



# CLIENT SERVICES AGREEMENT



*This Agreement is a contract between the Client, either a physical or legal person, (as identified in the Client Application Form and named the "Client"), and Solidary Markets NZ Ltd ("SMFX"), 1st Floor, Harvest Court, 218 George Street, Dunedin, 9045, New Zealand, and It sets out the terms under which SMFX will provide its services to Clients. Please read it carefully and seek clarification of any points that may be unclear. The terms set out will come into effect, and the rights and obligations of the parties will apply, from the date of signing of this Agreement.*

Solidary Markets NZ Ltd ("SMFX") deals as principal in Spot Foreign Exchange and Spot Metal Contracts ("Contracts") and agrees to provide Services to the Client on the based of the:

- a) Client Services Agreement (comprising the Client Application Form and General Terms and Conditions);
- b) Risk Disclosure; AML Policy; Terms of Use; and
- c) Any other additional terms and conditions issued by SMFX in connection with the Services

## **1. AGREEMENT AND REPRESENTATIONS:**

SMFX, We or Us means Solidary Markets NZ Ltd

The Client wishes to appoint SMFX to deal in Spot Foreign Exchange and Spot Metal Contracts on its behalf. In doing so, the Client acknowledges that:

- a) The Client Services Agreement comprising the Client Application Form, General Terms and Conditions and the Disclosure Statement are one agreement for the purposes of this Agreement;
- b) The Client has full power and authority to enter into this Agreement and any resulting transactions and to perform the obligations under it. The Client warrants that they will provide full and accurate information as requested, will disclose all relevant information and will act in good faith and observe all applicable Laws, codes and regulations during all dealings with SMFX; Where the Client is a Company or incorporated entity, the Client warrants that the Company or incorporated entity is formed legally and has the power and authority to trade in and deal in Contracts and the person(s) executing this Agreement has the power and authority to execute this Agreement ;
- c) Where the Client is a trust or partnership, the Client warrants that the Trust Deed or Partnership Document (as appropriate) permits dealing in Contracts and the person executing this Agreement has such power and authority to execute this Agreement; Where the Client is a trust or partnership, the Client warrants that the Trust Deed or Partnership Document (as appropriate) permits dealing in Contracts and the person executing this Agreement has such power and authority to execute this Agreement;
- d) the Client has considered their own financial circumstances, needs and objectives and established that dealing in Contracts is appropriate for them. The Client warrants that they understand the risks, terms and conditions of the transactions entered into with SMFX (regardless of information supplied by SMFX) and is willing to take on those risks.
- e) SMFX does not, nor do any of its directors, officers, agents, or employees, guarantee repayment of capital or payment of income about any investment made by SMFX on the Client's behalf.
- f) the Client will deal with SMFX on a principal to principal basis only and no other person has or will have any other interest in any Contract that SMFX holds on the Client's behalf. If a Client wishes to act as an agent for another party, the Client will advise SMFX and request SMFX to set up another account.



- g) the Client has had an opportunity to obtain independent financial and taxation advice concerning the Client Services Agreement and Disclosure Document;
- h) all money and/or assets deposited with SMFX as collateral or Margin are owned by the Client and free of any lien, charge, security, interest or other encumbrance.
- i) no part of any funds remitted by the Client have been the proceeds of any illegal activity or used for any terrorist financing or money laundering activities. The Client agrees to provide such information related to their business and financial affairs as may be reasonably requested by SMFX in order to comply with AML/CTF or other legislative requirements.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 The defined Terms as used in this Agreement are in capitals and are defined in this Clause.

- Reference to the singular includes the plural and vice versa
- Reference to male implies the female and vice versa
- In this Agreement, any reference to the Client where the Client comprises more than one person indicates they shall be bound jointly and severally by the Agreement
- Headings, examples and references in this Agreement are for reference only and do not affect its interpretation
- Any reference to any statute, regulation or order made shall imply reference to all amendments, revocations or other changes made to such statute, regulation or order.

### 2.2 In the Agreement, the following terms, unless otherwise stated, have the following meanings:

**Agreement means** all the terms, conditions, appendices, representations and warranties contained herein and in any supplementary agreement including SMFX Client Services Agreement, General Terms and Conditions and Disclosure Statement.

**Allocation Policy** provides that orders will be executed in the order in which they are received; except that client orders will be filled before house trades are filled.

**Authorised Person** means the Client and any other person who has been authorised in writing by the Client to transact on the Clients account and who may bind the Client under the terms of this Agreement.

**Base Currency** means the currency in which the relevant account has been denominated and will be US dollars unless otherwise notified.

**Business Day** means for Spot Foreign Exchange Contracts and Spot Metal Contracts a day on which the relevant underlying exchange rate or commodity is available for dealing.

In relation to other services and notices, it means any day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Auckland, New Zealand.

**Client** means the person(s) who have executed this document in the Client Services Agreement and have been granted an account with SMFX.

**Client Application Form** means the form given to Clients to apply for an account with SMFX. **Collateral** means securities or other assets, including money, or any guarantee or indemnity accepted by SMFX from the Client instead of cash for the purposes of complying with the Client's obligations to pay, or as approved by SMFX as collateral.

**Contract** means any transaction relating to Spot Foreign Exchange and Spot Metals or any other contracts that may be introduced by SMFX from time to time or any other agreement which SMFX may enter into to enable it to fulfil its obligations under such contract.

**Counterparty** means a person or entity that takes the contra position of any Contract, including a bank or financial intermediary, whether in NZ or overseas.



**Disclosure Statement** means the information required to be disclosed to Clients by investment brokers and advisors in order to comply with the Securities Markets Act 1988.

**Discretionary Account** means an account where the Client has authorized another person(s) to trade that account on the Client's behalf.

**Effective Date** means the Date of executing this Agreement.

**End of Day** means 5.00 pm New York time.

**Initial margin** means the amount required in respect of a Contract entered into by the Client. **Long Position** means where a person holds an excess of purchase over sales of the relevant commodity, currency or other investment instrument. **Margin** means either an Initial Margin or a Variation Margin

**Minimum Equity Balance** means the minimum money required in an account to maintain a Position.

**Minor** means a person under the age of 18 years at time of application. **Off-Exchange** means a market for trading Contracts that are not executed through a Futures & Options Exchange.

**On-Exchange** means a market for trading Futures Contracts that are executed through a recognized Futures & Options Exchange.

**Order** means an instruction to buy or sell Contracts or Securities and includes instructions to amend or cancel a previous instruction(s).

**Regulatory Authority** means any authority, body or person having responsibility for or in connection with the regulation or supervision of dealing in Contracts or for the enforcement of any other law or regulation applicable to dealing in

Contracts. In order to have more comprehensive information about SMFX's regulatory framework please visit [HERE](#)

**Short Position** means where a person holds excess of sales over purchase of a relevant commodity, currency or investment instrument.

**Spot** means the price that is quoted for immediate (spot) settlement. These are leveraged contracts for an agreed quantity at an agreed rate. The agreed quantity underlying this contract is not deliverable. These contracts are valued at the end of the trading day and reopened the following trading day at the current market price with the resulting profit or loss either debited or credited to the clients account.

**Underlying Asset** The underlying asset with reference to which the value of a Contract is determined.

**Variation Margin** means the difference between the value of a contract at the time it is made and its value at any later date.

### 3. TERM AND COMMENCEMENT

This Agreement takes effect, and the rights and obligations of the parties under this Agreement will apply, on and from the Effective Date and continues unless terminated in accordance with these General Terms and Conditions.

The Client acknowledges that these General Terms and Conditions and your Account will continue until you have performed all of your obligations under this Agreement, all positions have been closed out and your account has been terminated in accordance with these General Terms and Conditions.

