

# TERMS & CONDITIONS

Issuer: FINALTO (Australia) Pty Ltd

ACN 158 641 064

AFSL 424008

Date: 1<sup>st</sup> April 2021

Risk Warning: Trading Foreign Exchange and Contracts for Difference is highly speculative, carries a high level of risk and is not appropriate for every investor. You may sustain a loss of some or all of your invested capital, therefore, you should not speculate with capital that you cannot afford to lose. Please ensure that you fully understand our Risk Warnings available on <https://liquidity.finalto.com/au/risk-warning/>

FINALTO (Australia) Pty Ltd reserves the right to amend or supplement this document at any time. It is the legal agreement through which we provide our investment services to you and forms the basis of the legal relationship between us. The prevailing version of the Terms and Conditions are always available on our website <https://liquidity.finalto.com/au/>.

## 1. GENERAL

### a) Entire Agreement

This client agreement, together with any Schedule(s) and accompanying documents, as amended from time to time, (this “Agreement”) sets out the terms of the agreement between you and us. Please read it carefully and let us know as soon as possible if there is anything which you do not understand.

This Agreement sets out the basis on which we will provide services to you. This Agreement governs each Transaction entered into or outstanding between us on or after the execution of this Agreement. This Agreement was prepared for wholesale clients only and does not apply to retail clients.

This Agreement supersedes any previous agreement between you and us on the same subject matter and takes effect when you indicate your acceptance via our website. This Agreement shall apply to all Transactions contemplated under this Agreement.

### b) Information about us

FINALTO (Australia) Pty Ltd, is authorised and regulated by the Australian Securities and Investments Commission (“ASIC”). FINALTOAU holds an AFS Licence 424008, issued by ASIC.

Our contact details are set out in Clause 21(b) under the heading “Our Details”.

### c) Interpretation

- I. In the event of any conflict between the terms of this Terms and Conditions (‘Agreement’) and our website this Agreement will prevail.
- II. A glossary of terms can be found in clause 23 of this Agreement.
- III. A reference in this Agreement to a “Clause” shall be construed as a reference to, a clause of this Agreement, unless the context requires otherwise. References in this Agreement to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof. A reference in this Agreement to “document” shall be construed to include any electronic document. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the Applicable Regulations have the same meaning in this Agreement unless expressly defined in this Agreement.
- IV. When we use the term “you” or “client” we mean you, as the user of our services and the person acquiring our products and our other clients if the context requires. This includes bodies corporate, unincorporated associations, partnerships and individuals.
- V. Headings are for ease of reference only and do not form part of this Agreement.

### d) Our Services

Subject to the terms of this Agreement, our website terms and conditions, trading platform specifications, product schedule and our acceptance of your application form, we will open an Account and will provide general financial product advice,

dealing and market making services for CFD and foreign exchange contracts and such other financial products as we may, in our sole discretion, determine from time to time.

FINALTOAU operates through its website which allows trading via our Online Trading Platform. Our website contains further details about us and our services, and other information relevant to this Agreement.

**e) Our Other Services**

- I. As a part of our Service offering hereunder, we may provide you with the following additional Services:
  - Education services, whereby we shall provide you with materials explaining to you, without limitation: how to use the electronic trading platform, features of our CFD products and how they work; and basic principles of economic and technical analysis;
  - Regulatory updates – we may keep you up to date on regulatory developments which, in our view, may have an impact on the markets and your trading;
  - Platform updates – we regularly update and upgrade our electronic trading platforms and will shall make sure that such updates are explained to you.
- II. We shall, and you authorise us to, deliver to you the Services specified in Clause 1(e)(I) above by means of electronic mail, SMS and push notifications as well as via our Platforms. Without limitation, the materials which we shall deliver to you in the course of providing such Services may include PDF files, e-mail text and other visual and textual materials.
- III. It is understood and agreed that the Services specified in this Clause 1(e) are provided on non-reliance basis only. You undertake and warrant that you shall not rely on the materials provided to you under this Clause 1(e) when taking your investment and trading decisions or when determining your trading strategy. We give no representation whatsoever as to the accuracy, completeness or suitability for you of the information provided by us in connection with the Services specified in Clause 1(e)(I) above.

**f) Language**

This Agreement is supplied to you in English and we will continue to communicate with you in English for the duration of this Agreement. However, where possible or appropriate and for your convenience, we will endeavor to communicate with you in other languages in addition to English.

The English version of this Agreement is the governing version and shall prevail whenever there is any discrepancy between the English version and the other versions.

**g) Communication with us**

Unless the contrary is specifically provided in this Agreement, you may communicate with us via our Customer Support Department as specified in Clause 21(b), through [liquidity.finalto.com](http://liquidity.finalto.com) at our Website or an approved 'live chat' system within the Business Hours. Generally, communication with us in writing, by email or other electronic means, or orally (including by telephone).

**h) Capacity**

When you trade in our products and we provide financial services to you, we act as principal and not as agent, broker or trustee on behalf of someone else. When we receive your instructions and execute them, we are the party to the other side of the Transaction and the party with whom you are entering a contract as principal.

By agreeing to these Terms and Conditions you are agreeing to be categorised as a “wholesale” client and you may not be entitled to the protections afforded by certain Applicable Regulations. This may include, but is not limited to:

- I. our obligation to provide appropriate disclosure information to you before providing the services;
- II. the prohibition against us using retail client and sophisticated investor funds to margin, guarantee, secure, transfer, adjust or settle dealings in derivatives by FINALTOAU or other clients;
- III. Your right to complain to the Australian Financial Complaints Authority (AFCA);
- IV. the restriction on the payment or receipt by us of any inducements or other conflicted remuneration; and
- V. the requirement that you receive from us adequate Confirmations and reports on the services provided to you.

**i) Legal Age**

When you trade in our products and we provide financial services to you, we act as principal and not as agent. FINALTOAU's services and products are only available to individuals who are at least 18 years old (and at least the legal age in the jurisdiction of the individual). You represent and warrant that if you are an individual, you are at least 18 years old and of legal age in the jurisdiction where you live to form a binding contract, and that all registration information you submit is accurate and truthful. FINALTOAU reserves the right to ask for proof of age from you and your Account may be suspended until satisfactory proof of age is provided. FINALTOAU may, in its sole discretion, refuse to offer its services and products to any person or entity and change its eligibility criteria at any time.

**j) Banned/Prohibited Jurisdictions**

The Company reserves the right and is entitled to at any time, and upon its sole discretion, to restrict offering its services to certain jurisdictions and consider them as banned countries (the “Banned Jurisdictions”) in terms of engagement with the potential clients. The jurisdictions in which the Company offers its services are subject to change from time to time.

The client hereby confirms that, by agreeing to this Agreement, he or she is residing in a jurisdiction that allows them to trade the product(s) they wish to trade with FINALTOAU. The client covenants to inform the Company should their situation alter in any way. The Company reserves the right to request any additional information deemed necessary in order to verify compliance with this clause. The client will also inform FINALTOAU if they are not a citizen of the country in which they reside.

**k) Amendments to this Agreement**

We may amend this Agreement by giving written notice to you by post or email. Each amendment will become effective on the date specified in the notice and will be deemed accepted on the earlier of when you place an order or instruction with us to enter into a Transaction after the date on which the amendment becomes effective, or 2 business days have elapsed since the effective date of the change. Unless expressly agreed otherwise, an amendment will not affect any open Transaction or any legal rights or obligations which may already have arisen. If you do not wish to accept any amendment made by us, you may by notice to us Close Out any of your open Transactions and your Account in accordance with this Agreement.

## **2. REGULATION**

### **a) Subject to Applicable Regulations**

This Agreement and all Transactions are subject to the Applicable Regulations so that:

- I. nothing in this Agreement shall exclude or restrict any obligation which we have to you under Applicable Regulations;
- II. we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations;
- III. all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you; and
- IV. such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable.

### **b) Action by regulatory body**

If a regulatory body takes any action which affects a Transaction, then we may take any action which we, in our reasonable discretion, consider desirable to correspond with such action or to mitigate any loss to FINALTOAU incurred as a result of such action. Any such action shall be binding on you. If a regulatory body makes an enquiry in respect of any of your Transactions, you agree to co-operate with us and to promptly supply information requested in connection with the enquiry to FINALTOAU or the regulatory body.

## **3. RIGHT TO CANCEL THIS AGREEMENT**

You have a right to cancel this Agreement within a period of fourteen (14) days commencing on the date on which this Agreement is made (the "Cancellation Period"). Should you wish to cancel this Agreement within the Cancellation Period, you should send us a notice in writing to the following address: [cs@finalto.com](mailto:cs@finalto.com)

There is no cooling off arrangement for transactions offered by FINALTOAU. This means that you do not have the right to return the transaction, nor request a refund of the money paid to acquire the Transaction. If you change your mind after entering into a transaction with FINALTOAU, you must close out the open positions, and take the risk of a loss being incurred in doing so.

Cancelling this Agreement within the Cancellation Period will not cancel or terminate any Transaction entered into by you during the Cancellation Period. If you fail to cancel this Agreement within the Cancellation Period you will be bound by its terms, but you may terminate this Agreement in accordance with Clause 17 (Termination Without Default).

## **4. GENERAL ADVICE AND INCIDENTAL INFORMATION**

### **a) General Advice only**

We will not provide you with personal financial product advice. We only provide clients with general financial product advice.

Personal financial product advice is advice that takes into account one or more of your objectives, financial situation or needs or advice which could reasonably be regarded as having done so. General financial product advice is advice which is not personal financial product advice.

Before following any general financial product advice that you have requested from us or that was provided by us, please consider the appropriateness of the advice having regard to your own personal objectives, financial situation and needs and also consider seeking independent advice before making any decisions about using the services and products offered by FINALTOAU.

