



Terms & Conditions

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1. Definitions and interpretation

1.1. Whenever used in this Agreement, unless inconsistent with the subject matter or context, the following words shall have the following meanings:

Account Opening Form means the ACM form prepared by ACM for completion by the Client to enable ACM to open the Client Account.

ACM means Asia Capital Markets LLC RCN: 316 LLC 2020.

ACM Website means the ACM website located at www.asiacapmarkets.com or elsewhere as nominated by ACM from time to time, and includes the Trading Platform.

Agreement means these Terms and Conditions together with all other documents which are referred to in these Terms and Conditions.

Authorised User has the meaning given in clause 5.1 of this Agreement.

Base Currency means Australian, United States Dollars or another currency declared by ACM to be the Base currency for a particular Contract or account type, or as otherwise agreed between ACM and the Client.

Business Day means any day other than a Saturday, Sunday or public holiday on which banks are open for business in the jurisdiction of the nominated bank/s.

CFD means a Contract For Difference, which is a type of Contract.

Client means the Client named in the Account Opening Form, together with its officers, directors, employees and agents.

Client Account means the Client's ACM account which operates under the terms of this Agreement and allows the Client and the nominated Authorised Users to enter into currency transactions or CFD transactions with ACM.

Contract means a transaction in which the Client agrees to purchase or sell a currency, CFD or other derivative from or to ACM or enter into any other transaction with ACM for the provision of ACM's services under the applicable Trade Contract Terms.

Credit Limit means the limit on the total amount of credit that ACM will provide to the Client.

Default Event means any acts or omissions on the part of

- (a) the Client;
- (b) an Authorised User; or
- (c) the Client or Authorised User's employee, agent or assignee (whether or not known to us, and whether or not acting in concert with other natural persons or algorithmic tools).

which in ACM's sole discretion, are deemed as being:

- (d) negligence;
- (e) mistake;

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- (f) willful misconduct, (including commission churning, sniping, causing or contributing to or benefiting from a Material Error, moving the price of an Underlying Instrument or Contract, scalping, arbitraging off-market pricing);
- (g) a breach of any provision, obligation, warranty or representation made under this Agreement (and/or any information provided to ACM in connection with this Agreement is or has become untrue or misleading);
- (h) a failure at any time or for any period deemed reasonable by ACM to respond to any notice or correspondence from ACM;
- (i) taking advantage of what ACM considers to be abnormal trading conditions; or
- (j) the violation of any law.

Division Event means any event having, or with the potential to have, a diluting or concentrating effect on the value of, or the effect of changing the nature of, any Contract or Underlying Instrument not based on shares (including but not limited to digital currency) whether temporary or otherwise.

Force Majeure Event means events or causes including, but not limited to, the following: an act of God, unavoidable accident of navigation, war(whether declared or not), sabotage, riot, insurrection, civil commotion, national emergency(whether in fact or law), martial law, fire, flood, cyclone, earthquake, landslide, explosion, power or water shortage, failure of a transmission or communication, prohibition law, regulation, decree or other legally enforceable order difficulty or expropriation, restriction, prohibition, law, regulation decree or other legally enforceable order of a government agency, breakage or accident, change of International, State or Commonwealth law or regulation or any damage of ACM's machinery or system, unless occurring as a result of an act, omission, default or negligence of the Client or ACM.

Instructions has the meaning given in clause 6.1 of this Agreement.

Internet means the interconnected system of networks that connects computers around the world, and includes any Trading Platform.

Insolvency Event means any of the following:

- (k) an order, or an application for an order, is made by or to a court:
 - (i) that a corporate Client be wound up; or
 - (ii) appointing a liquidator or provisional liquidator for a corporate Client;
- (l) a liquidator, provisional liquidator or controller is otherwise appointed to a corporate Client;
- (m) a resolution is passed to appoint an administrator to a corporate Client;
- (n) a corporate Client enters into a deed of arrangement or propose a reorganisation, moratorium or other administration involving all or any of the Client's creditors;
- (o) a corporate Client is dissolved or wound up in any other way;
- (p) the Client is unable, or states that they are unable, to pay their debts as and when they fall due, or otherwise states that they are insolvent;
- (q) the Client seeks or obtains protection from any of their creditors under any legislation;
- (r) the Client commits an act of bankruptcy as varied from time to time ;

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- (s) a bankruptcy petition is presented in respect of the Client or, if the Client is a member of a partnership, in respect of one or more of the partners;
- (t) any security interest becomes enforceable against the Client and the beneficiary of that security interest takes steps to enforce the security or charge; or
- (u) any other event having substantially the same legal effect as the events specified in paragraphs (a) to (j) above.

Limit Order has the meaning set out in the PDS.

Margin Call means an amount that ACM may at its sole discretion require the Client to pay, in addition to the Margin Requirement, solely determined by ACM.

Material Error means a liquidity provider or ACM error, a software error, a typographical error or obvious mistake in a Contract, Underlying Instrument, quote or indication and includes quoting delays.

