

Barrenjoey<sup>®</sup>

# Terms and Conditions of Business

Barrenjoey Markets Pty Limited

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## Terms and Conditions of Business

### 1 Terms and conditions

#### 1.1 Barrenjoey Terms

**Barrenjoey** referred to in these terms and conditions of business (**Terms**) means Barrenjoey Markets Pty Limited (ABN 66 636 976 059) (Australian Financial Services number 521800) and its subsidiaries from time to time and references to **we, us** and **our** shall refer to Barrenjoey.

#### 1.2 Our relationship

Subject to section 1.4, these Terms govern the relationship between you, the Client (referred to in the Terms as **you** or **Client**) and us including any services we provide to you. You will be deemed to have accepted the Terms which will become effective and legally binding on you with the effect from the earlier of the date:

- that you receive them, in writing or electronically;
- when you first give an order to us;
- when you start to receive our services, or
- when you use our Website.

You do not need to sign the Terms to be bound by them.

#### 1.3 Amendments

We may amend the Terms at any time by notice on our [Website](#) without separately notifying you. You should periodically visit the Website to review the current Terms.

#### 1.4 Terms are supplementary

These Terms supplement any existing or future agreement, disclosure, confirmation or notification which sets out the legal terms applicable to a product, type of product or to the trading of a product (collectively referred as **Agreements**). The terms of those Agreements will prevail over these Terms to the extent that they conflict and in relation to transactions to which the Agreements relate. However, these Terms continue to govern all other aspects of the relationship between you and us.

### 2 Our Services

#### 2.1 Financial services

Once you have been onboarded and approved to deal with Barrenjoey, we, in our discretion, may provide you with a range of financial services and products across Barrenjoey's full-service offering.

We will provide our services, act, and exercise any discretions under these Terms in good faith and in a commercially reasonable manner, and in accordance with Applicable Law and Applicable Regulations. However, we do not owe you any fiduciary or similar obligations in connection with any service we provide you.

In order to provide our services to you, we may request additional information from you for legal or regulatory purposes. You agree to provide this information promptly.

#### 2.2 General advice

Barrenjoey provides general advice only, which may be by phone or email, via our Website or by other electronic means. Where we do provide market information, trade ideas, general advice or general recommendations, no representation, warranty or guarantee is given as to its accuracy or completeness, as to any legal, accounting or tax consequences nor as to its suitability. When providing general advice, we do not ask for, nor take into account your particular investment

objectives, financial situation or investment needs. We will not provide you with investment advice, legal, accounting or tax advice nor manage or supervise your transactions or investment. Nor will we not monitor your financial position.

### 2.3 No recommendations

You have made your own independent decision to enter into each transaction and each transaction is appropriate based on your own judgement and advice from such advisors that you deem necessary. You are not relying on any communication from us as a recommendation to enter into any transaction, it being understood that information and explanations related to the terms and conditions of a transaction is not investment advice or a recommendation to enter into that transaction.

### 2.4 Appointment as agent

You may appoint Barrenjoey to act as your agent and authorise us to enter orders and execute transactions in equity or other products on your behalf, in accordance with your instructions, and to do all things necessary for the execution of those orders and /or transactions in accordance with Applicable Law.

Where we act as your agent, you acknowledge that we may enter orders and/or transactions with or for you directly or, in our discretion, with or through various channels, including a broker, intermediary or execution facility on such terms as we determine. Where those parties are engaged, you agree to bear the costs associated with their use and acknowledge that we will not be liable to you for their actions, except to the extent caused by our gross negligence, wilful default or fraud.

You acknowledge that we may enter orders and/or transactions in a principal capacity whilst continuing to discharge our obligations to you as your agent.

## 3 Your Classification

### 3.1 Wholesale client

You represent you are a wholesale client within the meaning of section 761G of the Corporations Act and agree to notify us in writing if you cease to be a wholesale client.

### 3.2 Clients located outside Australia

You represent that you are within a category of professional or institutional investor in the jurisdiction of your location that is permitted to use our services or exempt from such category of professional or institutional investor in accordance with the Applicable Law of the jurisdiction of your location in order to use our services. (All the above terms are as defined under Applicable Law). Our Website includes a list of eligible investor types which you can access [here](#).

You agree to notify us in writing if you cease to be of such classification or if your client classification changes.

### 3.3 Services cease

We may cease to provide any services to you if your circumstances change and you no longer meet the requirements to be classified as a client that falls within section 3.1 or 3.2.