## **5. OWN JUDGEMENT AND SUITABILITY**

Without prejudice to our obligations, in asking us to enter into any Transaction, you represent that you are solely responsible for making your own independent appraisal and investigations into the risks of the Transaction. You represent that you have obtained sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks of any Transaction.

We give you no warranty as to the suitability of the financial products traded under this Agreement.

## **6. CONFLICT OF INTEREST POLICY**

Please refer to our Conflicts of Interest Policy which can be obtained by contacting us and requesting a copy. Our Conflict of Interest Policy provides further information on how we manage conflicts which may affect the impartiality of general financial product advice and research we provide to you together with other conflicts.

## **7. RISK**

- I. You acknowledge that trading in leveraged products and using Margin involves significant risks and further acknowledge that you are prepared to accept these risks.
- II. You acknowledge that trading in financial products offered by FINALTOAU involves the risk of loss as well as the prospect of profit.
- III. You acknowledge that you have given consideration to your objectives, financial situation and needs and have formed the opinion that dealing in financial products offered by FINALTOAU is suitable for your purposes.

## **8. CLIENT ACCOUNTS AND AML PROCEDURES**

### **a) Opening an account**

By opening an Account, you agree that all Transactions entered into between us shall be governed by the terms of this Agreement, as amended from time to time and you agree to be bound by such terms.

### **b) You acknowledge:**

- I. You will apply to establish an Account by completing the application form, which is available by contacting a member of the FINALTOAU sales team.
- II. You will complete a wholesale declaration form. On the basis of this information, we will assess whether we

consider opening a wholesale Account with FINALTOAU is appropriate for you. It is your responsibility to promptly inform us in writing if at any time you become aware of any information or circumstances which might indicate that our assessment should be changed. Our assessment of your suitability for an Account with FINALTOAU does not constitute personal financial advice and cannot replace your own independent assessment of whether an Account is suitable in light of your own objectives, financial situation and needs. You should be aware that wholesale clients are not entitled to the same statutory protections as retail clients.

- III. FINALTOAU is subject to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and is required to collect certain information and verify your identity (including, in accordance with our policy, any and all of your authorised signatories), before opening the Account. Each person who is authorised to trade and provide instructions on your behalf will need to sign the application form and provide identification information to FINALTOAU before an Account will be opened. We may pass on information collected from you and relating to transactions as required by the AML/CTF Act or other applicable laws and regulations and we are under no obligations to inform you that we have done so.
- IV. After FINALTOAU accepts the application, your Account will be established.
- V. No Transactions can be entered into until you have opened an Account and lodged cleared funds in that Account.
- VI. That by applying to open an Account you consent to entering into over-the-counter Transactions outside a regulated market.
- VII. Your Account covers all of the products and services offered by FINALTOAU which you apply for in your application form and which FINALTOAU agrees to provide to you. Within your Account, you may have one or more trading accounts. A trading account is a sub-account of your Account for a specific method of dealing, such as for a specific Online Trading Platform or for dealings in a specific product. For example, you could have a trading account for each different currency denomination of the products in which you deal and a separate trading account for other products. You can trade in the products offered by FINALTOAU and access our services through our Online Trading Platform. By opening an Account, you agree all Transactions entered into between us shall be governed by the terms of this Agreement, as amended from time to time and you agree to be bound by such terms.

#### **c) Currency of Accounts and Conversions**

You will be able to open your Account(s) and trading account(s) in any currency that may be offered by FINALTOAU. You agree that Account(s) balances will be calculated and reported to you in the currency in which the Account(s) are maintained. Please note that FINALTOAU may use different exchange rates to calculate Account balances and fund withdrawals and transfers.

The currencies which are currently accepted by FINALTOAU are USD, AUD, EUR.

FINALTOAU may apply conversion fees when your account currency is different than the quoted currency of the underlying asset you are trading in. This will affect any conversions made on the Used Margin, profit and loss, overnight rollovers, CFD expiration rollovers and adjustments for corporate actions (such as dividends and splits).

As an example, if the account currency is US dollars and you open a position on a Euro-quoted asset (e.g. Germany30) your used margin is converted in US dollars.

#### **d) Types of Accounts**

FINALTOAU offers the following type of Accounts, depending on the legal status of the client:

- I. Individual account;
- II. Joint account;
- III. Company account;

Other account types may be available. Please speak to FINALTOAU customer support for further information.

#### **e) Joint Accounts**

- I. In addition to the conditions listed in Clause 9 in the paragraph entitled "Authority" with regards to joint Account holders, you acknowledge and agree the following additional conditions apply. Where your Account held with FINALTOAU, is jointly owned by two or more individuals:
  - a) Each joint Account holder will be jointly and severally liable for all obligations to FINALTOAU arising in respect of your joint Account.
  - b) Each joint Account holder is responsible for complying with the terms of this Agreement. If there is a dispute between the joint Account holders which we know about, we may insist that each joint Account holder provides written instructions to us. In cases of conflicted and/or opposing instructions provided both joint Account holders, FINALTOAU shall refrain from implementing any instructions received until both joint Account holders provide FINALTOAU with clear, consistent and non- conflicting instructions on the matter.
  - c) If you or any other Joint Account holder dies, we may take instructions from and pay any balance to the survivor(s).
  - d) Where a joint Account holder provides personal and financial information relating to other joint Account holders for the purpose of opening or administering the Account that person confirms that they have the consent or are otherwise entitled to provide this information to us and for us to use it in accordance with this Agreement.
  - e) In the case of withdrawal of profits, if any joint Account holder wishes to withdraw profits from the joint Account, that person will be required to complete a withdrawal form which must be signed by all joint Account holders, provided that the conditions for withdrawals stipulated in Clause 8(j) (Withdrawing funds from your Account) are satisfied. Upon receipt of the completed and signed withdrawal form permission will be granted by FINALTOAU to withdraw any profits from the joint Account. FINALTOAU will credit the amount of profits withdrawn in the same bank account from where it was originally received.
  - f) In order for the joint Account to be valid and binding it is required that all joint Account holders sign the joint Account Application Declaration and in case any of the joint Account holders wish to terminate



this Agreement and close the joint Account held with FINALTOAU, the written consent of all joint Account holders shall be obtained in accordance with the provisions of Clause 8 (j) of this Agreement.

**f) Rollover Charges**

Any open CFD Transactions held by a client at the end of the trading day as determined by FINALTOAU or over the weekend, shall automatically be rolled over to the next business day so as to avoid an automatic Close Out and settlement of the Transaction. The client acknowledges that when rolling over such Transactions to the next business day, overnight rollover charges may be either added or subtracted from the client's Account with respect to such Transaction. The overnight rollover charges amount shall be determined by FINALTOAU from time to time, in FINALTOAU's absolute discretion. The client hereby authorizes FINALTOAU to add or subtract the overnight rollover charges to or from the client's Account for any open Transactions that have accrued overnight rollover charges, in accordance with the applicable rate thereto, each day at the time of collection specified on the Online Trading Platform for each individual financial product, as applicable.

**g) CFDs over Futures**

A CFD Transaction that is linked to futures contracts has an expiration date. CFDs in such instruments are not traded up until the exact expiration date of the underlying instrument. Instead, such CFDs, unless the relevant CFD Transaction is closed by you, are automatically rolled over. Such CFD shall be rolled over to the next underlying futures contract and price, usually on the last Friday (or, in case of CFD in cryptocurrencies, Thursday) before the official expiration day of such futures contract. This is known as the expiration rollover.

Any stop loss/take profit, entry stop or entry limit orders attached to your futures CFD Order before it is rolled over will be adjusted to symmetrically (point-for-point) reflect the price differences between the expiring contract underlying your original CFD Order as at its expiration date and the rolling over (new) contract underlying your CFD Order.

**h) Payment Options**

- I. Once your application has been approved, you will be notified of your Account details and you may fund your FINALTOAU Account via Direct credit, Electronic Funds Transfer or Wire transfer only.

You may choose your account base currency at the time of account creation. The currencies which are currently accepted by FINALTOAU are USD, AUD, EUR.

**i) Funding your Account**

FINALTOAU does not accept any form of payment from a third party to fund your Account. This means that clients must ensure they transfer funds from a bank account in the same name as their Account name. All deposits must be cleared funds before they will be available for you to commence trading.

When making a deposit, the Company shall have no liability in relation to any loss, costs or expenses you suffer, as a result of:

- I. Any delay or defect, or failure of the Electronic services software or any other network links
- II. Any viruses, worms or malicious software introduced into your computer software or hardware

- III. Inability to make a deposit due to a technical issue
- IV. Any cause beyond our reasonable control and the effect of which is beyond the legitimate expectations for us to avoid

**j) Withdrawing funds from your Account**

Without prejudice and subject to the terms of this Agreement, all Applicable Regulations and all conditions attaching to any relevant payments made to you under a rebate scheme operated by us and the monies not being used for Margin purposes or have otherwise become owing to us, may be withdrawn by you from your Account. Once your withdrawal request is approved your withdrawal request will be processed by us and funds will be sent to the same bank account or other originating source of the funds as soon as possible. (Note: Some banks may take time to process payments especially in currencies where a correspondent bank is involved in the transaction).

If you have a Joint Account, payments from your Joint Account will require a withdrawal request form which must be signed by all joint Account holders and which must be submitted to us. Upon receipt of the completed and signed withdrawal form permission will be granted by FINALTOAU to withdraw funds up to the amount initially deposited (plus any profits and less any losses), provided that the conditions for withdrawals stipulated in Clause 8(j) (Withdrawing funds from your Account) are satisfied. FINALTOAU will credit the amount withdrawn to the same bank account from where it was originally received.

