



## TRADING TERMS AND CONDITIONS

TD Markets (Pty) Ltd (hereinafter the “Company”) is an investment firm incorporated and registered under the laws of South Africa, with registration number 2016/506271/07. The Company is authorized and regulated by the Financial Sector Conduct Authority (hereinafter the “FSCA”) under license number 49128. The Company is authorized to provide the services specified in these Trading Terms and Conditions (hereinafter the “Agreement”).

TD Markets is a trade name of TD Markets (Pty) Ltd. Trading in Financial Instruments is regulated by the Financial Advisory and Intermediary Services Act 2002 and as implemented into the Law and amended from time to time.

The domain name [www.tdmarkets.co.za](http://www.tdmarkets.co.za) (hereinafter the “Main Website”) is owned by the Company. The Company may also register and operate other websites mainly for promotional and marketing purposes in languages other than English.

The Client accepts and understands that the official language of the Company is the English language. Any translated version of the Agreement and/or any other agreement or communication, may be provided solely for convenient purposes. In the event of dispute, the English version shall prevail. The Client should always refer to the Legal Documentation posted on the Main Website for all information and disclosures about the Company and their activities.

### 1. Definitions of Terms

<b>Access Codes</b>	Means any credentials provided by the Company for accessing the Trading Platform or credentials used by the Client to access the Client Portal;
<b>Agreement</b>	Means this document;
<b>Applicable Regulations</b>	Means the rules of any relevant regulatory authority, the rules of any relevant exchange, and all other applicable laws and rules in force from time to time, including the Financial Advisory & Intermediary Services Act 2002, relevant to the Financial Instruments;
<b>Authorized Person</b>	Means an individual duly authorized on behalf of the Client to perform under the Agreement;



<b>Balance</b>	Means the net of all realized profits and losses on executed Transactions and deposits/withdrawals to/from an account;
<b>Base currency</b>	Means the designated currency of the Client Account;
<b>CFD</b>	Means contract for differences;
<b>Client</b>	Means any natural or legal person to whom the Company provides its Services;
<b>Client Account</b>	Means any and all accounts for trading opened by the Client through the Company;
<b>Client's Bank Account</b>	Means an account held in the name of the Client and/or the name of the Company on behalf of the Client with a bank or other institution or any electronic payment provider or a credit card processor;
<b>Client Portal</b>	The portal on the Main Website through which the Client can access the Client Account;
<b>Company</b>	Means TD Markets (Pty) Ltd, with a registered address at 9th Floor, Atrium on Fifth, 5 <sup>th</sup> Street, Sandton, 2196, Johannesburg, South Africa (phone: +27 10 3000 011, , e-mail: <a href="mailto:support@tdmarkets.com">support@tdmarkets.com</a> , website: <a href="http://www.tdmarkets.co.za">www.tdmarkets.co.za</a> ), a limited proprietary Company registered under the Laws of the Republic of South Africa with registration number 2016/506271/07 and is regulated by the FSCA under license number 49128;
<b>Contract Specification</b>	Means the principal contractual terms relating to a Financial Instrument which include such matters as size, price and margin requirements;
<b>Electronic Systems</b>	Means any electronic trading facility offered by the Company (e.g. MetaTrader platforms, web-based platforms, mobile platforms, etc.), including the Client Portal on or through which a Client may send information including prices, orders, bids, offers and executions for the purposes of trading with or through the Company including any hardware, software and/or communications link;



<b>Equity</b>	Means with respect to a Client's Account the aggregate of (i) the Balance; and (ii) unrealized profit or loss on open positions (after deduction of any Charges and the application of any Spread on closing of a position) – which can be expressed as follows: Balance +/- Open Positions – Spread - Charges;
<b>Financial Instruments</b>	Means the financial instruments described in paragraph 3.1 of this Agreement;
<b>FOREX</b>	Means trades on the foreign exchange market;
<b>Free Margin</b>	Means the amount of funds in the Client's Account that can be used for trading; Free Margin = Equity – Margin
<b>FSCA</b>	Means the Financial Sector Conduct Authority, whose offices are located at Riverwalk Office Park, Block B, 41 Matroosberg Road (Corner Garsfontein and Matroosberg Roads), Ashlea Gardens, Extension 6, Menlo Park, Pretoria, South Africa (contact telephone no. +27 12 428 8000), and any regulatory body which succeeds to one or more of the functions and/or duties performed by the FSCA as at the date of this Agreement;
<b>General Code</b>	Means the General Code of Conduct for Authorised FSPs and Representatives in terms of the Financial Advisory and Intermediary Services Act, Act 37 of 2002, as amended by Board Notice 43 of 14 May 2008;
<b>Introducing Broker</b>	Means any legal entity or a natural person obtaining remuneration from The Company and/or Clients for introducing Clients to The Company;
<b>Investment Services</b>	Means the investment services described in paragraph 3.1;
<b>The Company</b>	Means TD Markets (Pty) Ltd, with a registered address at 9th Floor, Atrium on Fifth, 5th Street, Sandton, 2196, Johannesburg, South Africa (phone: +27 10 3000 011, , e-mail: support@tdmarkets.com, website: www.tdmarkets.co.za), a limited proprietary Company registered under the Laws of the Republic of South Africa with registration number 2016/506271/07 and is regulated by the FSCA under license number 49128;
<b>Main Website</b>	Means the website of the Company, being <a href="http://www.tdmarkets.co.za">www.tdmarkets.co.za</a> ;
<b>Margin</b>	Means the funds determined by the Company in its absolute discretion that a Client is required to deposit with the Company as collateral to secure the Client's liability for any losses which may be incurred in respect of any Transaction and is required as a condition of entering into and/or maintaining a Transaction with an open position;



<b>MTF (Multilateral Trading Facility)</b>	Means a multilateral system operated by an investment firm or market operator, which brings together buying and selling interests in financial instruments, or allows buyers and sellers of those financial instruments to be brought together, within the system and in accordance with its rules so that a contract is concluded between them;
<b>Power of Attorney</b>	Means the power to authorize a third party to act on behalf of the Client in all the business relationships with the Company;
<b>Principal</b>	Means the principal entity, liquidity provider, counterparty to the trades executed on platform which is CapXM Ltd., a company registered under the laws of Saint Vincent and The Grenadines;
<b>Regulated Market</b>	Means the multilateral system managed or operated by a market operator and which brings together or facilitates the bringing together of multiple third-party buying and/or selling interests in financial instruments - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorized by a competent authority as such and functions regularly in accordance with the provisions of the Law;
<b>Regulations</b>	The Financial Advisory & Intermediary Services Act 2002, the Financial Intelligent Centre Act 2001, the rule of any relevant regulatory authority, the rules of any relevant exchange, and all other applicable laws, regulations and rules in force from time to time, relevant to the Financial Instruments and the performance of this Agreement;
<b>Retail Client</b>	Means a client who is not a Professional Client or an Eligible Counterparty;
<b>Trading Platform</b>	Means the trading platform set up by the Company on which the Client trades Financial Instruments; and
<b>Transaction</b>	Means any type of transaction performed by TD Markets in the Client's account including but not limited to purchase and sale transactions involving Financial Instruments, deposits and withdrawals.

## 2. Scope and Application

2.1 This Agreement (and any amendments to this Agreement) supersedes any previous agreement between the Company and the Client on the same subject matter and takes effect between the Company and the Client.

2.2 This Agreement sets out the basis on which the Company agree to provide Investment Services. Depending on the service and Financial Instrument, the Company shall

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be subject to, among other things, as relevant, the FAIS Act of 2002, the Applicable Regulations and other codes of conduct and/or circulars applicable to the provision of relevant services issued by the FSCA or other relevant regulatory authority.

2.3 This Agreement is provided to assist the Client in making an informed decision about the Company, their services and the risks of the Financial Instruments.

2.4 This Agreement should be read in its entirety in deciding whether:

- a) to buy, sell or to continue to hold any Financial Instrument; and/or
- b) to be provided with the Services.

2.5 This Agreement governs all Investment Services and/or Ancillary Services and, unless governed by any other agreement, any other services provided by the Company.

