

# Futures, Options and CFDs Terms and Conditions



FUTURES & OPTIONS PARTICIPANT



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# TERMS & CONDITIONS

## 1 INTERPRETATION

In this Agreement, unless a contrary intention appears:

1.1 **"Agreement"** means the agreement constituted by the Client Application Form completed by you, these terms and any amendment made in accordance with these terms and any other written agreement between you and us which we agree forms part of this Agreement;

**"Application Form"** means the form entitled "Client Application Form" on [www.omf.co.nz](http://www.omf.co.nz);

**"Authorised Representative"** means each person authorised by you to instruct us on your account and behalf as listed in the Application Form or advised in writing to us by you from time to time;

**"Business Day"** means a day on which trading banks in Auckland, New Zealand are open for business;

**"Client Acknowledgement"** means the client acknowledgement incorporated in the Application Form;

**"Contract"** means a futures contract as defined by section 37(1) of the Securities Markets Act 1988 and includes an option and a CFD;

**"CFD Contract" or "CFD"** means a contract which is a Contract for difference by reference to fluctuations in the price of the relevant security or index;

**"corporations"** includes a body corporate, association (whether incorporated or not), governmental, semi-governmental or local authority or agency;

**"dealing"** means dealing as defined by section 37(5) of the Securities Markets Act 1988;

**"Default Event"** means any event described in clause 8.1 of these terms;

**"Exchange Rules"** means the NZX Futures and Options Rules;

**"Exchange"** means a recognised exchange on which Contracts are traded (being a "Futures and Options Exchange" as defined by the Exchange Rules);

**"Futures Industry Law"** means, The Securities Markets Act 1988, The Futures Industry (Client Funds) Regulations 1990, The Companies Act 1993 and any other legislation to the extent applicable to Contracts and the Exchange Rules;

**"insolvent"** means insolvent, bankrupt, in liquidation, receivership or statutory management, under administration or reconstruction, struck off or removed from the register under the Companies Act 1993, wound up, dissolved, subject to any assignment for the benefit of creditors or subject to any arrangement or compromise with creditors and **"insolvency"** has the corresponding meaning;

**"Logon ID"** means, collectively, your identification number and password;

**"NZX"** means New Zealand Exchange Limited and includes any replacement or substitute thereof;

**"Off-Exchange"** means Off-Exchange as defined by the Exchange Rules;

**"Online Terms and Conditions"** means the terms and conditions entitled "Online Terms and Conditions" on [www.omf.co.nz](http://www.omf.co.nz);

**"option"** means an option as defined in section 37(1)(d) of the Securities Markets Act 1988;

**"person"** includes any individual, firm, company, corporation, association of persons (corporate or not), trust, government agency (in each case whether or not having separate legal personality);

**"Risk Disclosure Statement"** means the risk disclosure statement incorporated in the Application Form;

**"Site"** means the internet website [www.omf.co.nz](http://www.omf.co.nz);

**"SFE"** means the Sydney Futures Exchange;

**"you" or "your"** has the meaning given to it in the Client Application Form;



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“we”, “us” or “our” means OMFfinancial Limited;

- 1.2 except as otherwise defined in this Agreement all terms used in this Agreement which are defined in the Futures Industry Law shall bear the same meaning as they bear in the Futures Industry Law;
- 1.3 the singular includes the plural and vice versa;
- 1.4 words importing a gender include every other gender;
- 1.5 headings are for convenience of reference only and shall not affect the construction of this Agreement;
- 1.6 any party to this Agreement or any other agreement includes its successors and permitted assignees and transferees;
- 1.7 a reference to any legislation or rule includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation or rule and any amendment to, or reenactment or replacement of, that legislation or rule.

## 2. AUTHORITY TO EXECUTE AGREEMENT

- 2.1 You **REPRESENT, AGREE AND ACKNOWLEDGE** that: -
  - (a) where you are a corporation, you have been and are duly formed under the laws of the place of your formation and have power and authority to deal in Contracts, and the person executing this Agreement has full power and authority to execute this Agreement on your behalf;
  - (b) where you are a partnership, you have power and authority to deal in Contracts, and the person executing this Agreement has full power and authority to execute this Agreement on your behalf;
  - (c) where you are an individual, you have legal capacity to execute this Agreement;
  - (d) in executing this Agreement and in giving effect to it and each transaction under it you will not

infringe any provision of any deed or other document or agreement to which you are a party;

- (e) where you consist of more than one individual then this Agreement shall bind each and all of you severally and jointly;
- (f) you have given careful consideration to your objectives, financial situation and needs and have formed the opinion that dealing in Contracts is suitable for your purposes; and
- (g) except as otherwise expressly disclosed in writing to us, you act as principal (and not as agent or trustee) in entering into this Agreement and each transaction under it.