If you request a withdrawal of monies from your Account and we cannot comply with it without Closing Out some part of your open Transactions, we will not comply with the request until you have Closed Out sufficient open Transactions to allow you to make the withdrawal. In order to process your withdrawal request please ensure that the funds, namely the realised balance, remaining in your Account following your withdrawal are at least equal to your Used Margin. If you have not met the necessary bonus trading requirements at the time you make a withdrawal request, the amount of that bonus will be debited from your Account. Withdrawals will only be made on request by you, by bank transfer to an account in your name or by banker's draft payable to you personally or such other method as we, in our absolute discretion, may determine.

## **9. TRADING POLICIES AND PROCEDURES**

**a) Placing of instructions**

You may give us instructions in electronic form via API, through our Online Trading Platform or orally by telephone to the FINALTOAU Trading Desk, unless we tell you that instructions can only be given in a particular way. If you give instructions by telephone, your conversation will be recorded and will be accepted by you as evidence of instructions given. Telephone orders are accepted in the sole discretion of FINALTOAU. If any instructions are received by us by telephone, computer or other medium we may ask you to confirm such instructions in writing. We shall be authorised to follow instructions notwithstanding your failure to confirm them in writing. In this Agreement "instructions" and "orders" have the same meaning.

**b) Authority**

We shall be entitled to act for you upon instructions given or purporting to be given by you or any person authorised on your behalf without further enquiry as to the genuineness, authority or identity of the person giving or purporting to give such instructions provided such instruction is accompanied by your correct Account number and password. If your Account is a joint account, we may act on instructions from either you or any other person in whose name the Account

is opened (each a “Joint Account Holder”), including instructions to trade. In certain circumstances we may require instructions from all Joint Account Holders. We may give any notice or communication to either you or another Joint Account Holder. We shall have no responsibility for further inquiry into such apparent authority and no liability for the consequences of any actions taken or failed to be taken by us in reliance on any such instructions or on the apparent authority of any such persons.

**c) Cancellation/withdrawal of instructions**

Orders may be cancelled via our Online Trading Platform or orally by telephone to the FINALTOAU Trading Desk but we can only cancel your instructions if you explicitly request so, provided that we have not acted up to the time of your request upon those instructions. Executed instructions may only be withdrawn or amended by you with our consent. FINALTOAU shall have no liability for any claims, losses, damages, costs or expenses, including legal fees, arising directly or indirectly out of the failure of such order to be cancelled.

**d) Right not to accept orders**

We may, but shall not be obliged to, accept instructions to enter into a Transaction. If we decline to enter into a Transaction, we shall not be obliged to give a reason, but we shall promptly notify you accordingly.

We may exercise this right in circumstances including but not limited to low market volumes, volatile market conditions or a lack of securities in the underlying market for FINALTOAU to hedge its positions.

**e) Control of orders prior to Execution**

We have the right (but not the obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion and may include (without limitation):

- I. controls over maximum order amounts and maximum order sizes;
- II. controls over our total exposure to you;
- III. controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the quoted price at the time the order is submitted to the order book);
- IV. controls over our Online Trading Platform (to include (without limitation) any verification procedures to ensure that any particular order or orders has come from you); and/or
- V. any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.

**f) Trade Adjustments**

Clients must be aware that the leveraged products offered by FINALTOAU carry a high degree of risk. The amount of Initial Margin may be small relative to the value of the face value of the Transaction as Transactions are ‘leveraged’ or ‘geared’. A relatively small market movement in price or the rate of the foreign currency may have a proportionately larger impact on the profit or loss of the open position and thereby the funds that you have deposited or will have to deposit. This may work against you as well as for you.

FINALTOAU exclusively reserves the right to widen spreads, amend Initial Margin levels and adjust leverage under certain market conditions including, but not limited to, when the FINALTOAU Trading Desk is closed, around fundamental announcements, and at times of market volatility. FINALTOAU will, on a reasonable endeavors basis, provide notice to you regarding such changes, however FINALTOAU reserves the right to make such changes without notice. In such circumstances you agree to indemnify FINALTOAU for any and all losses that may occur due the widening of spreads and the adjustment of leverage.

**g) Execution of orders**

We shall use our reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that Execution will be possible according to your instructions. If we encounter any material difficulty relevant to the proper carrying out of an order on your behalf, we shall notify you promptly.

We are under no obligation to and shall not monitor or execute orders outside trading hours for the relevant Market. You may open a position during the trading hours of the market of the underlying Financial Instrument of the CFDs and subject to the relevant Market being made available by us for trading limits and any trading limits any minimum/maximum trade sizes which we may impose in accordance with the provisions of this Agreement. We advise you accordingly and based on the terms that and conditions that, as a derogation from this, you will be able to place orders outside of the hours in which the relevant market is open for trading. You will not be able to close positions outside of the hours in which the relevant market is open for trading. However, we advise you accordingly and based the terms and conditions that you may place pending orders during Out of Trading Hours. These orders will stay inactive and may be executed in the hours in which the relevant market is open for trading. We reserve the right to change these terms by amending this agreement.

**h) Trading Parameters Limitations**

We have the right to set limits and/or parameters to control your ability to place CFD Orders at our absolute discretion. We may at any time require you to limit the number of open positions which you may have with us. It is your responsibility to ensure that you remain informed at all times, of such minimum or maximum trade sizes or stakes which we may have in place.

Such trading limits and/or parameters may be amended, increased, decreased, removed or added by us at our absolute discretion and may include (without limitation):

- a) controls over maximum order amounts and maximum order sizes;
- b) controls over our total exposure to you;
- c) controls over prices at which your Orders may be submitted;
- d) controls implemented in respect of our Online Trading Platforms, including without limitation any verification procedures to ensure that any particular Order was placed by you; and/or
- e) any other limits, parameters or controls which we may be required to implement in accordance with applicable laws and regulations.

You agree and understand that these limitations and/or parameters are put in place to protect the legitimate interests of FINALTOAU and to ensure that it is able to comply with its obligations as a holder of an Australian Financial Services Licence.

**i) CFDs in cryptocurrencies**

When trading in CFDs where the underlying asset is a cryptocurrency, you should be aware that the cryptocurrencies are traded on non-regulated decentralized digital exchanges. Accordingly, price formation and price movements of the cryptocurrencies depend solely on the internal rules of the particular digital exchange, which may be subject to change at any point in time and without notice. This often leads to a very high intra-day volatility in the prices of the cryptocurrencies which may be substantially higher compared to other instruments. Therefore, by trading CFDs in cryptocurrencies you accept a significantly higher risk of loss of your invested amounts which may occur within a very short time frame as a result of sudden adverse price movements of the cryptocurrencies.

We derive our market and pricing data on the cryptocurrencies from the digital decentralized exchanges the cryptocurrencies are traded on. Due to the non-regulated nature of such exchanges, the market data and price feed information provided by such exchanges may be subject to the internal rules and practices of such exchanges which may significantly differ from the rules and practices observed by the regulated exchanges. In particular, you should be aware that the pricing formation rules of the cryptocurrency exchanges are not subject to any regulatory supervision and may be changed at the relevant digital exchange's discretion at any time. Similarly, such digital exchanges may introduce trading suspensions or take other actions that may result in suspension or cessation of trading on such exchanges or the price and market data feed becoming unavailable to us. The above factors could result in a material adverse effect on your open positions, including the loss of all of your invested amounts. Where a temporary or permanent disruption to or cessation of trading occurs on any digital exchange from which we derive our price feeds for the relevant cryptocurrency, your positions in such cryptocurrency will be priced at the last available price for the relevant cryptocurrency, and you may be unable to close or liquidate your position or withdraw any funds related to such position until the trading on the relevant digital exchange resumes (if at all). You accept that where trading resumes again at either the relevant original digital exchange or on any successor exchange thereof, there may be significant price differential (price gapping) which may impact the value of your CFD positions in the relevant cryptocurrencies and result in significant gains or losses. In the event that the trading resumes on any other successor exchange than the relevant original digital exchange, the Company reserves the right to perform adjustments in order to neutralize the effect of the price difference of the two exchanges. Where trading does not resume, your entire investment will potentially be lost.

**j) Execution Policy**

- I. We are the principal to every order you place with us and therefore we are the only execution venue.
- II. When executing your Orders, we shall adhere to our duty of treating customers fairly. Notwithstanding the provision of this clause, whenever there is specific instruction from you, we shall aim to execute the order following the specific instruction, subject to the provisions contained herein, having however regard to the types of order and Price Slippage and Market Gapping as set out within this Agreement.

**k) Confirmations**

At the end of each trading day, Confirmations for all Transactions that we have executed on your behalf on that trading day will be available via your Online Trading Platform which is updated online as each Transaction is executed.

Confirmation of Transactions and statements of your Account(s), in the absence of manifest error, shall be deemed correct, conclusive and binding upon you if not objected to by email if orders were placed through our Online Trading Platform or by telephone to the FINALTOAU Trading Desk, within 48 hours of making such Transactions and the Confirmations being available to you via our website or we notify you of an error in the Confirmation within the same period.

**l) Improper or Abusive Trading**

Should FINALTOAU determine, at its sole discretion and in good faith, that you or any representative of yours trading on behalf of your behalf has motive and manipulation to engage in:

- Fraud;
- Attack;
- Commission laundering;
- Unusual transactions;
- Sniping;
- Illegal actions leading up to a transaction using multiple IP addresses to attack our systems in a 'Distributed Denial of Service - like' manner;
- Using any means to intentionally cause price latency on our system;
- Placing orders based on manipulated prices;
- Hedging by taking an offsetting position in a related instrument with a view to gaining profit from beneficial trading conditions such as bonuses offered by the Hedged trade;
- Arbitrage trading on prices offered by our platforms;
- Using an Expert Advisor or Auto Trading to identify instances of off market pricing;
- Coordinated transactions by, or in conjunction with other parties in order to take advantage of systems errors and delays on systems updates;
- Placing future "buy-stop" or "sell-stop" orders within one hour prior to the release of financial data; FINALTOAU and/or
- Scalping

FINALTOAU without notice reserves the right to determine such situation at its discretion as "Invalid Transactions Caused by Willful Misconducts or Unusual Transactions". This determination is made regardless of whether the situation was caused by the use of an EA or third party.