### **3. Provision of Services**

3.1 The Company shall arrange for execution the Client's orders in relation to the Financial Instruments below:

- a) Contracts for difference on spot FOREX, spot precious metals, cryptocurrencies or any other commodities available for trading, futures and shares;
- b) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- c) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash at the option of one of the parties other than by reason of a default or other termination event.

(the "Investment Services").

3.2 The Company shall also make appropriate and reasonable arrangements to enable the Client to carry out transactions in the Financial Instruments stated in paragraph 3.1.

3.3 The Investment Services shall involve Transactions in Financial Instruments not admitted to trading on Regulated Markets or an MTF. By accepting this Agreement, the Client acknowledges that the Client's orders may be executed by TD Markets outside a Regulated Market or an MTF.



3.4 The Client acknowledges that provision of any services by the Company does not constitute the provision of investment advice.

3.5 The Investment Services to be provided by the Company to the Client are:

a) Execution of orders on behalf of Clients in relation to the Financial Instruments below:

- (i) Contracts for Differences on spot FOREX, spot precious metals, futures, shares or any other commodities available for trading
- (ii) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.
- (iii) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash at the option of one of the parties other than by reason of default or other termination event.

3.6 The Company will also provide the following ancillary services:

- a) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management.
- b) Foreign Exchange services where these are connected to the provision of Investment Services.
- c) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

3.7 The services of paragraph 3.5 shall involve transactions in Financial Instruments not admitted to trading in Regulated Markets or an MTF. By accepting this agreement the Client acknowledges, and agrees he has given express prior consent to the execution of orders by the Company outside a Regulated Market or an MTF.

3.8 The Client acknowledges that the services of paragraph 3.5 do not constitute the provision of investment advice.

#### **4 Acknowledgement of Risks**

4.1 Contracts for differences, options, futures, swaps, forward rate agreements and many other derivatives (including most put options) are leveraged products and involve a high level of risk. It is possible for the Client to lose all his capital invested. Therefore, these products may not be suitable for everyone and the Client should



ensure that he understands the risks involved. The Client should seek independent advice if necessary.

4.2 The Client unreservedly acknowledges and accepts that, regardless of any information, which may be offered by the Company, the value of any investment in Financial Instruments may increase or decrease and there is a substantial risk that the investment may become of no value. In the case of Financial Instruments which are contracts for differences or other contractually based derivatives the entire amount of margin deposit may be lost.

4.3 The Client acknowledges that the Company has not solicited, or in any other way recommended his/her participation in trading with the Company pursuant to any particular trading system, and that the Client has made inquiries and conducted research sufficient to make an informed investment decision.

4.4 The Client unreservedly acknowledges and accepts that he runs a great risk of incurring losses and damages as a result of purchasing and/or selling any Financial Instrument and the Client accepts and declares that he is willing to undertake this risk.

4.5 The Client acknowledges and accepts that the Company do not and shall not provide any investment advice. Where applicable, any general views expressed to the Client by the Company (whether orally or in writing) on economic climate, markets, investment strategies or investments, trading suggestions, research or other such information are not to be viewed as investment advice or recommendations by the Company and shall not give rise to any advisory relationship. Each decision by the Client to enter into a Contract for Differences or any other trading product offered by the Company is an independent decision by the Client. The Company are not acting as an advisor to, or serving as a fiduciary of the Client and the Company specifically disclaims any such duties.

4.6 The Client confirms that the funds deposited to the account held with the Company are derived from legitimate sources. The Client further acknowledges and confirms that he/she has the financial resources and relevant knowledge to make an informed decision regarding the funding and trading of the account, and that the Client is trading on his/her own behalf and on his/her own accord.

4.7 Before deciding whether to trade, the client should consider that (a) such products are complex and of high risk and is likely to lose all of the invested capital, and (b) the values of cryptocurrencies can widely fluctuate and are extremely volatile and may result in significant losses over a short period of time.



- 4.8 The Client further understands that the market and pricing of CFDs on Cryptocurrencies is derived from digital decentralized exchanges with non-regulated nature. Consequently, the pricing information provided by such exchanges may substantially differ compared to the pricing of regulated exchanges. As a result, the trading environment and the respective prices are highly unpredictable compared to other financial instruments. The aforesaid exchanges may have different internal policies and rules which are not subject to any regulatory supervision resulting to an uncertain trading environment that can have material adverse effect on the client's capital.
- 4.9 The trading in CFDs on Cryptocurrencies is not appropriate for all investors and as such, the client should fully consider whether trading in cryptocurrency CFDs is appropriate for them.
- 4.10 The preceding paragraph does not constitute investment advice based on the Client's personal circumstances, nor is it a recommendation to enter into any of the services or invest in any Financial Instrument. Where the Client is unclear as to the meaning of any of the above disclosures or warnings, the Client is strongly recommended to seek independent legal or financial advice.
- 4.11 The Client acknowledges and accepts that there may be risks other than those mentioned in this paragraph 4. The Client also acknowledges and accepts that he has read and accepted the "Risk Disclosure" document, which is available in the Legal Documentation section of the Main Website.

## **5 Electronic Systems and Trading**

- 5.1 The Company shall provide, or arrange to provide the Client with Access Codes for entering into Transactions or dealings with the Company. Such Access Codes can be used to access the Electronic Systems. Any such dealings shall be carried out on the basis set out in this paragraph and on the basis of any additional agreement which the Company may enter into with the Client to regulate such activity.
- 5.2 The Client acknowledges and accepts that the Company has the right to restrict any access to its Electronic Systems where it deems appropriate, for the smooth operation of its Electronic Systems as well as to protect other client's interest and its own. The Client will only be entitled to access the Electronic Systems and enter into dealings for its own internal business use on a non-exclusive, non-transferable basis.
- 5.3 All rights and interests and all intellectual property rights (including, without limitation, all trademarks and trade names in or relating to the Company) are owned by TD Markets (PTY) LTD is registered with the Financial Sector Conduct Authority FSP49128





Company or the Company' suppliers and will remain the property of the Company or Company' suppliers at all times. The Client will have no right or interest in those intellectual property rights other than the right to access the Electronic Systems. The Client shall not copy, license, sell, transfer, make available the Electronic Systems or information on the Electronic Systems to any other person. The Client shall not remove or alter any copyright notice or other proprietary or restrictive notice contained in the Electronic Systems.

- 5.4 The Client acknowledges that in the case of any delay and/or disruption or outage in relation to the Electronic Systems or any electronic communication (including the internet, the Trading Platform or electricity), if the Client wishes to place an order he must call the Support department of TD Markets on +27 10 3000 011 and place his verbal instruction. The Client acknowledges and accepts that the Company have the right not to accept any verbal instruction in case the Company' personnel are not satisfied of the caller's/Client's identity or in case the caller/Client does not provide clear instructions to the Company. The Client acknowledges that verbal instructions shall be treated on a first come, first served basis and the Company bear no responsibility for possible delays in executing the verbal instruction via the Company's internal procedure of submission to the Principal.
- 5.5 The Client shall take all necessary precautions to ensure the confidentiality of all information, including, but not limited to, the Access Codes to the Electronic Systems, transaction activities, account balances, as well as all other information and all orders. The Client acknowledges that the Company bear no responsibility in the case that the Access Codes are used in an unauthorized manner by any third party, except where unauthorized use is the result of the Company' default. The Client is strongly advised not to use any public computer to login with his Access Codes. The Client should always logout from the Electronic Systems. The Client shall ensure that no computer viruses, worms or similar items are introduced through the Electronic Systems to the Company' computer systems and networks. The Client will be responsible for the installation and proper use of any virus detection software which the Company may require.
- 5.6 The Client undertakes to notify the Company immediately if it comes to his attention that the Client's Electronic System Access Codes are being used unauthorized.
- 5.7 To the extent permitted by Applicable Regulations, the Company shall not be liable for:
- a) any loss, expense, cost or liability (including consequential loss) suffered or incurred by the Client as a result of instructions being given, or any other communication being made via the internet or other electronic media; the



Client shall be solely responsible for all orders, and for the accuracy of all information, sent via such electronic media; and

- b) any loss or damage that may be caused to any equipment or software due to any viruses, defects or malfunctions in connection with the access to, or use of, the Electronic Systems.

