

# Pulse Markets Client Agreement

**Pulse Markets Pty Ltd** A.C.N 081 505 268 Australian Financial Services Licence (**AFSL**) AFSL Number 220383. (**Pulse Markets, we, our, us**)

**Date of this agreement: 28 January 2019**

## Introduction

This document sets out the terms and conditions upon which Pulse Markets provides Services to you.

In this document, when we refer to “your Adviser”, we are referring to the Pulse Markets employee, or an Authorised Representative, that provides our Services to you on our behalf. Authorised Representatives are not employees of Pulse Markets, they are third parties that we have authorised to provide specified Financial Services under our AFSL on our behalf.

In order for Pulse Markets to provide some of the Services it offers, you will need to become a client of one or more third party Service Providers that are not related to Pulse Markets.

It is important that you carefully read, understand and keep for future reference:

1. these terms and conditions;
2. our Financial Services Guide;
3. our Privacy Policy;
4. any Client Agreements that you enter with one or more of our nominated Service Providers; and
5. any other Disclosure Documents provided to you.

**Part A** sets out the general terms and conditions that apply to all Services that Pulse Markets provides to Pulse Markets Clients.

**Part B** sets out the terms and conditions that apply to Advice Services, Wealth Management Services and Arranging Services.

**Part C** sets out the definitions and interpretation for terms used in these terms and conditions.

If you have any queries regarding this agreement, please speak in the first instance with your Adviser.

## PART A - General Terms and Conditions

### Important information

1. This document contains the terms and conditions that form the agreement between you and Pulse Markets in respect of the Services that Pulse Markets agrees to provide to you and on your behalf from time to time.
2. This agreement comes into effect, and you agree to be legally bound by it:
  - a. if you are an existing client as at the date of this agreement, on the date that we notify you that this agreement will come into effect (“effective date”), and from the effective date:
    - i. it will replace any prior agreement between us with respect to Services provided to you by us or on our behalf; and
    - ii. you will be deemed to have accepted its terms when you next provide your Adviser or any Pulse Markets Representative or Authorised Representative with instructions to undertake any action on your behalf; or

- b. if you make an application to become a Pulse Markets Client, on the date that we accept you as a Pulse Markets Client; and
- it remains in force until terminated in accordance with its terms, or replaced by a later version.
- 3. We may, in our sole discretion, and the Service Providers may in their sole discretion, refuse to:
  - a. accept you as a client; or
  - b. provide any Financial Service or Financial Product to you.
- 4. When we accept you as a Pulse Markets Client, you appoint Pulse Markets to provide the Services to you that you:
  - a. nominate at the time of application; or
  - b. you subsequently request, and that we agree to provide to you.

### **General Representations and Warranties**

- 5. You represent and warrant to Pulse Markets and your Adviser that:
  - a. the information you give us is complete, correct and not misleading, and we may rely on that information unless you notify us in writing that it has changed;
  - b. if you are a company, that we can rely on an ASIC company search of you as being current and valid;
  - c. if you are a body corporate, that your incorporation details are current and valid;
  - d. if you are a trustee:
    - i. you are the properly appointed trustee of the trust;
    - ii. you will be bound by these terms and conditions in both a personal capacity and in your capacity as trustee;
    - iii. you can be indemnified out of the assets of the trust for all obligations and liabilities incurred under or in connection with this agreement;
    - iv. as trustee of the trust, you have properly exercised your trust powers and have full power and authority to enter in this agreement, perform your obligations under it, and acquire the Services that you acquire as a Pulse Markets Client;
    - v. your instructions are lawful and authorised;
  - e. if you are an individual, you are over the age of 18;
  - f. the obligations and liabilities under these terms and conditions or an Additional Service Agreement apply to each person named in your application to become a Pulse Markets Client jointly and severally, and a representation, warranty or undertaking made by a joint account holder is made by each of them;
  - g. you have the legal power and right to execute contracts and other documents in relation to the Services, including for acquiring and disposing of Financial Products;
  - h. you will ratify and confirm any proper actions that your Adviser carries out based on your instructions or the instructions of someone you authorise in writing to act on your behalf; and
  - i. as soon as you become aware of an error or omission, you are responsible for taking necessary action to mitigate further loss.