### 4. APPLICATION OF LAWS

Both parties agree that the terms of their relationship and any subsequent dealings are subject to and bound by:

- legislation, regulations or Exchange Rules that are applicable;
- this Agreement



## 5. SCOPE OF SERVICES

**5.1** SMFX may deal on a Client's behalf on all Products as listed in SMFX Product Schedule (as amended from time to time). SMFX is principally in the business of providing online trading facilities allowing Clients to efficiently deal in Contracts on an execution only basis. SMFX will execute transactions on the Client's behalf solely on Client instructions and this should not imply any advice or any approval or recommendation on the merits of such transaction. SMFX is not required to explain any risks that may arise from a particular transaction as the Client has had an opportunity to seek independent financial advice.

**5.2** SMFX does not provide advice, recommendation or direction on the merits of any particular transaction. However, from time to time, SMFX may provide the following:

- Historical and/or factual information
- General product advice (without considering an individual Client's situation)
- Publications, updates, research or information sheets based on information from external sources.

It should be clearly noted that SMFX makes no representations, warranties or guarantees as to the suitability, completeness, truth or accuracy of such information, recommendations or advice provided and does not accept any responsibility for decisions based (in full or in part) on such information. SMFX recommends Clients consider all information, opinions and guidance in light of specific individual circumstances.

**5.3** Neither SMFX nor its employees trade on a discretionary basis. If approached by a staff member to trade on a discretionary basis, SMFX requests that the Client rejects such an offer and advises SMFX immediately of this approach.

**5.4** As SMFX is trading in OTC products, these are off Exchange. The Client agrees that SMFX can deal for the Client as principal where the relevant underlying market or security is not regulated by the rules of any stock exchange or investment exchange. However, SMFX may hedge such trades either through OTC contracts or Exchange traded contracts. In all cases, as SMFX is not a member of any Exchange, those contracts will be traded with SMFX counterparties who may or may not trade directly on the Exchange.

## 6. RISK

### WARNING

**6.1 Some of the significant risks include the following:**

**Leveraged Products** The high degree of leverage that is obtainable in these types of Contracts because of small margin requirements, can work both for and against the Client. The use of leverage can lead to large losses as well as large gains. The Client may be required to pay further amounts to cover fees on open and closed positions.

**Derivative market volatility** These markets are speculative and volatile. Prices can fluctuate rapidly and may reflect unforeseeable events or changes in conditions. These can be difficult, if not impossible, to predict.

Sometimes markets move so fast that "gapping" or "slippage" occurs. This is where markets move so quickly that sudden drops or increases occur. If this occurs in the Underlying Market, this also affects the price and may mean the Client is unable to close out a position or open a new position at the price at which the Client has placed the order.

The placing of contingent orders (such as a stop-loss order) may not always limit a Client's losses to the amounts they may want. Conditions may prevent execution of such orders.



### **Other Factors in the Underlying Market**

As the price of the Contract is based upon an Underlying Asset several factors in the Market may also affect an individual's position. Certain political, governmental or other events may cause the underlying asset to be suspended from trading. This may affect SMFX's ability to offer our products to Clients, including closing out existing positions.

Where the Market lacks liquidity (because of insufficient trading activity or where order demand at a particular price or for a particular asset in a specific underlying market exceeds supply), this may affect SMFX ability to offer the relevant Contract in sufficient volume to allow a Client to close out a position or open a new position.

### **Margin calls**

If the price moves against you, you may be required, at short notice, to deposit additional margin funds with SMFX in order to satisfy our Margin Call requirements and maintain your position. This amount may be substantial.

If any Client does not provide those additional funds within the required timeframe, their position may be liquidated at a loss and they will be liable for any shortfall in their account. Positions are marked to market on a daily basis with payments being settled daily to account for market movements.

### **Minimum balance**

If a Client's account balance falls below the minimum required balance as outlined in this Agreement, SMFX reserves the right to reduce or close out that Client's positions. The minimum balance may be varied at SMFX sole discretion.

### **Loss caused by spread**

If a Client opens a position and closes it before the market has moved favorably, they may still incur a loss to the extent of the spread and any fees and commissions payable. Furthermore, the spread may be larger at the time the Client closes the position than when they opened it.

### **Liquidation**

SMFX reserves its right not to accept a Client's order request or to close out a position without their agreement in certain circumstances. Please refer to Clause 12 of these Terms and Conditions.

### **Third Party Supply**

Data supplied by third parties may be delayed, incorrect or unavailable. SMFX is not responsible for provision of those information services nor the consequences if they fail, are delayed or are wrong.

### **Foreign Exchange exposure**

Client accounts are maintained in the currency that the Client has nominated (Base Currency).

Where a Client deals in a Contract that is in a currency other than their Base Currency, all margins, profits, losses etc relating to that Contract are calculated using the currency in which the Contract is denominated.

For this reason, a Client's profits and losses may be affected by fluctuations in foreign exchange rates. The conversions of the foreign currency balance of that

Client's account are undertaken automatically each day at End of Day using the Exchange Rate as quoted by SMFX.

### **Operational risk**

While SMFX have made every reasonable effort to ensure continuity of services, operational risk such as disruptions to communications, computers, networks or external events may lead to delays in the execution and settlement of a transaction.

### **Indemnification**

Should any Client fail to pay or provide security for amounts payable to SMFX or fail to perform any obligation as outlined in the Client Agreement, these General Terms and Conditions allow SMFX to take steps to protect our position (including for example the power to close out positions and to charge default



interest). Under these General Terms and Conditions, the Client also indemnifies SMFX and its agents, representatives and employees against certain losses and liabilities. SMFX liability is expressly limited. Please read these General Terms and Conditions and our Disclosure Statement carefully to ensure these matters are clear prior to executing any documentation.

#### **Regulatory requirements**

As these products are Contracts with SMFX directly and are not traded on a licensed market or regulated exchange, they are not afforded the same protection as trades undertaken through an exchange or licensed market. There is no Guarantee Fund or equivalent applicable to trading in the OTC market.

Changes to NZ legislation, regulatory or taxation requirements may affect SMFX ability to provide our services to the Client and/or may have an adverse effect on the Client's dealings with SMFX.

## **7. ACCOUNT MANAGEMENT**

### **7.1 Account Opening**

In order to open an account, the applicant will be required to complete the relevant Application form, read the General Terms and Conditions and Disclosure Statement (including detail of the risks associated with trading these instruments) and provide identification as specified in the application. SMFX is under no obligation to open an account with any individual or entity, even if all information has been provided.

### **7.2 Password**

Once the Client's account is opened, the Client will be issued with a password and login details. It is the Client's responsibility to ensure their password is kept secure. Should this security be breached, the Client must inform SMFX immediately. Upon confirmation of identification, SMFX will reissue a new password and, if requested by the Client, place a hold on the Client's account.

### **7.3 Minimum deposit**

Once a Client decides to trade, they will be asked to deposit an initial sum of money. This will include the money the Client wishes to trade and an Initial Margin sum (covering the Margin requirements). A minimum deposit of \$100 is required to commence trading.

### **7.4 Right to call for funds / security**

SMFX may call for payment of money or the provision of other security which SMFX considers, in its absolute discretion, appropriate in connection with the obligations incurred by it in respect of Contracts entered into for a Client's account. Time is of the essence and the Client must pay any amount called or provide security within 24 hours of the call for payment or, if resident or domiciled outside New Zealand, then within 48 hours unless an alternative time period is stipulated in this Agreement. However, SMFX reserves the right to close out client positions where there is insufficient equity held in the account.