## 3. ACKNOWLEDGEMENTS

- 3.1 You **REPRESENT, AGREE AND ACKNOWLEDGE** that: -
  - (a) you have been given a document by us and you have read and understood such document which:
    - (i) explains the nature of Contracts;
  - (b) you have read and understood the Client Acknowledgement and Risk Disclosure Statement (and the terms used in these documents have been explained to you by us);
  - (c) we have explained and you have understood our allocation policy (see section 4.3 below);
  - (d) you have received a copy of this Agreement;
  - (e) You appoint us as your agent for the purpose of dealing in Contracts in accordance with the terms of this Agreement;
  - (f) we may transfer from your other account(s) if any, whether carried or managed by us, such funds as may be required to meet obligations as a result of transactions between both parties;
  - (g) we will deal, or will instruct third persons to deal on your behalf, in Contracts on an Exchange;

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- (h) where we instruct third persons to deal in futures contracts on an Exchange or to deal in other Contracts, we may share the commission or such other amounts relating to those Contracts with those persons as we think fit;
- (i) you will take all reasonable steps to deliver information or documentation to us or cause information or documentation to be delivered to us concerning Contracts which are requested by a person having a right to request such information or documentation. You authorise us to produce the information and documentation to the person making the request;
- (j) without limiting clause 3.1(i) above, you authorise us to provide details of all or any information relating to your Contracts and trading in Contracts to any relevant Exchange in whatever form and at whatever times as may be requested by the Exchange to carry out its regulatory functions;
- (k) you will indemnify us and keep us indemnified from and against all sums of money, actions proceedings, suits, claims, demands, damages, costs, expenses and any other amounts whatsoever claimed against or incurred by us resulting from a failure by you to comply with this Agreement;
- (l) trading in Contracts may create an obligation to give or take delivery, or make a cash adjustment, in accordance with the terms of a Contract;
- (m) we will at all times be trading on an Exchange as a principal notwithstanding that the relevant Contract may have been entered into on the instructions of you and we will incur obligations as a principal when dealing in Contracts as a result of instructions received from you;
- (n) any benefit or right obtained by us upon registration of a Contract with the clearing house for any Exchange as a result of the assumption of liability or a guarantee by that clearing house, or any other legal result, is personal to us and the benefit of that benefit, right or legal result does not pass to you;
- (o) you have no rights, whether by way of subrogation or otherwise, against any person other than us in respect of Contracts traded on an Exchange or Off-Exchange except to the extent (if any) provided by any applicable law;
- (p) in dealing in Contracts on behalf of you, we may require the buying or selling of foreign currency and the exchange rate which shall apply is the exchange rate applicable at the time your money is exchanged by our bankers or the clearing house (as the case may be), unless otherwise agreed in writing between you and us;
- (q) you agree that reports to you on the execution of instructions and/or contract notes by us shall be prima facie proof of such instructions. You accept that any objection must be confirmed in writing by you to us within forty-eight (48) hours of communication;
- (r) a notice signed by any one of our directors, managers or other authorised employees, stating the amount of moneys due and payable by you shall be prima facie evidence of the same;
- (s) trading in Contracts incurs a risk of loss as well as a potential for profit.