### **Third Party Service Providers**

- 6. In order for Pulse Markets to provide some of the Services you will need to become a client of one or more third party Service Providers that are not related to Pulse Markets. In arranging for a third party to provide services to you, we will act as your agent, not the Service Provider's agent.
- 7. If you wish to acquire services that are provided by a Service Provider, you will need to agree to that Service Provider's terms and conditions (which may be referred to as a Client Agreement), and will also become a client of the Service Provider.
- 8. Pulse Markets may change the Service Providers used, or appoint additional Service Providers at any time.

9. If Pulse Markets nominates another Service Provider to provide services, you may need to enter into an agreement with the replacement Service Provider in order to continue to use the Services.

### **Fees and Charges and Remuneration**

10. You agree to pay the Fees and Charges for Services provided to you by Pulse Markets and your Adviser under this agreement.
11. How we are remunerated is disclosed in our Financial Services Guide, and may also be disclosed in a Statement of Advice if you receive Personal Advice.
12. If your Adviser agrees to provide Financial Product Advice or Wealth Management Services to you on an ongoing basis, we may enter into an ongoing fee arrangement with you under which you agree to pay an Ongoing Advice Fee on an ongoing basis for those Services, until:
  - a. you terminate the ongoing fee arrangement at any time by giving Pulse Markets written notice; or
  - b. if you are a Retail Client, within a Renewal Period:
    - i. you do not notify Pulse Markets whether you want the ongoing fee arrangement to be renewed and continue for another term; or
    - ii. you notify Pulse Markets that you do not want the ongoing fee arrangement to be renewed and continue for another term;
  - c. Pulse Markets or your Adviser notifies you that we will no longer provide you with the Services the subject of the ongoing fee arrangement; or
  - d. this agreement is terminated in accordance with its terms
13. Upon termination of an ongoing fee arrangement, you will be liable to pay Pulse Markets on demand any amounts remaining unpaid for:
  - a. any liability accrued for Services provided to you up to and including the date that termination takes effect; and
  - b. our reasonable costs incurred solely and directly because of the termination.

### **Client Directed Payments**

14. You may authorize, consent and direct us to make payments to our Representative(s) and/or Authorised Representative(s) for the Financial Product Advice and/or dealing services that they provide to you, by providing us with a Client Direction.
15. If a Client Direction is provided, the payments will continue in accordance with your Client Direction (or any replacement Client Direction) until the earlier of:
  - a. you giving us written notice that you no longer consent, authorize or direct for the payments to continue, in which case, we will cease making the payment as soon as reasonably practicable after receipt of the notice, and in any event, within 10 business days of receipt;
  - b. us giving you 10 business days written notice if we decide in our reasonable discretion that we will no longer facilitate the payments; and
  - c. with immediate effect upon:
    - i. us not being paid or not receiving the fees that you have directed us to pay a proportion of; or
    - ii. termination of this agreement.

### **GST**

16. Unless expressly stated otherwise, all Fees and Charges are GST inclusive, and if expressly stated otherwise, you agree to pay us the GST amount.
17. You agree to indemnify us and keep us indemnified against any applicable penalties, interest and charges in relation to GST that is paid or payable by us in providing taxable services to you, except to the extent that the penalties, interest and charges arise from or are caused by our fault.

## **Trust Funds**

18. To the extent required by the Corporations Act and subject to this agreement we will hold funds we receive on your behalf in trust for you. Pulse Markets may retain any interest paid on such funds.

## **Personal Information**

19. As a financial services provider Pulse Markets may collect, hold, use and disclose personal information about you. We are required or authorised to collect your personal information under various laws including the AML/CTF Act, the Corporations Act and the Foreign Account Tax Compliance Act (US).
20. We have an obligation under the AML/CTF Act to verify your identity before we can provide you with our Services, to protect against identity theft, money laundering and other illegal activities. We do this by collecting and verifying personal information about you such as your name, date of birth and residential address when you complete our application form. We are also required to collect such information about any persons who may be acting on your behalf.
21. You acknowledge that it is an offence under the AML/CTF Act to provide false or misleading information.
22. Depending on whether you are an individual or organization, the information we collect will vary. For example, if you are a company we may collect company registration details, as well as details of the company's shareholders or additional directors.
23. You acknowledge that the verification of your identity can be carried out in different ways, depending on where you reside.
24. Pulse Markets will treat your personal information according to our Privacy Policy which is published on the Pulse Markets Website.
25. By agreeing to these terms and conditions, you also consent that Pulse Markets may disclose the personal information obtained from you to the parties noted in our Privacy Policy.
26. We may also disclose personal information to other entities where:
  - a. it is required or allowed by law; or
  - b. you have otherwise consented.