## 4 Dealing and authority

### 4.1 Order acceptance

You may place an order with us to deal in financial products (which request we shall not be obliged to acknowledge or accept) via various forms of communication, including, where we have agreed, voice or by means of electronic links or systems.

We may decline to accept an order or a execute a transaction at our discretion. You acknowledge that we may decline to execute the transaction for you if the information we require is not provided. Where the information is provided, we rely on it being accurate and correct.

## 4.2 Indemnity

Where we act as your agent, you agree to indemnify us for any losses or expenses that we may incur because of changed market conditions or delays in the execution of the order except to the extent caused by our gross negligence, wilful default or fraud.

Your communications to us, including an order, will be effective on receipt by us. We may treat as a valid authorisation and rely on, any instructions, commitments, notices, requests or other communications in any form which purports to have been made, and which we reasonably accept as having been made, by you or on your behalf. You will be bound by any obligations entered into by us, and any actions taken by us, in reliance on such communications. You agree to indemnify us for any losses or expenses that we may incur in reliance on such communication.

## 5 Orders

### 5.1 Representations

In placing an order with, or giving instructions to us, you represent to us:

- you have full power, authority and capacity to give the order, and enter into and perform your obligations under the resulting transaction;
- you have in place and comply with all necessary governmental, regulatory, exchange or other authorisations, consents, licences and approvals (collectively "Authorisations") you require to use and accept our services;
- you are not in breach of your obligations under these Terms;
- you are not Insolvent;
- the order and proposed transaction are not in breach of any Applicable Law;
- you have the financial resources to satisfy all your obligations in connection with any order or transaction; and
- you are aware of, and accept, the risks of trading in financial products and are not relying on us to advise you of any corporate actions or other events attaching to financial products you wish to trade.

### 5.2 Client capacity

You represent to us that, unless you have otherwise notified us in writing, your dealings with us are as principal and you will not be acting as agent for any other person or entity. If you are acting as agent for another person or entity, you must notify us in writing of your principal and by that notice you represent to us that you are duly authorised to enter into dealings in financial products on behalf of that principal. You are responsible for compliance with these Terms whether you are dealing as principal or as agent for another person.

### 5.3 Notification as agent

If you have notified us that you are acting as agent, we may require:

- reasonable verification of the identity of the principal;
- confirmation that you are authorised to act as agent for the principal;
- information on the beneficial owners of the principal;
- such other information to comply with any Applicable Law.

You acknowledge that we may in our discretion refuse to act for you if you are acting as an agent.

## 5.4 Acting as agent

Where you are acting as agent for a principal and we have agreed to deal with or for you in such capacity, you represent to us that:

- your principal has full power, authority and capacity to accept these Terms, and place orders and enter into the resulting transactions;
- your principal has and will maintain all Authorisations required in connection with the transactions under these Terms;
- when performing the transactions your principal will comply with all Applicable Law;
- you will immediately notify us if you cease to act as agent for any principal you have previously notified us; and
- in placing an order on behalf of a principal you have no reason to believe that the principal would not be able to perform any settlement obligations under any resulting transaction.

## 5.5 Acting as trustee

Where you are acting as a trustee of a trust, you represent that:

- you are the sole trustee of the trust;
- the trust is properly established;
- you are not in breach of trust;
- you have the right to be indemnified out of trust assets and that right has not been limited in any way;
- each order you place with us and each transaction you enter into under these Terms is for benefit of the trust and beneficiaries.

## 5.6 Right to refuse to deal

We may:

- refuse to accept an order or execute a transaction;
- limit the volume of an order or transactions; or
- refuse, subject to any separate agreement between us and you, a request for an order or transaction to be given up to Barrenjoey by another broker.

We will not be liable to you for any loss caused by such refusal or limitation. We will inform you of the refusal or limitation at the time you seek to place the order or the request for give-up is made, or as soon as reasonably practicable after that time.

## 5.7 Cancellation or other actions

We will not be liable for any losses, damages, costs or expenses incurred by you:

- as a result of anything lawfully done by us in connection with our services;
- by reason of our compliance with Applicable Law or any direction, requirement or request of any relevant exchange or regulatory authority; or
- as a result of the relevant exchange exercising any power to cancel or amend orders, transactions or crossings.

If any Applicable Law requires us or you to liquidate some or all open transactions or to do any other act, matter or thing, we may do so at your expense and without an order or instruction from you and we are not liable to you for any resulting loss, cost, damage or expense you incur.