Where such a determination is made, FINALTOAU reserves the right to deduct any profit or loss generated directly or indirectly from the trades in addition to the commission, in addition to exercising its right to cancel any improper or abusive orders without prior notice to you. Clients and agents of FINALTOAU herein acknowledge and agree that upon the final determination in relation to whether the situation constitutes "Invalid Transactions Caused by Willful Misconducts or Unusual Transactions" by FINALTOAU after the detailed investigation of the account, Clients and agents are required to fully obey without any objection.

FINALTOAU's objective is to provide the most efficient trading liquidity available in the form of streaming, tradable prices for most of the financial instruments we offer on the trading platform. As a result of the highly automated nature of the delivery of these streaming, tradable prices, you acknowledge and accept that price misquotations are likely to occur from time to time. These misquotations, which may include 'off market' pricing, can occur at any time without notice to you or otherwise disrupt your trading experience. FINALTOAU has the right but not the obligation to inform you of the fact after you have traded using off market prices or misquotations. FINALTOAU reserves the right to cancel or adjust trades conducted on misquotations and off market prices so as to reflect the actual prices that would have applied to

the trade.

Furthermore, should you execute trading strategies with the objective of exploiting such misquotations or off market pricing or otherwise in a manner that is inconsistent with fair market practice, FINALTOAU shall also consider that as “Invalid Transactions Caused by Willful Misconducts or Unusual Transactions.”

Where a finding of “Invalid Transactions Caused by Willful Misconducts or Unusual Transactions” has been made, then FINALTOAU will have the right to:

- I. adjust the price spreads available to you;
- II. restrict your access to streaming, instantly tradable quotes, including providing manual quotation only;
- III. obtain from your account any historic trading profits that you have gained directly or indirectly through such, misquotations, manipulations or abuse of liquidity as determined by us at any time during our trading relationship;
- IV. reject an order or to cancel a trade;
- V. if the conduct concerns scalping, to switch your account to any other liquidity provider/s or pools that it deems appropriate to facilitate that order type and execution.
- VI. Adjust prices to reflect actual market prices; and/or
- VII. immediately terminate our trading relationship with written notice.

**m) Prohibited Trading**

No employee or any of their related entities shall, during the term of their employment with FINALTOAU become a client of FINALTOAU (either directly or indirectly, alone or with partners, associates, affiliates or any other third party) without FINALTOAU’s prior written approval. Should FINALTOAU consider that the employee is trading without FINALTOAU’s prior written approval we shall consider all the trading to be irregular or illegal trading. In such circumstances the employee’s Account(s) will be temporarily frozen and all open Transactions shall be Closed Out immediately and any funds held within the Account shall be held by FINALTOAU pending a thorough investigation of the matter.

No business associate or former business associate of FINALTOAU or any of its related entities shall, during the period of the agreement between the associate/former business associate and FINALTOAU and after termination of such agreement, become a client of FINALTOAU (either directly or indirectly, alone or with partners, associates, affiliates or any other third party) without FINALTOAU’s prior written approval. Should FINALTOAU consider that the associate/former business associate is trading with FINALTOAU without FINALTOAU’s prior written approval personally and/or via a third party we shall consider all the trading to be irregular or illegal trading. In such circumstances the relevant associate/former business associate’s Account(s) will be closed and all open Transactions shall be Closed Out immediately and any funds held within the Account shall be held by FINALTOAU pending a thorough investigation of the matter.

**n) Disabling and Cancelling Deposits**

We have the right not to accept funds deposited by you and/or to cancel your deposits in the following circumstances

- I. if you fail to provide FINALTOAU with any documents it requests from you either for client identification and verification purposes or for any other reason;
- II. if FINALTOAU suspects or has concerns that the submitted documents may be false;
- III. if FINALTOAU suspects you are involved in illegal or fraudulent activity;

In case of cancelled deposits, and if there is not a confiscation of your funds by a supervisory authority on the grounds of money laundering suspicion or for any other legal infringement, your funds will be returned to the bank account from which they were initially received.

**o) Absolute Discretion**

FINALTOAU may refuse to accept an order, adjust an order, cancel an order, adjust an executed trade, cancel an executed trade or terminate this Agreement at any time by giving you notice as soon as practicable.

**p) Adjustments on CFDs where the Underlying Asset is a Share**

You acknowledge that if you hold an open CFD Transaction you have no ownership of the Underlying Asset or any rights attaching to ownership.

Notwithstanding you do not own the Underlying Asset, if you buy a CFD where the Underlying Asset is a share in a company you will hold a "long" CFD and your Account will be credited with an amount equal to the gross dividend on the relevant number of the CFDs as soon as practical, typically on the Business Day after the ex-dividend date. However, you agree and acknowledge such CFDs do not confer rights to any dividend imputation credits.

Conversely, if you sell a CFD where the Underlying Asset is a share in a company i.e. you will hold a "short" CFD and agree and acknowledge your Account will be debited by an amount equal to the gross dividend on the relevant number of the CFDs on the ex-dividend date.

Where the Underlying Asset of a CFD is a share in a company and if there is a corporate action by that company, you agree and acknowledge FINALTOAU may, in its discretion, make an adjustment to the terms of your CFD Transaction. For example, an adjustment will ordinarily be made by FINALTOAU for:

- subdivisions or splits;
- consolidations;
- reclassifications of shares;
- bonus issues;
- other issues of shares for no consideration;
- rights issues;
- buy backs;
- in specie distributions;
- takeovers;
- schemes of arrangement or similar corporate actions;



- a corporate action event that has a dilutive or concentrative effect on the market value of the shares;
- any other event in respect of which FINALTOAU (in its absolute discretion) decides an adjustment is appropriate.

You agree and acknowledge FINALTOAU has a discretion to determine the extent of the adjustment and has the right to decide to make an adjustment in any circumstance where we consider an adjustment is appropriate. Our discretion in this regard will be exercised reasonably in an effort to place you substantially in the same economic position that you would have been in had the adjustment event not occurred.

FINALTOAU may elect to change margin requirements, re-price or Close Out a position (without prior notice to you) if the Underlying Asset of the CFD (being a share) is the subject of a take-over offer, scheme of arrangement or other mechanism for change in control, or if FINALTOAU otherwise determines in its absolute discretion that it is not reasonably practicable to make an adjustment. The closing price will then be the price reasonably determined by FINALTOAU to be the market value of the underlying asset.

Notwithstanding the foregoing, FINALTOAU reserves the right to close all open positions relating to the underlying asset before the occurrence of a corporate action.

#### **q) Trading in Underlying Assets which have been Suspended or Halted**

An Underlying Asset may be suspended, delisted or subject to a trading halt on the relevant Exchange (or other market). In such circumstances, you acknowledge and agree that FINALTOAU may, in its absolute discretion, cancel any order which has not been executed, re-priced, changed margin requirements for or Closed Out.

Should FINALTOAU exercise its discretion to Close Out any open Transaction it will also exercise its discretion to determine a price or value. You acknowledge that FINALTOAU's discretion is unfettered and so has no condition or qualification. Our discretion in determining a price or value will be exercised reasonably. You acknowledge you have the risk of relying on whatever price or value is determined by FINALTOAU.

If the Underlying Asset is a security (share) which ceases to be quoted on the relevant Exchange or is suspended from quotation for three consecutive Business Days on that Exchange, or such lesser period agreed between you and FINALTOAU, you acknowledge and agree that FINALTOAU has a discretion to Close Out your open Transaction at a price determined in FINALTOAU's unfettered discretion.

#### **r) Online Trading Account Archiving**

If we do not record any activity in your Trading Account during a continuous period of three (3) months and you have an account balance of zero, your Trading Account and all its history will be archived on our trade server.

If you wish to keep using your Trading Account or restore it in the future, please contact us at [cs@finalto.com](mailto:cs@finalto.com).

## **10. ONLINE TRADING PLATFORM TERMS**

### **a) Scope**

These Clauses apply to your use of any Online Trading Platform provided by FINALTOAU.

### **b) Access and Trading Hours**

Once you have gone through the security procedures associated with the relevant Online Trading Platform provided by

us, you will get access to such Online Trading Platform, unless agreed otherwise or stated on our website. All references to FINALTOAU's hours of trading are in Greenwich Mean Time ("GMT") using 24-hour format. Our Online Trading Platforms will normally be available continuously, every week, excluding cases where the market in the Underlying Asset is closed. Please consult our website for more details on operating times for each financial product we offer.

We reserve the right to suspend or modify the trading hours at our discretion. Our website will be updated in order to inform you accordingly. We may change our security procedures at any time and we will inform you of any new procedures that apply to you as soon as possible.

Notwithstanding anything to the contrary, you may only open or close a CFD position during the trading hours of the market of the underlying financial instrument of the CFDs and subject to the relevant market being made available by us for trading. You will not be able to place orders or close your positions outside of the hours in which the relevant market is open for trading, unless we advise you accordingly and based on the terms and conditions we may set in such cases. CFD Orders that you place may only be executed during our business hours and when those hours coincide with the trading hours of the regulated market on which the underlying financial instruments are traded on.

CFDs in cryptocurrencies shall be typically available for trading through our Online Trading Platforms, from 23:00 GMT on Sunday until 22:00 GMT on Friday provided the underlying exchange from where we draw relevant price feeds operate.

You may only open a position during the trading hours of the market of the underlying Financial Instrument of the CFDs and subject to the relevant Market being made available by us for trading and any trading limits and any minimum/maximum trade sizes which we may impose in accordance with the provisions of this Agreement. We advise you accordingly and based on the terms and conditions that, as a derogation from this, you will be able to place orders outside of the hours in which the relevant market is open for trading.