Margin Requirement has the meaning set out in the PDS.

Monies has the meaning stated in clause 21.1 of this Agreement

Notice has the meaning stated in clause 29 of this Agreement. Obligations

has the meaning stated in clause 21.3 of this Agreement. PDS is Product

Disclosure Statement.

Registered Office means the registered office of ACM as notified to the Saint Vincent & the Grenadines Financial Services Authority.

Senior Officer means an "officer" of ACM and/or the Client, and in the case of ACM, includes an employee, director or consultant nominated by ACM as the Complaints Officer.

Stop Loss Order has the meaning set out in the PDS.

Trade Contract Terms has the meaning stated in clause 6.3 of this Agreement.

Trading Platform has the meaning stated in clause 18.1 of this Agreement.

Underlying Instrument has the meaning set out in the PDS.

a client is considered to be a wholesale client if he/she meets any of the following: The price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds \$500,000; or - The financial product, or financial service, is provided for use in connection with a business that is not a "small business"; or - The financial product or service is not provided for use in connection with a business and the person acquiring the financial product or service provides a certificate from a qualified accountant, obtained within the prior 2 years¹, that he or she: o Has net assets of at least \$2.5 million²; or o Has a gross income for each of the past 2 financial years of at least \$250,000; or - The investor is a "professional investor" or a "sophisticated investor"

- 1.2. If the Client is comprised of two or more legal persons then a reference to a right or obligation of the Client under this Agreement or under a transaction contemplated by this Agreement confers that right or imposes that obligation, as the case may be, jointly and severally on those persons.
- 1.3. In the event of any inconsistency between the English language version of a document referred to in this Agreement and their translated equivalent in any other language, the English language version shall prevail, to the extent of any inconsistency.

2. This Agreement

- 2.1. This is a master agreement and sets out the terms and conditions of any future contracts between the Client and ACM, relating to either or both of:
 - (a) provision of General Advice to the Client; and
 - (b) execution of Contracts relating to foreign exchange and CFD transactions.

- 2.2. This Agreement includes the ACM Account Opening Form and the PDS that may have been exchanged and/or executed between the Parties. However, in the event of any inconsistency between this Agreement:
 - (a) this Agreement and other contracts or documents, exchanged and/or executed between the Client and ACM, the PDS shall prevail to the extent of the inconsistency; and
 - (b) this Agreement and the Account Opening Form, this Agreement shall prevail to the extent of any inconsistency.

3. Client representations and warranties

- 3.1. If ACM provides General Advice to the Client then the Client acknowledges that the advice is general in nature and does not consider the personal objectives, circumstances or needs of the Client. The Client must consider its own objectives, circumstances or needs, as well as the relevant PDS, before making a decision to use ACM's services.

- 3.2. If the Client does not fully understand the risks associated with ACM's services, then they should not use ACM's services.

- 3.3. The Client warrants that in the case of:
 - (a) an individual or more than one individual, they are of full age and capacity; and
 - (b) a firm or corporation, it is duly constituted and incorporated and possesses the requisite power to enter into this Agreement; and
 - (c) all contracts made or to be made, and in any case, this Agreement and such contracts are and will constitute legally binding and enforceable obligations of the Client.

- 3.4. If the Client enters into this Agreement in its capacity as trustee of a trust, the Client makes the following representations and undertakings:
 - (a) the relevant trust instrument is valid and complies with all laws which apply to the Client;
 - (b) the Client is properly appointed as trustee of the trust;
 - (c) the Client has a right of indemnity from the trust assets in respect of this Agreement and the transactions contemplated by it;
 - (d) the Client will comply with its duties as trustee of the trust;
 - (e) the Client will not do anything which may result in the loss of its right of indemnity from the trust assets;

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- (f) if the Client is replaced or joined as trustee, the Client will make sure the new trustee becomes bound to ACM's satisfaction by this Agreement and any other Agreement relating to a transaction contemplated by this Agreement to which the Client is expressed to be a party, or by a document which is identical in effect;
- (g) the Client will not resettle, set aside or distribute any of the assets of the trust without ACM's written consent unless compelled to do so by the trust instrument;
- (h) the Client will not amend or vary the trust instrument without ACM's written consent; and
- (i) if the Client is not the sole trustee of the trust it is a requirement that each and every trustee agrees in writing to be bound by the terms of this Agreement and by any transactions entered into in connection with this Agreement.

3.5. The Client represents and warrants to ACM that:

- (a) Execution and delivery by the Client of this Agreement, and performance of all of the Client's obligations contemplated under this Agreement, does not violate any law applicable to the Client.
- (b) All information provided by the Client to ACM is true, correct and complete, and the Client will notify ACM promptly of any changes to such information.
- (c) All information provided by the Client to ACM is true in all material respects as at the date of this Agreement or, if later, when the information is provided. Neither that information nor the Client's conduct or the conduct of anyone acting on its behalf in relation to the transactions contemplated by this Agreement, was or is misleading, by omission or otherwise.
- (d) The Client shall make ongoing disclosure to ACM of any matters that may affect the operation of this Agreement or of the ability of the Client to pay Margin Calls or to remain solvent.

