gained from Sniping as determined by us in good faith; and
  - e. terminate this Agreement immediately in accordance with clause 39.
- 14.3. You acknowledge that, particularly due to the fact that we off-set some of our liability to Clients by opening analogous positions with other institutions, your CFD Transactions with us can have an impact on the price of the Underlying Instrument. This enhances the possibility of market abuse. For the purpose of preventing such abuse, you represent and warrant to us that:



- a. you will not and have not entered into a CFD Transaction with us if to do so would result in you, or others you are acting in concert with, to have had to disclose your participation if transacted in the Underlying Instrument;
- b. you will not and have not entered into a CFD Transaction in connection with:
  - (i) a placing, issue, distribution or other similar event;
  - (ii) an offer, takeover, merger or other similar event;
  - (iii) or any corporate finance activity.

In relation to the Underlying Instrument.

- c. you will not and have not entered into a CFD Transaction that contravenes any law or regulation prohibiting insider dealing, market manipulation or any other form of market abuse or market misconduct.
- 14.4. You will not place or close a CFD Transaction and you will not place an Order that contravenes any primary or secondary legislation or other law against insider dealing, market abuse or market manipulation.
- 14.5. If you place or close any CFD Transaction or place an Order in breach of the representations and warranties given in this clause 14, and we have reasonable grounds for suspecting that you have done so, we may at our absolute discretion and without being under any obligation to inform you of our reason for doing so close that CFD Transaction and any other CFD Transaction that you may have open at the time, if applicable, and also do any of the following at our absolute discretion:
- a. enforce the CFD Transaction or CFD Transactions against you if it is a CFD Transaction or CFD Transactions under which you have made a Loss;
  - b. treat all your CFD Transactions that meet the circumstances set out in this term as void if they are CFD Transactions under which you have secured a profit from us, unless and until you produce evidence that satisfies us that you have not, in fact, committed the breach of warranty and/or misrepresentation the suspicion of which was the ground for us taking action under this clause. For the avoidance of doubt if you do not produce such evidence within the period of three months from the date on which action is taken by us under this clause, all such CFD Transactions will be finally null and void as between you and us; or
  - c. cancel any Order on your Account with us.
- 14.6. You acknowledge that it would be improper and potentially illegal for you to deal in the CFD Product if the sole purpose of such a CFD Transaction was to manipulate the buy or sell prices, and you agree not to conduct any such CFD Transactions.
- 14.7. You acknowledge and agree that we may undertake any such measures and comply with any such regulation as is appropriate to conduct either regular or periodic

checks, assessments or other such reporting on your CFD Transactions throughout the lifetime of your Account and where appropriate after the Account has closed.

- 14.8. You acknowledge that we are entitled (and in some cases required) to report to any relevant regulatory authority details of any CFD Transaction or Order entered into or requested by you.
- 14.9. You will be deemed to repeat the representations and warranties contained in this Clause 14 at the time you enter into this Agreement, every time you enter into a CFD Transaction and every time you give us any other instruction.
- 14.10. You agree that we will share information regarding your CFD Transactions, Account activity and any other relevant information about you if ASIC or any other regulatory authority empowered to seek information about you demand this and that you shall indemnify us against any claim for Losses should we be required to take any action on your account.

## 15. Closing or Suspending your Account

- 15.1. Either party may suspend or close an Account at any time upon written notification to the other party. Should either party exercise the right to suspend or close an Account, all Open Positions shall be closed by TD365, in its absolute discretion, at the Closing Price.
- 15.2. If you have not placed a CFD Transaction or Order on your Account within the previous 90 days, your Account will be considered inactive and we reserve the right to remove any bonuses or credits that have been applied to your Account.
- 15.3. If you have not placed a CFD Transaction or Order on your Account within the previous 180 days, your Account will be considered a dormant account and may be closed at our discretion if there is no cash balance on the Account. In the event of your Account being classified as a dormant account for a period of 6 years we will contact you on the most up-to-date details we have on file. You will have 28 days thereafter to claim the funds from your Account before we are legally allowed to give the remaining monies in your Account to the charity of our choice.

## 16. Corporate Actions and Adjustments

- 16.1. If any Underlying Instrument to which a CFD Transaction relates is subject to possible adjustments as the result of any Adjustment Event set out in clause 16.2, we will determine what adjustment, if any, should be made to the related CFD Transaction to account for the dilutive or concentrative effect of any such event to preserve the economic equivalent of such CFD Transaction prior to the relevant event or to reflect the effect of such event on such CFD Transaction. Any such adjustments will be effective as of a date reasonably determined by us.

- 16.2. “Adjustment Events” include the following in relation to an Underlying Instrument:
- a. a subdivision, consolidation or reclassification of shares, or a free distribution of shares to existing holders by way of bonus, capitalisation or similar issue;
  - b. a distribution to existing shareholders of additional shares, other share capital or securities granting the right to payment of dividends or proceeds of liquidation of the issuer, or securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in cash or otherwise) at less than the prevailing market price per share; and
  - c. any event analogous to any of the foregoing events or otherwise having a dilutive or concentrative effect on the market value of the relevant Underlying Instrument.
- 16.3. If an Underlying Instrument to which a CFD Transaction relates is subject to a Merger Event, TD365 reserves the right to close any or all affected CFD Transactions at any time during the Merger Event or to adjust the opening price of such CFD Transaction to reflect any cash portion of the offer or to amend the size to reflect any corresponding adjustment to the Underlying Instrument caused by the Merger Event and/or to close the affected CFD Transaction and reopen a new CFD Transaction reflecting the new Underlying Instrument that has been created.
- 16.4. We may make a credit or debit adjustment to your Account if you have an Open Position in an Underlying Instrument that is a share and that Underlying Instrument pays a dividend. You must hold the Open Position at the close of business immediately prior to the ex-dividend date and while we will determine what adjustment, if any, should be made in our reasonable discretion, we will typically make the following adjustments:
- a. if you hold a long Open Position, your Account will be credited with the net dividend amount receivable (i.e. after deducting from the gross dividend any applicable withholding tax, other local taxes or other charges); and
  - b. if you hold a short Open Position, your Account will be debited with the gross dividend amount (i.e. including any applicable withholding taxes, other local taxes or other charges).
- 16.5. We may make a credit or debit adjustment to your Account if you have an Open Position in an Underlying Instrument that is a stock index and a constituent of that Underlying Instrument pays a dividend. You must hold the Open Position at the close of business immediately prior to the ex-dividend date and while we determine what adjustment (if any) should be made in our reasonable discretion.

## 17. Suspensions, De-listings and Change in Law

- 17.1. If an Exchange or an Underlying Instrument to which the Open Position relates is suspended, TD365 may increase the Margin Requirement to the extent considered by TD365 to be fair and reasonable in the circumstances. If such Underlying Instrument remains suspended for a time that we think is unacceptable to us in our sole discretion, we may close the Open Position at the Closing Price.
- 17.2. If an Exchange on which an Underlying Instrument is principally traded announces that pursuant to the rules of such Exchange an Underlying Instrument has ceased to be listed, traded or publicly quoted on such Exchange for any reason (other than a Merger Event) and is not immediately re-listed, re-traded or re-quoted on a market or quotation system located in the same country as such Exchange we will close the Open Position at the Closing Price on the day on which such an event occurs.
- 17.3. If the Underlying Instrument in which you hold a CFD Transaction is subject to (i) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (ii) the promulgation of or any change in the interpretation by regulation (including any action taken by a taxing authority), then TD365 may, in its reasonable discretion, close the CFD Transaction at the Closing Price.
- 17.4. Upon termination of this Agreement, if any Underlying Instrument to which your Open Position relates is suspended then TD365 reserves the right to retain such Margin required to protect TD365 against any and all liability associated with that Open Position including retaining Margin up to 100% of the notional value of that Open Position.