### 3.2 You and we AGREE that:

- (a) the terms of our relationship in respect of Contracts and any dealings between us concerning Contracts are subject to and bound by:
- (i) the Securities Markets Act 1988 and any other legislation applicable to Contracts;
- (ii) the Exchange Rules;
- (iii) in the case of Contracts traded on an Exchange, the rules and regulations of the Exchange that trades the relevant Contracts;

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- (iv) in the case of Contracts traded Off-Exchange, the terms and conditions governing the relevant Contract;
  - (v) this Agreement;
  - (vi) the Post Trade Agreement (as that term is defined in the Exchange Rules) (if any); and
  - (vii) the Futures Industry (Client Funds) Regulations 1990,
- insofar as they apply to Contracts;
- (b) we are not required to act in accordance with your instructions where to do so would constitute a breach of:
- (i) the Securities Markets Act 1988 and any other legislation applicable to Contracts;
  - (ii) the Exchange Rules;
  - (iii) in the case of Contracts traded on an Exchange, the rules and regulations of the Exchange that trades the relevant Contracts;
  - (iv) in the case of Contracts traded Off-Exchange, the terms and conditions governing the relevant Contract;
  - (v) this Agreement;
  - (vi) the Post Trade Agreement (as that term is defined in the Exchange Rules) (if any); and
  - (vii) the Futures Industry (Client Funds) Regulations 1990,
- insofar as they apply to Contracts;
- (c) to the extent any provision of this Agreement is inconsistent with any provision of the Futures Industry Law then the inconsistent provision of this Agreement shall be modified so as to comply with the relevant provision in the Futures Industry Law.

## **4. EXECUTION OF ORDERS**

- 4.1 We will use our best endeavours to execute or arrange the execution of your

instructions, but we will not be responsible for delays or errors in the transmission or execution of your instructions save through our own gross negligence, fraud or dishonesty

- 4.2 You may give instructions to us orally or in writing.
- 4.3 We undertake and you acknowledge that in respect of dealings in Contracts on an Exchange, instructions received from you and from other persons and orders on our own account shall be executed by us in the sequence in which they are received and recorded, unless it would be fair and equitable to allocate Contracts obtained in respect of similar orders on the same day on a different basis.

## **5. RECORDING OF CONVERSATIONS**

- 5.1 You **AGREE** to the:
- (a) electronic recording by us or by an Exchange or other market on behalf of us of your telephone conversations with us, with or without an automatic tone warning device;
  - (b) use of recordings or transcripts from such recordings for any purpose which we or the relevant Exchange deems desirable, including their use as evidence by either party in any dispute or anticipated dispute between you and us.
- 5.2 We agree to make available to you, on request, an opportunity to listen to any existing recording of your telephone conversations with us in the event of a dispute or anticipated dispute between you and us. We will on request provide a copy of any such recording to you provided that you agree to pay the reasonable costs of ours in providing such copy.

## **6. OUR RIGHT TO DEAL**

- 6.1 You **AGREE AND ACKNOWLEDGE** that:
- (a) we may deal in Contracts as principal on our own account; and
  - (b) our directors or employees and all other persons associated with us may deal in Contracts on their own account.

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6.2 We may in certain circumstances either acting for another client or on our own account take the opposite position to you in a Contract, and you acknowledge our right to do so and to charge you such amounts as are permitted by clause 9 as if we had not taken the opposite position to you.

### **7. DEPOSITS AND MARGINS**

7.1 You **AGREE AND ACKNOWLEDGE** that:

- (a) whilst holding an open position in a Contract you must provide us with telephone contacts through which you may be called twenty-four (24) hours a day;
- (b) we may call for payment of money or the provision of other security as we, in our absolute discretion, consider appropriate in connection with the obligations incurred by us in respect of Contracts entered into for the account of you;
- (c) we have the right whenever in our discretion we consider it appropriate to raise or lower the margin or deposit requirements or any other requirements for the payment of money or provision of security, which once established, may apply to existing positions as well as new positions in the Contract affected by such change;
- (d) the time by which you must pay any amount called or provide security is of the essence and if no other time is stipulated by us when making a call then you are required to pay the amounts or provide the relevant security within twenty-four (24) hours of the margin deficit occurring, provided that if you are not a resident of or domiciled in New Zealand, you are required to pay the amounts or provide the relevant security within forty-eight (48) hours;
- (e) should you fail to meet the call then we may (without prejudice to any other rights or powers under this Agreement) in our absolute discretion, and without creating an obligation to do so, close out, without notice, all or some of the Contracts;
- (f) liability to pay an initial margin accrues at the time the Contract is

executed, regardless of when the call is made;