You will not be able to close positions outside of the hours in which the relevant market is open for trading. However, we advise you accordingly and based on the terms and conditions that you may place pending orders during Out of Trading Hours. These orders will stay inactive and may be changed until the trading hours and will be executed in the hours in which the relevant market is open for trading. We reserve the right to change these terms by amending this agreement.

#### **c) Electronic Order entry for Market Orders equals Order Execution**

To enter an online order, you must access the appropriate instrument, then click on "BUY" or "SELL" for the relevant product. A confirmation of execution occurring is contained within the order blotter. Orders may fail for several reasons including changing quoted prices, insufficient funds to meet Initial Margin, unspecified trade size or unanticipated technical difficulties.

#### **d) Restrictions on services provided**

There may be restrictions on the number of Transactions that you can enter into on any one day and also in terms of the total value of those Transactions when using an Online Trading Platform. Please refer to our website for details of the limits imposed upon Transactions carried out through our Online Trading Platform.

#### **e) Access requirements**

You acknowledge and agree you will be responsible for providing the computer or other electronic device to enable you

to use an Online Trading Platform offered by FINALTOAU.

**f) Virus detection**

You acknowledge and agree you will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.

**g) Use of information, data and software**

In the event that you receive any data, information or software via an Online Trading Platform other than that which you are entitled to receive pursuant to this Agreement, you acknowledge and confirm you will immediately notify us and will not use, in any way whatsoever, such data, information or software.

**h) Maintaining standards**

When using a computer or other electronic device, you acknowledge and agree you must:

- I. ensure that such computer or other electronic device is maintained in good order and is suitable for use with our Online Trading Platform;
- II. run such tests and provide such information to us as we shall reasonably consider necessary to establish that the computer or other electronic device satisfies the requirements notified by us to you from time to time;
- III. carry out virus checks on a regular basis;
- IV. inform us immediately of any unauthorised access to an Online Trading Platform or any unauthorised Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and
- V. not at any time leave the computer or other electronic device from which you have accessed such Online Trading Platform or let anyone else use the computer or other electronic device until you have logged off the FINALTOAU Online Trading Platform.

**i) System defects**

In the event you become aware of a material defect, malfunction or virus in your computer or other electronic device or in an Online Trading Platform, you acknowledge and confirm you will immediately notify us of such defect, malfunction or virus and cease all use of such computer or other electronic device until you have received permission from us to resume use.

**j) Intellectual Property**

- I. all rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to our Online Trading Platform remain vested in us or our licensors.
- II. you will not copy, interfere with, tamper with, alter, amend or modify our Online Trading Platform or any part or parts thereof unless expressly permitted by us in writing.
- III. you will not reverse compile or disassemble our Online Trading Platform, nor purport to do any of the same or

permit any of the same to be done, except in so far as such acts are expressly permitted by law.

- IV. any copies of our Online Trading Platform made in accordance with law are subject to this Agreement. You shall ensure that all the licensor's trademarks and copyright and restricted rights notices are reproduced on these copies. You shall maintain an up-to-date written record of the number of copies of our Online Trading Platform made by you. If we so request, you shall as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of our Online Trading Platform.

**k) Liability and Indemnity**

Without prejudice to any other terms of this Agreement, relating to the limitation of liability and provision of indemnities, you acknowledge and agree the following Clauses shall apply to our Online Trading Platform:

**(a) System errors**

We shall have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You acknowledge that access to an Online Trading Platform may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to an Online Trading Platform for this reason.

**(b) Delays**

Neither we nor any third-party software provider accept any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Online Trading Platform.

We do not accept any liability in respect of any delays, inaccuracies or errors in prices quoted to you if these delays, inaccuracies or errors are caused by third-party service providers with which we may collaborate.

We shall not be obliged to execute any instruction which has been identified that is based on errors caused by delays of our Online Trading Platform to update prices provided by the related-party service providers. We do not accept any liability towards executed Transactions that have been based on and have been the result of delays as described above.

**(c) Misquotes/ Mispricing**

It is possible, that a transaction may be performed at the wrong price due to a price feed misquote from any of our third-party liquidity providers or through an unexpected technical fault. Equally, there may be delays due to internet connection or occasions where a position is opened or closed, based on latent prices that do not reflect the correct market prices at the time of transaction, resulting in an inaccurate profit or inaccurate loss.

Such events may affect your transactions and our business. In this case, we will take all the necessary measures to remedy and rectify the situation fairly on a case-by-case basis. Remedies include correcting deal entry prices or exit prices according to the correct market rates at the time of transaction. We may need to cancel any transaction(s) executed incorrectly due to a price misquote, open the position again at the correct market price and/or make an adjustment (either positive or negative) to your account. We will make our best efforts to contact you and inform you of our actions, by telephone or by e-mail.

**(d) Viruses from an Online Trading Platform and Unauthorised Use**

We shall have no liability to you (whether in contract or in tort, including negligence) for any loss, liability or cost whatsoever from any unauthorised use of our Online Trading Platform and in the event that any viruses, worms, software bombs or similar items are either introduced into our computer system or network or introduced into your computer or other electronic device via an Online Trading Platform or any software provided by us to you in order to enable you to use our Online Trading Platform, provided that we have taken reasonable steps to prevent any such introduction. You shall indemnify us on demand for any loss that we suffer arising as a result of any such introduction. You shall also, on demand, indemnify, protect and hold us harmless from and against all losses, liabilities, judgments, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using an Online Trading Platform with your designated passwords, whether or not you authorised such use.

**(e) Underlying Markets**

We shall not be liable for any act taken by or on the instruction of an Exchange, clearing house or regulatory body.

**(f) Suspension or permanent withdrawal with notice**

We may suspend or permanently withdraw an Online Trading Platform, by giving you 24 hours written notice.

**(g) Immediate suspension or permanent withdrawal**

We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use any Online Trading Platform, or any part thereof, without notice, where we consider it necessary or advisable to do so, for example due to your non-compliance with the Applicable Regulations, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of security. In addition, the use of an Online Trading Platform may be terminated automatically, upon the termination (for whatever reason) of:

- I. any license granted to us which relates to our Online Trading Platform; or
- II. this Agreement.

**11. CLIENT MONEY****a) FINALTOAU Accounts**

All money deposited into your account by you or a by person acting on your behalf, or which is received by FINALTOAU on your behalf, will be held by FINALTOAU pursuant to the Corporations Act. To ensure FINALTOAU complies with its obligations under the Corporations Act, ASIC regulatory guidance and the ASIC Client Money Reporting Rules, which requires it to comply with various record-keeping, reconciliation and reporting obligations in relation to sophisticated client money held in FINALTOAU's accounts. FINALTOAU must:

- Keep records of sophisticated client money received and retain such records for 7 years;

- Perform a daily and monthly reconciliation of sophisticated client money on FINALTOAU's accounts with the actual sophisticated client money;
- Notify ASIC within 5 business days if FINALTOAU identifies a breach of the ASIC Client Money Reporting Rules or if a discrepancy is identified by the reconciliation;
- Lodge with ASIC an annual director's declaration and an external auditor's report on FINALTOAU's compliance with the ASIC Client Money Reporting Rules within 4 months of the end of FINALTOAU's financial year; and
- Establish, implement and maintain policies and procedures designed to ensure FINALTOAU's compliance with the ASIC Client Money Reporting Rules.

For money deposited in our FINALTOAU's accounts, you should be aware that, with the exception of clients that open the Separate Segregated Bank Account type described below, all other clients' funds are co-mingled into one bank account i.e. all client money, regardless whether it is wholesale or retail client money is co-mingled or mixed with other client money and is pooled into one bank account.

FINALTOAU may, pursuant to the Section 981 of the Corporations Act and Regulatory Guide 212, make payments out of FINALTOAU's account in the following circumstances:

- making a payment to, or in accordance with the written direction of, a person entitled to the money;
- defraying brokerage and other proper charges in the operation of your Account;
- paying FINALTOAU money to which it is entitled;
- making a payment that is otherwise authorised by law or pursuant to the operating rules of licensed market; and
- as otherwise permitted under the Terms and Conditions or any other agreement put in place between you and FINALTOAU.

Additionally, FINALTOAU is entitled to keep interest earned on FINALTOAU's account.

Subject to the Australian Client Money Rules, you acknowledge and agree that we have the right to use client monies provided by you to meet margins, deposits, fees, transaction settlements, hedging or other costs which may be immediately forwarded out of FINALTOAU's account by FINALTOAU to our licensed third party clearing and execution providers or other hedging counterparties, and applied against your margin, exchange, fee and settlement obligations. Client monies which are held in our accounts in accordance with the Corporations Act may be forwarded to licensed third-party providers for the purposes of margining, guaranteeing, adjusting or settling dealings in derivatives by TTMAU. Sophisticated investor funds will not be used for the purpose of margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by TTMAU or on behalf of people other than the client.

Client money will not be used by the company for its internal purposes such as working capital. Money lodged or deposited with us to meet Margin requirements are not treated as funds belonging to FINALTOAU but are treated as funds belonging to the clients.

Client monies may not be insulated from a default in our FINALTOAU's account and therefore, assets in the FINALTOAU's account belonging to non-defaulting Clients are potentially at risk even though they did not cause the default. If there were to be a deficit in the overall FINALTOAU's accounts, and in the event that FINALTOAU became insolvent before we could make up that deficit, you would be an unsecured creditor with respect to your share of the amount of the deficit in the FINALTOAU's accounts. If we were to become insolvent as an unsecured creditor, you would need to submit to the liquidator appointed proof of the balance of our debt to you, as evidenced by your Account statements.

FINALTOAU does not accept payments from or make payments to any third parties. In accordance with Australian Anti-Money Laundering and Counter Terrorism Financing regulations, FINALTOAU reports, where necessary, any suspicious transactions to AUSTRAC.