3.6. The Client acknowledges that ACM will enter into the transactions contemplated by this Agreement in reliance on the representations and warranties made by the Client.

4. Use of Personal Information

- 4.1. Personal Information collected by ACM is treated as confidential and is protected by the Privacy Act (Cth) 1988. ACM will only collect Personal Information which is necessary to perform the services contemplated by this Agreement. ACM will treat the Client's Personal Information in accordance with its Privacy Policy, which the Client may obtain by contacting ACM or on the ACM Website.
- 4.2. ACM will use reasonable precautions to maintain the confidentiality of information ACM receives from the Client and material and/or data the Client provides, creates, inputs or develops in connection with the Client's use of the ACM services. Nonetheless, because such information, material and/or data may be provided through the Internet or by facsimile transmission, the Client hereby acknowledges and agrees that ACM cannot assure that such information, material and/or data will continue to be confidential.
- 4.3. The Client accepts the risk of a third party receiving confidential information concerning the Client and specifically releases and indemnifies ACM from any claim arising out of a third party intercepting, accessing, monitoring or receiving any communication from a Client intended to be provided to ACM or from ACM intended to be provided to the Client.

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- 4.4. The Client acknowledges and agrees that ACM may, subject to clause 4.1, disclose the Client's name and other personal and financial information about the Client, and any relevant details of an Authorised User, to its employees, representatives, officers, agents, and affiliates, as well as to a governmental entity or self-regulatory authority, an Internet service provider or any other third party agent or service provider for any purpose related to offering, providing, administering or maintaining the ACM Services, or to comply with applicable laws.
- 4.5. In appropriate cases all communications and information concerning the Client held by ACM, may be disclosed to and reviewed by law enforcement agencies and regulatory authorities. In addition, the Client agrees to comply with all applicable money laundering and counter terrorism financing laws, including, but not limited to, the requirement to obtain or provide satisfactory evidence of the identity of any person whom the Client may represent in any transaction entered into with ACM.

5. Authorised Users

- 5.1. The Client shall provide ACM with a list of people authorised to access ACM's services and/or enter into Contracts on the Client's behalf (each an "Authorised User").
- 5.2. The Client shall immediately notify ACM when any new person becomes an Authorised User or when any existing Authorised User is no longer entitled to be an Authorised User. Upon receiving Notice, the change in Authorised User is effective immediately. However, the Notice shall not affect any Contracts already executed.
- 5.3. The Client hereby indemnifies and agrees to hold ACM harmless in respect of any loss incurred by an Authorised User entering into any Contract or other transaction contemplated under this Agreement. Any appointment of an Authorised User made pursuant to the clause 5.1 shall remain in full force and effect as an appointment in writing required by the Agreement unless and until Notice of cancellation of appointment and/or replacement has been delivered to ACM's Registered Office.
- 5.4. Until the Client has provided a Notice to ACM to the contrary, ACM may continue to assume that all existing Authorised Users have authority to execute legally binding transactions with ACM. All Instructions given and accepted by an Authorised User will be deemed to be Instructions authorised by the Client and shall be binding upon the Client.
- 5.5. The Client will take reasonable steps to ensure that each Authorised User complies in full with this Agreement.
- 5.6. ACM reserves the right at any time to refuse the appointment or continuation of an Authorised User without reason.

6. Formation of Each Contract

- 6.1. When the Client, or an Authorised User, contacts ACM by either telephone, electronically or otherwise via the Internet, ACM may, but is not obligated to, ask for or clarify the following information where applicable:
- the Client's account number;
 - further Client identification details;
 - the Contract type (e.g. foreign exchange, margin foreign exchange or CFD);
 - whether the Contract is to buy or sell;

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- (e) the number of Contracts; and
- (f) for Contract orders, the order type, the order price and the order expiry date.

- 6.2. Collectively, though not exhaustively, the information referred to in clause 6.1 or any portion thereof, constitutes the Instructions.
- 6.3. ACM will immediately provide the Client with, either verbally or via the Internet, prices at which the relevant currency or CFD can be purchased or sold. These are the Trade Contract Terms.
- 6.4. If the Client, or an Authorised User, then indicates by either telephone or by clicking the relevant button on the Trading Platform that they accept the Trade Contract Terms then ACM shall have a discretionary right to create a Contract. If ACM exercises this right then a Contract is formed between the Client and ACM. When a Contract is created the parties shall become bound by the content of the relevant Trade Contract Terms and this Agreement. If ACM declines to exercise the right to create a Contract, ACM shall not be obliged to give a reason, however, ACM shall promptly notify the Client that ACM has not created a Contract with the Client.