- (g) liability to pay a variation margin accrues at the time the variation margin comes into existence. The liability to pay variation margin accrues regardless of when a call is made;
- (h) you are responsible to pay in cash any deficit owing to us after closure and that if you default in payment of such deficit we may realise any securities held by us and apply the proceeds against that deficiency;
- (i) we will call not less than the minimum deposit required by the relevant Exchange;
- (j) your liability in respect of margin calls is not limited to the amount, if any, deposited with us;

### **8. YOUR DEFAULT**

8.1 It is a Default Event whether or not it is within your control if:

- (a) you become insolvent; or
- (b) you become subject to a recommendation by the Securities Commission or Reserve Bank of New Zealand to the relevant Minister supporting the appointment of a statutory manager; or
- (c) you make any representation that is incorrect or misleading in any material way with the result that loss or damage is, or is likely to be, suffered by us; or
- (d) any guarantee or other security provided by you to us is, without the consent of us, withdrawn or becomes ineffective; or
- (e) you fail to pay, or provide security for, amounts payable to us or you fail to perform any obligation arising pursuant to the settlement of a Contract;
- (f) you, being a natural person, die or become of unsound mind or you or your estate is liable to be dealt with in any way under the law relating to mental health; or

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- (g) you impose a moratorium on payments to creditors or cease or threaten to cease carrying on business; or
- (h) in the absence of you making alternative arrangements acceptable to us, you are not contactable by us within any consecutive period of twenty-four (24) hours in order for us to obtain instructions.

8.2 On or at any time after a Default Event occurs, we may, without prejudice to any other rights we may have, without giving prior notice to you, take any action, or refrain from taking action, which we consider reasonable in the circumstance in connection with Contracts entered into for you (including, without limitation, open positions arising from Contracts) and, without limitation, we may do any one or more of the following:

- (a) enter into one or more transactions to effect the close out of one or more open positions in accordance with the rules and regulations of the Exchange on which those Contracts are traded;
- (b) exercise one or more Contracts that are options in accordance with the rules and regulations of the Exchange on which those Contracts that are options are traded;
- (c) abandon any options not yet exercised or cover option positions by entering into further Contracts; or
- (d) cancel any outstanding orders in order to close your account or accounts pursuant to which there are moneys owing to us or in respect of which account or accounts there are insufficient funds deposited with us and available to us, to satisfy moneys owing to us;
- (e) satisfy any obligation you may have to us out of any property, money or security belonging to you in our custody or control and for that purpose to enforce at your expense any asset or security held by us in such manner as we see fit;
- (f) exercise any other power or right which we may have under the Rules, the rules and regulations of the Exchange on which any relevant

Contracts are traded, the terms and conditions of a Contract traded Off-Exchange or this Agreement or perform any other obligations arising under the Rules, the rules and regulations of the Exchange on which any relevant Contracts are traded, the terms and conditions of a Contract traded Off-Exchange or this Agreement, in any such case at your expense;

- (g) take such other action as a reasonably prudent futures broker would take in the circumstances to protect the personal obligation incurred when dealing on your behalf;

and you must account to us as if those actions were taken on the instruction of you, and without limitation, you are liable for any deficiency and you are entitled to any surplus, which may result.

Any sale, purchase or other action authorised hereunder may be made at our absolute discretion on an Exchange or other market, at public auction or at private sale, without advertisement, and without prior demand or call of any kind upon you or upon your personal representatives.

We may act on our own behalf as vendor or purchaser in any such transaction without hereby incurring any liability of any kind to you and may buy or sell any property dealt with in accordance with the foregoing provisions free of any equity or right of redemption in you. A prior demand or call, or prior notice of the time or place of sale of purchase or other action shall not be considered a waiver of our right to sell or buy or take other action without demand or notice as herein provided.