## 5.8 Indication of Interest

An indication of interest (**IOI**) for equity market products is a non-binding electronic expression of trading interest that may be shared to other wholesale clients to identify potential counterparties to interact with order flow.

In placing an order with us, under these Terms, you consent to the disclosure of IOIs relating to your orders. Please note that the IOIs may relate to one or more parts of your orders placed with us, and your identity and contact details will not be disclosed in those IOIs. Please email us at [EquityOrders@barrenjoey.com](mailto:EquityOrders@barrenjoey.com) if you do not consent to your order information being used in relation to the disclosure of IOIs at the time of or prior to placing any order with us.

## 5.9 Equity products aggregation and averaging

Except as you otherwise notify to us, you consent to us accumulating and averaging your orders, and transactions will be allocated in accordance with our [Best Execution Policy Disclosure](#).

## 5.10 Equity products best execution disclosure

We will handle and execute orders in accordance with our best execution obligations. [Our Best Execution Policy Disclosure](#) provides how these obligations may affect the handing and execution of your orders.

## 5.11 Equity products allocation policy

We will allocate Market transactions fairly in accordance with our obligations. Our policy on allocation of Market transactions is disclosed in the [Best Execution Policy Disclosure](#).

## 5.12 Equity products short sales

You acknowledge that it is your responsibility to notify us when placing a sale order whether the order is a short sale or a long sale, and if a short sale, whether you are selling under an ASIC exemption or have a securities lending arrangement in place such that you have a “presently exercisable and unconditional right to vest” the securities in the buyer at the time of sale. If the latter, you must provide the information required by Applicable Law including the number of the financial products that you will vest in the buyer in reliance on the securities lending arrangement, a description of the financial product, and the name of the issuer of the product.

Where the sale transaction is a short sale, it is your responsibility to put in place appropriate securities lending arrangements, to ensure that you have a “presently exercisable and unconditional right to vest” the securities in the buyer at the time of sale and to report the transaction in accordance with Applicable Law.

## 5.13 On-Market Buy Backs

In accordance with ASIC Market Integrity Rule 5.14.1, you acknowledge that we have informed you [here](#) of current on-market buy-backs where we are acting for the company involved in the buy-back.

# 6 Regulatory

## 6.1 Comply with laws

We may do whatever we consider necessary or advisable to comply with any Applicable Law including the rules, regulations, requirements, directions, decisions, customs, usages, practices and guidelines of: any financial market, including ASX Limited, Cboe Australia Pty Limited and Australian Securities Exchange (ASX 24) (each, a **Relevant Exchange**), ASX Clear Pty Limited (**ASX Clear**), ASX Clear (Futures) Pty Limited (**ASX Clear Futures**), ASX Settlement Pty Limited (**ASX Settlement**), and any other applicable clearing and/or settlement service, in each case, whether based in Australia or abroad, (collectively **Applicable Regulations**), and anything we do or do not do to comply with Applicable Regulations will be binding on you.

## 6.2 Exchange rules

You acknowledge that transactions relating to financial products quoted on, or which may be effected through, a Relevant Exchange (**Market transactions**) are subject to the rules, directions, decisions and requirements, customs and usages of a Relevant Exchange, ASX Clear, ASX Clear Futures, ASX Settlement or ASIC and the correction of errors and omissions.

## 6.3 Market integrity rules

The market integrity rules (**MIR**) made by ASIC in accordance with Part 7.2A of the Corporations Act require the following notifications be given in respect of your Market transactions (as defined in the MIR), unless you agree not to receive these notifications:

- a notification that we have entered into your Market transaction as principal; and

- if your Market transaction was executed as a crossing, the execution code of the execution venue for the crossing.

If you would like to receive these notifications, you agree to send an email to [middle.office@barrenjoey.com](mailto:middle.office@barrenjoey.com) and we will contact you to discuss the delivery and content. If not, then by placing orders with Barrenjoey you are agreeing not to receive the notifications.

## 6.4 Prudential Supervision Warning

We are not authorised under the *Banking Act 1959* (Cth) (**Banking Act**) and are not supervised by the Australian Prudential Regulation Authority (APRA).

An investment in a particular kind of investment product, or in all investment products, issued or sold by us will not be covered by the:

- depositor protection provisions in section 13A of the Banking Act; and
- financial claims scheme established under Division 2AA of the Banking Act.

## 7 Trading venues and platforms

You acknowledge that where you may deal and/or trade in connection with our services via a third-party electronic trading platform, the terms of use for the relevant trading platform apply in addition to and supplement these Terms. You agree that you will comply with the terms of use for any such trading platform that you use to obtain our services under these Terms.