FINALTOAU is entitled to retain all interest earned on client moneys held in segregated accounts with a bank or approved deposit-taking institution. The rate of interest earned by FINALTOAU on this account is determined by the provider of the deposit facility.

**b) Client monies to which FINALTOAU is entitled**

Where you incur a liability to FINALTOAU through an unrealised or realised loss or you incur FINALTOAU fees and charges, or otherwise then at the time that liability is incurred, FINALTOAU becomes entitled to the amount of funds held in your FINALTOAU's account equivalent to the value of the loss or fees and charges.

## **12. MARGINING ARRANGEMENTS**

**a) Margin call**

You acknowledge and agree that FINALTOAU has the right to Close Out open Transactions held by you without contacting you first.

**b) Opening Transactions**

Before you enter into a Transaction, FINALTOAU requires you to have sufficient funds in your Account to meet the relevant Initial Margin applicable to the FINALTOAU product. The Initial Margin requirement is set by FINALTOAU, calculated as a percentage of the full-face value of the relevant FINALTOAU product and available via the Online Trading Platform. FINALTOAU may amend the amount of Initial Margins from time to time in our sole and absolute discretion.

If you wish to open a Transaction and you do not have sufficient funds (or Equity) in your Account to meet the Initial Margin, our Online Trading Platform will not allow the order or Transaction to be processed.

**c) Tiered margin model**

A tiered margin model is available to clients and might affect the required margin for your position. As the volume per instrument increases, the margin required for the position will increase accordingly which means that accordingly the leverage will decrease for the volume falling within the next tier. This is applied in an independent manner per instrument, so that if you have open positions across multiple instruments, the margin will be calculated separately for each.

**d) Maintaining Open Transactions**

If there is an adverse movement in the value of a Transaction we will require additional funds from you to cover the amount of the adverse movement and to supplement the Initial Margin. This means, in order for you to continue to hold

open Transactions you must maintain sufficient funds or Equity in your Account to cover the Initial Margin and the value of any adverse market movements (generally known as maintenance margin).

You acknowledge that you may be required to deposit a substantial additional sum at short notice to maintain your Margin balances at a sufficient level to cover adverse price movements (i.e. unrealised losses). This means you may be subject to a Margin Call to pay additional Margin if there are insufficient funds in your Account or you have insufficient Equity.

If you do not maintain your sufficient equity in your account, FINALTOAU may in its entire discretion and without further notice, Close Out all of your open positions unless additional funds are deposited into the Account or the market moves such that the account value returns above the minimum Margin Level.

You acknowledge that if you do not maintain sufficient funds to meet the Margin requirements to maintain an open Transaction(s) your open Transaction will be Closed Out by FINALTOAU.

We will take reasonable steps to notify you before we Close Out your open position(s) and Margin Calls may be made by notification via our Online Trading Platform.

FINALTOAU may attempt to provide you with sufficient notice of Margin Calls to enable you to meet them. However, in certain market conditions such as extreme volatility this may not be possible, and funds will need to be deposited with us to retain your open Transaction.

You acknowledge and agree that it is your responsibility to actively monitor and manage your Transactions and your obligations, including ensuring that you maintain sufficient funds to meet Margin requirements to maintain your open positions.

**e) Margin Call Notification**

If your Margin Level is 100% or greater, we are entitled in our complete discretion to close all open positions on your Account and cancel all Orders:

- I. We can close your open positions and cancel all Orders with or without giving you notice. If we do so without giving notice, we will inform you in our Online Trading Platform that we have done so.
- II. FINALTOAU is not obligated to tell you if your account is close to liquidation. However, as a courtesy, FINALTOAU may attempt to send you a Margin Call notification when the Margin Level reaches 100%.

It is your sole responsibility to ensure that you monitor your Margin Level. You must ensure that you log into the trading platform on a regular basis to monitor your Equity and any relevant notifications and that you maintain an email address at all times and keep us up to date and informed of your current email address. FINALTOAU will not use any other means of communication to tell you when your account reaches these margin levels.

- III. Margin Level is a percentage calculated as follows:

(Used Margin divided by Total Equity) multiplied by 100. For calculation purposes, all relevant figures will be converted into your Base Currency.



- IV. You must monitor your Account, and all relevant factors, so that you know the current Margin Level, Equity and whether or not your account is at risk of being liquidated.

**f) Liquidation**

FINALTOAU reserves its rights, in its entire discretion, to Close Out any or all of your open Transactions where a Margin Call has not been met or Margin Level increases beyond 100% due to adverse price movements, without prior notification to you.

When a Margin Call is not met by you by lodging additional funds or Closing Out some or all of your open Transactions and the Margin Level increases to 100%, you acknowledge and agree that our Online Trading Platform may automatically identify which open Transactions are in an unrealised loss position and in our entire discretion, Close Out the open Transactions with the largest unrealised loss first and continue Closing Out open Transactions with the next highest unrealised loss, until additional funds are deposited or the market moves such that the Margin Level is below 100%.

At this stage, no further automated notifications will be made to clients informing them that some or all of their open Transactions have been Closed Out. Clients will be able to see which of their open Transactions have been Closed Out by logging into their Account on our Online Trading Platform.

### **13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**a) Representations and Warranties**

You represent and warrant to us on the date this Agreement comes into effect and as of the date of each Transaction that:

- I. You understand that this client agreement constitutes a legal, valid and binding contract;
- II. You are a wholesale client as defined under sections 761G and 761GA of the Corporations Act 2001 (Cth);
- III. You understand that, as a wholesale client, you are not entitled to many of the statutory protections available to retail clients;
- IV. The information relied upon by FINALTOAU in making the wholesale client assessment that you have provided is complete and accurate and will remain so;
- V. You understand and acknowledge that you have an obligation to inform FINALTOAU as soon as practicable if any of the information or factors relied upon by FINALTOAU in making the wholesale client assessment changes;
- VI. you have all necessary authority, powers, consents, licenses and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and such Transaction and to grant the powers referred to in this Agreement;
- VII. the persons accepting this Agreement and each Transaction have been duly authorised to do so and are disclosed to us giving details of the relationship with you by providing all necessary information and/or documentation;

- VIII. this Agreement, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
- IX. If you choose to use an Expert Advisor, or Auto Trading or have a power of attorney on your account, you do so at your own risk and are solely responsible for the conduct and the liabilities on your account caused directly or indirectly by the use of the Expert Advisor, Auto Trading, agent or attorney;
- X. no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default (a "Potential Event of Default") has occurred and is continuing to occur with respect to you;
- XI. you act as principal and sole beneficial owner (but not as trustee) in accepting this Agreement and each Transaction and in case you wish to open, either in the present time or in the future, more than one Account with FINALTOAU either as individual client (natural person) or as the beneficial owner of a corporate client or trust (legal person) it is required to immediately disclose to us that you are the beneficial owner of the Account(s) during the account opening procedure and to provide us with the necessary information and/or documentation regarding the relationship between the natural and/or legal person(s);
- XII. any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;
- XIII. you are willing and financially able to sustain a total loss of funds deposited in your Account and those funds resulting from Transactions;
- XIV. you are not insolvent, and if you are a corporate client, no resolution has been passed and no petition has been presented or order made for your winding up or liquidation or the appointment of a receiver or a receiver and manager or an administrator or other insolvency official to you or any of its assets;
- XV. trading in Transactions is suitable for you; and
- XVI. except as otherwise agreed by us, you are the sole beneficial owner of all funds you transfer to your Account under this Agreement.

**b) Covenants:**

You covenant to us:

- I. you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licenses and authorisations referred to in this Clause;
- II. you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself;
- III. you will use all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and any Transaction, so far as they are applicable to you or us;

- IV. you will not send orders or otherwise take any action that could create a false impression of the demand or value for a financial product. Nor will you send orders which we have reason to believe are in breach of Applicable Regulations or by taking advantage of the Account(s) you may maintain with FINALTOAU could be considered as irregular or illegal trading, including but not limited to one's intention to benefit from delays in the prices or to abuse out Online Trading Platform at manipulated prices; and
- V. upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this Clause or to comply with any Applicable Regulations.

## **14. EVENTS OF DEFAULT**

The following shall constitute Events of Default.

### **a) Failure to Comply**

You fail to make any payment when due under this Agreement or you perform any act or omission in breach of any other provision of this Agreement and such failure continues for one Business Day after notice of non-performance has been given by us to you.

### **b) Liquidation, Insolvency and Other Arrangements**

- I. You commence a voluntary or other procedure seeking or proposing liquidation, re-organisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each a " Representative") of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing, and in the case of a re-organisation, arrangement or composition, we do not consent to the proposals;
- II. An involuntary or other procedure is commenced against you seeking or proposing liquidation, re-organisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a Representative of you or any substantial part of your assets and such involuntary case or other procedure either:
  - a. has not been dismissed within five Business Days of its institution or presentation; or
  - b. has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure.

### **c) Death or Mental Illness**

If FINALTOAU forms the belief that you have died, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your

property, undertaking or assets (tangible and intangible).

**d) Third-Party Providers**

- I. You or any Third-Party Provider (or any Representative acting on behalf of either of you or a Third-Party Provider) disaffirms, disclaims or repudiates any obligation under this Agreement or any other document containing an obligation of a Third-Party Provider, or of you, in favour of us supporting any of your obligations under this Agreement;
- II. Any Third-Party Provider fails, or you yourself fail to comply with or perform any agreement or obligation to be complied with or performed by you or it in accordance with the applicable documents;
- III. Any representation or warranty made or given or deemed made or given by any Third-Party Provider pursuant to any document that proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
- IV. Any event referred to in Clause 14 (Event of Default) occurs in respect of any Third-Party Provider.

**e) False or Misleading Information**

Any representation or warranty made or given or deemed made or given by you under this Agreement or any document that proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given.

**f) Expiry of Documents**

Any document that expires or ceases to be in full force and effect prior to the satisfaction of all your obligations under this Agreement, unless we have agreed in writing that this shall not be an Event of Default.