You shall at all times be liable for payment of any debit balance owing in your account(s) and in the event that the proceeds of any action taken by us under this clause or this Agreement are insufficient for the payment of all of your liabilities due to us, you shall promptly pay, upon demand, the deficit, together with interest thereon at our standard rate as notified to you by us from time to time and all costs of collection or enforcement or other action taken by us hereunder (including reasonable legal fees on a solicitor and own client basis) and all other amounts due hereunder;

8.3 If any transactions are terminated in accordance with clause 8.2, we will determine, as at the termination date, the mark-to-market value in New Zealand dollars of that terminated transaction. Such

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a determination will be made by us in good faith on the basis of the market quotations obtained by us. Each quotation will be for an amount, if any, that we would have to pay someone else (expressed as a negative number) or that someone else would have to pay us (expressed as a positive number) to assume your rights and obligations under the terminated transaction or transactions. Where a quotation is denominated in a currency other than New Zealand dollars, we may convert the quoted amount into New Zealand dollars using an exchange rate selected by us in good faith. Once the mark-to-market value of each terminated transaction has been determined, each value will be aggregated to obtain a final net amount. If this final net amount is negative then you must pay this amount to us. If this final net amount is positive then we must pay the absolute value of this amount to you. Any net amount payable to you will be subject to the right of set-off contained in clause 8.4 of this Agreement.

- 8.4 After a Default Event has occurred we are entitled to set-off any amount owed by us to you under this Agreement against any amount owed by you to us (whether or not owed under this Agreement, and irrespective of the currency, place of payment or booking office of the obligation). Where an amount to be set-off under this clause is denominated in a currency other than New Zealand dollars, we may convert that amount into New Zealand dollars using an exchange rate selected by us in good faith. This clause does not have any effect on any other rights of set-off we may have.

### **9. COMMISSION, FEES, EXPENSES**

- 9.1 You **AGREE** to pay to us:
- (a) commissions, fees, taxes and charges in connection with dealing in Contracts for you at such rates as we determine from time to time and notify to you in writing from time to time;
  - (b) all amounts payable as result of making or taking delivery or making a cash adjustment in accordance with the terms of a Contract;
  - (c) all amounts incurred by us as a result of your default under the terms of this Agreement (including without limiting the generality of the foregoing all

legal costs and expenses on a solicitor/client basis);

- (d) in respect of any unpaid amount required to be paid under this Agreement (including without limiting the generality of the foregoing any amounts due as a result of a Contract being closed out), interest at our standard rates as notified to you by us from time to time and such interest shall accrue and be calculated from the date when the amount was due (irrespective of any grace period) to the date of its final payment in full.

### **10. DELIVERY AGAINST POSITIONS ON NON SFE & NZX MARKETS**

10.1 You **AGREE AND ACKNOWLEDGE** that:

- (a) we do not permit clients to enter into delivery against futures or options positions on non SFE and NZX markets; and
- (b) in Contracts for which there is no cash settlement, you must close out all open positions in the current month, before the delivery period; and
- (c) if no instructions to close out a position in the current month of a deliverable Contract have been received before the last trading day we may close out the position by entering into a Contract which is the opposite of the original position without consulting/ contacting you.

### **11. SEGREGATED ACCOUNTS**

11.1 You and we **AGREE AND ACKNOWLEDGE** that all money and property deposited with us or received by us on behalf of you will be segregated by us in accordance with the Futures Industry Law.

11.2 You **AGREE AND ACKNOWLEDGE** that:

- (a) your moneys and the moneys of other clients of us will be combined and deposited by us in a clients' segregated account;
- (b) all moneys credited to the clients' segregated account maintained by us may be used by us to meet the default of any client of us; and

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- (c) unless otherwise agreed in writing, we are entitled to any interest on money and property of yours deposited with us and segregated and invested by us.

11.3 In accordance with the Futures Industry Law, our accounting records contain entries from day to day of all client money and property received by or in the possession or control of us. Records of all payments and disbursements of client money and property are also maintained. Your access to these records is not considered necessary as we fully disclose our obligations to you in Contract confirmations and monthly statements. Our accounting records are independently audited by our auditors and subject to inspection by NZX.

### **12. RIGHTS OF MEMBER TO REFUSE TO DEAL**

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12.1 We may at any time refuse to enter into a Contract for you or may limit the Contracts we enter into for you. We will inform you of any refusal or limitation at or before the time of you placing the order or as soon as practicable thereafter. Such refusal shall be without prejudice to any other rights and powers under this Agreement.

### **13. TIME OF ESSENCE**

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13.1 Time is of the essence under the terms of this Agreement.