### **7.5 SMFX Trading and Rights of Client**

SMFX, its directors, partners or employees may deal in Contracts as principal on their own account. Upon placing an Order with an Executing Dealer (which may or may not be SMFX), the Executing Dealer incurs obligations as principal, even though the Contract may have been entered on the Client's instructions.

### **7.6 Account operation**

Where a Client has more than one Account open with SMFX, each account will be treated as an entirely separate Account unless SMFX are advised in writing by the Client (and SMFX, in its sole discretion agree) to treat the Client's Accounts as one Account.



Where Accounts are treated separately, this means that any credit, (ie monies deposited as margin) will not, except where SMFX exercises its rights under

Section 14 of these General Terms and Conditions, discharge any of the Client's liabilities in respect of another Account.

Where Accounts are treated as one Account, all references to Account in this Agreement will be references to the aggregated Accounts.

### **7.7 Use of Client's Daily statements**

You agree to use your daily statements to confirm all orders that you place with us and monitor your margin obligations. SMFX still reserves its right, in its sole discretion, not to accept any order given by you.

### **7.8 Account statements**

SMFX will report all open positions and open orders to you via our electronic trading platform, with a daily statement providing a summary of open positions, free equity, margin requirements, cash balances, and fees and charges provided to you on a daily basis at the end of each trading day.

We encourage you to become familiar with the statements we provide you and understand how to read key elements such as your margin requirements, open positions, and any free equity.

### **7.9 Client obligation to review**

It is your obligation to review any deal confirmation we send to you immediately to ensure its accuracy and report any discrepancies that you may have to us within 2 business days.

### **7.10 Currency Ledgers**

Each Account may operate several Currency Ledgers. This means that money may be paid into the Account in several different Currencies and any net balances will be reported in the corresponding Currency Ledger. SMFX will generally settle trades in the relevant Currency where an appropriate ledger exists, except that where such Currency balance in that ledger is insufficient, SMFX may settle trades in any Currency Ledger.

However, SMFX will report all sums due to or from SMFX in the Base Currency at market rates as provided in our trading system at the end of the trading day.

At any time, the Client may request amounts to be converted into the Client's

Base Currency at the relevant exchange rate as quoted by SMFX and SMFX reserves the right to convert into Base Currency only where any Currency Ledger balance falls below US\$200 or its currency equivalent.

### **7.11 Contract notes**

SMFX will send the Client an electronic contract note via the online trading system containing essential details of the transaction following the purchase or sale of any investment.

All transactions will be due for settlement in accordance with the market requirements (as shown on the relevant contract note or advice). The Client will ensure that SMFX receives all cash and securities when due with respect to any transaction which is to settle on that Client's behalf and that all cash or investments held by, or transferred to, SMFX will be and remain free of any lien, charge or encumbrance. All payments due to SMFX will be made without set-off, counterclaim or deduction.

SMFX may agree, at its discretion, to provide credit for a transaction to be carried out overnight for a fee.

## **8. CLIENT MONEY**

### **8.1 Authorised deductions**

The Client agrees that SMFX is entitled to:





- a) Withdraw, deduct or apply any amounts payable by the Client to SMFX and/or any associate of SMFX from Client moneys held in any account or invested by SMFX, including, without limitation, making a payment for, or in connection with, the margining, adjusting or settling of dealings on Contracts entered into by the Client, or the payment of finance charges, commissions or interest to SMFX with all such amounts belonging to SMFX; and/or
- b) Use the funds in the client accounts to manage SMFX dealings with counterparties with respect to client positions.
- c) Deal with any property, other than money, given to SMFX by the Client, in such manner as SMFX in our sole discretion consider appropriate in consideration and in connection with the margining, adjusting or settling of dealings in Contracts with us or selling or charging any or all of such property that may be in our control following a Default Event.
- d) Retain all interest earned on client money held in accounts with a bank, approved deposit taking institution and/or exchange clearing house.

## 8.2 Interest

SMFX will not pay any interest on client money that is held for a Client.

If, however, there is a debit balance on the Client's Account, then SMFX are entitled to charge the Client interest at an interest rate as set by SMFX on the full amount of that balance and the Client will be required to pay such interest. All interest rates are available from SMFX upon request.

## 8.3 Deposits

Clients may transfer funds to SMFX using any of the following methods:

- Bank transfer
- Credit Card
- E-Wallets

NOTE: We do not accept cash deposits.

It is the Client's responsibility to ensure all funds are accurately referenced with Client account number to allow SMFX to promptly apply funds to the correct Account. We are not responsible for any delays incurred as a result of incorrect or incomplete referencing of funds transferred. SMFX will only act on cleared funds so to maintain the Client's open positions SMFX recommends a Client maintains sufficient margin to allow time for clearance and transfer of funds.

Third Party Accounts: It is the Client's responsibility to ensure that all moneys paid into their Account are from an account in the Client's own name and not any third party, unless SMFX have been advised in writing prior to sending of such monies.

We are under no obligation to accept monies from any third party and will not accept or bear any liability of responsibility for any loss, damage or other event arising from our decision to return such monies, including any loss incurred by you because you are subsequently in default of your obligations under this Agreement.

## 8.4 Withdrawal of Client Money

The Client may withdraw funds from an Account by sending a signed withdrawal request form by fax, email or post. This must detail Client Account details, the amount of the withdrawal and the account the money is to be paid into. SMFX will not pay monies into a third party account so the account must be in the name of the Account holder.

The Client will only be able to withdraw money available after margin obligations have been met and any fees, commissions or other charges have been deducted. We require a minimum of \$USD100 to maintain an open account.



### **8.5 Third Party transactions**

SMFX is entitled to delegate its responsibilities to a Third Party or Associated Entity, including (but not limited to) an Exchange, clearing house, an intermediate broker, settlement agent or OTC counterparty located either within or outside NZ ("Third Party"). SMFX shall not have any liability for any loss which the Client may sustain as a result of the insolvency, acts or omissions of any such Third Party.

### **8.6 Unclaimed monies**

In certain circumstances, SMFX may hold client money for a Client which has been allocated but not claimed by them. SMFX will cease to treat any unclaimed balances as client money after a period of six years, provided that all reasonable steps have been taken by SMFX to contact the Client regarding this balance. SMFX undertakes to make good any valid claim against balances that were released from being treated as client money, upon the provision by the Client of information to evidence the validity of their claim.

## **9. EXECUTION OF ORDERS**

### **9.1 Placing an Order**

Orders may be received in writing in any of the following ways:

- electronically, via our electronic trading platform or online chat
- telephone (note calls may be recorded)
- in writing (including by email or facsimile, where authorised)

It is the Client's obligation to ensure that their instructions have been received by SMFX.

Orders must be received allowing sufficient time for SMFX to implement them and SMFX does not accept responsibility for any errors or omissions resulting from misunderstandings in respect of oral or written instructions. It is the Client's responsibility to ensure that all details relating to the Client's Order are accurate; including without limitation the name of the Contract bought or sold, the volume and the total value of that Order.

If SMFX does not receive notification of any potential order discrepancy within two (2) business days, the daily trading statement of confirmation issued by SMFX to the Client via the online trading platform will be deemed to have been accepted by the Client.

### **9.2 Hours of operation**

SMFX generally operates between the hours of 21.00 Sunday GMT time and closes at 21.00 Friday GMT time except that:

- a) SMFX is under no obligation to quote prices or accept orders or instructions in respect of any Contract on a public holiday in any jurisdiction which, in SMFX reasonable opinion, affects the relevant underlying markets; and
- b) SMFX are under no obligation to accept orders or quote prices during any time when the relevant exchange is closed for business; and
- c) SMFX reserves the right to amend these hours as above from time to time at its sole discretion.