**g) Miscellaneous**

- I. We consider it necessary or desirable for our own protection, or any action is taken or event occurs which we consider might have a material adverse effect upon your ability to perform any of your obligations under this Agreement;
- II. You fail or omit to disclose to us your capacity as the beneficial owner of more than one Account you may maintain with us;
- III. We form the opinion that your account is or you intend to involve your account in front running, insider trading, market manipulation, fraud or other criminal activity; and
- IV. Any event of default (however described) occurs in relation to you under any other agreement between us.

## **15. CLOSING OF ACCOUNT**

**a) Liquidation Date**

Subject to the following sub-Clause, at any time following the occurrence of an Event of Default, we may, by notice to you, specify a date (the "Liquidation Date") for the termination and liquidation of Transactions in your Account accordance

with this Clause.

This Agreement may be terminated immediately under this clause by the Client or FINALTOAU by notice to the other in writing. 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. Unless the termination is due to:

- I. the Client providing false or misleading information to FINALTOAU; or
- II. that the Client has participated or is participating or has assisted or is assisting in money laundering or terrorist financing; or
- III. that the Client is being officially investigated by law enforcement and/or regulatory agencies

in which case, FINALTOAU 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 FINALTOAU.

**b) Automatic termination**

The date of the occurrence of any bankruptcy default shall automatically constitute a Liquidation Date, without the need for any notice by us and the provisions of the following sub-Clause shall then apply.

**c) Calculation of Liquidation Amount**

In calculating the amount available for withdrawal, FINALTOAU will take into consideration the balance in the Account and the balance in any other Account maintained by you with FINALTOAU after all open Transactions have been Closed Out by FINALTOAU at prices determined by it at its discretion ("Liquidation Amount").

Without prejudice to any rights of FINALTOAU under this Agreement, FINALTOAU shall transfer the Liquidation Amount (if any, and as determined by FINALTOAU in its sole discretion), less any applicable bank or other transfer fees, according to the client's instructions or the instructions of the client's representative within seven (7) Business Days from the date of receipt of the applicable written instruction. For the avoidance of doubt any such transfer by FINALTOAU is subject to (i) applicable laws and regulations including but not limited to anti-money laundering, tax authorities' requirements for deduction at source and exchange control foreign currency transfer restrictions; and (ii) you providing full identification documentation as required by FINALTOAU.

**d) Other Transactions**

Where termination and liquidation occurs in accordance with this Clause 15, we shall also be entitled, at our discretion, to terminate and liquidate by Closing Out, in accordance with the provisions of this Clause, any other open Transactions entered into between us which are then outstanding in our absolute discretion.

**e) Base Currency**

For the purposes of any calculation hereunder, we may convert amounts denominated in any other currency into the base currency of the Account at such exchange rate prevailing at the time of the calculation as we shall reasonably determine.

**f) Payments**

The Liquidation Amount shall be paid by the close of business on the Business Day following the completion of the termination and liquidation under this Clause (converted as required by applicable law into any other currency, any costs of such conversion to be borne by you, and (if applicable) deducted from any payment to you).

Unless a Liquidation Date has occurred or has been effectively set, we shall not be obliged to make any payment scheduled to be made by us under a Transaction for as long as an Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination hereunder, or any combination thereof) an Event of Default with respect to you has occurred and is continuing.

**g) Additional rights**

Our rights under this Clause shall be in addition to, and not in limitation or exclusion of, any other rights which we may have (whether by agreement, operation of law or otherwise).

**h) Single Agreement**

This Agreement, the particular terms applicable to each Transaction entered into under this Agreement, and all amendments to any of them shall together constitute a single agreement between us. We both acknowledge that all Transactions entered into on or after the date this Agreement takes effect are entered into in reliance upon the fact that the Agreement and all such terms constitute a single agreement between us.

**16. RIGHTS ON DEFAULT**

In an Event of Default or at any time after we have determined, in our absolute discretion, that you have not performed (or we reasonably believe that you will not be able or willing in the future to perform) any of your obligations to us we shall be entitled, without prior notice to you:

- I. to pay to you the fair market value of open Transactions at the time we exercise such right;
- II. to Close Out any of your Transactions, as we may in our absolute discretion select or upon such terms as we may in our absolute discretion think fit (without being responsible for any loss or diminution in price) in order to realise funds sufficient to cover any amount due by you hereunder;
- III. to Close Out any Transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate to cover, reduce or eliminate our loss or liability under or in respect of any of your Transactions; and/or
- IV. to cancel and/or consider void any Transactions and profits or losses either realised or unrealised and/or to close the Account(s) you maintain with us pursuant to this Agreement, immediately and without prior notice.

**17. TERMINATION WITHOUT DEFAULT****a) Termination**

Unless required by Applicable Regulations, either party may terminate this Agreement (and the relationship between us) by giving thirty (30) Business Days written notice of termination to the other. Termination of this Agreement is only permitted when all open Transactions have been Closed Out by either you or us.

All amounts payable by you to us will become immediately due and payable including (but without limitation):

- I. all outstanding fees, charges and commissions;
- II. any dealing expenses incurred by terminating this Agreement; and
- III. any losses and expenses realised in Closing Out any Transactions.

FINALTOAU will Close Out all positions at our discretion where you have not provided FINALTOAU with specific instructions regarding the Closing Out of your open Transactions by the specified dates.

FINALTOAU shall return any funds remaining in your Account to your bank account to the account from which the funds were received.

**b) Existing rights**

Termination shall not affect the outstanding rights and obligations which shall continue to be governed by this Agreement and the particular Clauses agreed between us until all obligations have been fully performed.

**18. EXCLUSIONS, LIMITATIONS AND INDEMNITY**

**a) General Exclusion**

Neither we, nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses, incurred or suffered by you under this Agreement (including any Transaction or where we have declined to enter into a proposed Transaction) unless such loss is arising directly from our negligence, willful misconduct or fraud. In no circumstance shall we have liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with this Agreement, whether arising out of negligence, breach of contract, misrepresentation or otherwise.

**b) Tax implications**

Without limitation, we do not accept liability for any adverse tax implications of any Transaction whatsoever.

**c) Changes in the values of the Underlying Assets**

Market orders are executed at the bid/ask prices offered through us. Pending or conditional orders (such as stop-loss, limit etc.) are executed at the price requested by you and offered by us. We reserve the right, at our full discretion, not to execute the order, or to change the quoted price of the financial product, or to offer you a new quote, in case of technical failure of our Online Trading Platform or in case of extraordinary or abnormal fluctuations of the price of the Underlying Asset as offered in the market. In the event we offer you a new quote, you have the right to either accept it or refuse it and thus cancel the order.

Without limitation, we do not accept any liability by reason of any delay or change in market conditions of the Underlying Asset before any particular order is executed resulting in a Transaction.

**d) Limitation of Liability**

We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any cause beyond our reasonable control, including without limitation any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any

governmental or supranational bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, Exchange, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Nothing in this Agreement will exclude or restrict any duty or liability we may have to you under Applicable Regulations, which may not be excluded or restricted thereunder.

**e) Responsibility for orders**

You will be responsible for all orders entered on your behalf via our Online Trading Platform and you will be fully liable to us for the settlement of any Transaction arising from it.

**f) Entire Agreement**

You acknowledge that you have not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. We will not be liable to you (in Equity, contract or tort) for a representation that is not set out in this Agreement and that is not fraudulent.

**g) Indemnity**

You shall pay to us such sums as we may from time to time require on a full indemnity basis, including paying sums for any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which we may incur or be subjected to with respect to any of your Accounts or any Transaction or as a result of any misrepresentation by you or any violation by you of your obligations under this Agreement (including any Transaction) or by the enforcement of our rights.

**h) Third-Party Providers**

FINALTOAU shall not be liable to you in contract, tort or otherwise by reason of the partial, full, temporary or permanent failure of any third-party providers, including but not limited to API clients and bridge software providers.

**19. FORCE MAJEURE**

We may, in our reasonable opinion, determine that an emergency or an exceptional market condition exists (a "Force Majeure Event"). If this occurs, we will, in due course, take reasonable steps to inform you (verbally or in writing). A Force Majeure Event will include, but is not limited to, the following:

- a)** any act, event or occurrence (including without limitation any strike, riot or civil commotion, act of terrorism, war, industrial action, acts and regulations of any governmental or supra national bodies or authorities) that, in our opinion, prevents us from maintaining an orderly market in one or more of the Financial Products in respect of which we ordinarily deal in;
- b)** the suspension or closure of any market or the abandonment or failure of any event on which we base, or to which we in any way relate, our quote, or the imposition of limits or special or unusual terms on the trading in any such market or on any such event;
- c)** the occurrence of an excessive movement in the level of any position and/or the Underlying Market or our anticipation (acting reasonably) of the occurrence of such a movement;
- d)** any breakdown or failure of transmission, communication or computer facilities, interruption of power supply, or



electronic or communications equipment failure; or

- e) failure of any relevant supplier, intermediate broker, agent or principal of ours, custodian, sub-custodian, dealer, exchange, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations.

If we determine that a Force Majeure Event exists, we may, at our absolute discretion, without notice and at any time, take one or more of the following steps;

- a) increase your Margin Requirements;
- b) close all or any of your open positions at such Closing Price as we reasonably believe to be appropriate;
- c) suspend or modify the application of all or any of the terms of this Agreement to the extent that the Force Majeure Event makes it impossible or impracticable for us to comply with the Agreement;
- d) Cancel pending orders, void past transactions, re-price open positions or terminate this Client Agreement; or
- e) alter the Last Trading Time for a particular position.

## **20.PRIVACY**

In providing financial services, FINALTOAU is required to collect personal information about you and you will need to confirm your agreement in relation to the handling of such personal information. If you do not comply with the requested personal information or agree to our handling of such information detailed in this Client Agreement, FINALTOAU may be unable to provide services outlined in this Client Agreement to you.