### **14. INDEMNITY**

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14.1 You hereby indemnify and agree to keep indemnified us and our employees, agents or representatives from and against all sums of money, actions, proceedings, suits, claims, demands, damages, costs, expenses and any other amounts whatsoever arising out of any default, whether by act or omission, of you under this Agreement or anything lawfully done by us in accordance with this Agreement or by reason of us complying with any direction, request or requirement of an Exchange or its clearing house or other regulatory authority in connection with this Agreement (including without limitation any of the matters listed in clause 9.1 which may be incurred by us in connection with this Agreement).

### **15. CONTRACT NOTES AND MONTHLY STATEMENTS**

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15.1 We shall furnish to you Contract notes and monthly statements as required by the Futures Industry Law.

### **16. TERMINATION**

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16.1 Either you or we may terminate this Agreement at any time by giving the other a notice in writing to that effect. This Agreement shall terminate on receipt of the notice by the other party or on the date specified in the notice whichever is the later.

16.2 Upon termination of this Agreement, we will close out all Contracts and will close out, abandon or exercise any options not yet exercised entered into by us for you unless, in accordance with a direction from you, those Contracts are transferred to another Futures and Options Participant (as defined in the Rules) in accordance with the Rules.

16.3 Termination does not affect the existing rights and obligations of you and us at termination and shall not release either you or us from any liabilities for any antecedent breach of any of the terms of this Agreement.

### **17. NOTICES**

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17.1 All communications, including demands pursuant to this Agreement, may be made electronically or by telephone, mail, facsimile or otherwise sent to the recipient at the address, telephone, post office box or facsimile number most recently notified in writing by the recipient to the sender.

17.2 Communications will be taken to be received:

- (a) if delivered in person or by telegraph, when delivered;
- (b) if made by mail, three Business Days from and including the date of postage;
- (c) if by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and

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- (d) (i) if given to you by email, on delivery (and a delivery report received by us will be conclusive evidence of delivery even if the communication is not opened by you);
- (ii) if given to us by email, on being opened and acknowledged by us.

17.3 A notice of change of name, postal or e-mail address must be given in writing and signed by an authorised person on the account.

### **18. GENERAL**

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18.1 Every exemption from liability, defence or immunity available to us shall also be available to and extend to protect every one of our employees, agents and representatives.

18.2 In the absence of our gross negligence, fraud or dishonesty, we shall not be liable to you for any loss or damage suffered by you in respect of any advice or recommendation given by us or our consultants to you or for any delay in the communication of orders due to any breakdown or failure of transmission or communication facilities or for any other cause or causes beyond our reasonable control or anticipation and you hereby indemnify and hold us harmless in respect of any such loss or damage.

18.3 We shall not (except to the extent of any direct (and not consequential) loss to a Client directly caused by gross negligence, fraud or dishonesty) accept or bear any obligation or liability whatsoever to you or any other person in respect of this Agreement or any transactions arising out of or contemplated by this Agreement.

18.4 If any term or part thereof of this Agreement shall be invalid or not enforceable in accordance with its terms, all other terms or parts thereof which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable term or part thereof shall be and continue to be valid and enforceable in accordance with its terms.

18.5 We may from time to time amend, alter, modify, substitute or supplement the terms of this Agreement by posting the amended terms on OMF's website – [www.omf.co.nz](http://www.omf.co.nz)

### **19. PROVISION OF INFORMATION AND/OR ADVICE TO YOU**

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19.1 While we believe that any information or advice provided to you is reliable, no warranty is given as to its accuracy and persons who rely on it do so at their own risk. In so far as any such information or advice contains material from other sources, we have not checked those sources and accept no responsibility for the accuracy of that material. You should satisfy yourself as to the correctness or otherwise of the statements contained in the material.

19.2 All information and advice provided to you is for the private use of you and is not to be passed to any third party without the prior written consent of us.

### **20. PROPER LAW**

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20.1 This Agreement shall be governed by and construed in accordance with the laws of New Zealand and each party submits to the non-exclusive jurisdiction of the Courts of New Zealand.

### **21. APPOINTMENT OF ATTORNEY**

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21.1 You hereby appoint each relevant Exchange as attorney of you to do all things necessary to transfer any open positions held by us on behalf of you to another Futures and Options Participant (as defined in the Rules) with access to that Exchange where our rights have been suspended other than as a result of default in meeting commitments to any clearing house.