All orders received outside Trading Hours will not be implemented until the commencement of the next Trading Day.

### **9.3 Order Types**

A list of Order Types is published on SMFX website and is amended from time to time.

### **9.4 Order Execution**

In accordance with SMFX Allocation Policy, orders will be executed in the sequence in which they are received; except that client orders will be filled before house trades are filled.



### **9.5 Order Confirmation**

Should the Client place an order via our electronic trading platform, they will receive instant confirmation as to the status of the order. It is important this is checked carefully. Telephone orders will be repeated back to the Client for confirmation and the conversations will be taped. (Note Clause 15 re notification of errors or discrepancies)

### **9.6 Right to Refuse to Deal**

SMFX reserve the right to, at any time, limit or refuse to enter into a Contract for the Client but warrant that we will notify you of any refusal or limitation as soon as practicable. Such refusal or limitation shall be without prejudice to any other rights and powers under this Agreement.

SMFX is not required to act in accordance with the Client's instructions where to do so would cause a breach of any applicable legislation, rules or regulations or cause a breach of this Agreement.

### **9.7 Opposite Positions**

In certain circumstances, SMFX may take the opposite position in the Contract, either acting for another client or on our own account.

### **9.8 Close Out of Positions**

At any time, with or without notice to the Client, and in addition to any other rights SMFX may have under this Agreement, SMFX may choose to close out or limit the size of a Client's open position(s) (net or gross) if any of the following circumstances occur:

- a) SMFX reasonably consider there are abnormal market or trading conditions; or
- b) SMFX are unable to quote prices in the relevant market due to lack of market information (for whatever reason) or
- c) SMFX consider that a Client may be in breach of a relevant regulation or law; or
- d) A Client has failed to provide any margin, deposit or other sum due under this Agreement in respect of any Contract or such margin amounts or Collateral fall below our margin requirements; or
- e) The combined size of all the Client's orders and/or all other orders for a Contract exceeds SMFX Normal Trading Size; or
- f) Where a Contract is withdrawn from SMFX Product Schedule; or
- g) SMFX are requested to close out or limit a Client's position by an authorised regulatory agency; or
- h) SMFX exercises our rights under Clause 26.1 of these General Terms and Conditions.

### **9.9 End of Trading Day**

These contracts are valued at the end of the trading day and reopened the following trading day at the current market price with the resulting profit or loss either debited or credited to the clients account.

### **9.10 Cancellation of orders**

An order (or part of an order) can be cancelled at any time prior to its acceptance by SMFX. If not received prior to acceptance, then that order shall be considered valid and binding under these General Terms and Conditions and the Client will be liable to settle the Order, in whole or in part as relevant.



### **9.11 No legal or Beneficial Interest in Underlying Asset**

The Client acknowledges that investing in these types of Products does not transfer the legal or beneficial interest in any Underlying Asset and the Client has no right or obligation to acquire or deliver such Underlying Asset.

### **9.12 SMFX's Right to Deal**

SMFX may deal in Contracts as principal on its own account and SMFX directors, partners or employees may deal in Contracts on their own account.

SMFX may, in certain circumstances, take the opposite position in a Contract, either acting for another Client or on our own account.

## **10. CLIENT INSTRUCTION**

### **10.1 Instructions**

SMFX may rely on and treat as binding any written or oral instruction which we have accepted in good faith and which we believe to be from you or someone entitled to act on your behalf.

Entirely at SMFX discretion, we may accept verbal or written instructions and may request that verbal instructions be confirmed in writing.

The Client agrees that any instruction and communication sent by the Client or on its behalf is made at the Client's risk and the Client authorises us to rely and act on, and treat as fully authorised and binding upon the Client, any instruction (whether or not in writing) which SMFX believes in good faith to have been given by or on behalf of the Client by any intermediary whom SMFX believe in good faith to have been duly authorised by the Client.

SMFX is entitled to act on the basis that all trades, orders or instructions transmitted online using your login, password, and/or account number are authorised by you unless we have already been notified, in writing, by you of a suspected breach of your login or password details. We are not required to establish the identity of any person quoting a Client's username, account number and/or password or if we reasonably believe that person to be an Authorised Person.

It is your sole responsibility to keep all security information relating to the Account confidential (including username, password and account details) and to advise us immediately in writing if you believe that such details have been breached.

SMFX is not liable in any way for any act or omission by us in reliance on any instruction given or action taken by a person acting or purporting to be acting on behalf of the Client who is not listed as an Authorised Person

SMFX reserves its right to in our absolute discretion and without explanation to the Client, refuse to act upon any instruction, particularly if SMFX believe that it may not be practical or in our opinion infringe any law, rule, regulation or term of this Agreement and will not be liable for such act or omission in accordance with our limitation of indemnity in Clause 11 of these General Terms and Conditions.

This clause will not apply where liability arises from an act of fraud, negligence or dishonesty of SMFX, its agents or employees.

### **10.2 Authorised Persons**

Those persons authorised to instruct SMFX with respect to your account are any persons listed in the account

Application Form as "Authorised Persons" or those persons whose names have been received in writing to SMFX as Authorised Persons and who have been accepted by SMFX as an Authorised Person (ie provided the required identification and met all compliance requirements).



Instructions accepted by such Authorised Persons are deemed to have been placed by the Client and SMFX may also provide information on the Account to such Authorised Persons. The Client warrants that such Authorised Persons may give instructions to place Orders and have read the General Terms and Conditions and Disclosure Statement of operating an Account with SMFX.

On occasion, and at SMFX sole discretion, SMFX may require Client confirmation where an instruction from an Authorised Person seeks to close an Account or remit money due to the Client.

By including Authorised Persons on the Client's Account, the Client personally indemnifies SMFX against any costs or losses SMFX may suffer as a result of the Authorised Person, or a person who appears to SMFX to be an Authorised Person, giving incorrect or unauthorized Orders, instructions or failing to comply with the terms of this Agreement.

### **10.3 Cancelling Orders**

If the Client wishes to close a position, then any related orders must be cancelled. SMFX cannot revoke any orders once initiated in the system so the Client will be liable for all orders made once actioned.

### **10.4 Communication difficulties**

If at any time the Client is unable for any reason to communicate with SMFX we shall not:

- a) be responsible for any loss, damage or cost caused to the Client by any act, error, delay or omission resulting from the failure to communicate, where such loss, damage or expense is a result of the Client's inability to enter into a transaction, and
- b) be responsible for any loss, damage or expense caused to the Client by any act, error or omission or delay resulting from that inability, including without limitation, where such loss, damage or expense is a result of the Client's inability to close a transaction, except where the Client's inability to instruct SMFX or communicate with us results from SMFX fraud, wilful default or negligence.

### **10.5 Power of Attorney**

A person authorised under a limited power of attorney as verified by SMFX, may be an Authorised Person once approved in writing by SMFX.

### **10.6 Assignment**

This Agreement is between the Client and SMFX and the Client is not entitled to assign or delegate any obligations or rights to any other party without SMFX prior written consent.

SMFX retains the right to assign to or take an assignment from any party of any benefits associated with this Agreement, any Contract or the balance of a Client's account.

If any Client defaults in payment of obligations owed to SMFX, we retain the right to assign to any person all or any of our rights in respect of money owing to us under this Agreement, as well as any security or other remedies in respect of such default.