## 8 Proprietary electronic trading systems

### 8.1 System access

We may offer you access to any of our proprietary trading systems (**System**), including systems which direct your orders to an exchange or trading venue without human intervention (**AOP**), as determined by us. For that purpose, we may provide you with usernames, passwords, user identification codes and other access measures (**Access Codes**) for your Authorised Persons to use on your behalf or where access is provided through a third party's electronic or other communication system such as Bloomberg, permit your Authorised Persons to have access to the System using Access Codes provided by the third party. We may at any time change, prevent or restrict access to the System including by changing, preventing, or restricting the use of any Access Code and may impose conditions on the use of the System.

### 8.2 Access codes

You must promptly notify us of any theft or loss of Access Codes, the cessation of the authorisation of an Authorised Persons to use the System on your behalf or if you believe or suspect that the security of any Access Code has been compromised or that there has or may have been any unauthorised use of the System.

You must ensure that Access Codes are not disclosed to any person who is not authorised to use such Access Codes. You are responsible for the use of all Access Codes assigned to you (whether by us or a third party) and for any acts or omissions as a result of such use. Accordingly, any use of the System is deemed authorised by you where the Access Codes appear to have been used and you must comply with all obligations in relation to a transaction executed as a result regardless of whether it was in fact authorised.

### 8.3 System use

You must:

- in relation to a System which is an AOP System, comply with Applicable Law in using the AOP and, you will be taken to represent that each Authorised Person: (i) has authority to submit orders on your behalf; and (ii) has demonstrated knowledge of the System and the rules of the Relevant Exchange or trading venue, and each such representation shall be deemed to be repeated on each day on which you access the System;
- maintain adequate security measures to prevent access to the System by persons other than your Authorised Persons, and to prevent use of the System to execute transactions which you have not authorised;
- provide and maintain any equipment and software and have appropriate arrangements with telecommunications suppliers, in order to access the System and where access is provided via a third party, you must make your own arrangements with such third party;



- comply with any conditions of use for the System which we advise to you from time to time; and
- only use the System in accordance with the functions, specifications, manner of operation or other documentation and information pertaining to the System that we provide to you.

#### 8.4 No warranty

Barrenjoey provides the System “as is, where is” without any warranty or representation of any kind whatsoever, express or implied as to the System, its capabilities, fitness for a particular use, the results from using the System or that the System will operate without interruption or delay, or function satisfactorily with all hardware or software you provide. Barrenjoey is not liable to you for any delay or inability to execute orders as a result of the System being unavailable or impaired.

#### 8.5 Intellectual property

In using the System you do not acquire any intellectual property rights in relation to the System other than a non-exclusive, non-transferable and non-sublicensable licence to use the information made available by the System. Specifically, you may not disclose or disseminate information provided by the System to any third party except as required by law or with our prior written consent.

#### 8.6 No liability

Barrenjoey is not liable for any loss or damage whatsoever that you suffer arising out of or in connection with any:

- error, inaccuracy, lack of completeness of information or communications transmitted through the System;
- delay or failure in transmission of information or communications due to inaccuracy, unreliability, imperfection, or low performance of the System; or
- other disruption, delay, downtime, or failure of the System whatsoever.

#### 8.7 Information

All information (not being Personal Information under Privacy Law) submitted to us in connection with orders or transactions or the use of the System, including transaction data, will be our property. You agree that we may use such information for improving our business offering or services to you and where the information is aggregated with other data and anonymised, for improving our business offering more generally.

### 9 Algorithmic trading

Where we allow you to execute transactions using execution algorithms, we will provide you with additional disclosures and information describing the algorithm execution strategies, the configurations available and the various risks.

### 10 Confirmations

You authorise us to:

- send contract notes, confirmations and other statements to you in electronic form;
- send a single contract note or confirmation for a series of transactions;
- show an average price for a series of transactions in equity products; and
- issue a replacement contract note, confirmation or statement to correct an error or omission, or if required by Applicable Law.

We are not required to provide you with a confirmation or other statement that is to be provided to you by another person.

You agree that the contract note, confirmation, other communication or statement is conclusive and binding unless you object before the opening of trading on the next trading day for the relevant market following the day of receipt.

### 11 Give-ups

Where we agree, you may instruct us to execute an order under these Terms and give up the transaction to a third-party broker. In such circumstances, you authorise us to give up the trade to the third-party broker and the terms of the relevant give-up apply to that give-up in addition to and supplement to these Terms. You must notify us immediately if the

third-party broker does not accept the transaction, whereupon we may in our discretion re-book the transaction in your name or close-out the transaction and you are liable to us for all costs, losses and expenses in connection with such re-booking or close-out.