### **22. AUTHORISED PERSONS**

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22.1 We are authorised to act upon the written or verbal instructions of each Authorised Representative. You may from time to time by notice in writing to us update Authorised Representatives. You undertake to ratify whatever an Authorised Representative shall lawfully do or cause to be done.

### **23. INSTRUCTIONS**

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23.1 You agree that we may assume the authenticity of any instructions given or purportedly given by you or your Authorised Representative and that any person claiming to be you or your Authorised Representative is in fact that

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person. You authorise us to act on instructions believed by us to be authentic. We are entitled to rely on any electronic instruction which includes your Logon ID without any enquiry as to the authority or identity of the sender of that message and you are bound by any such instruction.

- 23.2 An instruction given by you or your Authorised Representative electronically must be re-transmitted if you or your Authorised Representative receive a message or become aware that the instruction was received by us in an incomplete or garbled form.
- 23.3 You confirm that we are authorised to act on facsimile instructions given or purported to be given by you or your Authorised Representative regarding movements of funds in your account including payment to third party beneficiaries. Where any communication is purportedly given by you or your Authorised Representative to us by facsimile, we shall have no obligation to make any enquiry as to the authenticity, validity or legality of any such facsimile notwithstanding that any notice may subsequently be proven not to have been made, given or signed by the person purporting to give the notice. The instruction shall be valid until it is revoked in writing by you or your Authorised Representative.
- 23.4 We will only act within the parameters of your or your Authorised Representative's instructions. We will not act on a discretionary basis on your behalf unless you enter into a discretionary authority agreement with us.
- 23.5 You consent to us maintaining a transaction log of all electronic communications.
- 23.6 Our records of instructions will be conclusive evidence of those instructions.
- 23.7 You agree not to dispute the validity or enforceability of electronic communications and waive any right to raise any defence based on the absence of writing.

### **24. ACCESS TO SERVICES THROUGH THE INTERNET**

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- 24.1 Subject to complying with our Online Terms and Conditions, we grant to you a right to access the Site for the purposes of exercising your rights and complying with your obligations under this Agreement. This

right of access is for your use only. We reserve the right to withdraw or suspend your access to the Site at any time.

- 24.2 You are responsible for the confidentiality and use of your Logon ID and your password. If you become aware of any loss or theft or unauthorised use of your Logon ID or password, you must notify us immediately. Your Logon ID may be cancelled at any time without notice, but we will notify you as soon as practicable thereafter if this happens.

### **25 CONSUMER GUARANTEES ACT**

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- 25.1 If you are acquiring the services provided by us for the purposes of a business, you agree that the conditions, warranties and guarantees of the Consumer Guarantees Act 1993 and any rights you may have which are implied by common law, statute or custom will not apply to this Agreement. You also agree:
- (a) you will not claim any of the remedies set out in the Consumer Guarantees Act 1993 from us; and
  - (b) we will not be liable to you for any consequential loss however that consequential loss arises.

### **26 ASSIGNMENT**

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- 26.1 This Agreement inures to the benefit of our successors (by merger, consolidation or otherwise) and assignees.
- 26.2 We may assign to or take an assignment from any party of the benefit of this Agreement or any Contract or the balance of your account.
- 26.3 You acknowledge that you may not assign or transfer all or any part of your rights and benefit under this Agreement or any Contract without our prior written consent.

# PRIVACY POLICY

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## **1 COMMITMENT TO PRIVACY**

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- 1.1 OMFInancial Limited, its subsidiaries, partners and agents (either "OMFInancial Limited", "we" or "us") recognises its responsibility, and is committed to, ensuring the privacy of your information.
- 1.2 The following privacy policy has been developed in recognition that internet technologies, and specifically OMFInancial Limited's application of these, are rapidly evolving. This policy addresses privacy issues relevant to the Site, including all services, programs or information that you use or otherwise access from time to time via the Site that are provided by OMFInancial Limited (collectively, referred to as "the Site").
- 1.3 Should we change this privacy policy for any reason, such changes will always be posted to this page. However, if you have any further questions relating to this privacy policy, please do not hesitate to email us.