## **11. INDEMNITY / LIABILITY**

### **11.1 Unless caused by SMFX fraud, wilful default or gross negligence, neither we nor any associated company nor shall any employee be liable to the Client:**

- a) for any loss of profits, indirect, consequential or incidental damages, liabilities, claims, losses, awards, injury, proceedings or costs suffered or incurred by the Client in connection with the Services we provide to the Client as set out in this Agreement; or



- b) for any misinterpretation of any information or general advice provided by, or on behalf of, SMFX relating to a transaction entered into or proposed to be entered into under this Agreement; or
- c) SMFX does not act on Client instructions or is unable to provide any service under this Agreement as a result of some factor that is beyond our reasonable control (for example, Act of God, failure of computer or related systems, failure of market systems, failure of trading software or failure of any third party to provide any service to which this Agreement relates); or
- d) if we do not act on Client instructions or are unable to provide any service under this Agreement as a result of failure of computer systems, telecommunications systems, component failure, power failure or other unanticipated failure; or
- e) for any loss or damage caused as a result of a Client trading on money deposited into their Account in error by us. We will remedy all such errors as soon as practicable following notification of such error.

Unless caused by our fraud, wilful default or gross negligence, the Client will upon demand, indemnify us, our associated companies and employees against any costs, damage, losses or liabilities however arising by reason of or in connection with any action taken, not taken, or any transaction entered into or not entered into by SMFX under this Agreement.

## 12. FEES AND CHARGES

### 12.1 Client obligation to pay charges

All charges will be notified to the Client in writing prior to the relevant dealing or trading taking place. Such charges will be either as outlined in this Agreement or as otherwise notified in writing and will take effect on the date mentioned in the written communication. The Client agrees to pay:

- a) Commission as notified by SMFX as well as any other transactional fees charged or levied by SMFX or an Exchange. This commission will be itemised separately on the statement we send to you. Commission rates may be changed from time to time; and
- b) Any fees, commissions, financing and charges as set out in the Client Services Agreement and/or Disclosure Statement; and
- c) Any costs as identified in the Client Services Agreement and/or Disclosure Document, including but not limited to swap charges, fund withdrawal fees or network costs; and
- d) Any other costs incurred by SMFX as a result of Client default under the terms of this Agreement, including all legal costs and expenses; and
- e) Interest payable where an amount owed to SMFX by the Client is overdue. In such circumstance, interest will be charged at the rate of 5% per annum above the bank Overdraft rate and accrued daily from the date it becomes due until the date the balance is paid in full.

The Client will be provided with details of the total price to be paid in connection with a transaction including all related fees, commissions, charges and expenses and taxes payable via us, or if an exact price cannot be indicated, the basis for the calculation of the total price.

### 12.2 Client obligation to pay margin

When dealing in Contracts with SMFX the Client will be required to pay such sums of money as SMFX may require under this Agreement and as specified in this Agreement or otherwise advised to the Client in writing.

Such sums may include Deposits, Initial Margin, Variation Margin, and Security, Collateral or other amounts required for clearance of any debit balance in an Account.



Liability to pay an Initial margin accrues at the time the Contract is executed regardless of when a call is made.

Liability to pay a Variation margin accrues at the time the margin comes into existence, regardless of when a call is made.

### 12.3 Rebates to third parties

SMFX may rebate to third parties all or part of the commissions that are charged to the Client and undertake to provide further details on request. We may also have arrangements for spread-based rebates to third party introducing brokers where SMFX considers such arrangements will not affect the spread we would otherwise have offered and we undertake to provide the Client with further details on request.

### 12.4 When due and payable

All such commissions, fees, taxes and charges owed to SMFX will be accrued at the time of transaction (as advised on the Client statement), and will become due and payable on the 20th of each month following the transaction; except that, where a Client requests withdrawal of all funds held by SMFX, such disbursements shall be deducted immediately prior to payment into the Client's bank account.

### 12.5 Payments

- a) should the Client effect a transaction with us, the Client agrees that it will pay all transaction charges, fees, margins, settlements, interest and any other amounts due under this agreement on demand by SMFX in cleared funds or otherwise as required in accordance with the terms of this Agreement.
- b) SMFX are permitted to deduct, without further reference to the Client, charges relating to any services provided by us including administration charges, charges relating to the use of its electronic trading platform and royalties payable to any exchange from the Client's Account held with SMFX during the full term of this agreement whilst the Client utilises such services.
- c) Payments by the Client in accordance with this Agreement must be made without any offset, counter claim or condition and without any deduction or withholding of any or any other reason unless the deduction or withholding is required by applicable law. Should you be required to make any form of deduction in respect of tax from any payment to be made or if SMFX is required to pay any tax in respect of any payment made about this agreement at the Client's request the Client agrees to keep SMFX indemnified against tax and agrees to pay to SMFX any additional amounts required to ensure SMFX receives the full net amount that is equal to the amount SMFX would have received had a deduction, withholding or payment of tax not been made.
- d) SMFX will pay the Client in respect of any credit balance amount in the Client's account, except that SMFX may elect to withhold payment requested where:
  - open positions show notional losses; or
  - SMFX considers that market conditions indicate that funds may reasonably be required to meet any margin requirements on open positions; or
  - the Client has any contingent liability in respect of any other Account; or
  - there is an unresolved dispute between the parties to this Agreement; or
  - SMFX are required to withhold funds in order to comply with regulatory or legal obligations We will advise you if  any of the above situations arise



## 12.6 Currency of Payment

All amounts due to SMFX or payable by SMFX under this Agreement are payable in the currency SMFX shall determine at the time of payment.

# 13. DEPOSITS AND MARGINS

## 13.1 Initial Margin

Initial Margin is the amount debited from the Client account as soon as a new position is opened or an order is placed to open a new position. This acts as a security buffer and protects us in the event of Client default. Typically SMFX will require an Initial Margin calculated as a percentage of the contract value.

The Initial Margin will vary depending on the Contract traded. The initial margin is determined at SMFX discretion mostly by the liquidity of the underlying asset on which the product is based. Once the Client is trading, the daily statement will show the Margin requirement for Total Margin Requirement i.e. combined Margins of all Contracts.

SMFX advises the Initial Margin rates on the website and electronic trading platform.

Initial Margin is debited from the Client Account at the the time a Pending Order is executed, if there is not sufficient equity the Pending Order will not be executed and will be deleted.

## 13.2 Variation Margin

The Variation Margin is the unrealized profit or loss on a Client's open position. This is the difference between the value of the Contract when it was bought or sold and its current market price.

Should a Client's position move in their favour SMFX may refund part or all of the Variation Margin to the Client.

## 13.3 Equity Value

The equity value is the amount of money a Client would have left in their account should all of the Client's open positions be closed out at the current market price less any interest, fees, or transaction charges. Free equity is the total of all the positions in the Client's account less the margin requirement. Free equity can be used to open a new position or can be withdrawn from the Client's account. SMFX may require the Client to maintain a minimum free equity balance in their account. SMFX reserves the right to vary the margin requirement applicable at any time.

## 13.4 Client obligation to monitor

SMFX will report all margin requirements daily at the end of each trading day. It is the Client's responsibility to ensure that they request all relevant information, including Margin requirements, before placing any orders or closing out positions. SMFX will not be responsible for any losses the Client may incur in not requesting this information.

At all times, it is the Client's sole responsibility to monitor all margin requirements under these General Terms and conditions and any additional margin that may be required. To assist in this, we recommend that the Client consider this in light of the following factors:

- Volatility of the market & relevant Underlying Asset
- Any applicable exchange rate risk
- Any open positions
- Bank clearance times for funds transfer and clearance
- Any such matter the Client considers may affect your margin requirements





While SMFX will make reasonable endeavors to make a margin demand, we are under no obligation to provide such demand and the Client may have to close out or limit positions as provided under this Agreement.

A Client's Margin requirement for each Contract will fluctuate based on i) the price of the Underlying Contract and/or ii) foreign exchange rate changes if the Contract traded has a different Currency than the Client's Base Currency Account.