## 18. Closing Open Positions

- 18.1. Subject to clause 18.2, you may close an Open Position at any time during Trading Hours. We will not execute an Order by you to close an Open Position at any other time unless otherwise agreed by us.
- 18.2. You may close an Open Position in a Future CFD at any time during Trading Hours up to the Last Trading Day. You will not be able to close such Open Position at any time after the Trading Hours of the Last Trading Day as listed in the Market Information Sheets.
- 18.3. In certain conditions, it may not be possible to close the whole of an Open Position at the current Quote and may instead be closed at the Closing Price.
- 18.4. TD365 may close all or part of any Open Position at any time without notice at the Closing Price:
  - a. if the Underlying Instrument to which the Open Position relates becomes illiquid and due to such illiquidity we are unable to trade or borrow a

sufficient quantity of such Underlying Instrument to cover or settle any hedge position related to or in connection with the Open Position;

- b. if we are required, at any time, by a lender to return any Underlying Instrument borrowed by us which relates to the Open Position and we are then unable to maintain a hedge position in respect of the Open Position;
- c. if at any time we are otherwise unable to establish or maintain a hedge position, or any other Hedging Disruption occurs, in respect of the Open Position or the continuation of any such hedge is likely, in our opinion, to result in an increase in cost to us;
- d. an Event of Default or Force Majeure Event occurs;
- e. we reasonably consider that there are Exceptional Market Conditions occurring or about to occur;
- f. we reasonably consider it necessary for the protection of our rights under this Agreement;
- g. we are unable to make prices in the CFD Products due to the unavailability of the relevant market information for reasons beyond our control;
- h. we consider that you may be in breach of any applicable law;
- i. we are so requested by ASIC or any other regulatory body or authority;
- j. you fail to provide any Margin, deposit or other sum due under this Agreement in respect of any CFD Product transacted with us;
- k. Margin monies held by us in respect of any Open Positions which has been purchased on margin fall below our Margin requirements; or
- l. as otherwise contemplated by this Agreement.

## 19. Expiry and Roll-Over of Open Positions

- 19.1. An Open Position in a Future CFD that has not been closed in accordance with clause 18.2 or, otherwise in accordance with this Agreement, will automatically close on the Futures Settlement Date at the Futures Settlement Price. Any subsequent attempt by you to close such Open Position (whether or not accepted in error or otherwise by TD365) will be void.
- 19.2. You may, at any time during Trading Hours and up to the Last Trading Day, contact a Dealer by email or telephone and request that your Open Position in a Future CFD be Rolled-over. The Dealer will provide you with a Roll-over Quote and, if agreed at that time by both you and us, the Open Position in the Future CFD will be Rolled-over.
- 19.3. TD365 may, in its sole and absolute discretion, refuse any Roll-over instruction from you.

- 19.4. Rolling-over will result in the Open Position in the Future CFD being closed and a new Open Position in the next Contract Period being created.
- 19.5. You must have sufficient available Trading Resources in order to Roll-over.
- 19.6. In accordance with clauses 9.3 and 11.10, Stop Loss Orders and GS Orders may be cancelled when an Open Position in a Future CFD is Rolled-over.
- 19.7. You acknowledge and agree that TD365 will have the right to close any Open Position in its sole and absolute discretion without notice if the relevant Underlying Instrument is a derivative financial instrument which may settle on expiry by a delivery other than in cash, a reasonable period prior to the expiry date of such instrument as determined in the sole and absolute discretion of TD365.

## 20. Margin Requirements

- 20.1. In order to open a CFD Transaction, you must have a sufficient amount of Trading Resources to satisfy the Initial Margin Requirement (IMR) for that CFD Transaction. We may decline any Order to open a CFD Transaction if you do not have sufficient Trading Resources to satisfy the IMR.
- 20.2. You agree to provide us and to maintain in your Account at all times such cash collateral as is necessary to cover your Margin.
- 20.3. The IMR or Margin requirements are set out in the Market Information Sheets and can be viewed by clicking on the “i” (information) button located next to each CFD Product and may be changed from time to time by us, in our sole and absolute discretion, including without limitation, during Exceptional Market Conditions. Any changes to the IMR or Margin generally will be applied to each Open Position whether opened before or after such amendment.
- 20.4. A Stop Loss Order or GS Order may not necessarily reduce the Margin required as each Open Position is subject to the IMR.
- 20.5. TD365 may introduce new CFD Products from time to time. The IMR or Margin for such CFD Products may not be published in the Market Information Sheets but will be available either on the TradeDirect365 website or on request.

## 21. Margin Calls

- 21.1. If at any time your Trading Resources are not sufficient to cover in full your Margin Requirement, we shall be entitled to make a Margin Call. Margin is due for payment immediately upon a Margin Call being made.
- 21.2. Regardless of whether a Margin Call has been made, TD365 has the right to close out your Open Positions when the Equity on your Account falls to or below 50% of the Margin required to support those Open Positions. TD365 may execute such closure of Open Positions in any sequence that it reasonably determines.

- 21.3. It is your responsibility to monitor your Open Positions and all other relevant factors used to calculate Margin payable. We are not obliged to make Margin Calls at all or within any specific time period. We shall not be liable to you for any failure by us to contact you or attempt to contact you.
- 21.4. Margin Calls may be made in person, by telephone, telephone answering machine message, voice mail, letter, fax, email or any other means of electronic communication. If the contact details provided by you change in any way you must immediately contact us to provide new or alternative contact details to ensure you can be notified of Margin Calls. A Margin Call is deemed to have been made at the first time we endeavour to contact you using the details supplied by you for that purpose. Any message left on any electronic medium either mobile and telephone answering machine using the designated numbers supplied by you will be deemed to be evidence of a Margin Call having been made. Any fax requesting a margin payment will be deemed received by you upon our receipt of a successful transmission confirmation. Any email sent to you will be deemed received upon receipt by us of a successful delivery notice.
- 21.5. If you fail to pay a Margin Call we may, but are not obliged to, close any or all of your Open Positions at the Closing Price and close your Account and not accept any Orders or open any further CFD Transactions for you.
- 21.6. Notwithstanding that a Margin Call has not been met, we may in our sole and absolute discretion allow your Open Positions to run and allow you to open new CFD Transactions. This will not affect our rights at any subsequent time to take any action under this Agreement.
- 21.7. Notwithstanding any movements in the market that may reduce the Margin Call on your Account you are still liable to pay the full Margin Call as originally requested assuming you still have the same or similar Open Positions. We may take action and close all or part of your Open Positions if you fail to pay a Margin Call. Any Open Positions closed for such a reason shall be at our sole and absolute discretion. We shall not be responsible for the subsequent market activity of any markets on CFD Transactions closed or left open.
- 21.8. TD365 may view late Margin payments as indicative of Client risk and at its sole discretion may alter the amount of Margin required or close the Account.
- 21.9. You must not rely upon our right to demand payments of Margin as a method of monitoring your Open Positions, as such monitoring is your responsibility and we accept no liability for it and we shall not be required to issue a Margin Call and that any demands, calls or notices made or given by us in any particular instance shall not require us to make or give such demand, call or notice in another instance.

## 22. Account Settlement and Set Off

- 22.1. All other transaction fees and charges and any other monies that are accruable or chargeable to your Account ("Charges"), Realised Profits and Realised Losses in a



currency that is not your Base Currency will be converted to your Base Currency at a spot exchange rate determined in the sole and absolute discretion of TD365. Open Profit and Losses will not be converted to your Base Currency except for purposes of display in your Account Summary.