## **Security of Login Details**

27. If Pulse Markets provides you with secure access to the Pulse Markets Website, you agree:
  - a. to keep login details confidential and not to disclose them to anyone other than an Authorised Person;
  - b. to set your password in accordance with any instructions provided and to change it regularly or when prompted;
  - c. to make reasonable efforts to maintain security over any computer through which you log in to the Pulse Markets Website.

## **Reliance on Technology**

28. You are responsible for obtaining and maintaining any necessary computer technology, such as internet connection, in order for you to:
  - a. access our Services and those provided by relevant Service Providers; and
  - b. sending and receiving emails to and from us.
29. The Pulse Markets Website, and relevant services provided by Service Providers, may be subject to outages, delays or interruptions in availability, including but not limited to hardware, software and telecommunications errors and outages. You acknowledge that Pulse Markets will not be liable for your costs or losses which arise as a consequence of such outages, delays or interruptions.

30. We make no representations or warranties as to the security of data stored either on our web server or the web servers of those engaged by us to provide any part of our Services.
31. We do not make any warranty with respect to the accuracy or currency of information provided to you by third parties, including Service Providers.

### **Email Communications**

32. We will send all notifications under these terms and conditions, and any applicable Disclosure Documents required to be given to you, to your email provided on your application form, or separately nominated by you in writing, unless you advise us in writing that you do not wish to receive them by email ('opt-out').
33. You can change your email address (or any other contact details) with us by giving written notice in a form acceptable to Pulse Markets and your Adviser. Pulse Markets will not be liable for any notifications not received by you as a result of:
  - a. you providing an incorrect email address; or
  - b. your failure to provide Pulse Markets and your Adviser with an updated email address.
34. You authorize us to accept and act without any inquiry upon communications (including instructions) provided from your nominated email address.
35. You acknowledge and agree that communication by email is not a secure means of communication and we cannot guarantee the delivery of instructions to us or the security of any information contained within any email to and from us.

### **Variation**

36. Pulse Markets may vary these terms and conditions by giving notice to you.
37. Where the variation is minor, or its effect is not, in Pulse Markets' reasonable opinion, materially adverse to you, Pulse Markets may elect to post an update of the terms and conditions on the Pulse Markets Website.
38. For other variations, Pulse Markets will give you 5 business days prior notice sent to your email address. By instructing Pulse Markets or your Adviser to take any action on your behalf after the notice period has expired, or doing any other act that is specified in the notification given to you, you agree to be bound by the terms and conditions as varied.
39. If you do not agree to accept the variation, you can exercise your right to terminate this agreement in accordance with clause 40.

### **Termination**

40. Either Pulse Markets or you can terminate this agreement by giving at least 5 business days' written notice to the other.
41. Pulse Markets may terminate this agreement at any time without notice if:
  - a. you fail to pay any amount you are liable to pay under this agreement when it falls due;
  - b. you breach a material provision of this agreement, which in our reasonable discretion, is incapable of remedy; or
  - c. you breach a provision of this agreement which is capable of remedy, but which is not remedied to our reasonable satisfaction within 10 business days of us notifying and requiring you to remedy the breach.
42. Termination of this agreement will result in termination of the Services that we provide to you, but does not affect any:
  - a. rights or obligations that arise before termination;
  - b. claim we make for Fees and Charges or expenses incurred before termination; or
  - c. claims that one party has against the other party.
43. Clauses 5 (warranties), 73 (assignment of debt), 83 (liability) and 84 (indemnity) survive termination or expiry of this agreement together with any other term which by its nature is intended to do so.

## **Assignment**

44. You cannot assign, transfer or novate any of your rights or obligations under this agreement without our prior written consent.
45. You agree that Pulse Markets can, and that Pulse Markets has your consent to, assign, transfer or novate any or all of our rights or obligations under this agreement for our legitimate business interests, or in accordance with legal or regulatory requirements, by giving you no less than 10 business days' notice.

## **Complaints**

46. In the case of a complaint or dispute, unless you provide evidence to the contrary, our records of electronic or telephone communications or facsimile transmission shall be conclusive evidence of the details of the communications by email, internet, telephone or facsimile (as the case may be) between you and us.
47. If we cannot resolve a complaint to your satisfaction, depending on its nature, you can refer your complaint to FOS or ASIC.

