

# Account Terms & Conditions

The following Terms & Conditions shall replace any prior or existing agreement between the parties, or previously issued terms & conditions, and shall apply to any existing arrangements currently operating between the parties. By executing an Account Application and/or undertaking any transaction with KVB Kunlun Pty Ltd ACN 101 829 467 AFSL 226602 ("KVB Kunlun") you hereby agree to be bound by the following Terms & Conditions (as amended from time to time).

## 1. PURPOSE

The Client wishes KVB Kunlun to deal in exchange-traded and over-the-counter financial products on their behalf in accordance with the Client's instructions from time to time, and in accordance with the terms and conditions contained herein.

## 2. DEFINITIONS AND INTERPRETATION

a) In these Terms & Conditions unless a different intention is expressed, the following terms (as subsequently modified by amended legislation or regulation) shall mean:

"account" means the account of the Client dealing in the financial products issued by KVB Kunlun, which is established in accordance with the terms and conditions of this Terms & Conditions.

"agent" means a legal entity undertaking a transaction or function on behalf of another legal entity but in its own name;

"Terms & Conditions" means this Account Application, these terms & conditions and any other documents annexed or incorporated by reference;

"Authorised Person" means a person authorised to bind the Client under these Terms & Conditions;

"Business Day" means a day on which trading banks in Sydney, Australia are open for business;

"CFD" is a Contract For Difference which is an over-the-counter derivative product comprising an agreement under which one party is entitled to be paid an amount of money (profit), or has to pay an amount of money (loss), resulting from movements in the price or value of an underlying instrument or security (without actually owning that underlying instrument or security).

"Close of Business" means the time at which the market of the Exchange, on which the Underlying Security over which a CFD is quoted, normally closes on any Business Day.

"Closing Date" means in relation to a CFD the date on which the Client accepts the Closing Price of the Underlying Security, or on which a Closing Date is deemed to have occurred in accordance with these Terms & Conditions.

"Closing Notice" means in relation to a CFD the notice given by one party to the other to close any CFD in accordance with these Terms & Conditions.

"Closing Price" means in relation to a CFD the Underlying Security Price as determined by KVB Kunlun at the time KVB Kunlun receives the Closing Notice.

"Closing Value" means in relation to a CFD the Closing Price multiplied by the Contract Quantity.

"Collateral" means any property (including securities or other assets) deposited with KVB Kunlun by the Client;

"Contract" means any contract whether verbal or written, for the purchase or sale of a financial product, entered into by the Client;

"Contract Value" means in relation to a CFD the Underlying Security Price multiplied by the Contract Quantity.

"Contract Quantity" means in relation to a CFD the number of Underlying Securities to which the CFD relates.

"Corporations Act" means the Corporations Act 2001 (Cth);

"Excess Variation Margin" means the amount of the Client's Variation margin plus any amount payable by KVB Kunlun to the Client at that time and less any amount payable by the Client to KVB Kunlun at that time;

"Financial product" includes futures, options, contracts for difference, commodities and foreign exchange contracts, whether traded on an eligible exchange or over-the-counter, as those terms are defined in the applicable legislation or governed by market convention;

"Initial Margin" means an amount required to be deposited by the Client with KVB Kunlun to open a position.

"Long Party" means the party identified as having notionally bought the Underlying Security.

"Margin" means Initial Margin or Variation Margin or both.

"Net free equity" means the amount of money you would have left in your account should all of your open positions be closed out at the current market price less any interest, fees or transaction charges (gross liquidation value) less your Margin requirement.

"Operating rules" shall mean the rules, regulations, customs and practices from time to time of any exchange, clearing house or other organisation or market involved in the execution or settlement of any financial product transaction or contract;

"Relevant Exchange" means, in relation to a CFD transaction, the financial market on which the reference security which forms the subject of the CFD is quoted and is able to be traded. If the reference security is quoted on more than one financial market, KVB Kunlun will advise you of the Relevant Exchange for the purposes of the CFD, at the time the CFD is entered into;

"Short Party" means the party identified as having notionally sold the Underlying Security;

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“Underlying Security” means the underlying security (including index) to which the CFD relates;

“Underlying Security Price” means in relation to a CFD the current price of the Underlying Security as determined by KVB Kunlun;

“Variation Margin” means the amount deposited by the Client with KVB Kunlun including any increase or reduction arising from settlement of a closed position;

“Trust” means where the Client is a trust, the trust identified in the Client Details Form;

“Trust Deed” means where the Client is a trust, the trust deed governing the Trust as varied, substituted, supplemented or resettled from time to time.

- b) Headings are for convenience only and shall not affect the construction and interpretation of these Terms & Conditions
- c) The singular includes the plural and vice versa.
- d) Reference to a person or individual includes bodies corporate, unincorporated associations, partnerships and individuals.
- e) If there is any conflict between the terms of these Terms & Conditions and the relevant operating rules, the operating rules shall prevail.
- f) Any reference in these Terms & Conditions to any law, statute, regulation or enactment shall include references to any statutory modification or re-enactment thereof or to any regulation or order made under such law, statute or enactment (or under such modification or re-enactment).

### 3. CLIENT REPRESENTATIONS AND WARRANTIES

The Client represents and warrants to KVB Kunlun that:

- a) these Terms & Conditions constitutes a legal, valid and binding obligation of the Client;

- b) the Client will not enter into a financial product transaction as or by way of a wager and that all orders to be placed and all trading to be conducted under these Terms & Conditions are lawful;
- c) in executing and giving effect to these Terms & Conditions, the Client does not and will not infringe any provision of any other document or agreement to which the Client is a party, nor any law or judgment/order binding upon it;
- d) where the Client is more than one person, that all decisions made, and instructions issued, pursuant to these Terms & Conditions, are made on a fully informed and agreed basis by all the parties to the account;
- e) the Client is not an employee or the close relative of an employee of any exchange participant;
- f) all information supplied to KVB Kunlun by the Client is, or at the time it is supplied will be, accurate in all material respects and the Client will not omit or withhold any information which would make such information inaccurate in any material respect;
- g) the Client shall, where so required, provide to KVB Kunlun a valid and binding guarantee and indemnity in favour of KVB Kunlun as a precondition of entering into these Terms & Conditions;
- h) the Client will provide to KVB Kunlun on request such information regarding its financial and business affairs and/or identity, as KVB Kunlun may reasonably require;
- i) in executing these Terms & Conditions, the Client will appoint KVB Kunlun as its agent for the purpose of dealing in financial products in accordance with the terms of these Terms & Conditions;
- j) the Client and KVB Kunlun are bound by the applicable financial product laws, Corporations Act, applicable operating rules, customs, usages and practices (as modified from time to time) of the applicable exchange and clearing

houses where any dealing takes place;

- k) the Client will take all reasonable steps to obtain and communicate to KVB Kunlun all information, and shall deliver or cause to be delivered to KVB Kunlun all documents with respect to dealings in the financial products which are requested by any person having the right to request such documents and information. The Client authorises KVB Kunlun to pass on/deliver all such information and documents to any such person.
- l) the Client is not insolvent, and if the Client is a corporate client, no resolution has been passed and no petition has been presented or order made for the Client’s winding up or liquidation or the appointment of a receiver or a receiver and manager or an administrator of other insolvency official to the Client or any of its assets;
- m) KVB Kunlun relies on representations and warranties made by the Client. These representations and warranties and those contained elsewhere in these Terms & Conditions, survive the entering into of these Terms & Conditions and are repeated in respect of each financial product transaction.