7. Method and Timing of Payment

- 7.1. The Client must not deposit physical cash into ACM's accounts under any circumstances. ACM has an absolute discretion as to whether the Client may pay by cheque.
- 7.2. Any sum that the Client owes to ACM must be paid in one of the following:
- (a) by online bank transfer;
 - (b) by bank transfer on the same Business Day;
 - (c) by international telegraphic transfer; or
 - (d) by payment through a credit card or electronic gateway provider approved by ACM from time to time.
- 7.3. Any payment to ACM in any currency will be at the prevailing market conversion rate at the time the Contract is entered into as explained within ACM's PDS and FSG.
- 7.4. The Client must have sufficient cleared funds deposited in ACM's designated account before ACM will execute any Contracts. ACM will indicate to the Client the sum required as the Margin Requirement for each Contract.
- 7.5. ACM will notify the Client of any change in the amount of the Margin Requirement for any Contract by giving Notice via the Trading Platform. ACM will also provide notice of any such change by sending an email to the email address registered to the Client's Client Account. Any increase in the amount of the Margin Requirement will be due and payable immediately on Notice to the Client.
- 7.6. ACM may impose other fees and charges for using its services, by providing Notice to the Client. If the Client does not consent to the charges, it can terminate the Agreement and the charges will not apply to new Contracts. If the Client terminates the Agreement under this clause, all existing Contracts will survive the termination of this Agreement.
- 7.7. ACM is not responsible for any fees or charges imposed by third party banks or other counterparties, which are incurred by the Client in connection with the use of ACM's services.

8. Credit Limits

8.1. The Client understands that:

- (a) ACM may grant certain Clients a Credit Limit. A Credit Limit is
 - (i) a pre-agreed amount of currency that can be offset against a negative mark to market value on an open Contract;
 - (ii) an amount applicable to unsettled trading losses to some or all Contracts (either individually or in aggregate or both); and/or
 - (iii) an amount that reflects the amount paid by the Client to an ACM approved third party merchant, which has not yet been received by ACM;
- (b) if the negative mark to market of an open Contract is approaching or has exceeded the Client's Credit Limit, ACM reserves the right to Margin Call the Client in an amount entirely at ACM's discretion;
- (c) ACM is not obliged to provide credit to the Client; and
- (d) any Credit Limit set by ACM may be reduced or withdrawn at any time by giving Notice to the Client.

8.2. The Client acknowledges that if ACM acts on an Instruction which would result in a Credit Limit being exceeded:

- (a) ACM is not obliged to advise the Client that the Credit Limit will be exceeded;
- (b) the Client will continue to be liable to ACM for all amounts including those above the Credit Limit; and
- (c) ACM is not obliged to act upon any subsequent Instruction where a Credit Limit might be exceeded.

ACM may from time to time operate promotions under which it offers Clients credits toward Margin Requirements. Any such credits are not redeemable by any person for cash or any other instrument unless otherwise specified under the rules, criteria or terms and conditions associated with the particular promotion.

9. Authorisation Limits

- 9.1. The Client may inform ACM of an authorisation limit applicable to some or all Contracts either in general or for particular Authorised Users.
- 9.2. Any authorisation limit provided by the Client to ACM may be withdrawn by the Client at any time by giving Notice to ACM.
- 9.3. ACM may, at its own discretion, impose an authorisation limit on the Client and/or one or more Authorised Users at any time, by providing Notice before the imposition of the limit.

10. Interest Charges on open Contract

- 10.1. In any open Contract held by the Client, ACM will from time to time add an amount to the Client Account for interest earned, or subtract an amount from the Client's account for interest incurred for each day until the Contract is closed. The amount will be calculated in the following manner:

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- (a) For buying of one currency against the sale of another currency and the currency bought has a higher interest rate than the currency sold, the amount of interest or a portion of the amount of interest arising therefrom shall be added to the Client Account.
- (b) For selling of one currency against the purchase of another currency and the currency sold has a higher interest rate than the currency bought, the amount of interest or a portion of the amount of interest arising therefrom shall be subtracted from the Client Account.
- (c) For CFD contracts, any interest entitlement or liability arising from buying or selling the CFD shall be respectively added to, or subtracted from, the Client Account.
- (d) In the case of a negative interest rate, interest or a portion of the amount of interest arising shall be subtracted from the Client Account.
- (e) In all cases, interest shall be at the annual rate to be determined by ACM from time to time without Notice.

11. Interest Rate

- 11.1. If ACM makes available a Credit Limit as described in clause 8.1, ACM will apply interest at the rate of 3% per annum above the prime lending rate in the United States for the time being in force, calculated on a daily basis from the date of such advance up to and including the date of repayment in full will be charged on any outstanding balance.
- 11.2. In addition to clause 11.1 above, interest at the interest rate specified in clause 11.1 shall be chargeable on the following items:
 - (a) any part of the Margin Requirement or additional Margin Requirement not paid or deposited in the form of cash; and
 - (b) any amount due to ACM which remains outstanding.
- 11.3. Anything in this clause 11 or other clauses shall not be interpreted as binding ACM to make any advance to the Client nor shall it prejudice any of the rights and remedies of ACM against the Client or any other persons under this Agreement, the Contracts or otherwise conferred by law, equity or usage.