5.8 The Client shall be solely responsible for all orders and the accuracy of all information sent via the internet using Access Codes.

5.9 If the Client should uses a third party software application to provide trading signals or advice or other trading assistance (an “Expert Advisor”) or uses MetaTrader Hosting, a hosting environment allowing for real-time access to the Client’s TD Markets Account, the Company and its third party suppliers or licensors make no warranties or representations of any kind, whether expressed or implied for the service it is providing. The Company and its third party suppliers or licensors also disclaim any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by the Client, including loss of funds, data, non-deliveries or service interruptions by any cause or errors or omissions by the Client. The Client’s use of any information obtained by way of an Expert Advisor used in conjunction with

MetaTrader Hosting or otherwise is at the Client’s own risk, and the Company and its third party suppliers specifically disclaim any responsibility for the accuracy or quality of information obtained through its services. Connection speed represents the speed of an end-to-end connection. The Company and its third party suppliers or licensors do not represent or guarantee the speed or availability of end-to-end connections. The Company and its third party suppliers or licensors shall not be subject to any damages or liability for any errors, omissions or delays therein including unavailability. The licensed products and all components thereof are provided on an “as is” basis and are separate and distinct from the services provided under this Agreement. Where TD Markets believes that a Client is using additional functionalities /plug-ins where it affects the reliability and/or smooth and/or orderly operation of the Electronic Systems TD Markets has the right to suspend or terminate the Client’s Account.

## **6 Client Instructions and Orders**

6.1 The Client understands and confirms that all orders received by The Company from the Client for transmission for execution are orders for execution outside a Regulated Market or MTF. The transactions entered by the Client will be placed and executed in accordance with the Company’s Order Execution Policy which is available at [www.tdmarkets.co.za](http://www.tdmarkets.co.za)



6.2 The Client can open and close a position via the Trading Platform or by placing orders with The Company and can add or modify orders by placing "buy limit", "buy stop", "sell limit", "sell stop", "stop loss" and/or "take profit" orders on any Financial Instrument.

6.3 The Client's orders are executed at the Bid and Ask prices that are offered by the Company. The Client places his instant execution request at the prices he sees on his client terminal and the execution process is initiated. Due to the high volatility of the market as well as the internet connectivity between the Client terminal and the server, the prices requested by the Client and the current market price may change, during this process. In this event, the Company has the right to decline the Client's requested price and offer a new quote to the Client, which he can either accept or reject.

6.4 The Client has the right to use a Power of Attorney to authorise a third person (representative) to act on behalf of the Client in all business relationships with the Company as defined in this Agreement. The Power of Attorney should be provided to the Company accompanied by all identification documents of the representative. If there is no expiry date, the Power of Attorney shall be considered valid until the written termination by the Client.

6.5 The Company shall record telephone conversations, without any prior warning (unless required to give prior warning by Applicable Regulations), to ensure that the material terms of a Transaction and/or order placed by the Client and/or any other material information relating to a Transaction are properly recorded. Such records shall be the property of the Company and shall be accepted by the Client as evidence of his orders or instructions. The Company may use recordings and/or transcripts thereof for any purpose which it deems desirable. Copy of the records obtained under this clause may be available for a period of five (5) years in total as requested by the FSCA.

6.6 The Client acknowledges that the Company has the right to refuse accepting orders by the Client when they are not clear or during the following cases: opening a position, closing a position, modifying or removing orders.

6.7 In addition, the Client acknowledges that the Company has the right to refuse to accept any orders for transmission or any other instructions by the Client.

6.8 If any underlying asset of the Financial Instrument becomes subject to possible adjustments as a result of any of the events set out in sub-clause 6.9 (referred to as "Corporate Event"), the Principal will determine the appropriate adjustment, if any, to be made to the opening/closing price, size, value and/or quantity of the

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corresponding transaction (and also the level or size of the corresponding orders). This action is made in order to (i) account for the diluting or concentrating effect necessary to preserve the economic equivalent of the rights and obligations of the parties under that transaction immediately prior to that Corporate Event, and/or (ii) replicate the effect of the Corporate Event upon someone with an interest in the relevant underlying security, to be effective from the date determined by the Principal.

6.9 The events to which sub-clause 6.8 refers to are any of the following, by the declaration of the issuer of a security:

- a) a subdivision, consolidation or reclassification of shares, a share buy-back or cancellation, or a free distribution of bonus shares to existing shareholders, capitalisation or share split or reverse share split or similar event;
- b) a distribution to existing holders of the underlying shares or additional shares, other share capital or securities, granting the right to payment of dividends and/or proceeds from the liquidation of the issuer equally proportionate to such payments to holders of the underlying shares, securities, or warrants granting the right to receive or purchase shares for less than the current market price per share;
- c) any other event regarding shares analogous to any of the above events or otherwise having a diluting or concentrating effect on the market value of shares;
- d) any event analogous to any of the above events or otherwise having a diluting or concentrating effect on the market value of any security not based on shares; or
- e) any event that is caused by a merger offer made regarding the company of the underlying asset.
- f) earnings announcements.

6.10 If any underlying asset of the Financial Instrument becomes subject to a specific risk resulting in a predicted fall in value, the Company reserves the right to restrict short selling or even withdraw the specific Financial Instrument from the Trading Platform.

6.11 Determination of any adjustment or amendment to the opening/closing price, size, value and/or quantity of the Transaction (and/or the level or size of any order) shall be at the Principal's sole discretion and shall be conclusive and binding upon the Client. The Company shall inform the Client of any adjustment or amendment via its internal mail as soon as is reasonably practicable.



- 6.12 In the case where the Client has any open positions on the ex-dividend day for any of the underlying assets of the Financial Instrument, the Company has the right to close such positions at the last price of the previous trading day and open the equivalent volume of the underlying Financial Instrument at the first available price on the exdividend day. In this case, The Company will inform the Client via the internal mail of the said adjustment and no Client consent will be required.
- 6.13 The Client acknowledges that orders shall be executed at the bid and ask prices that are offered by the Principal. Due to the high volatility of the market as well as the internet connectivity between the Client terminal and the Company' server, the prices requested by the Client and the current market price may change in the period between the Client placing his order with The Company executing the order upon receipt. The Client acknowledges that in the case of any communication or technical failure as well as any incorrect reflection, on the quotes feed (i.e. prices to freeze/stop updating or price spikes), The Company reserves the right not to execute an order or, in cases in which the order was executed, to change the opening and/or closing price of a particular order or to cancel the said executed order.
- 6.14 Considering the levels of volatility affecting both price and volume, the Company is constantly seeking to provide client orders with the best execution reasonably possible under the prevailing market conditions. Client's orders (Buy/Sell, Buy Limit, Buy Stop, Sell Limit, Sell Stop, Stop Loss and/or Take Profit) are executed at the requested/declared price. However, during periods of volatile market conditions, during news announcements, on opening gaps (trading session starts), or on possible gaps where the underlying instrument has been suspended or restricted on a particular market, Buy/Sell Stop and Stop Loss orders may not be filled at requested/declared price but instead at the next best available price. In such case, Take Profit orders below/above Buy Stop/Sell Stop orders or Stop Loss orders above/below Buy Stop/Sell Stop orders during activation will be removed. The same execution policy applies when a trading strategy is deemed as abusive, because it is aiming towards potential riskless profit or another strategy deemed by the Company to be abusive. Accordingly, placing a Stop Loss order will not necessarily limit the Client's losses at the intended amount. Conditional upon a client informing the Company in advance of linked trading accounts with the Company to be used for a hedging strategy within those accounts (i.e. mirror accounts) the Company will not consider hedging activity in those mirror accounts as an abusive trading strategy.
- 6.15 The Company shall not be liable for any delays, inaccuracies or other errors in the transmission of any order, instruction or information (whether from the Client to the Company or from the Company to the Principal , or vice versa) due to any cause



beyond the reasonable control of the Company. Delays can be caused by various reasons depending on the current market conditions (e.g. high market volatility) as well as a slow/weak internet connection (e.g. between the Client's terminal and the Company's server).