### 4. CAPACITY TO ENTER INTO THESE TERMS & CONDITIONS

The Client represents and warrants to KVB Kunlun that:

- a) the Client is duly organised and validly existing (or, if an individual, is of legal age and is under no legal disability or incapacity) and has full power and authority to enter into, and has taken all necessary steps to enable it lawfully to enter into, these Terms & Conditions and the transactions contemplated by it, and perform its obligations it;
- b) the person executing these Terms & Conditions has full power and authority to execute the

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Agreement on behalf of the Client, and bind the entity (whether individual, company, partnership or otherwise);

- c) the Client has been properly categorised as a retail or wholesale client pursuant to the Corporations Act 2001 (Cwth), and accurately advised KVB Kunlun of its status as such;
- d) where the Client is a Trustee (including the trustee of a superannuation fund)
  - i. the Trust has been duly constituted, is valid and complies with all applicable laws;
  - ii. the Trust Deed has been executed and stamped, in accordance with the laws of the relevant State or Territory of Australia;
  - iii. the Client is the only Trustee of the Trust;
  - iv. the property of the Trust has not been resettled, set aside or transferred to any other trust or settlement and the Trust Deed has not been terminated and the date or any event for the vesting of the Trust's property has not occurred;
  - v. the Trust Deed specifically empowers and authorises dealings in financial products, and such dealings are within the authorised ambit of the Trust's investment strategy,
  - vi. all obligations under, and transactions contemplated by, these Terms & Conditions constitute binding obligations and are lawfully enforceable against the Trust and its property in accordance with their terms;
  - vii. it has an unrestricted right to be fully indemnified or exonerated out of the Trust's property in respect of any losses or liabilities incurred by it in its dealings with KVB Kunlun, and the Trust's property is sufficient to satisfy

that right of indemnity or exoneration;

- viii. it has complied with its obligations in connection with the Trust;
- ix. there is no conflict of interest on the Client's part in entering into these Terms & Conditions and performing its obligations under it or the transactions contemplated by it; and
- x. if the Client is a superannuation fund, it complies with all requirements outlined in the Superannuation Industry (Supervision) Act (1993).
- e) where the Client is an investment manager or a Responsible Entity, the investment management agreement or constitution specifically empowers and authorises dealings in the financial products, by the Client and on behalf of their underlying clients; and
  - xi. such dealings are within the authorised ambit of the/each underlying client's investment strategy;
  - xii. it will enter into transactions pursuant to the applicable investment management agreement as investment manager or Responsible Entity and not otherwise;
  - xiii. it will only deal in financial product transactions when the funds or other assets under its control are sufficient to meet the obligations which arise in connection with such dealing;
  - xiv. in the event of termination of the Client's appointment as investment manager or Responsible Entity of the Client, it is authorised to arrange for closing out of all contracts entered into on behalf of the Client prior to the date of such termination as soon as possible; and
  - xv. repeats each of these representations and

warranties in relation to both itself and its underlying clients.

## 5. ACCOUNT ESTABLISHMENT

- a) KVB Kunlun agrees to establish an account in the name of the Client, who is the person named as the holder of the account.
- b) Where the Client is more than one person, the account shall be established in their names as joint tenants unless they specifically advise otherwise (in which case it shall be established in their names as joint tenants). In any case, the parties to such joint account shall each be jointly (together) and severally (individually) liable.
- c) No one except the Client has an interest in the Client's account with KVB Kunlun opened for the purposes of these Terms & Conditions.

## 6. SEGREGATED ACCOUNTS

The Client agrees and acknowledges that:

- a) All money and property deposited by the Client with KVB Kunlun, or received by KVB Kunlun on behalf of the Client, shall be deposited to the Client's account and form a credit balance and will initially be paid into a client segregated bank account established and maintained by KVB Kunlun and invested in accordance with applicable legal and regulatory requirements;
- b) Such segregation of the Client's money and property does not protect the Client's money and property from the risk of loss;
- c) Whilst the Client's money and property is segregated from KVB Kunlun's money and property, it may be co-mingled with the money and property of other KVB Kunlun clients, and utilised as free and clear collateral by KVB Kunlun from time to time in respect of open positions. Such monies and property shall accordingly be treated as the legal and beneficial

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property of KVB Kunlun, subject to an obligation by KVB Kunlun to transfer equivalent back to Client in accordance with their transaction rights under these Terms and Conditions;

- d) KVB Kunlun shall be entitled to retain any interest earned on such segregated money or property held or invested by KVB Kunlun;
- e) If the Client does not provide KVB Kunlun with a tax file number or details of exemption, KVB Kunlun shall be legally obliged to deduct tax from interest payments at the highest marginal rate plus medicare levy;
- f) KVB Kunlun may use the funds in the client segregated account to manage KVB Kunlun's dealings with its counterparties with respect to client positions. The Client acknowledges that this serves as sufficient written authorisation for KVB Kunlun to withdraw without notice to, or further authorisation from, the Client any money or property deposited into the segregated account to be used by KVB Kunlun for this purpose. The Client has no interest in or claim over KVB Kunlun's contracts (if any) with any other person or in the accounts into which KVB Kunlun lodges or pays the funds which were withdrawn from the segregated accounts. The Client acknowledges that the balance of the Client's account may not be protected if there is a default in the dealings with counterparties or in the overall segregated account balance; and
- g) Any Collateral transferred by the Client to KVB Kunlun or held by KVB Kunlun or its counterparties on behalf of the Client is pledged as a security for any liability that the Client may have towards KVB Kunlun. Client warrants that all such Collateral are beneficially owned by the Client and are and will remain free from any lien, charge, security interest if other encumbrance. If the Client fails to fulfill any obligation under these Terms & Conditions, KVB Kunlun is entitled to sell any Collateral

immediately without notice and by the means and at the price that KVB Kunlun in its reasonable discretion determines. KVB Kunlun shall not be liable for any loss occasioned by such sale.

- h) Financial product trades executed through KVB Kunlun are routed to KVB Kunlun's service provider, who then facilitates execution and/or clearing on our behalf. Depending on the relevant jurisdiction or exchange, either KVB Kunlun or its service provider will be the registered owner of the instrument, within KVB Kunlun's client omnibus account. The value and dividends are then provided to clients by KVB Kunlun in accordance with their recorded, and continually reconciled, holdings. However, if KVB Kunlun were to go into liquidation, and an administrator appointed, clients would be prima facie entitled to fair value for their recorded holdings, rather than holding such instruments in their name directly, thereby placing clients in the position of unsecured creditors with the administrators.
- i) KVB Kunlun enters into arrangements with third party execution and clearing providers for the facilitation of transactions and settlements, and avails monies received for margin calls and settlements to such providers for this purpose.

## 7. MULTIPLE ACCOUNTS

- a) The Client is able to open multiple accounts denominated in the same currency as or in currencies other than that of the main trading account. The operation of multiple accounts may mean that the Client incurs additional costs.
- b) If the Client opens opposite positions in the same currency cross (for example) on the same account, such positions will cancel each other out. However if the Client operates several accounts (or sub-accounts) and opposite positions are opened on different accounts (or sub-accounts), such

positions will not cancel each other out. The Client is specifically made aware that unless closed manually, all such positions may be rolled over on a continuous basis and thereby consequently all incur a cost for such roll-over.

- c) Keeping opposite positions open on different accounts will result in both positions being continuously rolled over (and thereby continuously being charged the "tom-next rate") until manually closed.
- d) If the Client has opened more than one account, Margin or Collateral deposited on one account will not automatically serve as Margin coverage on the other account(s). A Client may therefore receive margin calls and stop outs on one account despite having additional collateral available on other accounts.
- e) However, if the Client has deposited money or Collateral on one account, KVB Kunlun is entitled to transfer money or Collateral from one account to another, even if such transfer will necessitate the closing of margin trades on the account from which the transfer takes place.
- f) Interest is calculated on the basis of the net free equity of each individual account or sub-account. When operating several accounts, Client will therefore be charged interest on the full negative net free equity on any account despite having a positive net free equity on another account. When operating several accounts Client should use caution when using more than one account, and understand that the rate of interest paid on positive balances differs from the rate of interest charged on negative balances.

## 8. RISK DISCLOSURES

- 8.1 The Client represents and warrants to KVB Kunlun that:
  - a) they have received, read, understood and accepted the risk disclosures provided herein in

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relation to the financial products to be traded and contained herein;

- b) they have received, read and understood the Financial Services Guide and Product Disclosure Statement;
- c) the Client acknowledges, recognises and understands that trading and investment in these financial products is speculative, may involve an extreme degree of risk and significant loss, and is appropriate only for persons who can assume risk of loss in excess of their margin deposit;
- d) the Client has read these Terms & Conditions and understands that KVB Kunlun has only provided general advice, and the Client has considered its objectives and financial situation and has obtained appropriate independent advice prior to entering into these Terms & Conditions, and has formed the opinion that dealing in the financial products is suitable for the Client's needs and purposes;
- e) the Client has taken such independent legal and financial advice as the Client considers necessary prior to executing these Terms & Conditions; and
- f) the Client is willing and able, financially and otherwise, to assume the risk of trading in high risk investments.

8.2 The Client acknowledges that neither KVB Kunlun nor any associated entity guarantees the performance of any given financial product or account nor that any financial product or account will achieve a particular rate of return.