If adverse market movements occur, the Client may be required to deposit additional money (called a Margin Call) to cover the fluctuating margin requirement for a particular Contract. Whenever trading, the Client will need sufficient equity in their Account to maintain the Total Margin requirement.

### **13.5 Liability for margin calls**

The Client is responsible for payment of margin calls, deposits and other security as requested by SMFX and the following is drawn to the Client's attention:

- Liability to pay an initial margin accrues at the time of the trade or deal is executed regardless of when a call is made. Liability to pay a variation margin accrues at the time the margin comes into existence, regardless of when a call is made.
- Client liability is the total of all margin calculation provisions.
- Should SMFX make a margin call the Client is required to deposit funds into their account within 24 hours or the Account will be taken to be in default. In some circumstances, SMFX may require payment within shorter time frames, (eg in times of increased market volatility) and payment will need to be made within these time frames in order to meet margin requirements.
- We will make all reasonable attempts to contact Clients by their preferred method of communication. SMFX are under no obligation to contact Clients. Where the market moves quickly or open positions are moving, we reserve the right to close out such positions under this Agreement without making any margin demand or any contact with the Client. Failure to meet margin call requirements may mean that we limit or close out positions in accordance with the terms of this Agreement. It is the Client's sole responsibility, 24 hours a day, to monitor their own positions and maintain the required margin.
- Any reduction in the application of Limited Hours trading means that open positions will be marked to market after close of trading and Client margin requirements will vary accordingly. If Clients do not wish to accept this additional risk, any affected Contracts may be closed out at any time after notice of such reduction has been given.

### **13.6 Delays in funds transfers**

On occasion, SMFX may, in its sole discretion, allow a Client time to forward funds to meet their margin requirements. This permission is given on a case by case basis and only upon prior written authority from SMFX. Cleared funds are credited to Client Accounts on Business Days between 8.00am and 6.00pm Monday to Friday (Central European Time). Where funds are received outside these hours, they will be credited on the next Business Day between 8.00am and 12.00pm.

## **14. DEFAULT EVENTS**

### **14.1 Default Events**

The Client will be considered in default of this Agreement if any of the following events occur, whether or not they are within a Client's control:

- a. failure to make any payment required under this Agreement (including monies owed under Margin Call) or on any account whatsoever where payments are not duly paid or satisfied as and when they become due;



- b. failure to perform and observe any obligation required in accordance with this Agreement or any other agreement or on any account whatsoever held with SMFX;
- c. any representation or warranty made to SMFX by the Client or on the Client's behalf are, or become incorrect or misleading;
- d. any Client ceases to pay debts duly owed to SMFX in accordance with this agreement or threatens to cease carrying on business;
- e. notice is given by the Client of an intention to pass a resolution to wind up a company, trust or partnership;
- f. any Client seeks a moratorium or proposes any arrangements with creditors
- g. insolvency or a receiver, or receiver and manager or administrator is appointed to the Client or its assets;
- h. a resolution is passed or a petition is presented or an order is made for winding up or liquidation;
- i. Client advises that they are unable to pay debts as and when they fall due or state they are insolvent;
- j. a Client or Executing Authority dies or become of unsound mind;
- k. a bankruptcy notice is issued against the Client;
- l. any security created by any mortgage or charge binding your assets becomes enforceable and the mortgagee or the charge takes steps to enforce the security attached to the mortgage or charge;
- m. without the consent of SMFX, any guarantee of or security to ensure Client obligations under this Agreement is withdrawn or becomes defective or insufficient;
- n. a Client's indebtedness to SMFX becomes immediately due and payable, or capable of being declared due and payable, prior to its maturity, by reason of the Client's or any other person's default; or
- o. the Client is not contactable by telephone within 24 hours, in order for SMFX to obtain instructions, and in the absence of the Client making alternative contact arrangements.
- p. SMFX reasonably considers it necessary for the protection of itself or its Associates.

#### **14.2 Actions Following a Default Event**

- a) Upon or after any Default Event occurs, SMFX, without prejudice to any other rights it may have under this agreement, has the right and power in its sole absolute and unfettered discretion and without necessity to give prior or any notice to the Client to do any one or more of the following:
  - i. terminate this agreement by the termination provisions of these General Terms and Conditions; ii. close out all or any open positions the Client may have as if the Client had given a Closing Notice to SMFX and had accepted the Closing Price determined by SMFX;
  - iii. treat all or any open positions as having been terminated by the Client;
  - iv. terminate any agreement or account whatsoever the Client has or may have with SMFX;
  - v. if there are insufficient funds in a Client Account to satisfy amounts owing to SMFX, SMFX may cancel any outstanding orders in order to close such Account or accounts;
  - vi. satisfy obligations that the Client may have to SMFX out of Client property including, money or security in SMFX custody or control including, without limitation, by selling securities lodged by the Client with SMFX or setting off obligations such that security transferred as collateral is not required to be returned and to enforce any asset or security held by SMFX in such manner as it sees fit at the Clients expense;
  - vii. transfer from other Client Accounts, if any, such funds as may be required for that purpose to satisfy any obligation the Client may have to SMFX;
  - viii. exercise any power or right that SMFX may have in accordance with this Agreement or in law or equity or take any other form of action as we may be required to take.



- b) SMFX shall not forgo any of the rights outlined in this Clause incurred as a result of a delay in the exercise of such rights and should SMFX not exercise any of its rights it reserves the right to do so at any time in the future.
- c) Where SMFX exercises its rights under this Clause, the Client authorises SMFX to close out at its own risk and expense as if the Client had given notice on the date that SMFX exercises its right, in accordance with Clause 26 and to cover any amount owed by the Client into NZ Dollars either at date of Client's default or on the date on which the Client pays the amount owed to SMFX in full.
- d) In the event of SMFX treating a Contract as having been terminated by the Client and SMFX exercising its rights in accordance with this Clause, SMFX will calculate the amount owing by the Client or SMFX as if the Client had
- e) been given a Closing Notice and had accepted the Closing Price determined by us. SMFX will have the right to debit from the Client's Account an amount equal to the amount which would have been payable by the Client had the Contract been closed at the Closing Price. This amount represents the damages incurred by SMFX.
- f) Any action taken by SMFX in accordance with this Clause shall not limit any other provision of this agreement and be without prejudice to any rights SMFX may have to any remedy or damages.

## 15. ERRORS

SMFX agrees to make good any errors identified by the Client; except that:

SMFX shall not be bound by any transaction which purports to have been made (whether or not confirmed by SMFX) at a price which:

- i. SMFX is unable to substantiate to the Client was manifestly incorrect at the time of the transaction; or
- ii. was, or ought reasonably to have been known by the Client to be incorrect at the time of the transaction.

The Client should verify the contents of each document received from, or made available by SMFX. Such documents will, in the absence of manifest error, be conclusive unless the Client notifies SMFX in writing to the contrary within 2 Business Days of receiving such document.

Despite anything to the contrary in this Agreement, the Client agrees that if a confirmation of a Contract, daily statement, monthly statement or other report is provided to the Client in accordance with clause 7 of this Agreement, the time for objecting to the contents of a document under clause 16 of this Agreement is from the time the relevant document is made available using the Electronic Facility.