- 6.16 Considering the volume of the Client's order and the current market conditions, TD Markets has the right to proceed with partial execution.
- 6.17 TD Markets has the right at its discretion to increase or decrease spreads of Financial Instruments depending on the current market conditions as well as the size of the Client's order.
- 6.18 The swap rate is mainly dependent on the level of interest rates as well as the Company's fee for having an open position overnight. TD Markets has the discretion to change the level of the swap rate on each Financial Instrument at any given time and the Client acknowledges that he will be informed by the Main Website. The Client further acknowledges that he is responsible for reviewing the contracts specifications located on the Main Website for being updated on the level of swap rate prior to placing any order with The Company. In addition, the Company reserves the right to amend the swap values of a specific Client in case of any suspect of a trading abuse.
- 6.19 The Company and the Principal reserves the right, at its discretion, to increase the Swap rate for any Client beyond the levels displayed on the Website, in the instance where the Client holds a position for a period of 10 calendar days or more.
- 6.20 TD Markets reserves the right to disable and/or enable swap free trading for Client's trading account at any given time. This can occur at times where the Client abuses the Company trading conditions/systems or where the Client's trading strategy imposes a threat to the Company's trading facility or where the Company deems necessary in order to protect the smooth operation of its trading facility. The Client further acknowledges that swap free applies for 10 calendar days only. Therefore, swap free accounts holding a position open for more than 10 calendar days, will be credited or debited swap accordingly.
- 6.21 All orders are placed in lot sizes. A lot is a unit measuring the Transaction amount and is different per each Financial Instrument. The minimum volume size for all Financial Instruments is 0.01 lot, except for contracts for minimum contract sizes for specific instruments as detailed and updated on the Main Website. The Client further acknowledges that he is responsible for reviewing the Contract Specifications located on the Main Website for being updated on the level of swap rate and other trading conditions prior to placing any order with The Company.



- 6.22 The Client can at any time request the Company to change his account leverage. The Client acknowledges that the Company has the discretion to change the Client's trading account leverage at any given time, without the Client's consent, either on a permanent basis or for a limited period of time. Such an event shall be disclosed to the Client by the Company via its internal mail or by email. The Client acknowledges that on every Friday and between the hours of 21:00 until 24:00 and occasionally before the release of major economic news, the Company maintains a maximum leverage of 1:100 on FX and 4 times the standard Margin requirement on remaining instruments other than FX, namely commodities, indices, futures and equities for any new positions opened during the said specified period.
- 6.23 By accepting this Agreement, the Client has read, understood and accepted the "Leverage Levels" as these are uploaded on the Main Website, in which Client Account's leverage may be changed by the Company based on his deposit amount as well as on the exposure on a single instrument.
- 6.24 The Company bear no responsibility when the Client uses additional functionalities/ plug-ins such as "Expert Adviser" or "Trailing Stop" since they depend on the Client terminal. In case where the Company suspects that a Client is using additional functionalities/ plug-ins where it affects the reliability and/or smooth operation and/or orderly of the Trading Platform TD Markets has the right to activate any clause specifically under clause 27.4, including sub-clause 27.4.
- 6.25 The Company shall have the right to start closing Client's positions starting from the most unprofitable, when the margin level is less than 50%. In the case where the margin level is equal to or less than 20%, then Client's positions are automatically closed, starting from the most unprofitable, at the market price. In case the Client has a zero fixed spread account then the Company shall have the right to start closing Client's positions starting from the most unprofitable, when the margin level is less than 100%. In the case where the margin level is equal to or less than 80%, then the Client's positions are automatically closed, starting from the most unprofitable, at the market price.
- 6.26 The Client acknowledges that he is responsible for reviewing the difference between the accounts located on the Main Website prior to opening an account and/or placing any order with The Company.
- 6.27 The Company reserves the right to change the Client Account type based on the total deposits made on the Client's account as well as based on the Client's trading account current balance.



6.28 In case where a Client is trading in a way that aims to take advantage of price disparities resulting from rare/occasional price latencies with the purpose of benefiting from a possible pricing arbitrage to the Company's detriment, either by using additional functionalities/plugin-ins (i.e. Expert Adviser, etc.) or by any other means, then the Company has the right to activate any clause specifically under clause 25, including sub-clause 27.4.

## **7 Margin and Leverage Levels**

7.1 As a condition of entering into a Transaction, the Company requires the deposit of Margin to secure the Client's liability to the Company for any losses which may be incurred in respect of the Transaction. The "Leverage Level" is the ratio of Margin to the market value of the open Transaction position which it secures. By accepting this Agreement, the Client has read, understood and accepted the "Leverage Levels" as these are uploaded in the Main Website under the "Trading Conditions" section.

Where applicable, the Leverage Level of a Client's Account(s) may be changed by the Company in its absolute discretion with reference to such matters as the deposit or Margin amount held in the Client Account and the size of credit exposure held on Financial Instrument(s) held in the Client Account(s).

7.2 A margin close out rule on per account basis will apply for Retail Clients. This will standardise the percentage of margin at 50% at which the Company is required to close out one or more Retail Client's open positions.

7.3 The Company needs to clarify that the above Leverage Limits and margin close out rule (as specified in clause 8.2 and 8.3) are applicable only to Retail Clients.

7.4 Margin requirements or Leverage Level may be set and varied without prior notice from time to time in the Company's sole and absolute discretion in order to cover any realised or unrealised losses arising from or in connection with Transactions, including subsequent variation of any Margin rates set at the time Transactions are opened subject to any Leverage/Margin restrictions imposed by Applicable Regulations. The Client can request to change his account leverage at any time by contacting the Company provided that the Client is eligible to a change and considering any leverage restrictions. The Client acknowledges that the Company has the discretion to change the Client's trading account leverage at any given time, without the Client's consent, either on a permanent basis or for a limited period of time. Such an event will be disclosed to the Client by the Company via its internal mail or by email.

7.5 The Client is obliged to maintain in his Account, at all times, sufficient funds to meet all Margin requirements. In addition, the Company will be entitled to treat any assets deposited with it by the Client from time to time (other than assets deposited for safe





custody only) as collateral against the Client's Margin requirements. Only funds received net of any bank charges, which relate to the transfer, will be credited as paid.

- 7.6 In the event that there is insufficient Margin in the Client's Account or in the event that the deposited Margin is not sufficient to meet the required Margin rates, as determined by the Company it may immediately close or terminate the Client's Transaction and Account without notice. Without prejudice to the generality of the foregoing the Company shall have the right, but shall not be obliged, to start closing Client's positions starting from the most unprofitable, when the Margin is less than 50% of the Margin or Leverage Level requirement. In the case where the Margin is equal to or less than 20% of the Margin or Leverage Level requirement, then the Client's positions shall be automatically closed, starting from the most unprofitable, at the market price.
- 7.7 The Client acknowledges that he is responsible for monitoring the Margin on his Account and for reviewing the difference between the accounts located on the Main Website prior to opening an account and/or placing any order with the Company.
- 7.8 The Company reserves the right to change the Client Account type based on the total Margin deposits made on the Client's account as well as based on the Client's trading account current balance.

## **8 Market Abuse**

The Client shall not use the Electronic Systems for orders or Transactions for or in connection with any activity which may constitute a fraudulent or illegal purpose or Market Abuse or otherwise use of the Electronic Systems in contravention of any Applicable Regulations. For the purposes of this Agreement "Market Abuse" means behaviour in relation to investments which involves insider dealing, market manipulation or market distortion in breach of Applicable Regulations. The Client undertakes to familiarise himself and comply with any Applicable Regulations concerning the short sale of securities if the Client seeks to execute a short sale contract for difference Transaction with a security as a Reference Asset and the Client will ensure that his use of the Electronic Systems will not result in a breach by the Company of any Applicable Regulations concerning the short sale of securities or any terms of this Agreement concerning short sale orders or transactions.