## 9. CLIENT ACKNOWLEDGEMENTS

The Client acknowledges to KVB Kunlun that:

- a) KVB Kunlun will deal or instruct third parties to deal on behalf of the Client, in the financial products;
- b) KVB Kunlun may utilise the execution and settlement services of appropriately licensed third parties on behalf of the Client in

order to provide the services detailed in these Terms & Conditions;

- c) Dealings in the financial products create an obligation to make a cash adjustment in accordance with the terms of the relevant transaction;
- d) Where a financial product has no maturity date or defined term, open contracts shall continue until such date as they are closed;
- e) All dealings executed on behalf of the Client pursuant to these Terms & Conditions shall be at the absolute discretion of KVB Kunlun. In particular, KVB Kunlun shall be entitled to take any action it considers necessary in its absolute discretion to ensure compliance with the operating rules and all other applicable laws and regulatory decisions;
- f) KVB Kunlun may act as principal in respect of the financial products traded by KVB Kunlun on behalf of the Client regardless of whether KVB Kunlun is acting on Client instructions or not;
- g) The Client has been made specifically aware that in certain markets, KVB Kunlun may act as a market maker and when so acting under normal market circumstances quote the Client bid and ask prices. KVB Kunlun will only disclose that it is acting as a market maker in response to a written request from the Client to make such disclosure. The Client accepts that in such markets, KVB Kunlun may hold positions that are contrary to the position of Clients resulting in potential conflicts of interest;
- h) Subject to applicable legal/regulatory requirements, the Client consents where KVB Kunlun either knowingly or unknowingly takes the opposite side to the Client in relation to any of the financial product transactions;
- i) Subject to applicable legal/regulatory requirements, the Client agrees and acknowledges that KVB Kunlun's directors,

employees and associates may and can deal on their own account;

- j) KVB Kunlun reserves the right, at its sole discretion and without explanation, to refuse to deal on behalf of the Client in relation to any exchange traded or over-the-counter financial products (other than closing out existing open positions held in KVB Kunlun's account on behalf of the Client) or to limit the number of open positions held on behalf of the Client or both. KVB Kunlun will inform the Client of any refusal before or as soon as practicable after such refusal;
- k) Client has no rights, whether by way of subrogation or otherwise, against any person other than KVB Kunlun, in respect of transactions on a futures exchange or market traded pursuant to the applicable rules of the exchange or market, except to the extent (if any) provided by any applicable law;
- l) Where errors have occurred in price quotes provided by, or the pricing of transactions quoted by KVB Kunlun to the Client, KVB Kunlun reserves the right to not be bound by such a quote or transaction where KVB Kunlun is able to substantiate to the Client that there was a material error at the time of the quote or transaction. Where this occurs in relation to the initial purchase of a financial product, KVB Kunlun will not issue (or if already issued will cancel) the contract and refund the Client's money accordingly. Where this occurs in relation to a price quote for an existing position, KVB Kunlun will re-issue the price quote accordingly.
- m) any benefit or right obtained by KVB Kunlun upon registration of an exchange traded or over-the-counter financial products with a clearing house is personal to KVB Kunlun and such benefit or right shall not pass to the Client;
- n) In dealing in the financial products on behalf of the Client or for any other purpose under these Terms & Conditions, when KVB Kunlun needs to buy/sell foreign currency

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from time to time, the applicable exchange rate shall be any widely recognised and published foreign exchange rate selected by KVB Kunlun in its sole discretion available on the date the Client's money is exchanged;

- o) There are risks associated with utilising an Internet-based deal execution trading system which include, but are not limited to, the failure of hardware, software, and Internet connection. Since KVB Kunlun does not control signal power, its reception or routing via Internet, configuration of your equipment or reliability of its connection, KVB Kunlun will not be responsible for communication failures, distortions or delays when trading via the Internet;
- p) Reports to the Client on the execution of contract notes by KVB Kunlun, and the content of such contract notes, open position statements and monthly statements, unless otherwise objected to within 48 hours after communication to the Client, shall be deemed proof of the accuracy of such contents and their execution in accordance with these Terms & Conditions;
- q) A notice issued by an authorised officer or agent of KVB Kunlun stating the amount of money due and payable by the Client shall be taken as final evidence thereof in the absence of manifest error;
- r) All determinations and calculations made by KVB Kunlun under these Terms & Conditions will be binding on the Client in the absence of manifest error;
- s) KVB Kunlun is entitled, in its reasonable opinion, to determine that an emergency of an exceptional market condition exists. Such conditions include, but are not limited to, the suspension or closure of any market or the abandonment or failure of any event to which KVB Kunlun relates its quote or the occurrence of an excessive movement in the level of any margin trade and/or underlying market or KVB Kunlun's

reasonable anticipation of the occurrence of such a movement. In such cases KVB Kunlun may increase its margin requirements, close any or all of the Client's open margin trades and/or suspend or modify the application of all or any of the terms, including but not limited to, altering the last time for trading a particular margin trade, to the extent that the condition makes it impossible or impracticable for KVB Kunlun to comply with the term in question.

- t) Anything KVB Kunlun is permitted to do in accordance with these Terms & Conditions may be done in its absolute discretion, and any opinion or view required to be formed by KVB Kunlun may be formed in its absolute discretion; and
- u) Provision of a Tax File Number (TFN) is optional. However, the non-provision of a TFN may result in a higher tax liability or surcharge.

## 10. KVB KUNLUN REPRESENTATIONS & SERVICES

- a) KVB Kunlun seeks to act honestly, exercise due care and diligence and act in the Client's best interests at all times. KVB Kunlun will give priority to Client interests and undertakes that it will not misuse Client information. KVB Kunlun will use reasonable endeavors to execute or arrange the execution of the Client's instructions.
- b) KVB Kunlun will arrange execution and clearing for transactions in financial products defined herein, and other authorised services as agreed with the Client from time to time.
- c) Unless otherwise expressly agreed, KVB Kunlun will provide services on an execution only basis in accordance with the Client's instructions, and will not provide advice to the Client regarding the merits of a transaction. The Client is hereby prohibited from treating any remark made by a KVB Kunlun representative regarding the

market, transaction or forecast as advice.

- d) Any transaction or market information or research provided by KVB Kunlun to the Client is provided as general information only, and does not constitute and cannot be relied upon as a recommendation to trade. KVB Kunlun makes no representation, warranty or guarantee, and accepts no liability for, the accuracy or completeness of any such information, and the Client relies on such at its sole risk.

## 11. ON-LINE TRADING FACILITY

- a) The Client acknowledges that it has read, understood and agreed to the terms and conditions associated with dealing via our on-line trading facility as set out in these Terms & Conditions.
- b) KVB Kunlun may amend any of the terms of these Terms & Conditions and by continuing to deal with KVB Kunlun or to access or use the on-line trading facility, the Client agrees to any amendments.
- c) KVB Kunlun agrees to grant the Client access to one or more electronic terminals, including terminal access through the Client's Internet browser, for the electronic transmission of orders to the Client's account with KVB Kunlun.
- d) KVB Kunlun shall permit the Client electronically to monitor the activity and positions in its account by providing an on-line trading facility. The on-line trading facility may be a proprietary service offered by KVB Kunlun or a third party system.
- e) The Client agrees to use the on-line trading facility software solely for its internal business or investment purposes.
- f) The Client agrees that it shall not distribute the platform to any third party.
- g) The on-line trading facility provided by KVB Kunlun may be used to transmit, receive and confirm the

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execution of orders, subject to market conditions and applicable operating rules and regulations. Regardless of any on-line confirmation received upon placement of an instruction via the on-line trading facility, such transaction is not confirmed by KVB Kunlun until KVB Kunlun provides confirmation.

- h) KVB Kunlun consents to the Client's access and use in reliance upon the Client having adopted procedures to prevent unauthorised access to and use of the on-line trading facility, in any event, the Client agrees to any financial liability for trades executed through the on-line trading facility.
- i) The Client may send and receive email messages and otherwise use the on-line trading facility as permitted in accordance with these Terms & Conditions, our policies and any applicable laws.
- j) KVB Kunlun reserves the right, in its sole discretion, to institute or change any policies at any time relating to the use of the on-line trading facility.
- k) The on-line trading facility is provided on an "as-is" basis and KVB Kunlun makes no express or implied representations or warranties to the Client regarding its operation or usability.
- l) KVB Kunlun makes no representations or warranties regarding any services provided by any third party.
- m) The on-line trading facility may be available in several versions, which may be differentiated in various aspects including, but not limited to the level of security applied, products and services available etc. KVB Kunlun shall not be liable to the Client for any loss, expense, cost or liability suffered or incurred by the Client due to the Client using a version different from the standard version with all available updates installed.
- n) KVB Kunlun may offer real-time tradeable prices to the Client. Due to delayed transmission between

the Client and KVB Kunlun the price offered may have changed before an order from the Client is received by KVB Kunlun. If automatic order execution is offered to the Client, KVB Kunlun shall be entitled to change the price on which the Client's order is executed to the market value at the time which the order from the Client was received.