You must ensure that all information provided to FINALTOAU is accurate and up-to-date at all times. Any changes must be reported to FINALTOAU as soon as practicable.

FINALTOAU has systems and processes in place which addresses privacy requirements. Our Privacy Policy is available on our website should you require further information about how and why FINALTOAU collects, stores and handles information.

You authorise FINALTOAU to collect, use, store or otherwise process any personal information which enable FINALTOAU to provide and/or improve its services. This may, on occasion, require the disclosure of personal information to our related entities, agents and service providers.

## **21.MISCELLANEOUS**

### **a) Notices**

Unless otherwise agreed, all notices, instructions and other communications to be given by us under this Agreement shall be given to the postal address, email address or fax number provided by you to us. Likewise, all notices, instructions and other communications to be given by you under this Agreement shall be given to us in writing at the address below:

### **b) Our Details**

You can contact us by the following means:

Telephone: + 612 6145 2020

Mail: Level 36, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000, Australia

Email: [cs@finalto.com](mailto:cs@finalto.com)

Complaints: [cs@finalto.com](mailto:cs@finalto.com)

Visit our website: [liquidity.finalto.com/au](https://liquidity.finalto.com/au)

You will notify us of any change of your address for the receipt of notices, instructions and other communications immediately.

#### **c) Electronic Communications**

Subject to Applicable Regulations, any communication between us using electronic signatures and any communications via our website and/or Online Trading Platform shall be binding as if they were in writing and shall be treated as satisfying any legal requirement that a communication should be signed and in writing, to the extent permitted by applicable law. Orders or instructions given by you to us via e-mail or other electronic means will constitute evidence of the orders or instructions given.

#### **d) Recording of calls**

We may record telephone conversations without use of a warning tone to ensure that the material terms of the order and the Transaction, and any other material information relating to the order or the Transaction, is promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of the orders or instructions given.

#### **e) Our records**

Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any legal proceedings. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion and subject to our privacy policy.

#### **f) Your records**

You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such orders are submitted. You can access your statements online at any time (subject to systems maintenance and any technical issues) via our Online Trading Platform. You may request to receive your statement monthly or quarterly via email, by providing such a request to [cs@finalto.com](mailto:cs@finalto.com).

#### **g) Third-Party Rights**

This Agreement shall be for the benefit of and binding upon both us and our respective successors and assigns. You shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer your rights or obligations under this Agreement or any interest in this Agreement without our prior written consent, and any purported assignment, charge or transfer in violation of this Clause shall be void. You agree that we may, without further notice to you and subject to Applicable Regulations, transfer by whatever means we consider appropriate all or any of our rights, benefits, obligations, risks and/or interests under this Agreement to any person who may enter into a contract with us in connection with such transfer and you agree that we may transfer to such person all information which we hold about you and all open Transactions.

**h) Time of the essence**

Time shall be of the essence in respect of all obligations of yours under this Agreement (including any Transaction and satisfying a Margin Call).

**i) Rights, Discretions and Waivers**

Unless otherwise stated, we shall be under no obligation to provide the reasons behind the exercise of our rights or to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under this Agreement (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.

**j) Set-off**

Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained. For the avoidance of doubt, if you have multiple accounts, we are entitled to set off any liabilities owing to us against any account that is held in your name singly or jointly, even if the liability was not incurred on that account.

**k) Partial invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

**l) Dispute resolution**

We want to know about any problems or concerns you may have with our services so that we can take steps to resolve the issue. FINALTOAU may close out or take any other action it considers appropriate in relation to the dispute without previously notifying and/or without having received instruction from you. FINALTOAU will do its best to notify you (verbally or in writing) what action it has taken, as soon afterwards as practicable, but if it does not, the validity of its actions shall not be affected.

Initially, all complaints will be handled and investigated internally. Please note that as a wholesale client, you may not be able to complain to an external dispute resolution body.

If you have a complaint about the financial services provided to you, please contact FINALTOAU to inform us about your complaint. You may do so through our website complaint form, email or telephone. We will investigate your complaint promptly. We will try to resolve your complaint quickly and fairly.

**22. GOVERNING LAW AND JURISDICTION****a) Governing law**

This Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia.

**b) Jurisdiction**

You irrevocably agree for our benefit that the courts of New South Wales, Australia shall have jurisdiction to settle any suit, action or other proceedings relating to this Agreement ("Proceedings") and irrevocably submit to the jurisdiction of such courts (provided that this shall not prevent us from bringing an action in the courts of any other jurisdiction).

**c) Waiver of immunity and consent to enforcement**

You irrevocably waive to the fullest extent permitted by applicable law, with respect to yourself and your revenue and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from suit; jurisdiction of any courts; relief by way of injunction, order for specific performance or for recovery of property; attachment of assets (whether before or after judgment); and execution or enforcement of any judgment to which you or your revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agree that you will not claim any immunity in any Proceedings. You consent generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

**d) Service of process**

If you are situated outside Australia, process by which any Proceedings in Australia are begun may be served on you by being delivered to the address in Australia nominated by you for this purpose. This does not affect our right to serve process in another manner permitted by law.

**23. GLOSSARY OF TERMS**

In this Agreement:

"Account"

means your account with FINALTOAU established under these Terms and Conditions

"Terms and Conditions"

means these Terms and Conditions of your Account with FINALTOAU by which you and FINALTOAU deal in Transactions.

"AFS Licence"

means Australian financial services licence (No. 424008).

"Agreement" means these this client agreement, together with any Schedule(s), and accompanying documents, as amended from time to time.

"Applicable Regulations" means

- I. Corporations Act 2001 (Cth);
- II. Corporations Regulations 2001 (Cth)
- III. Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)

- IV. Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth)
- V. Australian Securities and Investments Commission Act 2001 (Cth)
- VI. ASIC Class Orders and ASIC Rules
- VII. Any other rules of a relevant regulatory authority; and
- VIII. all other applicable laws, rules and regulations as in force in Australia from time to time.

**"ASIC Rules"**

means all guidance notes, administrative notices, newsletters and other guidance published by ASIC.

**"Australian Dollar" or "\$"**

means the lawful currency of the Commonwealth of Australia.

**"Business Day"**

means a weekday which is not a gazetted public holiday in Sydney.

**"Client Money Rules"**

means the rules specified in the Applicable Regulations relating to client money and other related matters, as amended from time to time.

**"Close Out, Closed Out, Closing Out"**

in relation to a Transaction mean discharging or satisfying the obligations of the parties under the Transaction and this includes:

- I. entering into an equal and opposite offsetting Transaction to match against an existing open Transaction of the same kind; and
- II. making adjustments for fees and charges.

**"Confirmation"**

means any confirmation of a Transaction issued by FINALTOAU and includes an electronically transmitted confirmation.

**"CFD"**

means a contract for difference which is a contract between you and FINALTOAU to pay in cash the difference in prices of the Transaction at the time the Transaction is opened and the time the Transaction is Closed Out or expires.

**"Corporations Act"**

means the Corporations Act 2001 (Cth).

**"Currency Pair"**

means the quotation and pricing structure of the currencies traded in the foreign exchange market whereby the value of a currency is determined by comparison to another currency. The first currency of a currency pair is called the "base currency", and the second currency is called the "term currency". The currency pair shows how much of the term currency is needed to purchase one unit of the base currency.

**“Equity”**

means the liquidating value of an Account and is calculated by deducting any unrealised losses from, and adding any unrealised profits, to the balance of the Account.

**"Event of Default"**

means any of the events of default as listed in Clause 14(a) to Clause 14(g) (Events of Default').

**“Exchange”**

means an exchange or market in which Underlying Assets are listed from time to time.

**“Execute”, “executed” or "Execution"**

means the completion of client orders on FINALTOAU's Online Trading Platform, where FINALTOAU acts as a principal to the Transaction with the client.

**"FINALTOAU"**

means FINALTO (Australia) Pty Ltd ACN 158 641 064.

**"FINALTOAU Trading Desk"**

means the trading desk operated by FINALTOAU.

**"Initial Margin"**

means the amount required to be deposited with FINALTOAU to enter a Transaction at any given time.

**"Margin"**

means the amount required to be deposited in your Account to maintain your open Transactions. This may be the Initial Margin paid to open the position or if prices have moved since the position has opened, the funds required to cover adverse price movements in relation to your open Transactions.

**“Margin Call”**

means a demand for additional funds to be deposited into your Account to meet Margin requirements because of adverse price movements against an open Transaction(s).

**"Online Trading Platform"**

means any electronic trading platforms offered by FINALTOAU to enable you to enter into Transactions.

**"OTC"**

means an over-the-counter financial product which is not traded on an Exchange.

**"Margin Level"**

means a percentage calculated as follows: (Used Margin/Total Equity) multiplied by 100.

**“Sophisticated Investor”**

has the meaning provided in s 761GA of the Corporations Act.

**"Third-Party Provider"**

means any person who has entered into any guarantee, hypothecation, agreement, margin or security agreement in our

favour in respect of your obligations under this Agreement.

**"Total Equity"**

means the aggregate of the current cash balance in your Account, taking into account all your realised profits and losses, Rollover Charges, administration charges and your unrealised profits and losses.

**"Transaction"**

means any of the kinds of OTC products offered by FINALTOAU which are traded under this Agreement.

**"Underlying Asset"**

means the thing or asset from which the CFD derives its price, include foreign exchange, shares, ETFs, indices, commodities, bonds, metals, and cryptocurrencies.

**"Used Margin"**

means the amount of money that must be maintained in your Account to ensure that you have sufficient funds to cover Initial Margin requirements and also to cover against unrealised losses on all your open Transactions at any one time.

**"Wholesale Client"**

has the meaning provided in sections 761G and 761GA of the Corporations Act.