## **9 Refusal to Transmit Orders to the Company**

- 9.1 The Company has the right to refuse to transmit an order for execution without any given notice and/or explanation to the Client. Among the cases that the Company is entitled to do so are the following (this list is not exhaustive):

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- a) If the Client does not have the required funds deposited in the Client Account;
- b) If the execution of the order would violate the smooth operation or the reliability of the Trading Platform;
- c) If the order aims at manipulating the market of the specific Financial Instrument;
- d) If the order is a result of the use of inside confidential information (insider trading);
- e) If the order aims to legalise the proceeds from illegal acts or activities (money laundering).

9.2 It is understood that any refusal by the Company to transmit an order to the Company for execution shall not affect any obligation, which the Client may have towards the Company or any right, which the Company may have against the Client or his assets.

9.3 The Client acknowledges that the Company is entitled to refuse to execute any particular order. The Company shall not be liable to the Client where the Company refuses to execute an order, which the Company has received from the Client and transmitted to the Company for execution.

## **10 Settlement of Transactions**

10.1 The Company shall proceed to a settlement of all Transactions upon execution of such Transactions. Unless otherwise agreed, the settlement of Transactions shall be in accordance with the normal practice for the Financial Instrument or market concerned.

10.2 A statement of account shall be provided by the Company to the Client on a monthly basis, if the client so requires, within five (5) business days from the end of the previous month. In the case where no Transactions were concluded in the past month, then no statement of account shall be provided. A statement of account or any certification or any confirmation issued by the Company in relation to any Transaction or other matter shall be final and binding to the Client, unless the Client files in writing his objection within four (4) business days from the receipt of the said statement of account, certification or confirmation.

10.3 The Client can also obtain a statement of his accounts, as well as confirmation of any Transaction, via the Trading Platform. Any objection or enquiry that the Client has in relation to an executed Transaction shall be investigated by the Company only if the Company receives notice in writing within four (4) business days of the date of such Transaction.

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## **11 Company's Order Execution Policy**

- 11.1 The Company is required to have in place an Order Execution Policy ("the Policy") and to take all sufficient steps to obtain the best possible results for its clients ("best execution") either when executing client orders or receiving and transmitting orders for execution in relation to financial instruments. The Policy sets out a general overview on how the Company will obtain the best possible result when executing Clients' orders by taking into account the criteria and factors stated in the Policy, the assessment process prior the selection of an execution venue and the monitoring on a continuous basis of the financial institutions used as a hedging liquidity/price providers. The best possible result will be determined in terms of the total consideration, represented by the price of the contract and the cost related to execution as the main factors. The other execution factors of speed, likelihood of execution size, nature or any other relevant consideration will, in most cases, be secondary to price and cost considerations, unless they would deliver the best possible result for the client in terms of total consideration.
- 11.2 The Client acknowledges and accepts that he has read and understood the Order Execution Policy, which is available in the Legal Documentation section of the Main Website. In particular, the client acknowledges that all transactions entered in any particular financial instrument with the Company are executed outside a regulated market or a multi-lateral trading facility (MTF) and the client is exposed to a greater risk of a possible default of the counterparty (i.e. the Company).

## **12 Client Account**

- 12.1 The Client shall open a Client Account with The Company in order to conclude any Transaction. This Agreement shall be considered effective upon the first funding of the Client Account, provided that the Company have sent the Client written confirmation of his acceptance.
- 12.2 The Client does not intend to use the Client Account for payment to third parties.
- 12.3 The Client shall not open more than one Client Profile. If the Client has opened more than one Client Profile (which is created when the Client registers their personal details, reads and accepts the Terms and Conditions and has had the relevant identity checks successfully completed), the Company reserves the right to disable the Client Profile(s) in accordance with Paragraph 27 below.



12.4 If the Client has opened more than one Client Account, the Company shall be authorised to consider and treat these different Client Accounts as a single unit. Among other rights, that the Company has in the way of handling these Client Accounts is the transferring of funds between Client Accounts to cover possible negative balances, without this affecting in any way the other rights of the Company.

12.5 Any funds received in a currency for which the Client does not hold a Client Account shall be converted by the Company into the Client's base currency. The conversion shall be made at the exchange rate applied on the day and at the time when the relevant funds are at the disposal of the Company.

### **13 Safeguarding of Client's Funds**

13.1 Authorisation granted by the FSCA does permit the Company to hold client monies and the Client shall send funds to the Company.

13.2 When holding Client's funds the Company shall take every possible measure to safeguard the funds against the use of Client funds for its own account and shall hold Client's funds in a segregated client bank account.

13.3 Any money received by the Company in respect of a Client's Segregated Account with the Company shall be treated as "Client Money" in accordance with the FAIS Act, separately agree with us to transfer full ownership of money to The Company for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such as Margin, in which circumstances such money will not be regarded as Client Money. Title transfer collateral arrangements are not used by the Company with Retail Clients.

13.4 By entering into this Agreement the Client agrees that the Company will not pay the Client interest on Client Money or any other unencumbered funds.

13.5 When holding Client Money, the Company makes adequate arrangements to safeguard the clients' rights and prevent the use of Client Money for its own account. For this purpose, the Company ensures to promptly place any Client money into one or more accounts, denoted as 'clients' segregated accounts which are segregated from the Company's own accounts and opened with any of the following: (a) a credit institution within South Africa; (b) a bank authorized and/or licensed in South Africa or a third country and (c) a payment service provider that has been assessed based on specific criteria imposed by the Company and/or approved by the Company's Management.

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13.6 Prior to the establishment of a business relationship with a person holding Client's Money as indicated in s. 16.5, the Company exercise all due skill, care and diligence as per applicable law and regulations by taking into account various parameters including among others the jurisdiction, expertise and market reputation of the person, financial indicators and legal or regulatory requirements. The Company establishes a relationship with a person that has been assessed and approved by the Company's Management.

13.7 Without prejudice to Clause 16.6, the Client further understands and consents that the Company may hold Client Money with a payment provider or a third party that do not treat such Client Money in accordance with the abovementioned Client Money rules.

13.8 Unless the Client notifies the Company in writing or otherwise, the Company may pass on Client Money or allow another person, such as an exchange, a clearing house or an intermediate broker, to hold or control Client Money where the Company transfers the Client Money (a) for the purposes of a Transaction for the Client through or with that person; or (b) to meet the Client's obligations to provide collateral for a Transaction (e.g. a margin requirement for a derivative transaction). By accepting this Agreement the Client gives his consent and authorizes the Company, where applicable, to transfer/hold his funds within or outside South Africa in one or more segregated client's bank account. Client Money held outside South Africa may be subject to the jurisdiction of that territory and Client rights may differ accordingly. The Company shall not be liable for the solvency, acts or omissions of any institution with which Client Money are held.

13.9 The third party to whom the Company will pass money may hold it in an omnibus account and it may not be possible to separate it from the Client's money, or the third party's money in which case the Client will not have any claim against a specific sum in a specific account in the event of insolvency. The Company does not accept any liability or responsibility for any resulting losses. In general, accounts held with institutions, including omnibus accounts face various risks including the potential risk of being treated as one (1) account in case the institution defaults. Another risk might be that the funds in the Omnibus Account may be exposed to obligations of the Company connected with the positions of other clients in case the Company is unable to meet its obligations towards them.

13.10 The Client hereby agrees that, in the event that there has been no movement on the Client's Account balance for a period of at least three years (notwithstanding any payments or receipts of charges, interest or similar items) and the Company is unable to trace the Client despite having taken reasonable steps to do so, the



Company may release any Client Money balances held for or on the Client's behalf, from the Client's account.

13.11 Any Client Account that has been inactive for 90 (ninety) days, including funding or trading, and has an account balance of up to 1 cent (any currency) will be archived and the Company shall have the right to deduct this remaining Client Money balance.

#### **14 Transfer of Funds**

14.1 The Client shall clearly specify his name and all required information, in accordance with international regulations related to the fight against money laundering and terrorism financing, on the relevant payment document/s.

14.2 Any amounts transferred by the Client to the Client's Bank Account will be deposited in the Client's Account at the "value date" of the received payment and net of any deduction/charges by the Client's Bank Account providers.

14.3 The Company has the right to refuse a Client's transferred funds in any of the following cases (this list is not exhaustive):

- a) If the funds are transferred by a third party;
- b) That the person who transferred the funds was not a duly authorized person;
- c) If the transfer violates legislation or Applicable Regulations.

14.4 In any of the above cases, the Company will send back the received funds to the remitter by the same method as they were received and the Client will suffer the relevant Client's Bank Account provider charges.

14.5 The Client has the right to withdraw the funds, which are not used for margin covering, free from any obligations (i.e. Free Margin) from the Client's Account without closing the said account.

14.6 Unless the Parties otherwise agree, in writing, any amount payable by the Company to the Client, shall be transferred directly to the Client's personal account. Fund transfer requests are processed by the Company within the time period specified on the Main Website and the time needed for crediting into the Client's personal account will depend on the Client's Bank Account provider.

14.7 Client's withdrawals should be made using the same method used by the Client to fund his Client Account and to the same remitter. The Company reserves the right

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to decline a withdrawal with a specific payment method and will suggest another payment method where the Client needs to proceed with a new withdrawal request, or request further documentation while processing the withdrawal request. Where applicable, the Company reserves the right to send Client's funds only in the currency as these funds were deposited. Where applicable, if the Company is not satisfied with any documentation provided by the Client, then the Company will reverse the withdrawal transaction and deposit the amount back to the Client's Account net of any charges / fees charged by the Client's Bank Account providers.

- 14.8 Client fund transfer requests will be performed from the Client Portal. The Company shall take every effort to notify the Client prior to any fund transfer request, of all charges, fees and costs for the said fund transfer.
- 14.9 The Client acknowledges that in case where a Client's Bank Account is frozen for any given period and for any given reason the Company assumes no responsibility and Client's funds will also be frozen. Furthermore, the Client acknowledges that he has read and understood the additional information provided on each payment method available on the Main Website.
- 14.10 By accepting this Agreement the Client gives his consent and authorizes the Company, where applicable, the Client's funds will be located in a segregated client's bank account. The Client also consents that his funds, where applicable, can be deposited in an omnibus account.

## **15 The Company's Fees**

- 15.1 For any services provided to the Client as presented under this Agreement, the Company is entitled to receive fees from the Client as well as compensation for the expenses it will incur for the obligations it will undertake during the execution of the said services. From time to time, the Company reserves the right to modify the size, the amounts and the percentage rates of its fees and the Client will be informed accordingly.
- 15.2 The Client agrees that the Company is entitled to change its fees unilaterally without any consultation or prior consent from the Client.
- 15.3 The Client will pay the Company any amount, which he owes, when due, in freely transferable, cleared and available same day funds, in the currency and to the accounts, which will be specified and without making any offset, counterclaim, deduction or withholding, unless the Client is required to do so by law.



15.4 The Company may deduct its charges from any funds, which it holds on the Client's behalf. For this purpose, the Company will be entitled to combine or make transfers between any of the Client's Accounts. The Company has the right to close any open positions of the Client in order to settle any obligations owned by the Client to the Company.

15.5 TD Markets will charge the Client interest on any amounts due, which are not paid, at such a rate as is reasonably determined by the Company as representing the cost of funding such overdue amounts. Interest will accrue on a daily basis. Furthermore, in the case that the Client fails to make the required deposit within the given deadline, the Company may also proceed with the sale of Financial Instruments from his trading account(s) without further notice unless otherwise agreed upon by the Company and the Client. The Company will then notify the Client of the effected sale orally, via email or by sending a relevant notification via our Trading Platform.

15.6 The Company may deduct or withhold all forms of tax from any payment if obliged to do so under Applicable Regulations. If the Client is required by law to make any deduction or withholding in respect of any payment, the Client agrees to pay such amount to the Company and this will result in the Company receiving an amount equal to the full amount which would have been received had no deduction or withholding been required. The Company may debit amounts due from any of Client's Accounts.

15.7 The Company is not responsible for paying Client's tax obligations in relation to possible income tax or similar taxes imposed on him by his jurisdiction on profits and/or for trading in Financial Instruments.

15.8 The Client further acknowledges and agrees that in cases where deposits and withdrawals are conducted on the Client account without any trading activity, the Company reserves the right to charge an administration fee of 3% of the deposited funds to cover any fees/transaction costs incurred by the Company.

15.9 An indicative summary of the cost components and charges derived from the trading of Financial Instruments i.e. CFDs offered by the Company can be found in the Key Information Document uploaded on the Legal documentation section on the Main Website.

15.10 By accepting this Agreement, the Client has read, understood and accepted the "Trading Conditions" as these are uploaded on the Main Website in which all related commission, costs and financing fees are explained. The Company reserves the right to amend at its discretion all such commission, costs and financing fees and the new information will be available on the Main Website. It is the Client's responsibility to visit

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the Main Website and review the Contracts Specification during the time he is dealing with the Company as well as prior of placing any orders with the Company.

15.11 The Client acknowledges and accepts that in the case of no activity, including funding or trading, within one year, the Company reserves the right to charge an annual fixed administrative fee of 50 USD (or currency equivalent), subject to the Client having sufficient funds available. In case the account balance is below USD 50 (or currency equivalent), the Company will charge any remaining balance and archive the Client's Account.

## **16 The Company Fees and other costs**

16.1 The Company shall not charge the Client for any services provided to the Client under this Agreement but the Company is entitled to receive fees from the Principal in terms of trading activity and services executed under the Company's agreement with the Principal as well as compensation from the Principal for the expenses it incurs for the obligations it undertakes during the execution of the said services.

16.2 The Client acknowledges that fees and compensation payable to the Company under this paragraph 16 shall enhance the quality of the services that the Company offer to the Client.

16.3 The Client agrees that the Company's fees may change unilaterally without any consultation or prior consent from the Client.

16.4 The Client acknowledges that he may incur other costs or taxes relating to the Investment Services, and that these costs or taxes may not be paid via the Company or imposed by it.

## **17 Inducements**

17.1 The Company, further to the fees and charges paid or provided to or by the Client or any other person on behalf of the Client, as stated in paragraph 17 of this Agreement, may pay and/or receive fees/commission to/from third parties, provided that these benefits are designed to enhance the quality of the offered service to the Client and not impair compliance with the Company's duty to act in the best interests of the Client. The said payment arrangements might result from the conclusion of an agreement between among others the Company and its Liquidity or Platform service providers which are required in order for the Company to be able to perform the Services.



17.2 Where applicable, any fees/commissions received by the Company are justified by the provision of an additional or higher-level service to the Client proportional to the level of such fees or commissions.

17.3 Furthermore, the Company does not receive or pay any Inducements for the provision of Investment Research by third parties in the provision of the Services to Clients.

## **18 Introduction of Clients from Third Parties**

18.1 The Client may have been recommended by a third party like an Introducing Broker or an Affiliate to the extent permitted by the Applicable Regulations. Based on a written agreement with the Company, the Company will pay a fee or commission to the Introducing Broker for the referral as a matter of a quality enhancement of the service offered to the Client.

18.2 The Client acknowledges and agrees that the Company shall not be responsible or liable for any type of agreement that may exist between the Client and the third party or for any additional costs in relation thereto that may arise as a result of this Agreement.

18.3 The Client acknowledges and agrees that the Introducing Broker is not a representative of the Company nor is he authorised to provide any guarantees or any promises with respect to the Company or its services and any advice or personal recommendations given by a third party to the Client regarding his Client Account or Transactions is not given on behalf of the Company and nor does the Company accept or assume any responsibility whatsoever for any such advice or recommendations.

18.4 Third parties are explicitly prohibited from providing investment advice to Clients unless where Third Parties are permitted by the Applicable Regulations and laws governing these activities.

## **19 Interest**

19.1 The funds credited to the Client's Account by the Company shall not bear interest.

19.2 By accepting this Agreement the Client gives his express consent and waives any of his rights to receive any interest earned on his funds held in the bank accounts of the Company and consents that the Company will benefit from such interest earned to cover registration /general expenses / charges / fees and interest related to the administration and maintenance of the bank accounts.