## 16. ELECTRONIC TRADING

### 16.1 Access to electronic order routing system

If SMFX provides the Client with access to an electronic order routing system, then the Client agrees and acknowledges that:

- a) SMFX may establish an electronic facility over the internet that allows Clients to view, download and print the confirmations of Contracts, daily statements, monthly statements and other reports that SMFX provides;
- b) the Client has the necessary skills, facilities and procedures to operate such a system
- c) SMFX is authorised to use the electronic facility as the means of providing Client confirmations of Contracts, daily statements, monthly statements and other reports from SMFX;
- d) the Client will access and use such electronic facility to:



- i. receive the confirmations of Contracts, daily statements, monthly statements and other reports SMFX provides;
  - ii. confirm all Contracts; and monitor Client obligations under this Agreement;
- e) the confirmation of the Contract, daily statement, monthly statement or other report is made available to the Client as at the time the relevant document is posted by SMFX on the electronic facility;
  - f) the Client understand the risks and obligations attaching to the use of such a system, including the risks in trading through an electronic order routing system which is serviced by means of computer and telecommunication systems. Such systems may not be secure and cannot be operated in all circumstances without error and errors may result in delay in telecommunications services to the Client or interrupted or terminated services to the Client
  - g) the Client is bound by instructions s/he transmits through the system; and
  - h) the Client will maintain the confidentiality of passwords used to access the system and ensure all security procedures are implemented and followed as determined by SMFX; and
  - i) your ability to trade through the system will be subject to limitations imposed by SMFX. Access to the system may be restricted or terminated at any time without notice; and
  - j) the Trading Software constitutes an electronic facility for the purposes of this Clause 16; and
  - k) SMFX may require the Client to comply with other terms as required by any directive issued to SMFX by an authorised regulatory agency; and
  - l) SMFX reserves the right to reverse any trade (s) arising out of wrong price/feeds.

SMFX may post confirmations of Contracts, daily statements, monthly statements and other reports that SMFX provides, in addition to making them available using the Electronic Facility.

## 16.2 Market Information

Intellectual property rights are attached to the system and to any system that provides Market Information therefore; and such information is confidential information and the Client agrees that s/he will not publicly display, redistribute or re-transmit the Market Information in any way without having executed an appropriate agreement with SMFX;

Market information provided through the system may not be accurate or current and that should be relied on at the Client's own risk.

## 17. DISCRETIONS

SMFX reserves the right to exercise certain discretions in respect of Client trading and Account management. In this regard, SMFX will consider our commercial objectives, regulatory considerations and ethical obligations. These discretions include, but are in no way limited to a right to:

- Refuse any application for an Account without cause
- Call for funds or security where we consider it would make commercial sense to do so (refer Clause 7.4)
- Refuse to accept any trades placed by the Client that we judge to be clearly outside the prevailing market price such that they may be deemed non-market price transactions, whether due to manifest human error or stale/incorrect/broken price feeds. Where we have opened or closed a trade before becoming aware of the price
- disparity, we may at our absolute discretion either treat that trade as void or accept that trade at the prevailing Market price
- Determine Commission rates and financing charges,
- Decline the Client's instructions or cancel any Order or instruction without reason, where:



- i. dealing or trading has been suspended or halted for any reason whatsoever or any other event considered by SMFX to constitute an emergency has occurred or is, in SMFX opinion, likely to occur and the Client has not reconfirmed instructions; or
- ii. in SMFX opinion, the Order is likely to breach Rules, Regulations or legislation or terms of this Agreement; or iii. in SMFX opinion, the Order is likely to be inappropriate, unethical or likely to negatively impact SMFX reputation or integrity in the market or create a disorderly market.

SMFX is not liable for any financial inconvenience or consequence as a result of using such discretions to cancel, limit or refuse an instruction from a Client.

## 18. ADVICE

SMFX does not give financial or taxation advice and strongly recommends that such advice is sought before entering into any agreement or engaging in any trading.

We may provide generic financial advice or market reports to all our Clients.

These do not take into account any individual's specific circumstances, needs or financial objectives. We will not give advice about whether the Client should open, close or hold a Contract as SMFX is an execution only broker.

## 19. TERMINATION

Either party may terminate this Agreement by giving notice in writing to the other. Termination will be effective upon receipt of the notice by the other party in accordance with Clause 24 of this Agreement. Termination does not affect the existing rights and obligations of either party at termination. Upon termination of this Agreement, we will close out all Contracts and close out, abandon or exercise any Contracts not yet exercised, entered into by us for the Client unless earlier advised to transfer these Contracts to another

Dealer. The balance in the Client's account at termination will be repaid to the Client by bank transfer no later than five business days after this Agreement terminates.

We reserve the right to terminate this Agreement immediately and without notice in the event of any abuse of the Services provided, any abuse of our staff, or for any reason as may be deemed reasonable and appropriate by us in respect of our legal and regulatory obligations. SMFX further reserves the right to suspend this Agreement pending review of our possible subsequent termination and without prior notice to the Client under such circumstances.

## 20. JOINT ACCOUNT HOLDERS

Where an Account is held jointly, this Agreement shall bind them jointly and severally and each of those persons is authorised to give instructions in relation to the Account unless SMFX is otherwise advised in writing.

SMFX is not required to verify that each Client approves instructions taken and may take instruction and any one of the persons named as Joint Account Holders may act as the Client and may give effective and final discharge of any of SMFX obligations.

## 21. MINORS



If a Minor applies to become a Client, then either the Minor's parent or guardian are required to be a party to this Agreement. Any reference to Client in this Agreement is a reference to the parent or guardian of the Minor.

## **22. CONSUMER GUARANTEES ACT**

The Client agrees that where the Client acquires or holds itself out as acquiring SMFX services under this Agreement, for the purposes of a business, the Consumer Guarantees Act 1993 will not apply.

## **23. PRIVACY**

SMFX, its subsidiaries, partners and agents recognises its responsibility, and is committed to, ensuring the privacy of Client information.

### **23.1 Editing and Deleting, Access to Personal Information**

The Client may request in writing to see their personal details and may request correction or alteration of details if required. It is the Client's responsibility to ensure that information provided to SMFX is accurate.

### **23.2 Information Collection**

SMFX have certain responsibilities under New Zealand law to verify the identity of clients and may need to make certain enquiries and obtain certain information from you for that purpose. The Client confirms that all information supplied will be accurate and consents to us passing on such information as we consider necessary to comply with any reporting requirements.

On application, SMFX will collect personal and financial information. While there is no obligation to provide such details, this may mean that an application is declined. Once an application is accepted, SMFX will provide the Client with a user name and password, which is used for statistical and security purposes.

During the term of this Agreement we continue to collect information, this includes records of all transactions and activities on the Client Account including details of Contracts entered into and margin calls made.

From time to time, SMFX may collect additional personal information from the Client in connection with optional surveys, news updates or promotions. Providing this information is optional. Feedback from surveys will be used to improve our Services.

### **23.3 Recording of conversations**

SMFX may record Client telephone and online chat conversations. Records will be kept pertaining to the Contracts entered into by the Client, overall activity of the account and are available to the Client via the internet. All of these records are available upon request and if there is a dispute or anticipated dispute, the Client has a right to listen to recordings of those conversations.

### **23.4 Cookies**

A cookie is a small data file placed on a computer by our server. A cookie identifies Client's computers to our web server when our website is visited by that Client. We do not use the cookie to collect or store personal information about Clients. SMFX uses browser cookies to improve the speed and reliability of our security system.

### **23.5 Use of information**

SMFX advises the following:



- Client's personal information will be used only for the purposes for which it is collected, and retained only for as long as is necessary to fulfill the purposes for which the information was collected (including any time that we are required by law to retain such information) except that:
- SMFX may release information about a Client to a third party:
  - a) Where required by law or if requested by any regulatory authority or exchange having control or jurisdiction over us (or any respective associate);
  - b) to investigate or prevent fraud or other illegal activity;
  - c) in connection with the provision of services to you by us;
  - d) if it is in the public interest to disclose such information; or
  - e) at your request or with your consent.
- SMFX will not sell or rent Client's personally identifiable information to any third party.
- SMFX will not use Client's personal information for any purpose that is not related to the products or services provided on the Site, or for any purpose for which the Client would not reasonably expect us to use the information.