- 22.2. We reserve the right to and shall be entitled to charge interest on all sums payable to us under this Agreement which are not paid within 5 days of their due date until payment is made in full, we shall charge you 2% per calendar month or part thereof cumulative on the sum owed to us. We will require you to reimburse us for any and all Losses we may suffer or incur if you fail to make payment when due for any reason whatsoever.
- 22.3. We have the right to debit from your Account or any other account in which you hold an interest any fees, interest or expenses incurred in respect to amounts owing to us. All debts to us are recoverable in law. We will actively pursue any sum (whatever the size) that is due.
- 22.4. We shall not pay you any Unrealised Profits and you may not use Unrealised Profits to offset your obligation to pay Realised Losses.
- 22.5. We shall be entitled to keep hold of funds in your Account to cover Margin, any funds including, without limitation, cheques or credit card payments, Unrealised Losses and Realised Losses and any other amounts due under this Agreement.
- 22.6. We may at any time set off any liabilities owed by us to you against any amount owed by you to us. We reserve the right, without notice to you and in our absolute discretion, to consolidate any or all of your Accounts of whatever type or description or any accounts in which you have a part or management function or oversight interest to the extent permissible by law or regulation.
- 22.7. Without prejudice to any part of this Agreement we shall be entitled to require the settlement of all Open Positions at any time and with immediate effect. Such settlement shall be made at the Closing Price. The settlement amount in respect of each CFD Transaction shall be calculated by us in our sole discretion as the difference between the opening and closing value of each CFD Transaction.
- 22.8. For the avoidance of doubt, we shall be entitled at any time to deduct, without notice or recourse to you, any monies deposited in or credited to your Account in error by us or on our behalf.
- 22.9. We shall, on receipt of a request by you, transfer to you any funds standing on the cash balance of your Account. However, we shall be entitled to deduct from any such payment any and all outstanding amounts owed to us, and any bank charges incurred in making the payment to you. We shall have absolute discretion in the choice of payment gateway mechanism for remitting funds to you. Payments made to you will be made by us in a timely manner. The time taken to receive your funds, especially overseas territories, may vary and may be due to factors beyond our control such as, but not limited to; checks conducted by your bank, local regulations and other payment gateway systems requirements external to us. You acknowledge and agree



that we shall be under no obligation to make any payment to you if the amount of such payment would reduce the equity on your Account to below the amount of Margin required for you to maintain your open Transactions.

- 22.10. Unless explicitly agreed in writing with you, and subject to any additional due diligence requirements, we shall not transfer funds to any bank account other than used previously to deposit with us. This includes distributions in payments on your Account and, where an Account is funded with a credit or debit card, this means payments back to that card or bank account associated with that card from which your initial payments originated. Note that some card or payment portal providers may restrict the amount of funds we can refund to you, for example where your profits exceed your original deposit(s).
- 22.11. We will not send funds back to an unverified source.
- 22.12. We will not return funds to an expired card.
- 22.13. For a credit or debit card to be verified you must have made at least one deposit with us using the card and the deposit must have fully passed through the fraud protection measures of the card processor.
- 22.14. For a bank source to be verified you must:
- a. Provide a bank statement clearly showing your address and bank account details (and if we request it, the statement should be certified), or
  - b. Request that our bank make a source trace of the bank account you used to make a previous bank deposit with us. A source trace can take up to 5 business days.
- 22.15. By default, when cards are used to make deposits, we will return subsequent withdrawals to those verified sources until the source has a net balance between you and us of at least zero. This may result in withdrawals being split between your cards.
- 22.16. You may request withdrawals to a specific verified source at the time of withdrawal but we retain the right to allocate a withdrawal in order to comply with our anti-money laundering and fraud prevention rules.
- 22.17. We aim to process withdrawals within 1 business day of any request being made. Assuming there are no impediments, restrictions (e.g. unverified sources, but not limited to this) and we can process the withdrawal, then the settlement time is dependent on our bank, payment services gateway or card processor settling the funds with your bank or card provider. This settlement time can vary significantly:

Card repayments:

- To Australian Clients typically take 2-3 business days but can take longer.
- To Non-Australian Clients typically take longer than 3 business days.

- We can only initiate a review with a card processor or payment services gateway if your funds have not been received after 10 business days.

Bank transfer payments:

- To Australian banks typically take 1 business day to settle.
- To banks outside Australia typically take 3-5 business days to settle.

22.18. Without prejudice to any other rights to which we may be entitled, we may, at any time and without notice to you, set off any amount (whether actual or contingent, present or future) at any time owing between you and us. You are also entitled to require us to exercise the right of set off in relation to all your Accounts and/or positions which have been closed. If the right of set off has been exercised, all the payment obligations will be consolidated into either an obligation for you to pay a net sum to us or for us to pay a net sum to you.

22.19. We will endeavour to clear negative balances on your account(s) on a daily basis. We will invoke the right to set off positive balances held on one account against any negative balances on another account as per clause 22.6. It is your decision to clear negative balances at all other times.

## 23. Client Money

23.1. Any money you pay to us which comes within the scope of Part 7.8 Division 2, Subdivision A of the Corporations Act, the "Client Money Rules", will be handled by us in accordance with these rules. Please see our PDS which details how we comply with the Client Money Rules.

23.2. You may request to withdraw money in excess of the Margin requirement from your Account by telephone or in writing. TD365 requires written requests to be in a form acceptable to us.

23.3. Unless otherwise agreed in writing between you and TD365, you will not be entitled to interest on the Account.

23.4. Due to fraud prevention measures and in accordance with money laundering regulations TD365 will endeavour to refund monies back to where they came from. Where monies have been deposited by card the cash will be returned to that card where possible. Where not possible and where cash has been deposited using BPAY or Electronic Funds Transfer (EFT) we may require sight of original bank statements showing original fund transfer to TD365 before refunding to the said bank account.

23.5. Where bank accounts have been closed, TD365 may require a letter from the originating bank stating that the account has been closed and there are no funds owing to the bank. Before TD365 will refund to a new bank account we may require sight of the original deposit transfer statement from the closed account and sight of an original new bank account statement.

- 23.6. Due to transfer costs TD365, may refuse refunds under AUD\$100 unless you are closing your Account.

## 24. Fees and Charges

- 24.1. You agree to pay to us such sums of money as may from time to time be due to us under this Agreement as a result of you placing an Order or entering into a CFD Transaction including, without limitation, any transaction fees and charges detailed from time to time in the Market Information Sheets.
- 24.2. The transaction fees and charges applicable to placing Orders and entering into CFD Transactions and which you must pay to us under this Agreement are set out in the PDS and the Market Information Sheets. Such transaction fees and charges include, without limitation:
- a. Commission;
  - b. Overnight Financing;
  - c. Spreads;
  - d. GS Order premiums;
  - e. Exchange data fees;
  - f. Bank fees;
  - g. FX balance conversion fees; and
  - h. Stock borrowing fees.
- 24.3. TD365 may amend the Market Information Sheets from time to time and it is the Client's responsibility to ensure that they are referring to the most up to date version of our Market Information Sheets as available on the TradeDirect365 website.
- 24.4. In Exceptional Market Conditions, TD365 reserves the right to vary Commission and Spreads on CFD Products within the maximum levels as quoted in the PDS at any time and to vary the Transaction Sizes without notice.
- 24.5. TD365 has the right to vary all transaction fees and charges as quoted in the PDS and the Market Information Sheets but will provide 30 days' notice if such a change is to be made.
- 24.6. If charges are imposed by a credit card or debit card provider (or any other provider) used to deposit cash into your Account, we reserve the right to pass these charges on to you. TD365 will not be responsible for any non-payment of these charges and will not be liable for any proceedings or further charges resulting from non-payment of such charges.

- 24.7. You agree that we may share commission and transaction charges with a Related Body Corporate or other third parties or receive or pay remuneration from or to the same in respect of an Order or CFD Transaction. Details of any such remuneration or sharing arrangements including, without limitation, where you have been introduced to us through a third party will not be set out in the relevant Contract Note.
- 24.8. TD365 may from time to time support the cost of Exchange fees on behalf of Clients but otherwise has the absolute right to charge the Client Exchange fees and/or disable Accounts where such fees have not been paid. We may, in our sole and absolute discretion, decide not to pass on Exchange fees where you have entered into a certain number of CFD Transactions in any given calendar month or where the value of such CFD Transactions exceed a certain level or for any other reason, each as determined by us in our sole discretion.
- 24.9. TD365 requires you to maintain a minimum Cash Balance of AUD\$100 and we may subsequently deduct monthly data fees from an Account in any given month where you have not traded to the extent that we may waive such fees. TD365 may in its sole and absolute discretion disable any Account if: (1) the data fees are not immediately received upon request; or (2) the Cash Balance is or becomes less than AUD\$50. Notwithstanding anything else in this clause, TD365 shall retain the absolute right to disable or suspend or close any Account at any time in accordance with clause 15.
- 24.10. We may make such deduction from your Account from time to time to satisfy other obligations owing to us as specified under this Agreement or the PDS in accordance with the Corporations Act and Corporations Regulations.