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## 20 Force Majeure

20.1 The Company shall not be liable to the Client for a failure to perform any obligation or discharge any duty owed under this Agreement if the failure results from any cause beyond its control, including, without limitation:

- a) acts of God, war, fire, flood, pandemic, epidemic, earthquake or other natural disaster;
- b) terrorist attack, civil war, threat of or preparation for war, imposition of sanctions, explosions;
- c) Postal or other strikes or similar industrial actions or disputes;
- d) any law or any action taken by a government or public authority;
- e) any breakdown, or interruption of power supply or failure of utility service or of transmission or communication or computer facilities;
- f) hacker attacks or other illegal actions against the Company's electronic Trading Platform or of the equipment of the Company;
- g) the suspension, liquidation or closure of any market or the abandonment or failure of any event to which the Company relates its Quotes, or the imposition of limits or special or unusual terms on trading in any such market or on any such event
- h) the failure of any relevant exchange, clearing house and/or broker for any reason to perform its obligations;

20.2 In case such an event occurs and the Company or the Principal reasonably believes that Force Majeure exists, the Company or the Principal may, without any prior notice to the Client, at any time and without limitations, take any of the following actions:

- i. increase margin requirements;
- ii. determine at its discretion the quotes and spreads that are executable through the Trading Platform;
- iii. decrease leverage;
- iv. close out any or all Client's Open Positions at such prices as the Company considers in good faith to be appropriate;
- v. suspend or freeze or modify any or all terms of this Agreement to the extent that the Force Majeure makes it impossible or impracticable for the Company to comply with them;
- vi. suspend the provision of any or all services of this Agreement;
- vii. take or omit to take any other actions as is deemed reasonable with regards to the position of the Company, the Principal the Client and all the other Company Clients;



## **21 Client Complaint**

21.1 If the Client has any cause for complaint in relation to any aspect of the services provided by the Company, the complaint should be addressed to the Compliance Officer or the Complaints Office using the Official Complaints Procedure, which is available in the Legal Documentation section of the Main Website.

## **22 Conflicts of Interest**

22.1 Under Applicable Regulations, the Company are required to have arrangements in place to manage conflicts of interest between the Company and its clients and between clients themselves. The Company shall maintain and operate effective arrangements with a view to taking all reasonable steps to avoid conflicts of interest. When conflicts of interest cannot be avoided, the Company shall disclose to the Client the nature and source of the conflict. The Company will, at all times, ensure that clients are treated fairly and with the highest level of integrity and that, their interests are protected.

22.2 The Client acknowledges and accepts that he has read and accepted the "Conflicts of Interest" document, which is available in the Legal Documentation section of the Main Website.

## **23 Appropriateness**

23.1 When providing the Services, the Company must, prior any provision of services, request from the Client to provide information regarding the Client's knowledge and experience in the investment field relevant to the Services offered by the Company in order to assess whether the investment service or product is appropriate for the Client. In accordance with FIC Act as amended 2017 the Company shall collect via means of an "Appropriateness Test" information related to the Client or potential Client such as the types of service, transaction and financial instrument with which the Client is familiar, the nature, volume and frequency of the Client's transactions in financial instruments and the period over which they have been carried out as well as the level of education and profession or relevant former profession of the Client. The Company will also collect information about the Client's financial situation and ability to bear losses as well as the Client's risk tolerance and compatibility of the risk profile of the product. If the Client's knowledge and experience is not appropriate for the Services offered

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or demanded by the Company, the Client will be warned about the risks implied in such investing.

23.2 The Client is responsible for keeping Company informed about any change to the Client's profile in regards to the information collected.

#### **24 Anti- Money Laundering Provisions**

24.1 The Company are obliged to follow certain requirements as set out by the FIC Act as Amended 2017 as well as local authorities, for preventing and suppressing money laundering activities, which accountable institutions to obtain certain verification documents from Clients before the establishment of a business relationship and/or during the business relationship.

24.2 The Company may also request the Client to inform the Company the invested funds were obtained / accumulated. This process may require proof of certain documentation.

24.3 The Company has the right not to carry out orders or instructions received from the Client, and the Company has the right not to execute orders or carry out instructions received, as long as the Client has not supplied information requested by the Company. The Company take no responsibility for any possible delays where the Client's verification documents are outstanding.

24.4 The Client represents and warrants that the funds invested to the Company are not the proceeds of a crime with the aim of concealing or disguising the illicit origin of the funds or of aiding any person involved in the commission of the offence of money laundering or terrorist financing.

#### **25. Communication Between the Client and Company**

25.1 Unless otherwise specified and with the exception of orders placed under clauses 5 or 6 above, the Client has to send any notice, instruction, request or other communication in writing to The Company's mailing address at 9<sup>th</sup> Floor, Atrium on Fifth, 5<sup>th</sup> Street, Sandton, 2196, South Africa , or any other address specified by The Company from time to time.

25.2 The Company may provide information to the Client in paper format or by email to the Client's email address provided during his registration.

25.3 All notices/information provided by the Company or received from the Client should be in the English language.

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## **26. Provision of Information, Data Protection**

- 26.1 The Client shall promptly provide the Company with any information which either of them may request as evidence for the matters referred to in this Agreement or to comply with any Applicable Regulations or otherwise, and shall notify the Company if there are any material changes to such information.
- 26.2 The Company shall at all times handle personal data in accordance with the Protection of Personal information Act, Act No. 4 of 2013.
- 26.3 The Company hold or will hold personal data relating to the Client in connection with products and services offered to him. Personal data provided to or obtained by the Company will be used for the purposes of providing the Client with the products and services he has requested. The Company have the right without informing the Client to inform any third parties or authorities in regards to the Client's personal information, Transactions or any other information as it may deem necessary in the case where the Client is directly or indirectly involved in fraud.
- 26.4 The Client acknowledges and accepts that he has read and accepted the "Privacy Policy", which is available in the Legal Documentation section of the Main Website.

## **27. Termination**

- 27.1 The Company or the Client can terminate this Agreement by giving five (5) business days written notice to the other parties (as relevant). During the termination notice, the Client is obliged to close all open positions. In the case where the Client has open positions during the termination period, then The Company reserves the right to close all of the Client's open positions.
- 27.2 Upon termination of this Agreement, the Company shall be entitled, without prior notice of the Client, to cease the access of the Client to the Trading Platform.
- 27.3 The Company may terminate this Agreement immediately without giving five (5) business days written notice in the following cases:
- a) Death of the Client;
  - b) Any measures of bankruptcy or winding up of the Client are taken;
  - c) Such termination is required by any competent regulatory authority or body;
  - d) The Client violates any provision of this Agreement or any other Agreement and in the Company' opinion, this Agreement cannot be implemented;



27.4 The Company may terminate this Agreement immediately without giving five (5) business days written notice, and the Company have the right to reverse and/or cancel all previous Transactions on a Client's account, in the following cases:

- a) The Client involves the Company directly or indirectly in any type of fraud, in which it places the interests of Company and/or the Company clients and/or other clients at risk prior to terminating this Agreement.
- b) The Company have grounds to believe that the Client's trading activity affects in any manner the reliability and/or smooth operation and/or orderly of the Trading Platform.

27.5 The termination of this Agreement shall not in any case affect, the rights of which have arisen, existing commitments or any contractual commitments which were intended to remain in force after the termination and in the case of termination, the Client shall pay for:

- a) Any pending fees / commissions of the Company and any other amount payable to the Company;
- b) Any charges and additional expenses incurred or to be incurred by the Company as a result of the termination of this Agreement;
- c) Any damages which arose during the arrangement or settlement of pending obligations.

27.6 The Company has the right to subtract all above pending obligations from the Client's Account.

27.7 Upon termination of the Agreement, the Company shall immediately hand over to the Client the Client's assets (i.e. funds) in its possession, providing that the Company shall be entitled to keep such a Client's assets as necessary, to pay any pending obligations of the Client.

## **28. Client's Right to Cancel**

The Client may cancel this Agreement within fourteen (14) days of the date of this Agreement by giving notice in writing to the Company at [care@tdmarkets.com](mailto:care@tdmarkets.com) or [support@tdmarkets.com](mailto:support@tdmarkets.com) . The Company shall confirm the Client's cancellation in writing.