### **23.6 Use of email**

In entering into this Agreement, the Client gives SMFX permission to communicate by email for relevant and related commercial emails. SMFX may use email addresses to periodically send promotional emails from SMFX about products and services, offers or updates relating to recent developments in our services that may be relevant. In accordance with The Unsolicited Electronic Messages Act 2007, if a Client does not wish to receive such emails, please advise us and we will immediately unsubscribe that person from such emails. SMFX will not authorise any third party to use Client email addresses to send unsolicited emails.

### **23.7 Security Procedures**

The Client is responsible for preventing unauthorised access to the trading system at all times. If the Client becomes aware that its systems have been accessed by unauthorised persons then the Client must advise SMFX immediately.

SMFX will maintain data accuracy and ensure appropriate use of any information supplied. As such we have put in place physical, electronic and managerial processes to protect the information the Client provides.

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

### **23.8 Linked Sites**

SMFX website may contain links to other websites. SMFX is not responsible for the privacy policies of such sites. This privacy policy applies solely to information collected by SMFX.

## **24. TAX**

The following tax information applies only to NZ residents for tax purposes as defined within the Income Tax Act 2004. This information is general in nature and we recommend that Clients consult their own adviser relating to their specific situation.

Returns to NZ investors are affected by NZ taxation rules under the Income Tax Act 2004. Any gain is likely to be considered assessable income and therefore be subject to tax. Conversely, expenditure will only be deductible if it is:

- i. incurred in deriving assessable income and/or excluded income; or
- ii. incurred in the course of carrying on a business for the purpose of deriving assessable income and/or excluded income.



We strongly recommend that Clients seek independent taxation advice to ascertain their own taxation position.

Notice will be deemed to be given, where made in writing and forwarded to the address below: Solidary Markets NZ Ltd

1st Floor, Harvest Court, 218 George Street, Dunedin, 9045, New Zealand

#### **24.1 Communications**

All communications will be deemed to be received when:

- i. at time of delivery if delivered in person; or
- ii. 7 Business Days from and including date of postage; or
- iii. upon receipt if delivered by Courier
- iv. one hour following completion of transmission if delivered by Fax
- v. one hour following completion of transmission if sent by email or SMS.

#### **24.2 Known Address**

All notices sent from SMFX will be sent to the Client's last known postal or email address. It is the Client's responsibility to ensure SMFX are kept updated with these details and all notices issued by SMFX will be deemed to have been delivered if sent to that last known address.

## **25. COMPLAINTS**

All complaints should be directed in the first instance to our Compliance Department Solidary Markets NZ Ltd

1st Floor, Harvest Court, 218 George Street, Dunedin, 9045, New Zealand

Email: [compliance@solidarymarkets.com](mailto:compliance@solidarymarkets.com) or phone NZ: +64 (0) 35880704

We will try to resolve your complaint as quickly as possible and we welcome your feedback to assist us in continuous improvement of our service to you.

## **26. GENERAL**

#### **26.1 Amendments**

SMFX reserves the right to amend, alter, modify, substitute or supplement any of the terms in this Agreement at any time. You are deemed to have consented to any alteration that may be made to this Agreement if we do not receive notification otherwise from you, in writing, between the time that the changes were notified to you and their coming into effect.

SMFX may also alter, withdraw or add Contracts or prices offered or the criteria for any Product offered within the Product Schedule.

#### **26.2 Title and interest**

It is agreed that all rights, title and interest to and in any payment between the Parties in respect of Contracts under this Agreement, vest in the recipient clear of any liens, charges, encumbrances or any other interest of the transferor or any third party.

Nothing in this Agreement creates in favour of either party, any mortgage, charge, lien, pledge or other security interest in any cash or property transferred by one to the other under any Contract.





### **26.3 Binding Effect**

This Agreement shall cover all Clients' accounts opened or reopened at any time with SMFX, irrespective of any change(s) at any time in SMFX personnel for any reason whatsoever.

This Agreement shall be binding on the Client's beneficiaries, personal representatives, and successors in title and permitted assigns.

### **26.4 Legal requirements**

We are entitled to take such action as we consider necessary to ensure continued compliance with all Applicable Laws. If we reasonably consider any Client has breached these Laws, we reserve the right to terminate this Agreement immediately and without notice.

### **26.5 Entire Agreement**

This Agreement sets out all of the terms and conditions relating to the provision of our services and contractual relationship to you, subject to any subsequent amendments that may be notified. It supersedes any General Terms and Conditions previously agreed between us.

Each contract and any other transaction entered into between us and you under this Agreement constitutes a single agreement between us.

### **26.6 Conflict of interest**

SMFX, our Associates or other persons connected with us may have an interest, relationship or arrangement that is material in relation to any Contract affected, or advice provided by us, under this Agreement. By entering into this Agreement you agree that SMFX may transact such business without prior reference to any Client(s).

#### **In addition:**

- a) SMFX may hedge our liability to you in respect of your positions by undertaking transactions in the Underlying Markets that may affect (positively or negatively) the prices at which you may trade.
- b) SMFX may provide advice and other services to third parties whose interests may be in conflict or competition with a Client's interests;
- c) SMFX, its Associates and the employees or any of them may act on behalf of other Clients who may take positions opposite to the Client or may be in competition with the Client to acquire the same or a similar position.

We will not deliberately favour any person over another but will not be responsible for any loss which may result from such competition.

From time to time SMFX may affect transactions with or through its Associates in order to provide the Services.

SMFX may share commission and charges with its Associates or other third parties or receive remuneration from them in respect of Contracts entered into by SMFX with you. Details of any such remuneration or sharing arrangement will not be set out on the relevant Contract Note but will be disclosed in accordance with any requirements of any Applicable Law.

Neither party will undertake any act or engage in any course of conduct which seeks to artificially alter or distort, or otherwise manipulate, the relevant underlying market in relation to any transaction contemplated by this Agreement.



### **26.7 Illegality**

Should any event occur which has the effect of making or declaring it unlawful or impracticable for SMFX to offer Contracts in accordance with the terms outlined in this agreement, SMFX may immediately terminate this agreement by providing written notice to you in accordance with Clause 24. Termination of this agreement will also result in the closure of all positions in accordance with Clause

19. Any such termination will not relieve the Client of any obligations the Client may have to SMFX in accordance with this Agreement prior to its termination.

In accordance with this Clause, such events include any change in law, regulation, treaty, order, official directive or

ruling or in their interpretation or application by any governmental authority or agent, the introduction, implementation, operation or taking effect of, any law, regulation, treaty, order or official directive or ruling.

### **26.8 Dispute Resolution**

We will attempt to resolve any disputes in good faith and as quickly as possible, but in any event we will acknowledge receipt of your complaint within 5 business days. If unable to resolve a dispute, then the matter will be determined by an arbitrator as appointed by the parties. If the parties cannot agree on a single arbitrator, then the matter shall be decided by two arbitrators (one appointed by each party) in accordance with the Arbitration Act 1996.

### **26.9. Exclusive Jurisdiction**

This agreement is governed by the laws in effect in New Zealand and all parties to this agreement agree to submit to the exclusive jurisdiction of the Courts of New Zealand. For the avoidance of doubt, this clause is inserted for the benefit of SMFX and does not prevent SMFX from commencing proceedings in any other relevant jurisdiction.

I have read and agree to all of the above mentioned Terms and Conditions.

*Solidary Markets NZ Ltd, Winter 2021*