## **Severance**

48. If any part of this agreement is found to be void or unenforceable for unfairness or for any other reason (for example, if a court or other tribunal or authority declares it so), the remaining parts of these terms and conditions will continue to apply as if the void or unenforceable part had never existed.

## **Force Majeure**

49. Neither party is liable to the other for any loss suffered by the other party where there is an act of war, terrorism, act of God, or any other force majeure event or incidence beyond either party's reasonable control.

## **Governing Law**

50. The laws of New South Wales govern this agreement and you irrevocably submit to the exclusive jurisdiction of the courts of New South Wales and any courts of appeal from those courts.

## **PART B – Advice Services, Wealth Management Services and Arranging Services terms and conditions**

This section sets out the terms and conditions on which Advice Services, Wealth Management Services and Arranging Services are provided to you

### **Advice Services**

51. We will only provide Personal Advice to you where you have requested that we provide, and we have agreed to provide, Personal Advice to you.
52. If we agree to provide you with Personal Advice, you acknowledge and agree that:
  - a. on our request, you will provide us with information regarding your financial needs and objectives in order for us to make informed recommendations to you;
  - b. if you do not provide all information that is relevant to your needs and objectives, or if you request that we provide you with advice that is limited in scope:
    - i. we will not be able to undertake a comprehensive analysis of your needs;
    - ii. any Financial Product recommendation we make may not be appropriate for you;and

- iii. you will need to consider whether any recommendation is appropriate for you and your financial needs and objectives.
53. You acknowledge that we may not always provide you with Personal Advice, even where:
- a. we have agreed to provide you with Personal Advice;
  - b. we have previously provided you with Personal Advice; or
  - c. you have provided us with information regarding your financial needs and objectives.
54. General Advice may be provided in discussions with you, trading ideas, and by email bulletins and newsletters. General Advice does not take your financial needs and objectives into account, so it may not be suitable for you.
55. We may also provide you with reports, including reports prepared by third parties that contain General Advice. Where the information is prepared by third parties, not by Pulse Markets or on our behalf, we do not take any responsibility for the accuracy or completeness or currency of that information.
56. You acknowledge and agree that it is your responsibility, before acting on any General Advice provided to you, to consider the appropriateness of the advice for you, having regard to your financial needs and objectives.
57. Unless we have agreed to provide you with Wealth Management Services or Personal Advice Services, then we will only provide you with General Advice and/or Execution-only Services.

### **Execution-only Services**

58. You may also instruct us to execute transactions in Financial Products on your behalf in circumstances where we have not given either Personal Advice or General Advice. We refer to these Arranging Services as Execution-only Services.
59. It is your responsibility, before entering into an Execution-only transaction, to consider the appropriateness of it for you, having regard to your financial needs and objectives.

### **Wealth Management Services**

60. We will only provide Wealth Management Services to you where you have requested that we provide, and we have agreed to provide, Wealth Management Services to you. The Wealth Management Services we agree to provide to you will be as specified in a schedule to this agreement if applicable, and/or as otherwise notified by us to you in writing from time to time.
61. You agree to pay the Fees and Charges applicable to the Wealth Management Services provided to you.

### **Arranging Services**

62. In order for us to arrange transactions in Traded Products and/or CFDs on your behalf, you will need to apply for a trading account with, and be accepted as a client of, our nominated Service Provider(s).
63. You authorize us to act as an intermediary on your behalf, as your agent, to:
- a. place Orders that you instruct us to place with the Service Provider; and
  - b. receive communications from the Service Provider.
64. You can place, amend or cancel Orders or give instructions to us in any of the following ways:
- a. by telephone (and note your telephone calls to us may be recorded unless you request that they are not); and
  - b. in writing, by email (or facsimile by prior arrangement only). You must confirm with us that such instructions have in fact been received by us as electronic communications may fail or not be received in a timely manner.
65. We will be deemed to have received your Order or instructions only at the time we have actual notice of the communication.