## **29. General Provisions**

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- 29.1 The Client shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer his rights or obligations under this Agreement or any interest in this Agreement, without the Company's prior written consent, otherwise any purported assignment, charge or transfer in violation of this paragraph shall be void.
- 29.2 If the Client is a partnership, or otherwise comprises of more than one person, his liability under this Agreement shall be joint and several. In the event of the demise, bankruptcy, winding-up or dissolution of any one or more of such persons, then (but without prejudice to the above or Company's rights in respect of such person and his successors) the obligations and rights of all other such persons under this Agreement shall continue in full force and effect.
- 29.3 Without prejudice, and to any other rights in which the Company may be entitled, the Company may at any time and without notice to the Client off-set any amount (whether actual or contingent, present or future) at any time, owing between the Client and the Company. The Company can offset any owned amounts using any account the Client maintains with the Company.
- 29.4 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be affected or impaired.
- 29.5 The Company's records, unless proven to be wrong, shall be the evidence of Client's dealings with the Company in connection to the services provided. The Client shall not rely on the Company to comply with Client's record keeping obligations, although records may be made available to the Client on request at the Company's discretion. For the avoidance of any doubt, copy of the records obtained may be available for a period of 5 years as required by FAIS and 7 years in total inclusive the 2 years' period where requested by the FSCA.
- 29.6 This Agreement and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between this Agreement and any Applicable Regulations, the latter shall prevail; (ii) nothing in this Agreement shall exclude or restrict any obligation which the Company have towards the Client under Applicable Regulations; (iii) the Company may take or omit to take any action it considers necessary to ensure compliance with any Applicable Regulations and whatever the Company do or fails to do in order to comply with them shall be binding on the Client;





29.7 This Agreement may be amended from time to time and the Company shall notify the Client of the relevant amendment or about the updated Agreement either in writing or through the Main Website. Any changes to this Agreement shall not apply to Transactions performed prior to the date on which the changes become effective unless specifically agreed otherwise. Should the Client disagree with the changes, he may terminate this Agreement in accordance with paragraph 27 hereof.

### **30. Representations, Warranties and Covenants:**

30.1 On a continuing basis, a Client represents, warrants, covenants and undertakes to the Company, both in respect of himself and any other person for whom the Client acts as an agent, that:

- a) The Client is authorized and has the capacity to enter into this Agreement and any Transactions which may arise under them;
- b) The Client is over 18 years old and is not a resident of a country that is not permitted to conduct business with the Company as displayed on the Main Website and at the time of opening the Client Account and at each occasion that he places an order with The Company, he is not located in a country that is not permitted to conduct business with the Company as displayed on the Main Website
- c) The Client is aware of the laws and regulations of South Africa in regards to being allowed to enter into this Agreement and the information that he provides on the account opening form (registration process) as well as in any other documentation is true and accurate;
- d) The Client has read and fully understood the entire contents of this Agreement with which he fully accepts and agrees;
- e) The Client acknowledges that the Company shall not be obliged to inform the Client of any developments or changes in laws, directives, regulations, information and policies from any competent authority;
- f) The Client agrees to direct advertising through cold calling by phone, or personal representation or by e-mail or any other electronic means used by the Company;
- g) There are no restrictions, conditions or restraints by Central Banks or any governmental, regulatory or supervisory bodies, regulating Client's activities, which could prevent or otherwise inhibit the Client entering into, or performing in accordance with this Agreement and/or under any Transaction which may arise under them;
- h) Client's performance under any Transaction in accordance with this Agreement does not violate any agreement and/or contract with third parties;



- i) This Agreement, each Transaction and the obligations created thereunder are binding on the Client and enforceable against the Client in accordance with their terms and do not violate the terms of any Applicable Regulations;
- j) There are no pending or, to the best of the Client's knowledge, any legal proceedings before any court, arbitration court, governmental body, agency or official or any arbitrator that purports to draw into question, or is likely to affect, the legality, validity or enforceability against him of this Agreement and any Transaction which may arise under it or the Client's ability to perform his obligations under this Agreement and/or under any Transaction which may arise under them in any material respect;
- k) The Client shall not enter into any Transaction unless he has a full understanding of all of the terms, conditions and risks thereof, and he is capable of understanding and willing to accept (financially and otherwise) those risks;
- l) The Client shall not provide to the Company any information, which is misleading and all information that the Client provides to the Company shall be true and accurate in all material respects. The Client shall inform the Company if his position changes and the information provided to the Company becomes misleading or does not materially represent his capacity and ability to trade with the Company;
- m) By entering into this Agreement, the Client acknowledges and understands that, when participating in the Company's promotions, he will be bound by the terms and conditions of such promotions applicable at the time on the country of residence of the Client;
- n) No Event of Default has occurred or is continuing.

### **31. Record Keeping and Call Recording**

31.1 Under Applicable Regulations, the Company is required to keep documents or data either in hard copy or electronic form including the documents agreed between the Company and the Client that sets out the rights and obligations of the parties and the other terms on which the Company will provide services to the Client. The Company shall be able to retrieve the relevant documents/data without undue delay and present them at any time to the Competent Authorities if requested. Furthermore, the Company will arrange for records to be kept of all services provided and transactions undertaken by it.

31.2 Furthermore, the Company shall record all telephone conversations and electronic communication with Clients for the provision of its Services (i.e. the provision of reception, transmission and execution of clients orders as well as the dealing on own account) as well as other conversations with the Clients irrespective whether the said orders resulted to a transaction or not.



33.3 The documents shall be kept for a period of at least five (5) years, inclusive of the right of the Competent Authority to request data, which is calculated after the execution of the transactions or the termination of the business relationship.

## **32. Company Liability**

32.1 The Company shall not be liable for any loss, liability or cost suffered or incurred by the Client as a result of providing the Investment Services or the Ancillary Services as described in this Agreement unless the loss, liability or cost is caused by the Company' gross negligence, wilful default or fraud committed while acting in accordance with the Client's instructions.

32.2 The Company shall not be liable for any loss, liability or cost which the Client may suffer or incur as a result of the negligence, wilful default or fraud of any third party (e.g. bank, electronic payment provider, etc.) which it has taken reasonable care in appointing.

32.3 Neither the Company nor the directors, officers, servants, agents or representatives of the Company shall be liable to the Client (except in the case of fraud) for any consequential, indirect, special, incidental, punitive or exemplary loss, liability or cost which the Client may suffer or incur arising from the act of omissions of the Company under this Agreement regardless of how such loss, liability or cost was caused and regardless of whether it was foreseeable or not. For the purposes of this paragraph, a loss, liability or cost includes any loss, liability or cost (as appropriate) arising from the Client being unable to sell Financial Instruments where the price is falling, or from not being able to purchase Financial Instruments where the price is rising, or from being unable to enter into or complete another trade which requires him to have disposed of or purchased the Financial Instruments or any other loss, liability or cost arising as a result of loss of business, profits, goodwill or data and any indirect, special, incidental, consequential, punitive or exemplary loss, liability or cost, whether arising from negligence, breach of contract or otherwise and whether foreseeable or not.

32.4 Nothing in this Agreement excludes or limits the liability of the Company if any such exclusion or limitation is prohibited by any Applicable Regulations.

## **33. Governing Language**

This Agreement as well as any additional agreement hereto (both present and future) are made in English. Any other language translation is provided as a convenience only. In the case of any inconsistency or discrepancy between original English texts and their



translation into any other language, as the case may be, original versions in English shall prevail.

#### **34. Governing law and jurisdiction**

This Agreement and all transactional relations between the Client and the Company are governed by South African law and the competent court for the settlement of any dispute which may arise between them under or in relation to this Agreement shall be the Courts of South Africa.

The Client accepts the terms and conditions of this Agreement. In particular, the Client:

- a) agrees that he has read and understood "Order Execution Policy";
- b) consents to his orders being executed outside a Regulated Market or MTF;
- c) agrees that he has read and understood the "Conflict of Interest Policy"
- d) agrees that he has read and understood the "Privacy Policy" and
- e) agrees that he has read and understood the "Risk Disclosure" document.