12. Margin Requirement

- 12.1. ACM will be under no obligation to execute a Contract unless you first pay the Margin Requirement as set out in the PDS.
- 12.2. Payment must be made pursuant to clause 7 of this Agreement.

13. Forced Liquidation

- 13.1. The Client is required to maintain the Margin Requirement. ACM reserves its full rights to close out all open Contracts:
 - (a) if at any time the Margin Requirement held by ACM is approaching or is no longer sufficient to cover the negative mark to market value of any or all open Contracts that the Client has open with ACM; or
 - (b) if at any time the pre-agreed Credit Limit assigned to the client by ACM is no longer sufficient to cover the negative mark to market value of any or all open Contracts that the Client has open with ACM.
- 13.2. ACM shall have the right, at its sole discretion, to determine the mark to market value from time to time.
- 13.3. In addition to other remedies available to ACM, if the Client fails to pay an amount when due under this Agreement, ACM has the right to terminate (by either buying or selling) any or all of the Client's open Contracts.

14. Division Events

- 14.1. If a Division Event occurs in relation to any Underlying Instrument and/or its issuer or technology environment, ACM may, acting in a commercially fair and reasonable manner, make adjustments to the Client's open Contracts, Limit Orders or Stop Loss Orders.
- 14.2. The adjustments ACM may make will be determined reasonably and will be binding on the Client. Such adjustments may include, but are not limited to one or more of the following:
 - (a) changing the amount of any Margin Requirement both in relation to open Contracts and new Contracts;
 - (b) adjusting the opening price of an Open Position, to reflect the impact of the relevant action or event;
 - (c) opening one or more new positions;
 - (d) closing one or more open Contracts;
 - (e) cancelling any Stop Loss Orders and Limit Orders;
 - (f) suspending or modifying the application of any part of this Agreement;
 - (g) crediting or debiting sums to the Client Account as appropriate; and
 - (h) taking any and all such other action, as ACM considers reasonably necessary.

15. Set Off Against Monies Owed

- 15.1. In addition to other remedies available to ACM, if the Client fails to pay any amount when due under this Agreement and/or if a Default Event occurs, ACM may set-off such amount against any amount payable by ACM to the Client.

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15.2. ACM is entitled to set-off against any amounts due to it by the Client, any amounts received by ACM from or on behalf of the Client including but not limited to moneys received as Margin Requirements or Margin Calls. ACM may determine the application of any amounts which are to be set-off at its own discretion.

15.3. A Client must not set-off against any amounts the Client owes to ACM by any amounts ACM owes to the Client.

16. Delay

16.1. ACM will use all reasonable efforts to process the Client's Contract order on a timely basis. However, ACM shall not, in the absence of willful misconduct, be liable for delays, damages, failures or errors in the completion of the Contract order.

17. Material Error

17.1. ACM will take reasonable steps to prevent Material Errors from occurring.

17.2. Should a Material Error occurs, ACM:

- (a) reserves the right to make the necessary adjustments to correct the Material Error; and
- (b) is not liable for any damages, claims, losses, liabilities or costs arising from the Material Error.

17.3. Any dispute arising from a Material Error will be resolved on the basis of the fair market value, as determined by ACM acting reasonably, of the relevant currency at the time such Material Error occurred.

18. Providing Instructions

18.1. If the Client uses ACM's online transaction systems (the "Trading Platform") the Client confirms and accepts the following:

- (a) The Client may be able to enter into Contracts at the rates quoted on the Trading Platform.
- (b) All transactions must be completed using the logins and passwords allocated to the Client by ACM and valid entry of such a login and password will constitute an authorisation by the Client to complete the Contract specified irrespective of whether the login and password are entered by an Authorised User.
- (c) The Client must ensure that the logins and passwords are kept secure and confidential. The Client must also ensure that each Authorised User to whom a login and password is provided, will keep them secure and confidential. The Client will advise ACM immediately if the Client has any reason to believe that the login and password allocated to the Client have not been kept secure and confidential.
- (d) The Client must ensure that no unauthorised person is able to use the logins and passwords. As part of this obligation the Client must ensure that each Authorised User quits the Internet browser after using the Trading Platform.
- (e) ACM may at any time without Notice to the Client suspend, withdraw or deny access to the Trading Platform and/or the Client Account for any reason including but not limited to security, quality of service, failure by the Client to pay an amount when due or breach by the Client of any provision of this Agreement. If and while such access is suspended, the Client will be able to close any open Contracts but will not be entitled to enter into new Contracts.

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- 18.2. ACM will not typically accept Instructions face to face at ACM's Registered Office. However, ACM may at its discretion allow an Authorised User to request ACM to accept Instructions, enter into Contracts and make financial dealings by physically visiting ACM's Registered Office. The Client acknowledges and agrees that upon the acceptance by ACM of the Authorised User's Instructions, the Client shall be bound by those Instructions.
- 18.3. In the event of the Trading Platform being unable to accept Instructions, an Authorised User may request ACM to accept Instructions and enter into Contracts by telephone, using the telephone number listed on the ACM Website. ACM may check the authority of the caller by requesting the caller give his or her name and confirming that such name has been notified to ACM by the Client as an Authorised User. ACM may at its discretion ask the caller for additional information to confirm the caller's identity. Upon such check confirming the identity of the caller, ACM may assume that the caller has the full authority as previously advised by the Client.
- 18.4. The Client acknowledges and agrees, and will ensure that each Authorised User acknowledges and agrees, that ACM may make a recording of any telephone conversation between any person and ACM at any time. The recording remains the property of ACM. The telephone recording can be used by ACM to confirm the terms and conditions of any transaction where there is dispute with a Client as to the Trade Contract Terms of the transaction, and for training, monitoring and compliance purposes.

19. Deduction of Intermediary/Receiving Bank Fees

- 19.1. In some circumstances a number of intermediaries may be involved in payment transaction and may deduct a charge. The receiving bank may also take a charge. These charges cannot always be calculated in advance, and the Client will be liable for these expenses.
- 19.2. ACM will not be liable for losses that result from fees under clause 19.1 being levied. ACM will use its best endeavors to ensure that all fees associated with a transaction are disclosed in the Trade Contract Terms or PDS or FSG. However, due to the complexity of the international foreign exchange markets this may not always be possible. If it is important that an exact amount of a particular currency arrives, the Client agrees to advise ACM accordingly and ACM may be able to pre-cover any undefined charges.

20. Circumstances Beyond ACM's Control

- 20.1. If ACM is unable to perform its obligations under this Agreement or a Contract because of factors beyond its control or because of a Force Majeure Event, ACM will notify the Client as soon as is reasonably practicable and will use reasonable endeavors to secure the return of any money paid by the Client in respect of which ACM has been unable to discharge its obligations under this Agreement.
- 20.2. In the case of a Force Majeure Event, ACM may also take any other steps it considers reasonably necessary, including but not limited to altering the Margin Requirement, closing any or all open Contracts, amending or varying these Terms and Conditions and/or any Contract insofar as it is impractical or impossible for ACM to comply with its obligations to the Client.
- 20.3. ACM may give a Notice to the Client at any time if it forms the view that market conditions in the relevant financial market for the currency, commodity or other underlying instrument concerned are seriously disturbed including circumstances where, in ACM's opinion, deposits in the currency concerned are not available in the ordinary course of business to ACM in the relevant financial market or because of national or international financial, political or economic circumstances or because of exchange controls.

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20.4. When a Notice is given under clause 20.3, ACM's obligations will be suspended while it and the Client negotiate alternative arrangements. If both parties reach agreement before the agreed date for settlement of a Contract, those alternative arrangements will apply. If they do not reach agreement within that period, each will be released from its obligations under the relevant transaction.

21. Client Money

21.1. The Client agrees that ACM may aggregate money paid into the Client Account (the Monies) with funds received from other Clients into a single designated account, which will be maintained as required by law.

21.2. The Client consents to and directs ACM to:

- (a) retain any interest accrued from time to time on the Monies, and to invest that money as permitted by law;
- (b) withdraw Monies that constitute remuneration payable to ACM; and
- (c) withdraw Monies that it is otherwise entitled to pursuant to law.

21.3. If the Client is a Wholesale Client, the Client authorises and directs ACM to withdraw, apply or otherwise utilise the Monies:

- (a) in order to meet obligations (the Obligations) incurred by ACM in connection with Contracts. Obligations may include an obligation to make payments to a Related Entity or a liquidity provider in connection with liabilities ACM incurs when the Client and other clients place Contracts with ACM. Liabilities in this sub-clause include but are not limited to minimum floating margin requirements imposed by a Related Entity or liquidity provider, or other hedging requirements;
- (b) in order to enforce other rights that ACM has under this Agreement or in the PDS; and
- (c) for any other reason allowed by law.

21.4. The Client agrees that when ACM uses the Monies for a lawful purpose as set out in this clause 21, the Monies do not belong to the Client and do not constitute a loan or constructive trust in favour of the Client.

21.5. If the Client has an open Contract, and it requires a deduction for any reason as set out in this Agreement or the PDS, that deduction may occur immediately when the deduction arises, and the Monies will become ACM money. Conversely, if the Client has an open Contract, and it requires a credit for any reason as set out in this Agreement or the PDS, that credit will typically be applied to the Client's Monies as after completing ACM's end of day reconciliations.

22. Payments into Client Account

22.1. The Client must ensure that:

- (a) payments into the Client Account are from the Client as the holder of the Client Account and not from any third party;
- (b) without limiting the above, payments from an account are payments from your account and not from any account of any third party.

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22.2. The Client agrees and acknowledges that ACM may refuse to accept or return any payment of money from any third party or from any account of any third party, and that ACM does not accept any liability or responsibility for any loss, cost or expense incurred or suffered by the Client in connection with such non-acceptance or return, including because the Client is subsequently in default of their obligations to ACM.

23. Default Events

23.1. 23.1 If a Default Event occurs ACM may take all or any of the following actions, or any other step it considers reasonably necessary:

- (a) immediately require payment of any amount the Client owes to ACM, including any Margin Call;
- (b) terminate this Agreement;
- (c) close all or any of the Client's open Contracts;
- (d) limit the size of the Client's open Contracts either in monthly terms or a number of Contracts;
- (e) refuse orders to establish new Contracts;

- (f) convert any ledger balances to the Base Currency of the Client Account;
- (g) exercise ACM's rights of set off;
- (h) impose new Margin Requirements relating to the Client's trading or Client Account;
- (i) lower the Credit Limit, or withdraw the provision of any credit, in relation to the Client Account;
- (j) suspend the Client Account;
- (k) open one or more new contracts on the Client Account;
- (l) call on any guarantee in respect of the Client's obligations;
- (m) require the Client immediately to close out any open Contract or settle any Contract in such a manner as ACM reasonably determines necessary;
- (n) combine, close or consolidate any Client Accounts and offset any and/or amounts owed to, or by, ACM in such manner as ACM may in its absolute discretion determine; or
- (o) retain any amount owed by ACM to the Client against any contingent liability of the Client to ACM or so long as the contingency subsists.

24. ACM's Rights to Close, Void, Enforce or Cease Offering Contracts

24.1. Without limiting any other right ACM has under this Agreement, ACM may close or void any Contract or take any other steps it considers reasonably necessary, including ceasing to offer the Client a particular type of Contract (or Contract with particular features), where:

- (a) ACM is in dispute with the Client in respect of an open Contract. In this case we can close all or part of the open Contract in order to minimize the amount in dispute;
- (b) ACM identifies or reasonably suspects that the Client has manipulated its prices, execution process or other practices, abused particular Contract features, or provided ACM with false or misleading information; or

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(c) there is a material breach of the Agreement in relation to the Contract.

24.2. ACM may also, in its absolute discretion, choose to enforce any Contract of a type referred to in clause 24.1.

25. Termination

25.1. This Agreement may be terminated immediately by the Client or ACM by Notice to the other in writing. However, termination by either party shall not affect any Contract or other transaction previously entered into and shall not relieve either party of any outstanding obligations arising out of this Agreement, nor shall it relieve the Client of any obligations arising out of any Contract entered into prior to such termination.

25.2. In the event that ACM is made aware of or has reason to believe any of the following:

- (a) that the Client has provided false or misleading information to ACM; or
- (b) that the Client has participated or is participating or has assisted or is assisting in money laundering or terrorist financing; or
- (c) that the Client is being officially investigated by law enforcement and/or regulatory agencies; or
- (d) a Default Event or Insolvency Event has occurred,

then ACM, at its sole discretion, may terminate this Agreement immediately by Notice to the Client, and ACM at its sole discretion shall be relieved of any obligations set out in this Agreement or arising out of the transactions contemplated by this Agreement, including any obligations arising out of any Contract already entered into with ACM.

26. Liability and Indemnity

26.1. The Client shall indemnify and hold ACM harmless from any and all liabilities, claims, costs, expenses and damages of any nature, including, but not limited to, reasonable legal fees and any fees and expenses incurred in connection with litigation, arising out of or relating to the Client or an Authorised User's negligence, mistake or wilful misconduct, the violation of any law by the Client, or the breach by the Client of any provision of this Agreement or if a Default Event occurs.

26.2. The Client also agrees to promptly pay ACM for all damages, costs and expenses, including reasonable legal fees and expenses, incurred by ACM in the enforcement of any of the provisions of this Agreement. The Client's obligations under this clause shall survive the termination of this Agreement.

26.3. The Client acknowledges they will be liable for any losses which may be realised as the result of entering into a Contract, regardless of the trading resources available in relation to the Client Account at the time the Contract is executed.

26.4. ACM will use all reasonable endeavors to execute Contracts or make payments to the Client or to any third party specified by the Client, in accordance with the timing specified in the Client's Instructions. However, ACM shall not be liable under any circumstances for any direct, indirect or consequential loss (including any loss of profits) incurred as a result of a delay in funds reaching the Client's nominated account.

26.5. Nothing in this Agreement is intended to limit or exclude any liability ACM may owe the Client under any statutory rights the Client may have.

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- 26.6. In calculating or mitigating its loss due to a Default Event or Material Error, ACM is entitled to:
- (a) crystallise, unwind, reverse, repair or close any open Contracts; and/or
 - (b) nominate the date on which the open Contracts are valued; and/or
 - (c) nominate the methodology used to calculate the open Contracts' value; and/or
 - (d) take any other action that ACM determines to be reasonably necessary to protect its legitimate interests.

27. Amending this Agreement

- 27.1. The terms of this Agreement and any transactions under it, may be amended by ACM at any time. ACM will provide Notice to the Client of any such amendment. The Client agrees to be bound by the terms of such an amendment on the earlier of:
- (a) ten Business Days after ACM has posted Notice of the amendment on the ACM Website; or
 - (b) on the date of the Client entering any Contract after the amendment. Any other amendments must be agreed to in writing between ACM and the Client. If the Client does not consent to the amendment the Client can terminate the Agreement and the amendment will not apply retrospectively. Termination in this case does not affect any obligations owed by the Client, or rights of ACM with regard to any open Contracts held by the Client.
- 27.2. Clause 27.1 does not apply to an existing Contract, if the Client would be disadvantaged by the amendment.

28. Dispute Resolution

- 28.1. Except to the extent that this clause is inconsistent with the requirements of any legislative or regulatory regime, the dispute resolution process set out in this clause shall apply. The parties must use all their reasonable endeavors to resolve any dispute arising in connection with this Agreement or any transactions there under.
- 28.2. If the parties fail to resolve a dispute within 5 Business Days of one party giving Notice to the other of the dispute, either party may, by giving Notice to the other, refer the dispute to the parties' Senior Officers (where the Client is an individual no such referral is applicable) who, each party must ensure, must co-operate in good faith to resolve the dispute as amicably as possible within 10 Business Days of the dispute being referred to them.
- 28.3. If the Senior Officers (or individual and the ACM Senior Officer) fail to resolve the dispute within 45 Business Days of the dispute being referred to them, the parties must, at the written request of either party and within 10 Business Days of receipt of the request, refer the dispute to mediation in accordance with, and subject to, SVG Financial Services Authority. The costs of the mediator shall be met equally by the parties. If the dispute or difference is not settled within 30 Business
- 28.4. This clause, however, does not limit the Client's rights (if applicable) to take any dispute to an external dispute resolution scheme of which ACM is a member.

29. Notices

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29.1. Any Notice required or permitted to be given under this Agreement or for the purposes of this Agreement shall be in writing and shall:

- (a) If to the Client, be sent by prepaid registered mail or delivered by hand to the address of the Client set out in this Agreement, or such other address the Client designates in writing, or by ACM posting a Notice to the ACM Website; and
 - (i) if posted on the ACM Website, Notice is deemed to have been given 3 Business Days after the Notice was posted on the ACM Website; or
 - (ii) if the Notice was sent to the address of the Client, the Notice is deemed to have been given on the Business Day after the Notice was sent, unless delivered by hand in which case the Notice is deemed to have been given on delivery.
- (b) If to ACM, be sent by prepaid registered mail or delivered by hand to the address of ACM set out in this Agreement or the PDS, or such other address as ACM designates in writing, and such Notice is deemed to have been given on the Business Day after the Notice was sent, unless delivered by hand in which case the Notice is deemed to have been given on delivery.

29.2. Any Notice given or made under this Agreement may also be sent by email if:

- (a) the Notice is sent to the email address last notified by the intended recipient to the sender; and
- (b) the sender keeps an electronic or printed copy of the Notice sent.

29.3. A Notice sent by email will be deemed to have been given on the first to occur of:

- (a) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
- (b) the time that the Notice enters an information system which is under the control of the recipient; or
- (c) the time that the Notice is first opened or read by an employee or officer of the recipient.

30. General

30.1. This Agreement shall be governed by and construed in accordance with the laws of Saint Vincent & the Grenadines. The parties agree to irrevocably submit to the non-exclusive jurisdiction of the courts of Kingstown, Saint Vincent & the Grenadines.

30.2. At no time shall either party enter into commitments for or in the name of the other party or use their intellectual property for any purpose whatsoever. Except as specifically provided for in this Agreement, neither party will:

- (a) use the other party's name or intellectual property without the prior written approval of the other party;
or
- (b) represent itself as being affiliated with, or authorised to act for, the other party.

30.3. Any rights or obligations that the Client may have pursuant to this Agreement shall not be assigned, transferred, sold, or otherwise conveyed, except with the prior written consent of IDM. ACM may, however, transfer any rights or obligations it may have pursuant to this Agreement to another party without the consent of the Client. Such an assignment shall only take place if a reasonable person would not expect it to cause detriment to a

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typical client of ACM. The Client will execute any documents (including a deed of novation) reasonably required by ACM to effect such a transfer. If the Client does not agree to ACM assigning its rights, the Client may terminate this Agreement. However, termination in this case does not affect any obligations owed by the Client, or rights of ACM with regard to any open Contracts held by the Client.