66. We will use our reasonable endeavours to submit your instructions to the relevant Service Provider as soon as reasonably practicable after receipt but we do not guarantee to submit them by a certain time, nor do we guarantee that the relevant Service Provider will wholly or partially execute your instructions or execute them by a certain time.
67. You must ensure that:
- a. you provide us with all information regarding the Order that we or the Service Provider reasonably require;
  - b. the details of each Order instruction are accurate at the time you place the Order; and
  - c. that you do not place Orders in respect of Traded Products where there will be no change in beneficial ownership.
68. You must advise your Adviser at the time of placing a sell Order for Traded Products whether or not it is a covered short sale, and if it is a covered short sale, you warrant and represent to Pulse Markets and the Service Provider that the sale will comply with applicable legal and regulatory requirements relating to covered short sales, including, without limitation, that you have obtained a legally binding commitment from a securities lender to lend the relevant securities to you under a securities lending arrangement.
69. You represent and warrant that before placing any Order, or instructing your Adviser to place an Order on your behalf:
- a. you will be in a position to pay for any Financial Products purchased;
  - b. you will have a presently exercisable and unconditional right to vest ownership of any Traded Products you sell in the buyer;
  - c. before the time and date for settlement specified on the Confirmation issued in relation to a transaction, you will ensure that you:
    - i. have sufficient funds in your Cash Account to meet your trading and settlement obligations, and you must not transfer funds out of your Cash Account before settlement in a way that would have an effect of you being unable to meet your settlement obligations; and
    - ii. where Traded Products have been sold you must deliver sufficient Traded Products to the Service Provider to satisfy your settlement obligations; and
    - iii. you will pay all associated fees, duties and taxes (including GST) for the transaction.
70. You acknowledge and agree in respect of each transaction that you will be:
- a. bound by these terms and conditions, your Client Agreement with the Service Provider, and all the requirements of the Corporations Act, and the Rules, regulations, customs and usages of the Relevant Exchange or market where the transaction occurs; and
  - b. charged, and you must pay, brokerage and any other applicable Fees and Charges.
71. You acknowledge and agree that:
- a. a Service Provider may at any time in its sole discretion direct us to:
    - i. refuse to accept you as a client or not accept Orders from you; or
    - ii. refuse to accept a particular Order from you; and
  - b. we may refuse to place an Order with a Service Provider on your behalf if there are insufficient cash funds in your Cash Account to meet your obligations in respect of the resulting transaction

### **DMA Service**

72. Where we make available to you a DMA Service by a Service Provider, you acknowledge and agree that Pulse Markets, our Representatives and our Authorised Representatives:
- a. are not responsible for entering your Orders or instructions into the DMA Service; and
  - b. except and only as may be required by law, make no representations or warranties express or implied with respect to the DMA Service.

### **Assignment of Debt**



73. You acknowledge and agree that where you fail to comply with your obligations in relation to a transaction conducted on the Relevant Exchange by the Service Provider, including a failure to make any payment due, or failure to perform or comply with your settlement obligations, the Service Provider may assign your debt to Pulse Markets, in which case you will owe the obligation to Pulse Markets. In the event of such an assignment, Pulse Markets will have the rights and powers of the Service Provider to do anything that it can do under its Client Agreement with you in relation to the debt and/or your failure to settle, which may include:
- a. requiring you to pay Pulse Markets on demand all outstanding amounts in relation to the transaction, which may include:
    - i. brokerage, administration fees, fail fees, stamp duties and GST;
    - ii. default interest on the outstanding monies levied in accordance with your Client Agreement with the Service Provider;
    - iii. costs and expenses incurred by the Service Provider or Pulse Markets acting pursuant to our respective agreements with you; and
    - iv. borrowing costs or losses incurred by reason of borrowing financial products;
  - b. instructing the Service Provider to sell, borrow or purchase, as Pulse Markets may determine in our reasonable discretion, sufficient Financial Products the subject of the relevant transaction, or other Financial Products or property held on your account by the Participant (including as CHES Sponsor) to repay the outstanding amounts;
  - c. instructing the Service Provider to enter into one or more transactions to close out or exercise an Options/derivatives contract;
  - d. cancelling any of your unexecuted Orders that have been placed with the Service Provider;
  - e. satisfy payment of outstanding amounts by withdrawing that amount from your Cash Account; and
  - f. taking any other action that Pulse Markets is entitled to take under the relevant provisions of your Client Agreement with the Service Provider upon assignment.
74. **Important:** You acknowledge and agree that:
- a. any action taken or not taken by Pulse Markets upon assignment to us by the Service Provider of your obligations is to protect our interests, not yours;
  - b. the actions taken may occur without any notice to you; and
  - c. Pulse Markets will not be liable to you for:
    - i. any failure to exercise (or any delay in exercising) any power pursuant to clause 73 or under the provisions of the Service Provider's Client Agreement with you that are assigned to us;
    - ii. not exercising any of the powers immediately, or at all.