- o) KVB Kunlun does not warrant that access to or use of the on-line trading facility will be uninterrupted or error-free, or that the service will meet any particular criteria with respect to its performance or quality. KVB Kunlun expressly disclaims all implied warranties, including without limitation warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security or accuracy.
- p) Under no circumstances, including negligence, will KVB Kunlun, its employees and/or service providers be liable for any direct, indirect, incidental, special or consequential damages including, without limitation, business interruption or loss of profits, that may result from the use of or inability to use the on-line trading facility. Where liability cannot be excluded, KVB Kunlun's liability shall be limited to an amount equal to the amount of fees paid to KVB Kunlun by the Client for use of the on-line trading facility.
- q) The Client agrees not to hold KVB Kunlun and any of its service providers (for whom it acts as agent in this regard) liable for any form of damage arising as a result of the unavailability of the on-line trading facility.
- r) The Client agrees that the use of the on-line trading facility is at the Client's risk and the Client assumes full responsibility for any losses resulting from the use of or materials obtained via the on-line trading facility.
- s) KVB Kunlun, its directors, officers, employees, agents, contractors, affiliates, third party vendors,

information providers, and other suppliers providing information or data services do not warrant that the on-line trading facility will be uninterrupted or error free nor do we or they make any warranty as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through the use of the on-line trading facility or the results obtained from its use.

- t) KVB Kunlun and its service providers will not accept any form of liability including any loss or damage to the Client or to any other person for:
  - i. any inaccuracies, errors or delays or omissions of any data, information or message or transmission or delivery of any such data, information or message;
  - ii. non-performance;
  - iii. interruptions in data, information or message transmission, due to any negligent act or omission, including any "force majeure" event or any other cause, whether or not within KVB Kunlun's control;

Force majeure events include amongst other things, floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, actions of any government, communications or power failure, equipment or software malfunction.

- u) The use and storage of any information provided or made available to the Client through the use of the on-line trading facility is for the use of the Client and is the Client's sole risk and responsibility.
- v) The Client is responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the on-line trading facility, and for all communications service fees and charges incurred by the Client in accessing the on-line trading facility.

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- w) KVB Kunlun may at any time at its sole discretion terminate or restrict any Client's access to the on-line trading facility at any time. Should KVB Kunlun terminate these Terms & Conditions or access to the trading platform the Client will be liable for all fees charges and obligations incurred under these Terms & Conditions prior to termination.
  - x) The Client acknowledges that from time to time, and for any reason, the on-line trading facility may not be operational or otherwise available for the Client's use due to servicing, hardware malfunction, software defect, service or transmission interruption or other cause.
  - y) The Client's failure to observe any of the undertakings or representations may result in civil or criminal liability, as well as termination of the use of the on-line trading facility.
  - z) The Client acknowledges that the Client has alternative arrangements in place at all times, for the transmission and execution of orders, if for any reason, circumstances prevent the transmission and execution of all, or any portion of, the Client's orders through the on-line trading facility. In the event the on-line trading facility not being operational, the Client agrees to contact KVB Kunlun to make alternative order entry arrangements. Such arrangements may be in the form of telephone, or as otherwise agreed.
  - aa) The Client may not under any circumstance use the on-line trading facility to do any of the following:
    - i. publish, post, distribute or disseminate defamatory, infringing, obscene or other unlawful or offensive material or information;
    - ii. intercept or attempt to intercept any email correspondence;
    - iii. use the on-line trading facility in any manner that may adversely affect its availability or its resources to other users;
    - iv. send correspondence electronically or otherwise to other users for any purpose other than personal communication; or
    - v. act, or fail to act in a manner which may result in the violation of any laws or regulations.
- 12. AUTHORISATIONS AND INSTRUCTIONS**
- 12.1 General**
- a) The Client hereby authorises KVB Kunlun to trade in the financial products on their behalf pursuant to the prior approval and instruction of the Client, or otherwise in accordance with KVB Kunlun's rights elsewhere under these Terms & Conditions.
  - b) The Client may communicate their instructions to KVB Kunlun via the on-line trading facility or by telephone. Faxed or email orders will not be accepted unless pursuant to a prior agreed arrangement between KVB Kunlun and Client.
  - c) In consideration of KVB Kunlun agreeing to accept telephone (or other written) instructions from the Client, Client acknowledges that KVB Kunlun is not obliged to accept/implement such instructions, and will not be liable to the Client or any other party should such instructions be unauthorised, forged or fraudulently given.
  - d) The Client may authorise any other person (the Authorised Signatory) to give instructions on its behalf and KVB Kunlun is entitled to act upon instructions which are or appear to be from the Client or any Authorised Signatory thereof. It is the Client's sole responsibility to notify KVB Kunlun in writing immediately if there is any change to the Authorised Signatory list provided.
  - e) The Client shall be responsible for all orders, and for the accuracy of information, sent via the internet using the Client's name, password or any other personal identification means implemented to identify the Client.
  - f) KVB Kunlun may, in its sole discretion and without explanation, refuse to act upon any instruction.
  - g) If the Client is more than one person, KVB Kunlun may act upon instructions received from any one person who is, or appears to KVB Kunlun to be, such a person, whether or not such person is an Authorised Person.
  - h) The Client may authorise any other person (Authorised Person) to give instructions (via the agreed methods) on its behalf and KVB Kunlun is entitled to act upon instructions which are or appear to be from the Client or any Authorised Person. It is the Client's responsibility to notify KVB Kunlun in writing immediately if there is any change to the Authorised Person list provided pursuant to these Terms & Conditions;
  - i) Persons may only be appointed as Authorised Persons where they are an employee or director of a corporate Client, they are a family member appointed to act in the temporary absence of an individual Client, or where they are or act for an Australian Financial Services Licensee with respect to the relevant activities.
  - j) KVB Kunlun is under no obligation to accept any instruction that is not made by an Authorised Person or to enquire as to the identity of any person providing the instruction if it reasonably believes the person is an Authorised Person.
  - k) Should KVB Kunlun receive any instruction that it reasonably assumes was from an Authorised Person, KVB Kunlun will not be liable for any properly performed action or omission by KVB Kunlun in reliance on that instruction.



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- l) KVB Kunlun shall not be liable for any act or omission by KVB Kunlun in reliance on any instruction given or action taken by any person acting or purporting to act on behalf of the Client who is not listed as an Authorised Person.
- m) The Client is obliged to keep all passwords secret and ensure that third parties do not obtain access to the Client's trading facilities;
- n) Mere transmission of an instruction by the Client shall not constitute a binding contract with KVB Kunlun until confirmed by KVB Kunlun via the trade confirmation;
- o) The Client has appointed KVB Kunlun as its agent for the purposes set out in these Terms & Conditions and conferred upon KVB Kunlun authority to do, or omit to do, all things reasonably necessary to perform its functions and all things reasonably incidental to the performance of its functions;
- p) The Client will execute or otherwise authorises KVB Kunlun to execute all such agreements as required to enable the provision of the services contemplated in these Terms & Conditions. The Client appoints KVB Kunlun as the Client's attorney to do all things necessary to enter into such agreements on the Client's behalf;
- q) The Client shall promptly provide any instructions to KVB Kunlun, which KVB Kunlun may require. If the Client does not provide such instructions promptly KVB Kunlun may, in its absolute discretion, take such steps at the Client's cost, as KVB Kunlun considers necessary or desirable for its own protection or the protection of the Client. This provision also applies in situations when KVB Kunlun is unable to contact with the Client;
- r) If the Client does not provide KVB Kunlun with notice of its intention to exercise an option or another financial product transaction which requires an instruction from the Client at the time stipulated by KVB Kunlun, KVB Kunlun may treat the option or the transaction as abandoned by the Client. If a transaction can be prolonged on expiry, KVB Kunlun may in its absolute discretion, choose to prolong or to close such transaction; and
- s) In general, KVB Kunlun shall act according to instructions as soon as practically possible and shall, as far as trading instructions are concerned, act within a time frame reasonable seen in the context of the nature of the instruction. However, if after instructions are received, KVB Kunlun believes that it is not reasonable practicable to act upon such instructions within a reasonable time, KVB Kunlun may defer acting upon those instructions until it is, in KVB Kunlun's reasonable opinion, practicable to do so or notify the Client that KVB Kunlun is refusing to act upon such instructions.
- ## 12.2 Authorisations and Instructions provided via the on-line trading facility
- a) KVB Kunlun will not be deemed to have any order or communication electronically transmitted by the Client until KVB Kunlun has actual knowledge of any such order or communication. The mere transmission of an instruction by the Client shall not constitute a binding contract between KVB Kunlun and the Client. The terms of any order or communication electronically transmitted to the Client may be subject to change or correction. Regardless of the fact that the on-line trading facility might confirm that a contract is executed immediately when the Client transmits instructions via the on-line trading facility, the confirmation forwarded by KVB Kunlun or made available on the on-line trading facility constitutes KVB Kunlun's confirmation of a contract. Any instruction sent electronically shall only be deemed to have been received and shall only then constitute a valid instruction and/or binding contract between KVB Kunlun and the Client when such instruction has been recorded as executed by KVB Kunlun and confirmed by KVB Kunlun to the Client including through a trade confirmation and/or account statement.
- b) The Client acknowledges and warrants that it has received a password granting it access to the on-line trading facility; is the sole owner of the password provided; and accepts full responsibility for any transaction that may occur on an account opened, held or accessed through the use of the password provided to the Client by KVB Kunlun, even if such use may be unauthorised or wrongful. The Client agrees to accept full responsibility for the use of the on-line trading facility, for any orders transmitted through the on-line trading facility and for all communications and the accuracy of all information sent via the on-line trading facility using the Client's name, password or any other personal identification means implemented to identify the Client.
- c) The Client warrants and agrees that any person who is in possession of any password is authorised by the Client, and the Client acknowledges that they will be responsible for any actions on their account associated with the use of its password.
- d) The Client agrees to notify KVB Kunlun immediately should the Client become aware of any unauthorised use, loss or theft of the Client's, username, password or account numbers; or inaccurate information with respect to the content of statements including, cash balances, open positions or transaction history.
- ## 13. ENTERING INTO A FINANCIAL PRODUCT TRANSACTION
- a) The Client may request on any given Business Day, via telephone or otherwise, KVB Kunlun to quote a price at which KVB Kunlun may be prepared to enter into a financial product transaction. The Client acknowledges that a price quotation pursuant to this request does not constitute an offer to

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enter into a new or close an existing financial product.

- b) Upon receiving the quote from KVB Kunlun, the Client may via telephone or otherwise offer to enter into a financial product transaction with KVB Kunlun at the price quoted by KVB Kunlun.
- c) KVB Kunlun is in no way obliged to accept the Client's offer to enter into a financial product transaction and, without limitation, is not obliged to accept the Client's offer to enter into a financial product transaction, if the Client has exceeded or would exceed a predetermined limit imposed on the Client under these Terms & Conditions; or until KVB Kunlun has received from the Client the Initial Margin where required, in the form of cleared funds. KVB Kunlun will promptly advise the Client should KVB Kunlun decide not to accept a Client's offer to enter into a financial product transaction.
- d) The Initial Margin where required to enter into a financial product transaction, if not already received from the Client, will be payable to KVB Kunlun upon acceptance by KVB Kunlun of the Client's offer to enter into the financial product transaction.
- e) Should KVB Kunlun accept the Client's offer to enter into a financial product transaction, KVB Kunlun will issue to the Client an electronic confirmation shortly after the financial product transaction has been entered into. This confirmation will be in the form of a deal confirmation. Failure by KVB Kunlun to issue a deal confirmation will not prejudice or affect the relevant financial product transaction. KVB Kunlun will not bear any liability whatsoever resulting from the failure to issue a deal confirmation.
- f) The Client agrees to examine the terms of each deal confirmation immediately upon receipt and the Client agrees that the contents of the deal confirmation, in the absence of manifest error, will be conclusive evidence of the

executed deal, unless within 48 hours of issue of a deal confirmation the Client notifies KVB Kunlun of any disputed detail in the deal confirmation received by the Client. Upon receipt of written notice within the 48hour period of the disputed detail, KVB Kunlun will investigate the dispute and with the co-operation of the Client, will endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, the Client will continue to satisfy any obligation to pay Margin calls made by KVB Kunlun in respect of the transaction as if the deal confirmation was correct and its details were not the subject of dispute.

- g) In its absolute discretion, KVB Kunlun reserves the right to limit the value of financial product transactions the Client may have outstanding under these Terms & Conditions. Should the Client wish to enter into any further financial product transactions, the Client must seek and obtain approval from KVB Kunlun, which Stray may grant or refuse in its absolute discretion.
- h) If the Client provides KVB Kunlun with standing instructions to enter into a financial product transaction when a particular price level is reached in the market of the underlying security, the Client acknowledges that the price at which the financial product transaction is entered into may not be the same as the price requested by the Client as KVB Kunlun may elect not to enter into the financial product transaction until it has satisfied itself that it can hedge its exposure in the underlying security.

## 14. EXECUTION OF ORDERS

- a) KVB Kunlun undertakes and the Client acknowledges that in respect of dealings in the financial products, and in compliance with the applicable Corporations Act and exchange operating rules requirements, KVB Kunlun shall

execute all dealings in the sequence in which they are received and recorded, unless it would be fair and equitable to allocate such contracts on a different basis;

- b) KVB Kunlun shall provide the Client with contract notes and monthly statements in accordance with applicable laws and regulation;
- c) It is the responsibility of the Client on receipt to carefully check all transaction confirmations and statement documentation (whether received/accessed electronically or otherwise) and to bring any errors or omissions to the attention of KVB Kunlun in writing within the time specified by KVB Kunlun. In the absence of such written objection, the contract notes and monthly statements shall be deemed correct in all respects; and
- d) Orders may be placed as market orders to buy or sell an instrument as soon as possible at the price obtainable in the market, or limit and stop orders to trade when the price reaches a predefined level, as applicable to the various instruments offered. Limit and stop orders are thus not guaranteed executable at the specified level or amount, unless explicitly stated otherwise by KVB Kunlun.
- e) KVB Kunlun may, in its absolute sole discretion, execute a stop loss order in relation to any contract where there are reasonable grounds to believe that subsequent price movements may be adverse to the Client. KVB Kunlun shall not be liable to the Client for any failure to exercise this discretion. A stop loss order is triggered when the Client has a sold position and the contract is traded at or above the stop loss price; or when the Client has a bought position and the contract is traded at or below the stop loss price. Once a stop loss order is triggered or executed it becomes a market order and KVB Kunlun shall use its best endeavours to execute the market order. The acceptance of a stop loss order is not a guarantee or

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representation by KVB Kunlun that the stop loss order can be executed at the stop loss price.

- f) KVB Kunlun may at its discretion aggregate the Client's orders with its own orders or orders of associates and/or persons connected with KVB Kunlun including employees and other clients. In addition, KVB Kunlun may split the Client's orders. Orders will generally be aggregated or split where KVB Kunlun reasonably believes it to be in the overall best interests of Clients, but the Client acknowledges that on some occasions the consequence of the aggregation or splitting may result in a less favourable price than the Client's order having been executed separately.

## 15. DEPOSITS AND MARGINS

The Client agrees and acknowledges that:

- a) KVB Kunlun may advise the Client of the need to provide an initial or variation deposit or Margin by way of the payment of money, or if KVB Kunlun so agrees, the lodgment of Collateral, in such amount as determined by KVB Kunlun in its sole discretion, feels is necessary to protect itself from the personal obligation incurred by dealing in the financial products on behalf of the Client. Prior to entering into a financial product transaction, KVB Kunlun may require the Client to deposit cleared funds which will only be accepted when all AML/CTF requirements are met. The amount required by KVB Kunlun and the time at which it is required will be at the absolute discretion of KVB Kunlun. KVB Kunlun is not obliged to permit any offset of any moneys or Collateral so required by KVB Kunlun;
- b) KVB Kunlun reserves the right whenever it deems appropriate to raise or lower the Margin or deposit requirements, which may apply to existing positions as well as to new positions. The Client will comply with and meet all such calls in accordance with the Agreement
- by depositing in cleared funds the sum requested or lodging the Collateral agreed within the time specified by KVB Kunlun. KVB Kunlun may determine the amount and time in its absolute discretion. Should KVB Kunlun require additional funds from the Client to pay Variation Margin ("Margin Call") the Client must pay the amount called by KVB Kunlun immediately upon being given notice by KVB Kunlun. In all respects, time shall be of the essence for all payment obligations of the Client;
- c) Should KVB Kunlun make a Margin Call, the Client acknowledges and agrees that KVB Kunlun may refuse any request by the Client to enter into any further financial product transaction positions until KVB Kunlun has confirmed the receipt of the Margin Call amount in the form of cleared funds;
- d) Any exercise by KVB Kunlun of any power or right under this clause, including, without limitation, the calling of Margin, shall be binding on the Client;
- e) Where the Client trades via the trading platform, the client is required to log-in to the system on a daily basis when they have opened positions to ensure they meet the margin requirement. It is the client's sole responsibility to monitor and manage their open positions and exposures, and ensure margin requirements are met as required;
- f) Where the Client has not checked the trading platform for Margin call notifications, and so has not met them in a timely manner, all margined positions will be closed out by KVB Kunlun, without further reference to the Client;
- g) KVB Kunlun may, in its discretion, request the Client to make all Margin and deposit payments with respect to any exchange traded or over-the-counter financial product transactions directly to a broker affiliated with KVB Kunlun. KVB Kunlun agrees that any payments made by the Client to such affiliate
- of KVB Kunlun pursuant to such a request will satisfy the Client's obligation to make payments to KVB Kunlun;
- h) Liability for a deposit or Margin arises at the time it is executed irrespective of the time at which any call is made, and such liability is not limited to the amount, if any, deposited with KVB Kunlun;
- i) The Client is responsible to pay any deficit owing to KVB Kunlun after closure, and if the Client defaults or refuses such payment, KVB Kunlun may apply the proceeds of any assets held by KVB Kunlun against that deficit;
- j) A Margin call will not be considered to have been met UNLESS AND UNTIL cleared funds have been received by KVB Kunlun in the nominated account (generally around 10am on the following Business Day).
- k) Should the Client fail to meet a Margin call, KVB Kunlun may without prejudice to any other rights or powers under these Terms & Conditions, and in its absolute discretion, close out, without notice, any or all of the Client's exchange traded or over-the-counter financial product contracts or refuse any request by the Client to enter into any further contracts;
- l) No credit shall be extended directly or indirectly to the Client by KVB Kunlun, unless otherwise agreed in writing;
- m) Subject to the Client meeting all Margin Call obligations, KVB Kunlun may permit the Client to withdraw from its account any excess Net free equity.
- n) Margin deposited by the Client will not fall due for repayment until the Client's obligations under these Terms & Conditions and under or in respect of any other account between KVB Kunlun and the Client are satisfied in full. Until this time, Margin will not constitute a debt due from KVB Kunlun to the Client nor will the Client have any right to receive payment of these funds;

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## 16. CONTRACTS FOR DIFFERENCE

### 16.1 Payments for Difference

The Client agrees and acknowledges that:

- a) Following Business Close on each Business Day during the term of an open CFD, KVB Kunlun will determine at Business Close the Contract Value of the CFD.
- b) If the Contract Value determined is higher than the Contract Value determined in respect of the Business Close on the previous Business Day, then the Short Party must pay to the Long Party the difference.
- c) If the Contract Value determined is lower than the Contract Value determined in respect of the Business Close on the previous Business Day, then the Long Party must pay to the Short Party the difference.
- d) The Contract Value at Business Close on the Business Day on which the CFD is entered into is determined using the Underlying Security Price.
- e) The Contract Value determined under clause 6(a) will ordinarily be the closing price of the Underlying Security quoted by the Relevant Exchange. Where KVB Kunlun determines that the contract value of a CFD at Business Close cannot be determined on that basis for any reason, the contract value will be the value determined by KVB Kunlun in its sole discretion.
- f) Without limiting sub-clause(e), if at any time trading on a Relevant Exchange is suspended or halted in any Underlying Security, KVB Kunlun will, in determining the Contract Value, at its discretion have regard to the last traded price before the time of suspension or halt.

### 16.2 Closing a CFD

The Client agrees and acknowledges that:

- a) At any time the Client may give KVB Kunlun by telephone or

otherwise notice of its intention to close any CFD (whether in whole or part) by specifying the Underlying Security and the proportion of the CFD that the Client wishes to close.

- b) Upon receipt of a Closing Notice, KVB Kunlun shall use reasonable endeavours to provide a quote for the Closing Price and notify the Client of that quote (by telephone or otherwise). It is the Client's obligation to notify KVB Kunlun as soon as possible (by telephone or otherwise) as to whether the Client is willing to accept the Closing Price. Should the Client accept the Closing Price the CFD, or relevant portion of the CFD, will be closed on the Closing Date.
- c) At the Close of Business on the Closing Date, should there be a difference between the Closing Value and the Contract Value of the CFD (or portion of it closed under clause 7(b)) it must be accounted for in the following way – (i) Should the Closing Value be greater than the Contract Value, the Short Party must pay to the Long Party the difference; and (ii) Should the Closing Value be less than the Contract Value, the Long Party must pay to the Short Party the difference.
- d) If a company, whose security represents all or part of the subject matter of a CFD, becomes externally administered within the meaning of the Corporations Act the CFD is taken to have been closed at the time that such administration commences. The Closing Price shall be determined by KVB Kunlun who may have regard to any factors it considers appropriate including, for example, the last traded price of the Underlying Security.
- e) Without limiting KVB Kunlun's discretion, if any of the Underlying Securities cease to be quoted on a Relevant Exchange, or are suspended from quotation, or subject to a trading halt for 5 or more consecutive Business Days, KVB Kunlun may, in its absolute discretion, elect to terminate the

relevant CFD by providing written notice to the Client.

- f) If at any time a take-over offer is made in respect of an Underlying Security, then at any time prior to the Closing Date of such offer, KVB Kunlun may close the CFD. References to "offer", "take-over" and "closing date" in these Terms & Conditions have the meanings given to them in the Corporations Act;
- g) It may not be possible to close out a CFD if there is a suspension of trading or a trading halt in respect of the Underlying Security. In such a circumstance, KVB Kunlun may decide, in its absolute discretion, not to close a CFD;
- h) As at Business Close on the day that a CFD is closed out, KVB Kunlun will calculate the remaining payment rights and obligations of the Client and KVB Kunlun based on the difference between the Closing Value and the Contract Value at the time it was entered into and taking into account any Margin which has already been debited from or credited to the Client's account in respect of that CFD;
- i) Where KVB Kunlun determines that the Closing Value of a CFD cannot be calculated on the Closing Date for any reason, the Closing Value will be the value determined by KVB Kunlun in its sole discretion;
- j) Without limiting the above, if at any time trading on a Relevant Exchange is suspended or halted in any Underlying Security, KVB Kunlun will, in determining the Closing Value of a CFD, at its discretion have regard to the last traded price before the time of suspension or halt; and
- k) All determinations and calculations made by KVB Kunlun pursuant to these Terms & Conditions will be binding on the Client in the absence of manifest error.
- l) Without limiting KVB Kunlun's discretion, if rules or regulatory changes from any Relevant Exchange or Regulator which

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effects, or is expected to effect, the liquidity of the Underlying Securities, KVB Kunlun may, in its absolute discretion, elect to terminate the relevant CFD by providing written notice to the Client.

## 16.3 Settlement of Positions

The Client agrees and acknowledges that:

- a) Payments to be made to the Client with respect to any CFD will be made in accordance with this clause.
- b) When a payment for difference is made, or a CFD is closed out in accordance with these Terms & Conditions
  - i. KVB Kunlun will credit to the Client's account any amount payable by KVB Kunlun to the Client; or
  - ii. the Client must (subject to sub-clause c)) pay to KVB Kunlun any amount payable by the Client to KVB Kunlun in such currency as KVB Kunlun may require in cleared funds within 24 hours of being advised of the amount so payable.
- c) If there is then sufficient Excess Variation Margin any amount owing by the Client under this clause may be settled in whole or in part by debiting the Client's account.
- d) KVB Kunlun reserves the right to offset any money owed to the Client under these Terms & Conditions or any other agreement against any money owed by the Client under these Terms & Conditions or any other agreement.
- e) If the Client has requested payment of any money owed to the Client under this clause, KVB Kunlun will deduct that money from the Client's account and pay it to the Client by cheque or in such other manner as may be agreed between KVB Kunlun and the Client. If the Client has not requested payment of any money so owed to the Client it will be retained in the Client's account.

## 16.4 Interest Charges

- a) Interest payments owing in respect of borrowings by the Long Party under a CFD or in respect of borrowings by KVB Kunlun from the Short Party under a CFD shall accrue and be payable on a daily basis at KVB Kunlun's prevailing rates of interest (determined at KVB Kunlun's sole discretion from time to time), and shall be settled by KVB Kunlun on each day by debiting or crediting the Client's account with the daily interest rate differential between the amount of interest payable by the Client and the amount of interest payable by KVB Kunlun to the Client. In the event that there is insufficient Excess Variation Margin in the Client's account, the Client acknowledges that any amount due under this clause is a debt due and owing by the Client to KVB Kunlun.
- b) In debiting or crediting interest to the Client's account, KVB Kunlun may charge or pay the Client interest at a rate different to the interest rate which KVB Kunlun is charged or paid on equivalent borrowings of foreign currency (or otherwise) by a bank or counterparty and may retain the difference.
- c) The rates of interest applicable under this clause may be as agreed between the Client and KVB Kunlun from time to time and, in the absence of such agreement, shall be a rate determined by KVB Kunlun in its absolute discretion.