## **12 Client money**

We will treat any money or property received from you or held on your behalf in accordance with Applicable Law, including the requirement to ensure any money or property received from you will be segregated. It should be noted, however, that since most Australian business undertaken between you and us is subject to settlement on a delivery versus payment basis, we will rarely hold your money.

## **13 Custody**

We will not ordinarily (and will not be obliged to) provide custody services in respect of your financial products. Where we do agree to provide custody, this will be in accordance with the provisions of a separate written agreement.

If we do agree to provide custody of your financial products and there has been no movement or instructions received in relation to these products for a period of at least 7 years and we have taken reasonable steps to trace you and return your financial products, you agree that we may liquidate any such unclaimed products that we hold for you at market value and hold such proceeds in accordance with unclaimed moneys laws.

## **14 Set off and lien**

You acknowledge that any amounts due from you or to you, regardless of their nature, currency, or origination, may be set-off and netted against each other by us.

Additionally, where permitted by law and without limiting any other right we may have, you grant us a lien over money or other property of yours that we hold, for any obligations which you owe to us. Where you have failed to pay any amount due or to discharge any obligation you owe to us, we may apply any such money or property towards or in discharge of such amount or obligation.

## **15 Payments, clearing and settlement**

You agree that:

- you will make payments (without set-off or counterclaim) and deliver securities on the due date to enable us to complete settlement;
- we do not have to deliver to your account or provide the sale proceeds in relation to a transaction until you have met your payment and/or delivery obligations in relation to that transaction;
- settlement will be made in accordance with Applicable Regulations; and
- unless otherwise agreed, settlement of securities and equity products is done on a delivery versus payment basis (netting will occur as agreed between the parties from time to time or under an Agreement).

You acknowledge that we may not settle transactions or transact with you until all relevant documentation, securities or payments relating to the transaction has been received by us.

If you fail to meet your payment or delivery obligations to us, we may at your cost take whatever reasonable action we believe is necessary to meet the settlement obligation including borrowing securities, buying-in, terminating or closing out the transaction. If your failure causes any losses, penalties, damages, suits or similar, you must fully indemnify us for those and any costs that we may incur.

If you fail to deliver to us money on the date that a payment is due, you agree to be charged interest at the Relevant Rate.

## **16 Research**

Where Barrenjoey publishes research or provides you with access to third party research you should refer to the full disclaimer provided with that research report. We have appropriate measures in place to manage or disclose conflicts of interest (see section 23) associated with the publication and distribution of research in accordance with our regulatory obligations.

Where we provide or distribute research, market commentary or other information to you:

- this is incidental to the dealing and execution services we provide and is not investment advice;
- we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the legal, accounting, tax or other consequences of any transaction or other matter;
- you will not publish, forward or provide the information to any other person without our prior consent; and
  - we make no representation as to the time of receipt by you and cannot guarantee that you will receive such information at the same time as our other clients (for example because of delays in the method of transmission).

## 17 Termination of services

We may terminate and suspend services to you, immediately and without notice by us if:

- you (or your principals) are Insolvent; or
- you (or your principals) are, in our opinion, in material breach of (i) your obligations to us (including material breach of any undertaking or representation), (ii) your obligations under any other Agreement between you (or your principals) and us, or (iii) Applicable Regulations.

Termination will be without prejudice to the completion of any transactions already initiated at the effective time of termination or legal rights or obligations which have already arisen.

## 18 Indemnity

You agree to indemnify and hold harmless each member of the Barrenjoey Group and each of their respective directors, officers, consultants, representatives, agents and employees (each a “**Barrenjoey Party**”) against all and any loss, cost or expense, damage, claim, action, liability, charge, penalty, outgoing or payment and legal costs on a full indemnity basis (**Loss**), proceedings or judgments of any nature incurred by, brought, made or recovered against us, in any jurisdiction, arising out of or in connection with:

- carrying out orders or your instructions for our services;
- your failure to comply or perform any of your obligations under or arising from these Terms,
- any information you provide being incorrect or misleading in any material respect; or
  - your use or misuse of any System, Website or other electronic links or systems or your failure to comply with any conditions for such use,
  - except to the extent such Loss is caused by any gross negligence, wilful misconduct, or fraud by a Barrenjoey Party.
  - You acknowledge that Barrenjoey accepts the benefit of this indemnity for and on behalf of itself and each other Barrenjoey Party and Barrenjoey may enforce the indemnity on its own behalf and on behalf of the Barrenjoey Parties individually or jointly.

## 19 Limitation of liability

Barrenjoey is not liable to you (or your principal) for any Loss incurred by you in connection with the services provided under these Terms except to the extent that the Loss is caused by our gross negligence, wilful misconduct, or fraud. In particular, but without limitation, we are not liable for:

- any delay or error in execution or other Losses resulting from circumstances outside our control, such as any action by any exchange or a regulatory or judicial authority under Applicable Law, negligence, fraud, default or insolvency of, or suspension of trading or settlement by any third party broker or trading platform, custodian, exchange or clearing house, or due to government restrictions, failure of utility, telecommunications network or similar services, pandemic, strike, war or civil unrest, terrorist act, force majeure event or event of nature; or
- loss of profits, revenues, or data, or special, indirect or consequential damages suffered by you.

Nothing in these Terms will exclude or restrict our liability for any liability which by law we cannot exclude or restrict, or any obligation which we have to you under Applicable Regulations in respect of a breach of any such obligation.

## 20 Fees, costs, and expenses

### 20.1 Fees and charges you pay to us

You must pay us fees, brokerage, or commission in respect of carrying out orders and/or entering into transactions at current rates as separately advised to you by us from time to time. You consent to us charging you fees, brokerage, or commission where we deal with you in a principal capacity. You must also reimburse us any duties, levies, taxes (other than income tax payable on our net fees, brokerage, or commission) withholding taxes, transfer fees, registration fees and other charges, costs or expenses incurred in connection with transactions effected with or for you.

Any charges due to us (or agents used by us) including any applicable GST or other taxes or charges may be deducted from any money held by us on your behalf or, at our discretion, must be paid by you as stated in the relevant confirmation or at settlement. Where you pay us in a currency other than the currency of the transaction, we will convert such amount at our Spot Rate of Conversion.

### 20.2 Fee arrangements with third parties

We may receive some or all of the fees, commission and remuneration from, and we may share some or all of the revenue, fees and charges with, a third party on any basis we agree with such party.

We may agree to share some or all of the revenue, commission or other fees that are received by us from you with third party agents, intermediaries and licensees where for example, third party involvement is required due to regulatory requirements, to enable the provision of services to you or, where necessary, entry into transactions with you in a particular jurisdiction where we are not authorised to operate or do not have operations. A list of such third party agents, intermediaries and licensees is available on our Website.

### 20.3 No interest

Unless we otherwise agree, you will not be paid any interest on the amounts held with us, even if such funds are kept in an interest-bearing client trust account.

## 21 GST

Unless otherwise expressly stated, GST is not included in the prices or other sums quoted as payable or consideration to be provided in respect of the services and products provided by Barrenjoey.

If GST is payable by Barrenjoey on any supply made to you, you agree to pay us an additional amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided unless otherwise agreed.

Where you are required to pay or reimburse an expense or outgoing of Barrenjoey, the amount to be paid or reimbursed by you will be the sum of: (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which Barrenjoey is entitled; and (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

In this section words and expressions which are not defined in these Terms, but which have a defined meaning in GST Law have the same meaning as in the GST Law.

## 22 Other tax matters

### 22.1 Withholding

Except as required by Applicable Law, all payments you make to us must be without withholding or deduction of Tax. If any Tax is required to be deducted, you will pay such additional amounts as necessary to ensure that the net amount we receive is equal to the amount we would have received if no such withholding or deduction had been required. You agree to provide us with any documentation we reasonably request in order to reduce or eliminate withholding tax on payments made to us. Where we are required by Applicable Law to withhold Tax from any payment or delivery, we make to you, we will do so and remit such Taxes to the relevant tax authority.

### 22.2 Provision of information and documents

Where requested, you agree to:

- notify us of your Global Intermediary Identification Number ("GIIN") together with any other identifier required under FATCA and CRS Law;

- provide in relation to you and if applicable, your principal, the appropriate withholding certificate or other evidence of your status under FATCA and CRS law and if any information you have provided becomes materially inaccurate or incomplete, provide us with updated information; and
- provide such forms, documents or certificates as may be required by us in order for us to identify the beneficial owner of an account or security and their residency for income tax purposes.

## 23 Conflicts of Interest

We have in place arrangements (such as information barriers) to identify and prevent or manage conflicts of interest that arise between ourselves or our employees and our clients, and between our different business areas and between our different clients. We manage such obligations in accordance with our [Conflicts of Interest Policy](#).

## 24 Confidentiality

### 24.1 Confidential information

Subject to section 24.2, We and you will at all times keep confidential and shall not disclose to a third party any information of a confidential nature or otherwise acquired in connection with these Terms or the services.

### 24.2 Disclosure

Nothing in section 24.1 prevents the disclosure of information:

- which is publicly available;
- to your clearing participant, prime broker or executing broker in connection with our provision of services to you, such as a give-up described in section 11 and to third party agents, intermediaries and licensees in the circumstances described in section 20;
- to any competent authority where the disclosing party reasonably believes such disclosure is required by law or where the competent authority or Relevant Exchange has required or requested such disclosure;
- to officers, employees, agents, contractors (collectively, Staff), our affiliates, related bodies corporate (as defined in Section 50 of the Corporations Act) and service providers and professional advisers of the disclosing party where they have agreed to keep such information confidential; and
- which may be necessary to enable the disclosing party to comply with any disclosure of reporting obligations (including Reporting Requirements as specified below) under Applicable Law.

We are under no duty to disclose to you any information in connection with our services, or to take into account any information or other matters which come to our notice or the notice of any of our Staff where we reasonably believe that in doing so would be a breach of any duty of confidence to any other person.

### 24.3 Reporting requirements

Notwithstanding anything in an Agreement or confidentiality agreement to the contrary, you are deemed to have consented to us disclosing your information to the extent required or permitted by Applicable Law, or Applicable Regulations which mandate reporting of transaction or similar information ("**Reporting Requirements**"). Reporting Requirements may include disclosure of trade information (including a party's identity, by name, identifier or other) to any swap or trade data repository or relevant regulator, and to persons who provide services to the trade data repository or regulator in jurisdictions other than in the jurisdiction of the disclosing party.

## 25 AML and counter terrorism financing

To satisfy our obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Australia), rules and similar Applicable Law in other jurisdictions (**AML/CTF Laws**), we will collect and verify certain information about our clients. In some cases, we may require further information to onboard or provide services to you.

You agree not do anything to put us in breach of the AML/CTF Laws, and to tell us if you become aware of anything that may do so.

You represent that you are not aware and have no reason to suspect that the funds used for your orders and transactions is derived from or related to money laundering, counter terrorism, bribery and corruption or similar activities (**Illegally Obtained Funds or Activities**).

You acknowledge that in certain circumstances Barrenjoey may be required to freeze or block an order, transaction or associated account where it is used in connection with or suspected of deriving from Illegally Obtained Funds or Activities. If this happens, we are not liable to you for any losses whatsoever and you agree to indemnify us pursuant to section 18.

## **26 Sanctions**

You represent that neither you nor any of your subsidiaries, branches and affiliate entities (collectively, the Client Group) or, to the knowledge of any member of the Client Group, any director, officer, beneficial owner, employee, affiliate, trustee, beneficiary, agent or representative of the Client Group, or any Client or other third party on whose behalf the Client Group is acting in connection with the transactions, is an individual or entity (Person) that is, is owned or controlled by a Person, or is located in a country or territory, that is currently a target of, or otherwise a subject of, any economic or financial sanctions or trade embargoes administered or enforced by the Australian Government, the Office of Foreign Assets Control of the U.S. Department of Treasury (OFAC), European Union, United Nations or United Kingdom economic sanctions (collectively, Sanctions).

You further represent that any interest in any funds or securities or other property transferred by you in connection with a transaction is not the property of, or originates from a Person that is, a subject of or located in a country or territory that is subject to Sanctions.

You will not allow any Person, country or territory that is subject to Sanctions to have any participation in or derive any other financial or economic benefit from transactions that you undertake with us.

## **27 Recording calls**

You:

- consent to the recording of all telephone conversations in connection with our services, with or without the use of an automatic tone warning device;
- agree to obtain any necessary consent of, and give notice of such recording to affected personnel;
- agree that recordings may be submitted in evidence in any proceedings relating to an order, transaction or our services; and
- agree that we are not obliged to maintain copies of such recordings and transcripts for your benefit.

## **28 Complaints**

We are committed to resolving any client complaints in a fair and objective way. Barrenjoey maintains complaints management policies and procedures for handling client complaints.

If during the course of your relationship with us, you feel dissatisfied with any of our services, you should contact your Barrenjoey client contact. All complaints will be dealt with in accordance with our complaints procedures and you will be kept informed as to the progress of resolution of your complaint.