### **Third Party Authority**

75. If you appoint a person in writing to have authority to act on your behalf in relation to the Services provided by or on behalf of Pulse Markets and/or one or more Service Providers, then you acknowledge and agree that:
- a. provided an Authorised Person is not restricted from providing instructions in relation to particular Services; and
  - b. unless and until you notify us otherwise in writing that the authority has been revoked; Pulse Markets and your Adviser can at all times act on the instructions of the Authorised Person, and provide information in response to a request from an Authorised Person, without the necessity to check the authority of the person.
76. You agree that if you or an Authorised Person breaches this agreement, or your Client Agreement with a Service Provider, the breach will be attributed to you as principal.
77. You agree that you are fully responsible for any loss you may suffer as a result of the actions of any Authorised Person, including instructions we may receive from the Authorised Person.

### **Linked Cash Account**

78. The Service Providers will require you to have a linked Cash Account in order to debit amounts in relation to your transactions and other payments permitted under the Client Agreement between you and the Service Provider.
79. In order for Pulse Markets and our Authorised Representatives to conduct Services on your behalf, you will need to open a Cash Account with a provider from our approved list. You agree to notify the Cash Account provider that you appoint us with a third party authority in respect of your Cash Account in order that we can have viewing access to information in respect of your Cash Account, including balances and transactions, and deposit funds if applicable.

### **Margin Loan**

80. If you have a Margin Loan account, you acknowledge and agree that:
- a. we will not notify you of a margin call; and
  - b. your liability under this agreement and your Client Agreement with a Service Provider arises irrespective of whether your lender is able to deliver or advance sufficient cleared funds or securities to satisfy your obligations.

### **Discretionary Trading; Managed Discretionary Account**

81. Pulse Markets will not conduct discretionary trading on your behalf unless you are a client of its Managed Account Service and have entered into a separate Managed Account Contract regarding the provision of those services to you. If you have entered a Managed Account Contract, the provisions of that agreement prevail over the provisions of this agreement, to the extent of any inconsistency.

### **Acknowledgement of Risks**

82. Trading or investing in Financial Products involves risks. You acknowledge and agree that:
- a. you must read and understand any Disclosure Documents given to you before making a decision to invest;
  - b. unless we have given you Personal Advice recommending that you invest in a particular Financial Product, it is up to you to decide whether an investment in any Financial Product is appropriate for you given your personal circumstances. You will rely on your own judgement in relation to your financial situation, needs and objectives when entering into transactions to acquire, open, dispose of, or close a Financial Product, transaction or position, and if you refrain from taking any of those actions;
  - c. an investment in Financial Products may involve risk of loss, including loss of capital;
  - d. the risk of loss in trading in Options and/or CFDs can be substantial and in some cases your liability can be unlimited. Trading in Options and/or CFDs is suitable for experienced investors who have an appetite for risk and can access cash or securities to meet margin requirements on demand and on short notice (within 24 hours). It is important that you carefully consider whether trading in Options and/or CFDs is appropriate for you in light of your investment objectives and financial circumstances. Trading in Options and/or CFDs is not suitable for you if you have a low risk tolerance. You should only trade in Options and/or CFDs if you understand the nature of the products and the extent of your exposure to risks and have read and understood all relevant Disclosure Documents from the Service Provider;
  - e. we do not guarantee or warrant the performance of any investment that you make;
  - f. past returns for a particular Financial Product do not constitute a guarantee of future performance; and
  - g. if you are a Wholesale Client, including because you provide a Qualified Accountant's Certificate to Pulse Markets or our Authorised Representative, you understand and agree

that you are confirming that you want to be treated as a Wholesale Client in your dealings with us, and that we will not be required to provide you with certain Disclosure Documents, and other consumer protections that Retail Clients are afforded under the Corporations Act will not be given or available to you.