## 17. COMMISSIONS FEES AND EXPENSES

- a) The Client agrees to pay:
  - i. All legal costs incurred by the Client associated with entering into these Terms & Conditions and all taxes and expenses incurred by the Client in connection with these Terms & Conditions;
  - ii. Commission upon the execution of any requested financial product transaction

at such rate as is agreed separately between KVB Kunlun and the Client, as well as an amount equal to any other fee charged or levied on KVB Kunlun, or other expense incurred by KVB Kunlun, arising from any action taken pursuant to these Terms & Conditions;

- iii. All stamp duty, duties and taxes (including GST) payable on or pursuant to these Terms & Conditions;
- iv. All amounts payable as a result of making or taking delivery or making cash adjustment in accordance with the terms of an exchange traded or over-the-counter financial product transaction;
- v. All amounts incurred by KVB Kunlun as a result of the Client's default under the terms of these Terms & Conditions, including without limitation, all reasonable legal costs on a solicitor/client basis;
- vi. Interest, in respect of any unpaid amount due under these Terms & Conditions, at a rate of three per cent per annum above LIBOR (at a minimum of 10% per annum). Such interest shall accrue and be calculated daily from the date payment was due until the date the Client pays in full and shall be compounded monthly; and
- vii. Interest is calculated on the basis of net free equity on each account, unless specifically agreed otherwise. Interest will be charged on the full negative net free equity on any account, regardless of whether the Client holds other accounts which have positive net free equity. Please note that this means that if you hold multiple accounts, you may incur interest charges although the aggregate net free equity position of all of your accounts may be positive.

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- b) The Client authorises KVB Kunlun to appropriate, transfer, credit, apply or pay monies that may be received by KVB Kunlun or held by KVB Kunlun on the Client's behalf in payment of any amounts which may be outstanding by the Client to KVB Kunlun or KVB Kunlun's agent in a transaction effected on the Client's behalf.
- c) Where amounts are payable by one party to the other, netting principles shall apply to enable the party owing the larger amount to pay the excess only to the other party. Amounts may be converted into the same currency in accordance with these Terms & Conditions.
- d) KVB Kunlun may in its absolute discretion reduce or waive the minimum deposit amount, the minimum account balance or interest rates on debit balances, fees (including royalties or fees for third party services) or transaction charges, for individual clients or for classes of clients, for any length of time, with or without conditions, without notice.
- e) The Client acknowledges that should they effect a financial product transaction with KVB Kunlun, the Client must pay all transaction charges, fees, Margins, settlements, interest and any other amounts due under these Terms & Conditions on demand by KVB Kunlun in cleared funds or otherwise as required in accordance with the terms of these Terms & Conditions.
- f) The Client confirms and acknowledges that KVB Kunlun is permitted to deduct, without further reference to the Client, charges relating to any services provided by KVB Kunlun including administration charges (including but not limited to fees associated with returned cheques, payment processing, debt collection and telephone transcript copies), charges relating to the use of its on-line trading facility and royalties payable to any exchange from the Client's account held with KVB Kunlun during the full term of these Terms & Conditions whilst the Client utilises such services.
- g) Any commissions payable by the Client with respect to dealings conducted on behalf of the Client by their financial adviser will be deducted from the Client's account by KVB Kunlun for remittance to the Client's financial adviser pursuant to details provided in writing by the Client to KVB Kunlun. Adviser commissions are payable immediately upon the entering into and the closing of a financial product transaction.
- h) Should the Client be given access through the electronic platform or otherwise to prices or information provided by any exchange to which a royalty or other fee must be paid for the use of such prices or information, KVB Kunlun shall have the right to effect the payment of any such royalty or other fee by debiting the Client's account on a monthly basis.
- i) Payments by the Client to KVB Kunlun in accordance with these Terms & Conditions must be made without any offset, counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law. Should the Client be required to make any form of deduction in respect of tax from any payment to be made or if KVB Kunlun is required to pay any tax in respect of any payment made in relation to these Terms & Conditions at the Client's request the Client agrees to keep KVB Kunlun indemnified against that tax and agrees to pay to KVB Kunlun any additional amounts required to ensure KVB Kunlun receives the full net amount that is equal to the amount KVB Kunlun would have received had a deduction, withholding or payment of tax not been made.
- j) The Client agrees that KVB Kunlun may at any time share transaction fees and charges with any other persons without being required to disclose the sharing of such fees and charges to the Client, unless such disclosure is required by law.

## 18. DELIVERY

The Client agrees and acknowledges that:

- a) KVB Kunlun does not permit entry into delivery against exchange traded positions;
- b) for contracts where there is no cash settlement, all open positions must be closed out in the current month, before the delivery period; and
- c) KVB Kunlun is authorised by the Client to close out a position in the current month of a deliverable contract by entering into a contract which is the opposite of the original position.

## 19. DEFAULT

- a) The Client acknowledges and agrees that where one of the following events occurs, KVB Kunlun may take any such action provided in Clause 19(c) below:
  - i. the Client fails to meet a call for a deposit or Margin or make any other payment when due under these Terms & Conditions;
  - ii. the Client is not contactable by KVB Kunlun (and has not made alternative arrangements) within the time specified by KVB Kunlun in order for KVB Kunlun to obtain instructions (where required);
  - iii. the Client dies or becomes of unsound mind, or the partnership is dissolved or ceases to exist for any reason;
  - iv. the Client suspends payment of its debts, makes any composition with its creditors, has a receiver appointed over some or all of its assets, takes or has any proceedings taken against it in bankruptcy or takes or allows any steps to be taken for its winding up (except for a solvent

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- amalgamation or reconstruction approved in advance in writing by KVB Kunlun) or anything similar to any of these events happens to the Client anywhere in the world;
- v. the Client fails in any respect fully and promptly to comply with any obligations to KVB Kunlun under these Terms & Conditions or otherwise or if any of the representations or information supplied by the Client are or become inaccurate or misleading in any material respect;
- vi. any guarantee, indemnity or security for the Client's obligations is withdrawn or becomes defective, insufficient or unenforceable in whole or in part;
- vii. any security created by any mortgage or charge binding the Client's assets becomes defective, insufficient or unenforceable in whole or in part;
- viii. these Terms & Conditions has been terminated;
- ix. it becomes or may become unlawful for KVB Kunlun to maintain or give effect to all or any of the obligations under these Terms & Conditions or otherwise to carry on its business or if KVB Kunlun or the Client is requested not to perform or to close out a transaction (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding; or
- x. KVB Kunlun considers it necessary to do so for its own protection.
- b) If the Client becomes aware of the occurrence of any event referred to in clause 19(a) above, it shall notify KVB Kunlun immediately.
- c) If any event referred to in Clause 19(a) above takes place, KVB Kunlun shall at its absolute discretion be entitled, but not obliged, to, and at the expense of the Client:
- xi. terminate the Agreement immediately;
- xii. close out any or all of the Client's contracts;
- xiii. close out, exercise or abandon any option not yet exercised;
- xiv. cover positions by entering into further contracts;
- xv. cancel any outstanding orders in order to close the Client's account;
- xvi. convert any amount owed by the Client to KVB Kunlun into Australian currency at any time on or after payment is due (until payment is received in full);
- xvii. satisfy any obligation the Client may have to KVB Kunlun out of any property, money or security belonging to the Client in KVB Kunlun's custody or control, and enforce any such asset or security (at the Client's expense) held by KVB Kunlun in such manner as it deems appropriate, but to a maximum amount equal to all sums due or to become due to KVB Kunlun from the Client;
- xviii. charge the Client with all of the costs, expenses and losses incurred by KVB Kunlun as a result of entering into, or closing out transactions pursuant to these Terms & Conditions; and
- xix. to take any such action a reasonably prudent person would take in the circumstances to protect the personal obligation incurred when dealing on behalf of the Client.
- whatsoever arising out of any default, whether by act or omission, of the Client under these Terms & Conditions or anything lawfully done by KVB Kunlun in accordance with these Terms & Conditions or by reason of KVB Kunlun complying with any direction, request or requirement of an exchange or its clearing house or other regulatory authority.
- b) KVB Kunlun shall not be responsible or liable in any way for any delay or error in the transmission or execution of any dealing by it under these Terms & Conditions caused by the Client or any other third party, including but not limited to trading floor or exchange system operational failure or action, bank delay, postal delay, failure or delay of any fax or electronic transmission or delay caused by accident, emergency or act of god.
- c) No warranty is provided by KVB Kunlun in relation to information or advice sourced from third parties, and all information or advice provided by KVB Kunlun to the Client is for the private use of the Client and is not to be communicated to any third party without the prior written consent of KVB Kunlun.
- d) KVB Kunlun makes no representation or warranty as to the results of dealing in the financial products, and shall not be liable for any damage or loss suffered or incurred by the Client arising out of or in connection with any advice, forecast, or opinion to the Client in relation to price movements or positions or to the likely profitability of any transaction.
- e) These indemnities shall survive any termination of the Client relationship.
- 20. INDEMNITY**
- a) The Client will indemnify and keep indemnified KVB Kunlun and its employees, contractors or agents from and against any cost, expense, claim, action, suit, loss, damage or other amounts
- 21. LIMITATION OF LIABILITY**
- a) The Client declares it has read, understood and accepted all of the terms and conditions outlined in