## 25. Overnight Financing

- 25.1. CFD Transactions may be subject to Overnight Financing adjustments. Overnight Financing fees and calculations are set out in detail in the PDS and the Market Information Sheets.
- 25.2. Where Overnight Financing is applied to Open Positions, an adjustment is made to the Account each time that the Open Positions are kept open Overnight, including Open Positions kept open on non-Business Days. For the avoidance of doubt, an Open Position held at the close of business on a Friday night will be charged for three days of Overnight Financing.
- 25.3. Should an adjustment to the Account in accordance with clause 25.2 in relation to Overnight Financing charges cause you to be unable to meet Margin requirements, then TD365 reserves the right (but is not obliged) to close part or all of any Open Position sufficient to ensure the Account remains in a positive Trading Resource amount or make a Margin Call. In this event, it shall be entirely at our discretion as to which Open Positions are closed and which are retained. TD365 shall not be responsible for any losses arising directly or indirectly in connection with actions carried out in relation to this clause.

## 26. Telephone Recording

26.1. The Client authorises and consents to the recording of their conversations with us including, but not limited to, conversation held by telephone, internet chat and meetings. The Client agrees to the use of such recordings as evidence in litigation or disputes. This clause authorises both parties to record but does not require either party to do so or to provide any additional or further warning of such recording prior to the recording. The recording of these conversations does not give the Client the right to request a copy of the recording in the event of a dispute. Such recordings remain the property of TD365 at all times.

## 27. Tax

27.1. You are liable for all taxes (Australian or foreign) that may arise as a result of or in connection with a CFD Transaction, whether under current or changed law or practice. We are not liable for any of your tax liabilities or for providing information or advice in respect of such liabilities and will not be responsible for notifying you of a change in tax law or practice.

27.2. If we become liable to pay any tax on your behalf as a result of or in connection with a CFD Transaction (including but not limited to any withholding taxes payable) you will reimburse us on demand in full for the amount of such tax paid by us. If we become liable to pay any stamp duty, stamp duty reserve tax or any other similar documentary tax or duty in any jurisdiction (collectively "Stamp Duty") in respect of an Underlying Instrument purchased or otherwise acquired by us or a Related Body Corporate in order to hedge any CFD Transaction between us and you, you will reimburse us on demand in full for the amount of Stamp Duty paid by us or such Related Body Corporate.

27.3. You will indemnify us and hold us harmless for and against all costs, claims, demands and expenses arising as a result of or in connection with (i) any failure by you to reimburse us in accordance with clause 27.1 or 27.2 and (ii) any late payment or non-payment of any tax or Stamp Duty payable by you in respect of a CFD Transaction executed by you.

## 28. Events of Default

28.1. Each of the following may constitute an "Event of Default":

- a. your failure to make any payment (including any payment of Margin) to us in accordance with this Agreement;
- b. your failure to perform any obligation due to us;
- c. if you are an individual, upon your death or your incapacity;

- d. where any representation or warranty made by you in this Agreement is or becomes untrue;
  - e. where you are or become subject to an Insolvency Event;
  - f. any other circumstance where we reasonably believe that it is necessary to take any action to protect our position or the position of any of our Clients from any risk we reasonably perceive; or
  - g. any other circumstance where we reasonably believe that it is necessary or desirable to prevent or address what might be a violation of the Governing Legislation or to ensure that good market practice is followed.
- 28.2. If an Event of Default occurs we may, in our sole and absolute discretion and at any time, take one or more of the following actions without prior notice:
- a. treat any and all of your CFD Transactions then outstanding as having been repudiated by you and close or part-close all or any of your CFD Transactions at the Closing Price;
  - b. convert any cash balances on your Account into the Base Currency;
  - c. retain any cash, investments (including any interest or other payment payable thereon) or other assets due to you, and/or sell them without notice to you at such price and in such manner as we, acting reasonably, decide, applying the proceeds of sale and discharging the costs of sale and the sums secured under this clause 28.2;
  - d. charge you interest on any money due, from close of business on the date when monies first fell due until the date of actual payment at a rate of 2% per calendar month on the total cumulative sum owing;
  - e. close your Account and refuse to accept any Orders or to enter into any further CFD Transactions; and
  - f. if you have failed to make a payment when due, inform your partner, employer, any professional, regulatory or other organisation with which you are associated or any person who we believe to have an interest in knowing such facts of the amount of such overdue sum, the circumstances thereof, the fact that you have failed to make payment, and any other relevant facts or information. By entering into this Agreement you expressly consent to any such disclosure of this data by us in the circumstances set out herein.
- 28.3. If we take any action under clause 28, unless in our sole and absolute discretion we consider it necessary or desirable to do so without prior notice by you, we will, where reasonably possible, take steps to advise you before exercising such rights. However, any failure on our part to take such steps will not invalidate the action taken by us under clause 28.

## 29. Client Risk Acknowledgment

29.1. By submitting the Application Form and entering into this Agreement, the Client acknowledges that:

- a. they are familiar with and understand the nature and mechanics of CFD trading including, without limitation, how to place Orders and enter into CFD Transactions;
- b. they recognise and understand that trading in CFD Products is highly speculative and involves an extreme degree of risk and the Client is familiar with and understands the risks associated with trading in CFD Products as set out in the PDS; and
- c. they may incur a loss equal to the amount invested and is only appropriate for those that can risk losing what they have invested.

## 30. Warranties & Undertakings

30.1. By submitting the Application Form and entering into this Agreement, the Client represents and warrants that:

- a. where the Client is a natural person:
  - i the Client has the legal capacity to execute this Agreement; and
  - ii no one except the Client has an interest in the Client's Account, other than as notified to TD365 in writing or as otherwise provided in this Agreement;
- b. where the Client is a body corporate:
  - i the Client has the status of a corporation validly existing under the laws of the place of its incorporation; and
  - ii the Client has the power and authority to enter into and perform its obligations under this Agreement and to place Orders and enter into CFD Transactions;
- c. where the Client is a partnership:
  - i the Client has power and authority to deal in CFDs; and
  - ii the persons executing this Agreement have full power and authority to execute this Agreement on behalf of the Client;
- d. this Agreement is enforceable against the Client in accordance with its terms, subject to any equitable remedies or any applicable bankruptcy, insolvency, reorganisation or moratorium or similar laws affecting parties' rights generally;



- e. the execution and performance by the Client of this Agreement or any action contemplated under this Agreement will not violate in any material respect any provision of:
  - i the Governing Legislation;
  - ii any law or treaty or any judgment, ruling, order or decree of any governmental agency binding on it;
  - iii if a corporation, its constitution or other constituent documents;  
or
  - iv any other document or agreement which is binding upon it or its assets;
- f. all information provided by it to TD365 in connection with this Agreement (including in the Application Form) is true and accurate in all material respects as at the date when the information is provided and remains so at the date of this Agreement and there are no facts or circumstances known to the Client after proper inquiry which have not been disclosed to TD365 and which, if disclosed, might reasonably be expected to adversely affect the decision of TD365 to enter into this Agreement;
- g. the Client shall advise TD365 promptly if the Client is or becomes an employee of any corporation in which any Exchange owns a majority of the capital stock, any member of any Exchange, any firm registered on any Exchange, any futures commission merchant, any broker/dealer, any holder of an Australian financial services licence authorised to deal or make a market in derivatives, an agent for any regulatory authority, or any bank or savings institution, and TD365 agrees to provide email copies of Contract Notes to such employers upon receipt of such instruction;
- h. there is no current or pending or threatened action affecting the Client or any of its assets before a court, tribunal, government agency, commission or arbitrator which is likely to affect the legality, validity or enforceability of this Agreement, or any Trade undertaken pursuant to this Agreement, or the ability of the Client to fulfil its obligations in respect of this Agreement;
- i. the Client is not a resident of the United States of America or a company or business incorporated under the laws of a State of the United States of America or located within the jurisdiction of the United States of America;
- j. all copies of documents and agreements given by or on behalf of the Client to TD365 constitute true, accurate and complete copies and those documents and agreements are in full force and effect;
- k. the Client has complied with all law and binding authorisations;
- l. the financial information disclosed in the Application Form is a true and accurate statement of the Client's current financial position and Net Worth;  
and



- m. TD365 is authorised to contact such references as it deems appropriate to verify the information supplied by the Client in the Application Form.
- 30.2. You will enter into each CFD Transaction with us as principal and not as an agent for any other third party. You will be solely responsible for all obligations arising out of a CFD Transaction, and we will treat you as a Client in relation to the CFD Transactions at all times. You will not allow any person to deal or manage your Account on your behalf unless we agree that such a person (the “Attorney”) may do so. In some circumstances, an executor or insolvency practitioner may be empowered to conduct activities on your Account.
- 30.3. If we agree that an Attorney may act on your behalf, we will be entitled to rely on any instructions given to us by the Attorney in relation to your Account. We may require confirmation that the Attorney has authority to act on your behalf at any time. If you act in connection with or on behalf of someone else, whether disclosed or not, we will not accept such person as an indirect customer of ours and will accept no obligation to them unless otherwise specifically agreed.
- 30.4. Each of the representations and warranties set out in this clause 30 shall be deemed to be repeated by the Client each time the Client places an Order or enters into a CFD Transaction.
- 30.5. If any Loss is incurred by you or by TD365 due to your breach of any warranty as set out herein you shall be liable to us for the total sum involved.

## 31. Limitation of Liability and Indemnities

- 31.1. Unless otherwise specified in this Agreement, this Agreement does not limit or exclude any liability incurred as a result of fraud, wilful default or dishonesty by TD365.
- 31.2. We shall not be liable to you or any person for any Loss (including any incidental, indirect or consequential Loss) whether arising out of negligence, breach of contract, misrepresentation or breach of applicable laws or regulations, incurred or suffered by you under or in connection with this Agreement, any Order or CFD Transaction or any of our dealings with you (including any Order not accepted by us) and irrespective of whether or not you or any other person have been informed of the possibility of such Loss. Without limiting the generality of the foregoing, under no circumstances will we be liable to you or any person for any indirect, consequential, special or exemplary loss or damage including any loss of profits, loss of goodwill, loss of business opportunity or reputational damage.
- 31.3. We shall not be liable for any Loss suffered or incurred by you as a result of any error in any Order, instruction or information given by you or an Authorised Person, as a result of us acting on any Order or instruction which is, or appears to be, from such Authorised Person.

31.4. You agree to fully indemnify TD365 and its affiliates (and in respect of each, their respective officers and employees) on demand against any and all liabilities, costs, claims, damages and expenses of any nature whatsoever which we or our affiliates (or in respect of each, their respective officers and employees) may suffer or incur directly or indirectly (including those incurred to an Exchange, clearing house or other regulatory authority) as a result, or in connection with, or arising out of:

- i this Agreement and any other agreement between the Client and TD365 or our affiliates;
- ii any CFD Transaction effected with you or on instructions by you or an Authorised Person,
- iii without limiting the foregoing, any breach by you of your obligations under this Agreement or any CFD Transaction;
- iv any representation or warranty by you or an Authorised Person proving to be incorrect in any material respect when made or repeated, or deemed to have been made or repeated; and
- v any claims, actions, proceedings or investigations arising out of or in connection with this Agreement or any CFD Transaction hereunder.

31.5. You acknowledge and agree that there are significant risks in trading through computer and telecommunications systems and agree that none of TD365 and our authorised officers, employees or agents are responsible for any Loss caused or contributed to by:

- i a delay in, malfunction of, interruption to, fault in or inaccuracy of computer or telecommunication services;
- ii inaccuracies or errors in the information conveyed through computer or telecommunication services; or
- iii a variation to the way in which Orders placed with computer or telecommunication services are managed.

31.6. None of TD365 and our authorised officers, employees and agents are responsible for any Losses caused or contributed to by any delay or error in the transmission or execution of any transaction contemplated by this Agreement that is caused by you or any third party, including but not limited to trading floor or exchange system operational failure or action, bank delay, postal delay, failure or delay of any fax or electronic transmission or delay caused by accident, emergency or Act of God.

31.7. No warranty is provided by TD365 or any of its authorised officers, employees and agents in relation to information sourced from third parties, and all information provided by TD365 to you is for your private use and is not to be communicated to any third party without the prior written consent of TD365.

31.8. None of TD365 and its authorised officers, employees or agents are responsible for any Loss incurred by you as a result of:

- i any delay in transmitting or failure to transmit funds caused by reasons beyond TD365's control; or
- ii TD365's failure to timely execute Orders placed with it or to transact business or otherwise administer this Agreement in the manner contemplated for reasons beyond its control (including exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication or computer failure, strikes or war);
- iii TD365 using, paying or depositing your money or other property paid or delivered to us as agent or as principal in connection with electronic trading platforms such that those monies or other property are paid to, deposited with or otherwise transferred in any way to a trading counterparty or agent (including a custodian or intermediary broker or other intermediary which provides financial services or ancillary services) of TD365, whether or not specifically disclosed to you (and whether TD365 or the trading counterparty acts as agent or as principal with respect to the other, or TD365 acts as agent for you);
- iv a transaction whose specific limits of liability of TD365 or any of its agents are notified to the Client from time to time.

31.9. References to CFD Transactions, instructions given by you or an Authorised Person, services to be provided to you or breaches by you of your obligations include CFD Transactions entered into by, instructions given, services to be provided to, and breaches by, an agent acting on your behalf.

## 32. Force majeure

32.1. Neither party is liable for any failure to observe its obligations under this Agreement where such failure is wholly or substantially due to a Force Majeure Event, provided that the party seeking to rely on the benefit of this clause (the "Affected Party"):

- a. as soon as reasonably practicable, notifies the other party of the extent to which it is unable to perform its obligations; and
- b. uses its reasonable endeavours to mitigate the adverse effects of the Force Majeure Event and perform its obligations under this Agreement.

32.2. Where the Force Majeure Event prevents the Affected Party from performing a material obligation under this Agreement for a period greater than two Business Days, then the other party may by notice to the Affected Party terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice.

32.3. If TD365 determines that a Force Majeure Event has occurred, it may:

- a. close out any or all Open Positions;
- b. void and cancel or execute any Order;
- c. adjust the price or size or quantity of any Open Position;
- d. suspend trading or alter Trading Hours;
- e. not accept any Order;
- f. vary Margin Requirements, minimum and maximum Transaction Sizes, Quotes and Spreads;
- g. require immediate payment of all amounts owed to TD365 under this Agreement or otherwise;
- h. void and cancel any Open Position where the Underlying Instrument to which the Open Position relates is suspended or cancelled on the Exchange or by the relevant Liquidity Provider or otherwise; or
- i. do or omit to do anything it believes reasonable to protect it and its other Clients.

32.4. TD365 will not be liable for any Loss incurred as a result of any Force Majeure Event.

### 33. Conflicts of Interest

33.1. TD365 may have a material interest, relationship or arrangement in respect of any Order placed by you or CFD Transaction entered into. We maintain a Conflict of Interest policy which is available on request.

### 34. Counterparties and Introducers

34.1. TD365 may instruct a Counterparty or third party in its sole and absolute discretion to give effect to your Order or instructions. Such a situation may arise if, for example, TD365 is not a member of a particular Exchange on which the Underlying Instrument to which the CFD Transaction relates is traded. TD365 will not be responsible for errors committed by such third parties.

34.2. If you have been referred to TD365 by an Introducer, TD365 is not responsible for any agreement made between you and the Introducer unless and, to the extent that, TD365 is a party to that agreement.

## 35. Cooling off

- 35.1. The "cooling off" provisions contained within the Corporations Act do not apply to any Orders or CFD Transactions.

## 36. Complaints and Disputes

- 36.1. If you have a complaint or a query, you should contact us using our contact details. If the complaint cannot be resolved at this first point of contact, you should contact the Complaints Officer at:

TradeDirect365  
Level 36  
Governor Phillip Tower  
One Farrar Place  
Sydney, NSW 2000

- 36.2. If your complaint cannot be resolved to your satisfaction within 45 days, you may lodge the complaint with the Australian Financial Complaints Authority (AFCA) at:

Australian Financial Complaints Authority  
GPO Box 3  
Melbourne  
Victoria 3001

Phone: 1800 931 678 (free call)  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Website: [www.afca.org.au](http://www.afca.org.au)

Time limits may apply to complaints to AFCA and so you should act promptly or otherwise consult the AFCA website to find out if or when the time limit relevant to your circumstances expires.

## 37. Privacy

- 37.1. In the course of conducting business with the Client, and in compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Anti-Money Laundering Laws), TD365 collects personal information about the Client. Personal information that TD365 may collect includes the Client's name, address, phone number, email address, date of birth and information regarding products and Services the Client enquires about or trades with TD365.
- 37.2. Any information obtained from the Client is used only for these purposes and is not disclosed to any other organisation except as set out below, with the Client's consent or as permitted or required by law.

- 37.3. TD365 may provide the Client's information to a company related to us, whether located in Australia or overseas.
- 37.4. If the Client does not provide TD365 with all the information we consider compulsory, we may be unable or limited in the financial products it can provide to the Client.
- 37.5. The Client confirms that it has read the privacy disclosures made in the Application Form and the PDS and acknowledges that:
- a. TD365 collects information about the Client to conduct business with the Client and to comply with Anti-Money Laundering Laws;
  - b. if the Client does not give all the information requested by TD365, we may not be able to provide financial Services or products to the Client; and
  - c. Clients may gain access to any personal information TD365 holds about them by notice to TD365.
- 37.6. The Client consents to:
- a. TD365 exchanging information about the Client with:
    - i any Related Body Corporate of TD365 whether they are located in Australia or in a foreign jurisdiction;
    - ii any employees, agents, contractors or other service providers of TD365 including any entity involved in any restructure or transfer of its business; and
  - b. the people or organisations described in the clause above, where applicable, using the Client's information:
    - i to provide the Client with further information of any services or products provided by TD365;
    - ii either to conduct market research or to contact the Client as provided for under the Agreement; or
    - iii to comply with any statutory or regulatory disclosure requirements;
  - c. TD365 disclosing any information about the Client as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction.
- 37.7. If the Client wishes to access or modify personal information which TD365 holds about the Client or the Client requests its removal from its records, the Client may contact us using the following contact details:

Client Support: 1800 886 514 (press "2") or +61(0)2 8310 4713

Email: [enquiries@td365.com.au](mailto:enquiries@td365.com.au)

Address: TradeDirect365  
Level 36  
Governor Phillip Tower  
One Farrar Place  
Sydney, NSW 2000

## 38. Amendments

38.1. TD365 is entitled to amend this Agreement at any time by giving you written notice. If an amendment relates to an increase in our fees or charges, we will give 30 days' notice of the amendment in accordance with the Corporations Act. In the event of any other amendment, we will only give notice of the amendment when the amendment is made. This notice may be provided to you in an email, via the Trading System or via any other means as determined by TD365.

## 39. Termination

39.1. This Agreement will remain in force until terminated.

39.2. You are entitled to terminate this Agreement by giving at least one Business Day's prior written notice to us provided that an Event of Default has not occurred and no event, which with the giving of notice or the lapse of time or both, would constitute an Event of Default has occurred. We are entitled to at any time terminate this Agreement by giving written notice to you of the termination. Any outstanding or accrued rights, remedies and obligations under this Agreement or the existence and enforceability of any Open Positions will remain open until closed in accordance with this Agreement. Any such termination will be without prejudice to TD365's rights to all Margin (including for the avoidance of doubt the right to demand further Margin in respect of the Open Positions).

39.3. At any time after termination of this Agreement, TD365 may, without notice to you, close any and all Open Positions at the Closing Price. This Agreement will apply until all Open Positions and obligations of the parties under this Agreement has been finally, unconditionally and irrevocably discharged.

39.4. Upon termination of this Agreement, any and all amounts payable by you to us will become immediately due and payable. TD365 will deduct all amounts due to us before transferring any credit balances in respect of any Account to you and will postpone any transfer until all CFD Transactions are closed. Furthermore, TD365 may require you to pay any charges incurred in transferring your credit balances to you.

39.5. Termination of this Agreement will not affect any provision under this Agreement that is intended to survive termination, including, without limitation, those provisions granting any indemnity in favour of TD365.

## 40. Notices

- 40.1. TD365 may communicate or give notice to the Client in such manner as TD365 reasonably deems appropriate. All correspondence, documents, written notices, confirmations and statements will be sent or transmitted by TD365 to the Client at the address, fax number, or email address specified on the Application Form or to such other address or number as the Client may subsequently notify to TD365 in writing and which TD365 confirms to the Client as having been received.
- 40.2. The Client must provide all notices required to be provided to TD365 under this Agreement to TD365 by mail or email using the contact details below:

Address: Client Support  
TradeDirect365  
Level 36  
Governor Phillip Tower  
One Farrar Place  
Sydney, NSW 2000

Email: [enquiries@td365.com.au](mailto:enquiries@td365.com.au)

- 40.3. Any notice, communication or demand sent by post will be deemed delivered five Business Days after posting and any notice, communication or demand delivered by electronic messaging system or email will be deemed given upon transmission confirmation. Notwithstanding the foregoing, any notice, communication or demand delivered through the Trading Platform is deemed to be delivered on the day it is first uploaded on the Trading Platform.

For the avoidance of doubt, if any notice, communication or demand is delivered by more than one means, then the notice, communication or demand is deemed to be delivered on the first time applicable by operation of clause 40.3.

## 41. No Waiver

- 41.1. A party does not waive a right or remedy in connection with this Agreement if it:
- fails to exercise its right or remedy;
  - only partially exercises the right or remedy; or
  - delays in exercising the right or remedy.
- 41.2. A party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
- further exercise the right or remedy; or



- b. exercise another right or remedy.
- 41.3. A waiver is effective only if in writing and properly signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.
- 41.4. For the avoidance of doubt, where TD365 has provided any waiver in connection with this Agreement, such waiver will be without prejudice to any existing, future or contingent rights or remedies that TD365 have or may have.

## 42. Assignment

- 42.1. You may assign this Agreement or any part of this Agreement with the written consent of TD365 which it may withhold in its absolute discretion.
- 42.2. TD365 may assign any or all rights and/or obligations under this Agreement at its discretion.

## 43. Miscellaneous

- 43.1. A word or provision in this Agreement must be read down if:
- a. the word or provision is void, voidable, or unenforceable if it is not read down; and
  - b. the word or provision is capable of being read down.
- 43.2. A word or provision must be severed if, despite the operation of clause 43.1, the Agreement or provision is void, voidable or unenforceable if the word or provision is not severed.
- 43.3. The remainder of this Agreement has full effect even if clause 43.1 applies.
- 43.4. All representations and warranties in this Agreement survive the completion of CFD Transactions contemplated by this Agreement.
- 43.5. A party's right or obligation which is of a continuing nature or which is not fully satisfied and discharged on completion of any CFD Transaction contemplated by this Agreement:
- a. does not merge on completion of that CFD Transaction;
  - b. continues in favour of the party to which it is owed; and
  - c. remains in full effect.