## **29 Other Terms**

### **29.1 Governing Law**

These Terms are governed by the laws in force of the State of New South Wales, and the parties submit to the non-exclusive jurisdiction of its courts.

### **29.2 Waiver**

A provision of these Terms, or right, power or remedy created under them, may not be varied, or waived except in writing.

### 29.3 Non-assignment and no encumbrance

You may not assign, novate, sub-contract, grant a security interest over or otherwise transfer your rights or obligations under these Terms, or any transaction under them without our prior written consent or otherwise in accordance with the terms of an Agreement between us.

### 29.4 Exercise of rights

If we do not exercise a right, power, or remedy in connection with our services fully or at a given time, we may still exercise it later.

### 29.5 Severability

If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of these Terms have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

### 29.6 No immunity

To the extent the law permits, you waive any right to claim sovereign or other general immunity from any lawsuit or enforcement of any judgement or award in connection with any transaction you enter into or any service we provide.

### 29.7 Electronic Communications

We may correspond with you by electronic communications. Such communications are deemed to have been delivered at the time when sent, if during normal business hours on a Business Day, and on the next Business Day if sent outside normal business hours. Electronic communications are not always secure and may be read, copied, lost, or interfered with in transit. We are not responsible for any of the risks associated with electronic communication, including loss of data and you consent to us sending you commercial electronic messages.

## 30 Privacy

Barrenjoey Group respects the privacy of people we deal with and we are committed to protecting the personal information provided to us by clients, Staff, service providers, visitors to our Website and other persons. Our Privacy Policy explains how the Barrenjoey Group collects, stores, uses, and may disclose personal information in accordance with the requirements of the Australian Privacy Act 1988 (Cth), the Australian Privacy Principles and other Applicable Law. You consent to the processing and disclosure of your personal information in accordance with our [Privacy Policy](#) which is available on our Website and acknowledge that we may not be able to provide services to you if you do not provide personal information to us.

## 31 Definitions and interpretation

Expressions used in these Terms which are given a meaning for the purposes of Chapter 7 of the *Corporations Act 2001* (Cth) (**Corporations Act**) shall, unless the context otherwise requires, have the same meaning in these Terms.

Unless the contrary intention appears, these meanings apply:

**Applicable Law** means all statutes, common law, and general law of a jurisdiction where we provide services to you and the rules, regulations, requirements, directions, decisions, customs, practices and guidelines of any applicable regulated financial market, including any Relevant Exchange.

**Applicable Regulations** has the meaning given to it in section 6.1 of these Terms.

**Authorised Person** means: any person you authorise from time to time to act on your behalf in relation to any of our services, or any transaction we execute with or for you.

**Barrenjoey Group** means Barrenjoey Capital Partners Group Holdings Pty Limited (ACN 644 241 510) and each of its subsidiaries.

**Business Day** means a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday, or public holiday in that place).

**Competent Authority** means any regulatory, enforcement or government authority or body including without limitation the Australian Securities and Investments Commission, the Australian Taxation Office, the Australian Prudential Regulation Authority, the Australian Competition and Consumer Commission, the Takeovers Panel, and a Relevant Exchange.

**CRS Law** is a reference to legislation which gives effect to the OECD Common Reporting Standard, including any associated regulations or guidance.

**FATCA Law** is a reference to legislation which gives effect to the section 1471 to 1474 of the US Internal Revenue Code of 1986, any bilateral intergovernmental agreement between any jurisdiction and the United States and Australia or any other jurisdiction, and any associated regulations or guidance.

**GST Law** has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

A person is **Insolvent** if:

- a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act).
- b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within [15] days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;
- e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- g) it is otherwise unable to pay its debts when they fall due; or
- h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

**Market transaction** has the meaning given to it in section 6.2 of these Terms.

**Relevant Exchange** has the meaning given to it in section 6.1 of these Terms.

**Relevant Rate** means the interest rate for late payments in Australian dollars specified on our Website.

**Spot Rate of Conversion** means our spot rate of conversion net of fees for the sale of one currency into the currency of settlement (if the payment relates to a settlement obligation) or into Australian dollars.

**System** has the meaning given to it in section 8.1 of these Terms.

**Tax** means any tax, levy, impost, or other charge or withholding of a similar nature (including any interest or penalty payable in connection with any failure to pay or any delay in paying any of these).

**Website** means the website owned and operated by Barrenjoey available here <https://www.barrenjoey.com/>



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