## **2. WHAT THIS PRIVACY POLICY COVERS**

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- 2.1 This privacy policy covers the following details:
  - (a) Access to, editing and deleting personal information;
  - (b) Collection of information;
  - (c) Cookies;
  - (d) Use of information;
  - (e) Use of email;
  - (f) Security; and
  - (g) Linked Sites

## **3. EDITING AND DELETING, ACCESS TO PERSONAL INFORMATION**

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- 3.1 You may ask to see your personal details that are held via the Site at any stage by emailing us. You may also ask us to correct or alter any details about you that we hold. It is your responsibility to ensure that information provided to us is accurate.
- 3.2 You may delete your user details from the Site by emailing us.

## **4. COLLECTION OF INFORMATION**

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- 4.1 As part of the registration process, we will provide you with a user name and password, which is used for statistical and security purposes.

- 4.2 From time to time, OMFInancial Limited may collect additional personal information from you in connection with optional surveys, news updates or promotions. Providing this information is optional. Feedback from surveys will be used to improve the Site.

- 4.3 If you register with the Site, you will not be anonymous to us. OMFInancial Limited collects personally identifiable information upon registration, and when you provide information for surveys, news updates or promotions. OMFInancial Limited logs your IP address (the location of your computer on the internet) and the pages you visit whenever you use the Site. This is for system administration, statistical and troubleshooting purposes.

- 4.4 We will always explicitly ask for any information that personally identifies you.

## **5 COOKIES**

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- 5.1 A cookie is a small data file placed on your computer by our server. A cookie contains information about your visit to our Site. When you visit the Site again, our server will look for the cookie and structure itself based on the information provided. A cookie identifies your computer to our web server when you visit the Site. We do not use the cookie to collect or store personal information about you. OMFInancial Limited uses browser cookies to improve the speed and reliability of our security system.

## **6. USE OF INFORMATION**

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- 6.1 Your personal information will be used only for the purposes for which it is collected, and retained only for as long as is necessary to fulfil the purposes for which the information was collected (including any time that we are required by law to retain such information).

- 6.2 We will not sell or rent your personally identifiable information to any third party.

- 6.3 We will not use your personal information for any purpose that is not related to the products or services provided on the Site, or for any purpose for which you would not reasonably expect us to use the information.

# PRIVACY POLICY

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- 6.4 The Site automatically generates logs regarding your sessions on the Site, such as the features you use, the actions that you take, and the information that you access. We generally use this information in statistical and aggregate formats to assess the effectiveness of the Site and to better understand your priorities and interests.
- 6.5 Personal data collected on the Site may be transferred to other OMFInancial Limited offices where it is necessary for the purposes for which you submitted the information. By submitting information to the Site, you consent to trans-mission of such information across national boundaries, provided that such information remains in the control of OMFInancial Limited.
- 6.6 We may release information about you when required to, or permitted, by law. We may also disclose information where you have authorised us to, or where disclosure is connected to the purpose for which it was collected – e.g. online registration. In all situations where we disclose your personal information to third parties, we will endeavour to inform you of such disclosure and the party to whom disclosure is made as soon as reasonably possible (if we are permitted by law to advise such details).

## **7. USE OF EMAIL**

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- 7.1 We do not spam or endorse the use of spam. We will not send emails to you that are unrelated to the Site, and we will not authorise any third party to use your email address to send you unsolicited emails.
- 7.2 If you are a registered user of the Site, we may use your email address to advise you of any upgrades or changes to the Site.
- 7.3 We may use your email address to periodically send promotional emails from OMFInancial Limited about products and services, offers or updates relating to recent developments in our services that may be relevant to you.

## **8. SECURITY PROCEDURES**

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- 8.1 To prevent unauthorised access, to maintain data accuracy and to ensure appropriate use of any information supplied by you, we have put in place physical, electronic and managerial processes to protect the information you provide on the Site.

- 8.2 Additionally, all stored user information is protected from unauthorised access through the use of secure passwords, user log-ons and other security procedures.

- 8.3 For more information about our security procedures, please email us.

## **9. LINKED SITES**

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- 9.1 The Site may contain links to Linked Sites. OMFInancial Limited is not responsible for the privacy policies of such Linked Sites. This privacy policy applies solely to information collected in the Site by us.

## **10 DEFINITIONS**

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- 10.1 All terms used in this Privacy Policy shall have the same meanings as those terms are used or defined in the Site's terms and conditions