## Liability

83. To the maximum extent permitted by law, in the absence of our fraud, wilful default or negligence Pulse Markets will not be liable to you for any losses (including without limitation, indirect or consequential losses or loss of opportunity or profits) costs, expenses or damages suffered by you arising from:
- a. our Representatives or Authorised Representatives acting on your instructions;
  - b. our Representatives or Authorised Representatives not acting on your instructions where permitted to do so;
  - c. you failing to give us information about your personal circumstances, financial needs and objectives, or giving incomplete or inaccurate information to us;
  - d. your default under:
    - i. this agreement; or
    - ii. a Client Agreement between you and a Service Provider;
  - e. default of a Service Provider under a Client Agreement between you and a Service Provider;
  - f. compliance with a direction, request or requirement of the Corporations Act, the Rules or any regulatory authority;
  - g. error, omission, non-receipt or invalidity in your instructions;
  - h. any events or circumstances that we cannot reasonably control (including, but not limited to, failure of electronic or mechanical equipment or communication lines, unauthorised access, labour problems, or theft, alteration, addition or loss of data by third parties);
  - i. any delay, interruption, omission, failure, error or fault by us in passing on and executing your instructions;
  - j. reliance in good faith on information or advice, or reliance on third-party research reports we provide to you or an Authorised Person;
  - k. market movements and other risks associated with the trading of and/or investment in Financial Products;
  - l. suspected or actual manipulative trading, including insider trading, false or misleading trading, market rigging and market manipulation (by a person other than us);
  - m. loss of access, faults, errors, defects, failures in any computer systems:
    - i. of yours;
    - ii. of ours;
    - iii. used in the provision of Services by us; or
    - iv. of a Service Provider;
  - n. reliance on a document or message that we had no reason to believe was not authentic (although we are not obliged to verify this) or delays caused by calling in good faith for further authentication of your instructions;
  - o. loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy;
  - p. any act or failure to act by you, your Authorised Person or a Service Provider;
  - q. the form and content of any relevant Disclosure Document, other than our own;
  - r. the performance of your investments, including loss of capital invested;
  - s. any delays in processing managed fund withdrawal requests due to exceptional circumstances, such as if a managed fund becomes illiquid or has withdrawal restrictions;  
or
  - t. any services provided to you by your Adviser or any of our Representatives or Authorised Representatives on behalf of another AFS licensee.

## Indemnity

84. You must, to the maximum extent permitted by law, at all times and from time to time, indemnify and keep each of Pulse Markets and its related bodies corporate and any of their respective directors, officers, contractors, agents and employees (each an Indemnified Person) harmless from and against all liabilities, losses, damages, costs or expenses directly or indirectly suffered by the Indemnified Person and from and against all actions, proceedings, claims for damages made against the Indemnified Person as a result of:

- a. any transaction you enter into;
- b. instructions provided by you or your Authorised Person;
- c. any failure by you to settle;
- d. any other breach by you of this agreement;
- e. any breach by you of your Client Agreement with a Service Provider;
- f. any breach of obligations owed by you to another AFS licensee whether or not as the client of your Adviser; or
- g. any breach by you of any representation or warranty made or taken to have been made by you (including without limitation in relation to any disclosure to be made in respect of sale Orders) not being true or correct,

other than to the extent that the loss has resulted from Pulse Markets' negligence, wilful default or fraud.

## PART C - Definitions and Interpretation

In these terms and conditions, unless the contrary intention appears, these words have the following meanings:

**Additional Services** means a service that you agree for us or a Service Provider to provide to you in addition to those specified in the definition of **Services**

**Additional Service Agreement** means the terms and conditions upon which any Additional Services are supplied

**Advice Services** means General Advice and/or Personal Advice

**AFSL** means Australian Financial Services Licence

**AML/CTF Act** means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006

**Arranging Services** includes, as applicable to the Services we have agreed to provide to you, arranging to execute transactions in Financial Products or for Service Providers to provide financial services or Financial Products to you

**ASIC** means the Australian Securities and Investments Commission

**Authorised Person** means a person that you notify us (in the form that we may require) is authorised to act on your behalf

**Authorised Representative** means any company (referred to as a Corporate Authorised Representative) or individual authorised by Pulse Markets to provide specified Financial Services under our AFSL.