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these Terms & Conditions. The Client agrees that when entering into a financial product transaction with KVB Kunlun the Client is relying on its own judgment and, to the extent permitted by law, in the absence of negligence, fraud or dishonesty by KVB Kunlun or any of its employees, agents and representatives in relation to KVB Kunlun's activities as the holder of an AFSL, KVB Kunlun shall bear no responsibility or liability of any kind whatsoever with respect to any advice or recommendation given or views expressed to the Client, whether or not the advice, recommendation, or views expressed was as a result of a request by the Client, nor will KVB Kunlun be liable in any respect of any losses incurred by the Client resulting from dealing in any product or products offered by KVB Kunlun including CFDs.

- b) KVB Kunlun will bear no liability whatsoever in respect of any private dealings, contracts, transactions or relationships between the Client and any of KVB Kunlun's employees or agents.
- c) KVB Kunlun shall bear no liability whatsoever in respect of any impact on the Client caused directly or indirectly by the issuance of any instructions by the Client to KVB Kunlun.
- d) In the absence of negligence, fraud, dishonesty or misconduct by KVB Kunlun or any of its employees, agents and representatives and to the full extent of the law, KVB Kunlun bears no responsibility or liability for any Client's losses or damages whatsoever incurred as a result of any delay in transmitting or a failure to transmit funds caused by reasons outside the control of KVB Kunlun or as a result of KVB Kunlun's failure to execute orders in a timely manner or administer these Terms & Conditions in the manner contemplated by these Terms & Conditions for reasons beyond its control and, without limiting the indemnity in clause 20, the Client indemnifies and agrees to keep KVB Kunlun and its

employees, agents and representatives (for whom KVB Kunlun acts as agent) indemnified and against all sums of money, actions, proceedings, suits, claims, demands, damages, costs, expenses and other amounts whatsoever arising in respect of any such loss or damage. Reasons outside KVB Kunlun's control may include but are not limited to, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication failure, strikes or war.

- e) KVB Kunlun will not be liable for any losses or damages arising from or in connection with any CFD as the result of any moratorium, suspension or delisting of any Underlying Security or any other occurrence in relation to a Relevant Exchange.
- f) All such available exemptions and limitations of liability shall apply in respect of KVB Kunlun's employees, officers, agents and representatives.

## 22. DISPUTE RESOLUTION

If a dispute arises between KVB Kunlun and the Client relating to any transaction (a "Disputed Transaction"), KVB Kunlun may close out or take any other action it considers appropriate in relation to the Disputed Transaction without previously notifying and/or without having received instruction from the Client. KVB Kunlun will try to notify the Client (verbally or in writing) what action it has taken, as soon afterwards as it practically can, but if it does not, the validity of its action shall not be affected.

## 23. TERMINATION

- a) These Terms & Conditions can be terminated at any time by either party giving 10 Business Days written notice to the other party.
- b) Unless otherwise agreed in writing between the parties upon termination of these Terms &

Conditions KVB Kunlun will close out all of the Client's exchange traded or over-the-counter financial product transactions and will close out, abandon or exercise any option not yet exercised, at KVB Kunlun's discretion.

- c) Should any event occur which has the effect of making or declaring it unlawful or impracticable for KVB Kunlun to offer financial product transactions to the Client in accordance with the terms outlined in these Terms & Conditions, KVB Kunlun may immediately terminate these Terms & Conditions by providing the Client with written notice.
- d) In the event of these Terms & Conditions being terminated, a Closing Notice must be provided by the Client in respect of all open positions. Such notice must be provided within 5 Business Days of the termination date. Should the Client fail to unwind any open CFD position within the 5 Business Days notice period, KVB Kunlun reserves the right to close out CFD positions as if a Default Event had occurred in accordance with these Terms & Conditions.
- e) Termination of the Agreement shall not release either party from any existing obligations or from any liabilities for any antecedent breach of any of the terms of these Terms & Conditions and will not relieve the Client of any obligations the Client may owe to KVB Kunlun in accordance with these Terms & Conditions prior to its termination.
- f) Rights under these Terms & Conditions can only be waived in writing, such waiver not to affect the waiving party's rights or entitlements in respect of subsequent breaches of the Agreement. Failure to compel performance shall not be construed as a waiver.
- g) If these Terms & Conditions are terminated, the Client acknowledges and agrees that all open positions must be closed within 5 Sydney Business Days of the date of termination



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## 24. GENERAL

- a) KVB Kunlun may amend these Terms & Conditions by giving the Client thirty days written notice of any amendments.
- b) In the event that any of the provisions contained in these Terms & Conditions are found to be invalid or unenforceable, such provisions shall be deemed deleted, and the validity and enforceability of the remaining provisions shall continue unimpaired.
- c) If a party fails to exercise or delays in exercising any right under these Terms & Conditions, by doing so it does not waive such right. The rights provided in these Terms & Conditions do not exclude other rights provided by law.
- d) The Client may not assign or otherwise transfer its rights or obligations under these Terms & Conditions or any transaction, without the express written consent of KVB Kunlun.
- e) The parties agree to the electronic recording by either party of telephone or internet conversations between the parties with or without an automatic tone warning device, and the use of such recordings as evidence by either party in any dispute or anticipated dispute between the parties or relating to dealings between the parties. Clients shall be permitted access to such tapes up to 90 days after the date of the relevant telephone conversation, and shall be liable to KVB Kunlun for all reasonable costs in retrieving and providing such tape.
- f) The Client acknowledges and agrees that KVB Kunlun is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's identity and credit standing. If such searches are carried out, KVB

Kunlun may keep records of the contents and results of such searches in accordance with all current and applicable laws.

- g) KVB Kunlun reserves the right to collect such information as is necessary from the Client to meet its obligations under applicable Anti Money Laundering laws and regulations. KVB Kunlun may pass on information collected from the Client and relating to transactions as required by applicable anti money laundering laws and regulations and is under no obligation to inform the Client it has done so. KVB Kunlun may undertake all such anti money laundering checks in relation to the Client (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by KVB Kunlun, and reserves the right to take any action with regard thereto with no liability whatsoever therefore.
- h) KVB Kunlun reserves the right to provide all such information regarding the Client in relation to its obligations to, or requests (whether legally binding or not) by a relevant regulatory body.

## 25. PRIVACY

- a) In order to provide the Client with these services, KVB Kunlun needs to collect personal information about the Client and obtain the Client's agreement in relation to the handling of such personal information. If the Client does not provide the requested information or agree to the information handling practices detailed in these Terms & Conditions, KVB Kunlun may be unable to provide the services outlined in these Terms & Conditions to the Client.
- b) The Client shall ensure that all information provided to KVB Kunlun is accurate and up-to-date at all times. Any changes must be

advised to KVB Kunlun as soon as practicable.

- c) KVB Kunlun have systems and processes in place to address privacy requirements, and can provide the Client with a Privacy Statement should the Client require further information about KVB Kunlun's information handling practices.
- d) The Client authorises KVB Kunlun to collect, use, store or otherwise process any personal information which enables KVB Kunlun to provide and/or improve its services. This may, on occasion, require the disclosure of personal information to our related entities, agents and service providers, and to organisations located in countries which do not have comparable laws to protect the Client's information.

## 26. NOTICES

All communications relating to these Terms & Conditions shall be in writing and delivered by hand or sent by post or telex, facsimile, or, electronic mail to the party concerned at the relevant address. Any such communication shall take effect if delivered, upon delivery; if posted, two business days after it is posted to the party's last known address; if sent by facsimile, or electronic mail, at the time of transmission (and receipt of confirmation); by telex, upon receipt of the answer back. Where the Client is more than one person, any notice or other communication provided by KVB Kunlun to one such person shall be deemed to have been provided to all such persons.

## 27. GOVERNING LAW

These Terms & Conditions are governed by and construed in accordance with the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts and tribunals in that State.