## 44. Governing Law

- 44.1. This Agreement is governed by the law in force in New South Wales. The parties submit to the jurisdiction of the Courts of New South Wales.

## 45. Entire Agreement

- 45.1. This Agreement, the Account Application Form, the PDS, the Financial Services Guide and any additional terms and conditions as determined and notified to you from time to time contain the entire agreement between the parties with respect to its subject matter. It sets out the only terms relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

## 46. Glossary

- 46.1. In this Agreement (and in addition to expressions defined elsewhere on the TradeDirect365 website) the following words and expressions shall have the following meanings unless the context requires otherwise:

“Account”	means the trading account held by you with TD365 for the purposes of trading CFD Products;
“Agreement”	means this Client Agreement between you and TD365, as amended from time to time;
“Affected Party”	has the meaning set out in clause 32.1;
“AFSL”	means an Australian financial services licence as defined in section 761A of the Corporations Act and is issued by the Australian Securities & Investments Commission;
“Application Form”	means the application form supplied by TD365 to open your Account;
“ASIC”	means the Australian Securities & Investments Commission or any regulatory body which replaces it or performs its functions;
“Ask Price”	means the price at which you can buy a CFD Transaction and is always the higher of the two prices Quoted;
“Attorney”	means an executor, insolvency practitioner or liquidator approved by us who is empowered to act your behalf;

“Australian Dollars”	means the lawful currency of Australia;
“Authorised Person”	means a person authorised by you or purports to be authorised by you to give instructions in relation to your Account including giving Orders, entering into CFD Transactions and withdrawing cash;
“Base Currency”	has the meaning set out in clause 5.8;
“Bid Price”	means the price at which you can sell a CFD Transaction and is always the lower of the two prices Quoted;
“Business Day”	means any day which is not a weekend or public holiday;
“Cash Balance”	means the cash that you hold in your Account and does not include Open Position P&L;
“CFD”	means a contract for difference and is a contract between you and us where we agree to exchange the difference in cash between the opening and the closing value of the CFD Transaction;
“CFD Products”	refers to each type of CFD or any other contractual arrangement entered into between you and us, including any transaction liable to Margin, that TD365 offers from time to time as set out in the Market Information Sheets or as otherwise notified by us to you;
“CFD Transaction”	means a transaction in a CFD or any other contractual arrangement entered into between you and us including any transaction liable to Margin;
“Charges”	has the meaning as set out in clause 22.1;
“Closing Price”	means the closing price of the CFD Transaction as determined by TD365 in good faith based on current and anticipated market conditions;
“Commission”	means the commission, charges or other remuneration in connection with the opening or closing of a CFD Transaction as disclosed and as notified to you from time to time;
“Contract Note”	refers to a trade confirmation;
“Contract Period”	means the contract period for a Future CFD as set out in the Market Information Sheets;
“Corporations Act”	means the Corporations Act 2001 (Cth);
“Counterparties”	mean banks, Exchanges and brokers through whom TD365 may trade to cover its CFD risk;
“Client”	means a person who has opened an Account with TD365 and has agreed to be bound by this Agreement;
“Client Agreement”	means this agreement between TD365 and you, as amended from time to time;
“Client Money”	refers to the cash in your Account which is held by TD365 in accordance with clause 23;
“Dealer”	means an employee or officer of TD365 and a Related Body Corporate who is able and qualified to accept Orders and enter into CFD Transactions;
“Equity”	means that real time valuation of your Account at any one time. It is your Cash Balance plus or minus Open Position P&L plus any Credit allocation where applicable;
“Events of Default”	have the meaning given in clause 28.1;

“Exceptional Market Conditions”	means the suspension, closure, liquidation, imposition of limits, special or unusual terms, excessive movement, volatility or loss of liquidity in any relevant market, Exchange, Liquidity Provider or Underlying Instrument, or where TD365 reasonably anticipates any of the above circumstances are about to occur;
“Exchange”	has the same meaning as "financial market" under section 767A of the Corporations Act and includes any futures, derivatives or stock exchange or other organised market for Transactions in financial products whether or not licensed or approved;
“Force Majeure Event”	will include, without limitation, the following: <ul style="list-style-type: none"> <li>(a) any event or occurrence including, without limitation, strikes, industrial action, war, sabotage, terrorist activity, national emergency, blockades or government action, an act of God;</li> <li>(b) any breakdown or failure of any transmission or supply of communications or other infrastructure or equipment or computer facility or trading software, whether belonging to us, you, an Exchange or Liquidity Provider or any settlement or clearing system;</li> <li>(c) the suspension, closure, liquidation, imposition of limits, special or unusual terms, excessive movement, volatility or loss of liquidity in any relevant Underlying Instrument, Exchange or Liquidity Provider to which the Order or CFD Transaction relates or where TD365 reasonably anticipates any of the above circumstances are about to occur;</li> <li>(d) any event or occurrence which prevents compliance with the Governing Legislation, law or the applicable regulatory system, an emergency or exceptional market conditions; or</li> <li>(e) any other event or circumstance which, in our reasonable opinion, prevents an orderly trading market being maintained in relation to your Orders or CFD Transactions;</li> </ul>
“FSG”	means the financial services guide prepared by TD365, as amended from time to time;
“Future CFD”	means a CFD Transaction in which the Underlying Instrument that relates to it is a derivative futures contract traded on an Exchange;
“Futures Settlement Date”	means the expiry date and time of a Future CFD as set out in the Market Information Sheets and where such date is not a Business Day it will be the Business Day immediately preceding the Futures Settlement Date unless otherwise specified in the Market Information Sheets;
“Futures Settlement Price”	means the price which we use in order to close a Future CFD on the Futures Settlement Date as defined under settlement details in the Market Information Sheets;
“FX CFD”	means a CFD Transaction where the underlying instrument relates to the value and fluctuation of one currency in relation to another currency;
“Gapping”	refers to an Order being executed at a price other than the price specified in the Order because the Quote moves from one price to the next price through the Order level and TD365 is unable to execute the Order at that price. Gapping can occur for the following reasons, including, without limitation: <ul style="list-style-type: none"> <li>a. during Exceptional Market Conditions;</li> </ul>

- b. where the relevant Underlying Instrument to which the Order relates has opened at a price significantly different to the closing price of the previous Trading Session or has gapped significantly due to a piece of economic, political, environmental or corporate news;
- c. when the Underlying Instrument has temporarily ceased trading on the relevant Exchange and then re-opened at a Quote that is through the relevant Order; or
- d. where the size of the Order was greater than the normal market size at which TD365 was reasonably able to trade in the Underlying Instrument.

“Governing Legislation” means the Corporations Act and the regulations made under it and all applicable financial services laws (as defined by section 761A of the Corporations Act);

“Guaranteed Stop Order or GS Order” has the meaning set out in clause 8.1(e);

“Hedging Disruption” means circumstances where we are unable, after using commercially reasonable (but no greater) efforts, to (1) 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 a relevant CFD Transaction; or (2) realise, recover or remit the proceeds of any such transaction or asset;

“Initial Margin Requirement or IMR” means the amount of Margin required to open a position;

“Insolvency Event” means any of the following events:

- (a) in the case of a corporation:
  - (i) the corporation is dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise);
  - (ii) a controller, liquidator, provisional liquidator, trustee or administrator is appointed in respect of the corporation or any of its assets;
  - (iii) an application is made to a court or a meeting is convened, or a resolution is passed (or notice is given of such meeting or resolution) or a notice is issued or any other step is taken by any person for the corporation to be wound up or dissolved or for the appointment of a liquidator, provisional liquidator, trustee or administrator to the corporation or any of its assets;
  - (iv) the corporation:
    - (A) decides to enter into, or enters into, a scheme of arrangement, a deed of company arrangement or composition with its creditors or an assignment for their benefit;
    - (B) proposes or is made subject to a moratorium of its debts; or
    - (C) takes proceedings or actions similar to any of those mentioned in this paragraph and as a result of which any of the corporation's assets are, or are proposed to be, submitted to the control of its creditors;

- (v) the corporation seeks or obtains protection from its creditors under any statute or any other law;
  - (vi) the corporation is unable to pay all of its debts as and when they become due and payable or is deemed to be insolvent under any provision of the Corporations Act or any other statute or law;
  - (vii) any attachment, distress, execution or other process is made or levied against any asset of the corporation;
  - (viii) the corporation ceases to carry on all or a substantial part of its business (or threatens to do so); and
  - (ix) an event occurs in relation to the corporation which is analogous to anything referred to above or which has a substantially similar effect; and
- (b) in the case of a natural person, the person:
- (i) dies;
  - (ii) becomes, or is declared by a medical practitioner (who is registered to practice in an Australian State) to be mentally or physically incapable of managing his or her affairs;
  - (iii) is or states that he or she is unable to pay all of his or her debts when they become due and payable;
  - (iv) enters into, attempts to enter into, or convenes a meeting for the purpose of entering into, an arrangement, assignment or composition with his or her creditors; and
  - (v) an event occurs in relation to the person which is analogous to anything referred to in this definition or which has a substantially similar effect; and
- (c) in the case of a partnership:
- (i) an event described in (a) or (b) above occurs in relation to one or more partners in the partnership;
  - (ii) the giving of any notice of intention to dissolve or wind-up the partnership, or the giving of any notice purporting to dissolve or wind-up the partnership; and
  - (iii) the partnership is dissolved or wound up by operation of law.

“Introducer”

means a third party who refers or introduces prospective Clients to us;

“Last Trading Day”

means the last time and date as set out in the Market Information Sheets that you can close an Open Position in a Future CFD;

“Limit Order”

has the meaning set out in clause 8.1(c);

“Liquidity Provider”

means a bank or other financial institution or third party that provides executable two-way quotes in respect of relevant Underlying Instruments to which the CFD Products relate on a continuous and regular basis;

“Loss”	means any loss, cost, claim, damages (whether compensatory, exemplary or punitive) or expenses, including fees and expenses of legal counsel;
“Manifest Error”	has the meaning set out in clause 13;
“Margin”	means the amount of cash collateral we require to be deposited on your Account at any given time to open and maintain an Open Position;
“Margin Call”	means a demand for cash collateral by way of Margin as TD365 may require for present, future or contemplated CFD Transactions under this Agreement;
“Margin Forex”	refers to foreign exchange contracts which are leveraged products:
“Margin Requirement”	means the aggregate amount of Margin required and being used for all Open Positions at any one time in your Base Currency;
“Market Information Sheets”	refers to the documents available on the TradeDirect365 website that detail all the information and specifications pertaining to all CFD Products offered by us;
“Merger Event”	<p>means in respect of any Underlying Instrument:</p> <ul style="list-style-type: none"> <li>(a) any reclassification or change of the Underlying Instrument that results in a transfer of or an irrevocable commitment to transfer all outstanding securities of the same class as the Underlying Instrument to another entity or person,</li> <li>(b) consolidation, amalgamation, merger or binding share exchange of the issuer of the relevant Underlying Instrument with or into another person (other than a consolidation, amalgamation, merger or binding share exchange in which such issuer is the continuing person and which does not result in a reclassification or change of all outstanding securities of the same class as the Underlying Instrument);</li> <li>(c) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 50% or more of the outstanding securities of the same class as the Underlying Instrument that results in a transfer of or irrevocable commitment to transfer all such securities (other than such securities owned or controlled by such other entity or person); or</li> <li>(b) any consolidation, amalgamation or merger of, or binding exchange of shares in the issuer of the Underlying Instrument or its subsidiaries with or into another person in which the issuer is the continuing person and which does not result in a reclassification or change of all outstanding securities of the same class as the Underlying Instrument but results in the securities outstanding (excluding securities owned or controlled by such other person) immediately prior to such event collectively representing less than 50% of the outstanding securities immediately following such event;</li> </ul>
“Net Worth”	means the sum of the your cash or cash equivalents, securities, real estate, the value of life insurance policies and other valuable assets owned, less all outstanding obligations, including but not limited to, notes secured or unsecured, that are payable to banks and other entitled or individuals, liens against property, both real and personal, and all other personal or business debts, but excludes the value of the Client’s primary residence;
“Open Position”	means a CFD Transaction that is active and open and has not been closed by you or us or otherwise in accordance with this Agreement;



“Open Position P & L”	means the aggregate amount of Unrealised Profit and Unrealised Loss on all Open Positions at any one time in your Base Currency;
“Order”	means an instruction by you to open or close a CFD Transaction and may include a Trade, Order to Open, Limit Order, Stop Loss Order or GS Order;
“Order to Open”	has the meaning set out in clause 8.1 (b);
“Overnight”	refers to the time at which you are deemed to be holding an Open Position for the purposes of Overnight Financing;
“Overnight Financing”	means a financing adjustment made to your Account when you hold an Open Position Overnight including Overnight on a non-Business Day, a Saturday or Sunday and any bank or public holiday;
“PDS”	means the product disclosure statement prepared by us for the purpose of offering CFDs, as amended, supplemented or replaced by us from time to time;
“Pricing Error”	means a manifest or obvious misquote by TD365, Exchange, Liquidity Provider or official price source on which we have relied in connection with any CFD Transaction, having regard to the current market conditions at the time an Order is placed as determined by us;
“Quote”	is the Bid Price or Ask Price (as the case maybe) quoted by TD365 from time to time for each CFD Product;
“Realised Loss”	means the cash loss realised by you when you close an Open Position;
“Realised Profit”	means the cash profit realised by you when you close an Open Position;
“Related Body Corporate”	has the meaning given by the Corporations Act;
“Roll-over” or “Rolled”	means the action of closing an Open Position in a Future CFD and then opening a new CFD Transaction in the next available Contract Period as set out in clause 20;
“Roll-over Quote”	means the Bid Price or Ask Price (as the case maybe) quoted by a Dealer over the telephone, in its sole and absolute discretion, in order to Roll-over an Open Position;
“Sniping”	has the meaning set out in clause 14.
“Single Currency Trading”	means a contract under which the parties agree to exchange the difference, in cash, between the opening value and the closing value of the contract and is denominated in the Base Currency of your Account;
“Spread”	means the difference between the Bid Price and the Ask Price of the Quote;
“Spread trade”	means a contract under which the parties agree to exchange the difference, in cash, between the opening value and the closing value of the contract and is denominated in the Base Currency of your Account;
“Stop Loss Order”	has the meaning set out in clause 8.1(d);
“Trade”	has the meaning set out in clause 8.1(a);
“Trade Confirmation”	means a message from TD365 to you confirming the execution of an Order;
“Trading Hours”	Means, in respect of each CFD Product, the hours during which we provide a Quote for a particular CFD Product as detailed in the Market Information Sheets or the TradeDirect365



website from time to time;

- “Trading Platform” means the electronic trading system or systems TD365 makes available to the Client via the internet to facilitate trading in CFDs from time to time, including without limitation, any online or downloadable trading platform;
- “Trading Resources” means the amount of cash held in your Account which is Account available to enter into an Order or to amend an Order (including moving a Stop Loss Order) or open a CFD Transaction;
- “Trading Session” means one or more continuous trading periods within the Trading Hours;
- “Transaction Size” refers to the minimum and maximum size or quantity of a particular Order or individual CFD Transaction as detailed in the Market Information Sheets and on the Trading Platform;
- “Unrealised Loss” at any given time means the Realised Loss that would be incurred by you on an Open Position if it were closed at that time;
- “Unrealised Profit” at any given time means the Realised Profit that would be made by you on an Open Position if it were closed at that time; and
- “Underlying Instrument” means a financial instrument that forms the subject of a CFD Transaction and is generally quoted on an Exchange or, in the case of some financial instruments, quoted by a Liquidity Provider.