**Cash Account** means a bank account or cash management account from which cash can be debited and deposited in settlement of your transactions

**CFDs** means Contracts for Difference and other over-the-counter margin trading products offered by the Service Provider

**Client Agreement** means the terms and conditions governing the services provided by a Service Provider to you

**Client Direction** means, if applicable, your written instructions (in the form that we may accept) authorising and directing the payment of amounts that you specify our Representative(s) or Authorised Representative(s) (as applicable) for services provided to you

**Corporations Act** means the Corporations Act 2001 (Cth)

**Corporations Regulations** means the Corporations Regulations 2001 (Cth)

**Disclosure Documents** include documents required to be given under the Corporations Act, such as Financial Services Guide, Product Disclosure Statements, Statements of Advice and trade Confirmations

**DMA Service** means a direct market access service through which Orders can be placed directly onto an electronic trading platform utilising automated order processing

**Fees and Charges** means a fee and/or charge as set out:

- in a Disclosure Document;
- on the Pulse Markets Website;
- in a document issued by us setting fees or charges for a Service;
- in this agreement, including a schedule to this agreement, if applicable

as amended in accordance with those documents from time to time

**Financial Product** has the same meaning as in the Corporations Act

**Financial Product Advice** has the same meaning as in the Corporations Act

**Financial Service** has the same meaning as in the Corporations Act

**FOS** means the Financial Ombudsman Service

**General Advice** has the same meaning as in the Corporations Act

**Managed Account Contract** means a contract governing the provision of discretionary Managed Account Services by Pulse Markets to a client

**Managed Account Service** means the managed discretionary account service offered by Pulse Markets

**Ongoing Advice Fee** means an amount you agree in writing to pay for ongoing Wealth Management Services or Personal Advice Services as agreed between you and Pulse Markets from time to time.

**Options** means exchange traded options

**Order** includes an order or instruction to enter into a transaction to buy, acquire, open, sell, dispose of or close-out a Financial Product

**Personal Advice** has the same meaning as in the Corporations Act

**Pulse Markets Client** means a person or entity accepted as a client of Pulse Markets under these terms and conditions

**Pulse Markets Website** means the website at [www.pulsemarkets.com.au](http://www.pulsemarkets.com.au) and includes, as the context requires, any other secure electronic platform or client portal belonging to us

**Qualified Accountant's Certificate** means a certificate completed by a "Qualified Accountant" (as defined in section 9 of the Corporations Act) in the required form that is able to certify the gross income and/or net assets of the Pulse Markets Client

**Relevant Exchange** means the ASX or Chi-X or any other securities exchange on which the Service Provider is entitled to transact facilitates transactions on

**Renewal Period** means any period within which, in accordance with the Corporations Act, we will give you notice of and within which you will have the option of electing to renew, or not renew, any ongoing fee arrangement you have with us

**Representatives** means our directors, officers, contractors, agents and employees

**Retail Client** means a retail client pursuant to Chapter 7 of the Corporations Act

**Rules** includes rules governing transactions including the ASIC Market Integrity Rules and the operating rules of a Relevant Exchange

**Services** means a service offered or provided by Pulse Markets pursuant to these terms and conditions and may include as the context requires:

- Advice Services
- Execution-only Services
- Wealth Management Services
- Arranging Services
- Additional Services

**Service Provider** means a third party Service Provider that:

- Provides execution, clearing and settlement services for Traded Products as a participant of the Relevant Exchange;
- Provides trading platforms for DMA use;
- Issues and transacts in CFDs or other over the counter derivatives;
- Provides any Additional Services offered from time to time;

**Traded Products** means Financial Products, including derivatives such as Options, that are traded on a Relevant Exchange, and which the Service Provider has agreed in its Client Agreement with you to facilitate transactions in on your behalf

**Wealth Management Services** may include, subject to clauses 60:

- General Advice;
- Personal Advice (subject to, and in accordance with the terms outlined in clauses 51 to 57);
- implementing Personal Advice in accordance with your instructions;
- ongoing reviews and Personal Advice Services at agreed intervals; and
- other services as agreed or notified to you from time to time;

**Wholesale Client** means a client that satisfies the criteria of a wholesale client pursuant to Chapter 7 of the Corporations Act

**You/your** means you, a Pulse Markets Client

**References to certain general terms:**

Unless the contrary intention appears, a reference in this agreement to:

- a. **(instructions, directions and requests)** an instruction, direction or request from you includes an instruction, direction or request from us on your behalf;
- b. **(variations or replacement)** a document (including the relevant terms and conditions) includes any variation or replacement of it;
- c. **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- d. **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- e. **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- f. **(singular includes plural)** the singular includes the plural and vice versa;
- g. **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- h. **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- i. **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia; and
- j. **(meaning not limited)** the words “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

k. **(reference to this agreement)** means these terms and conditions forming the Client Agreement between Pulse Markets and the Pulse Markets Client

**Headings** (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation.