

## Optiver Australia Pty Limited Terms of Business

### 1. Application and scope

- 1.1 Optiver Australia Pty Limited (ABN 54 077 364 366) (“we”, “our”, “us” or “Optiver”) deals on its own account in financial products with Institutional Investors on a principal to principal basis.
- 1.2 These Terms are legally binding and, subject to clause 1.3 below, govern all dealings in financial products with us, and shall take effect from the date you first place a Request For Quote with us or we place a Request For Quote with you.
- 1.3 To the extent that you provide us with Brokerage Services, we agree to conclude any Transaction with you under your terms of business PROVIDED THAT you acknowledge and agree that your terms of business are amended so that:
  - (a) the following clauses of these Terms shall be incorporated into your terms of business: clauses 5 (Relationship with us) and 6 (Trading Activities) to the extent applicable to Brokerage Services, and clauses 7 (Recording Conversations), 8 (Compliance with Applicable Regulations), 10 (Confidentiality), 11 (Privacy), 12 (No partnership), 13.4 (Liability), 15.2(b) (Representations and warranties) and 16.2 (Conflicts between your terms of business and incorporated clauses); and
  - (b) Notwithstanding any provision of your terms of business which specify that your terms of business shall be governed by the laws of any jurisdiction other than England and Wales, and without prejudice to the generality of that provision, the foregoing clauses of these Terms shall be governed by English law and are subject to and are to be construed in accordance with the Applicable Regulations.
- 1.4 Amendments to these Terms may be made by us pursuant to clause 20 below. Except as provided in clause 1.3 above, any additional or different terms stipulated by you or set out in any communication from you will not be effective or binding upon us unless agreed by us in writing.
- 1.5 These Terms replace all previous agreements and correspondence between you and Optiver in relation to the subject matter of these Terms. These Terms constitute the entire terms on which we will deal in financial products with you except where a Transaction is a trade executed under the Brokerage Service you provide to us, to which your terms of business and the clauses of these Terms incorporated in accordance with clause 1.3 above will apply. No alteration or addition (including, without limitation, through social media platforms such as WhatsApp or KakaoTalk) to these Terms will have effect unless issued or agreed by us in writing.
- 1.6 These Terms are subject to and are to be construed in accordance with the Applicable Regulations.
- 1.7 These Terms shall apply to all Transactions contemplated hereunder (except where a Transaction is a trade executed under the Brokerage Services provided by you to us to which your terms of business and the clauses of these Terms incorporated in accordance with clause 1.3 above will apply to that Transaction). You acknowledge that you have not relied on or been induced to enter into these Terms by a representation other than those expressly set out in these Terms.
- 1.8 These Terms are intended to apply to Institutional Investors only. You represent and warrant to us, as at the date of these Terms and on each date on which you enter a Transaction, that you are an Institutional Investor as defined under these Terms. You must notify us immediately if, at any time, you cease to be an Institutional Investor or consider that you may no longer fall within the definition of an Institutional Investor. You undertake to provide to us

any information, documents or certificates requested by us for the purposes of confirming the accuracy of your representation contained in this clause 1.8.

## 2. Definitions and Interpretations

Applicable Regulations	means: (a) the rules of a relevant regulatory authority; (b) the rules of the relevant exchange; or (c) all other applicable laws, rules and regulations as in force from time to time as applicable to these Terms.
Brokerage Services	means the execution of orders and/or receipt and transmission of orders for the benefit of Optiver by Counterparty, as well as any ancillary service provided by Counterparty in relation to that activity, whether or not for payment of fees.
CCASS	The Central Clearing and Settlement System operated by the Hong Kong Securities Clearing Company Limited.
Confidential Information	means all information you or we receive about the other party, any RFQ, or Transaction, under or in connection with these Terms that is not already publicly available (other than as a result of breach of these Terms by the relevant party).
Institutional Investor	refers to an entity that has the required level of professional experience to be defined as an institutional or professional investor or "wholesale client" or similar as defined under applicable law and/or regulation (including, in Australia, "professional investors" within the meaning of the <i>Corporations Act 2001</i> (Cth), in Hong Kong, "professional investors" falling within paragraphs (a) to (i) of the definition of "professional investor" in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong), in Japan, "professional investors" within the meaning of the Financial Instruments and Exchange Act, and, in South Korea, "investment traders" and "investment brokers" within the meaning of the Capital Markets Act of Korea").
London Cross	a Transaction which is settled in CCASS by matching settlement instructions made by your and our respective clearing participants.
Request For Quote ("RFQ")	any transaction request made by you with us or by us with you to acquire or dispose or otherwise deal in financial products.
Transaction	a transaction executed by you and Optiver on a principal to principal basis, and which may be concluded between each party's broker in relation to a financial product consequent upon a RFQ or (without limitation) by any other means agreed between you and us (for example by crossing the transaction directly by one or both of the parties), in relation to that financial product. For the avoidance of doubt, to the extent that you provide us with Brokerage Services, a Transaction includes also a transaction concluded under your terms of business.
Terms	these terms of business.
you or Counterparty	the Institutional Investor who is the party to a Transaction and where the content permits, any person authorised to operate or provide instructions on behalf of the entity to complete a Transaction.

### In these Terms:

- (a) words importing the singular include the plural and vice versa;
- (b) an expression importing a natural person includes a corporation or other body corporate;
- (c) a reference to a clause or party is a reference to a clause of or party to these Terms;
- (d) a reference to a statute, regulation, ordinance or by-law includes all statutes, regulations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, ordinances or by-laws issued under that statute.

- (e) a reference to a document includes all amendments to or replacements or novations of that document; and
- (f) a reference to a party to a document includes that party's successors and permitted assigns.

### **3. General Information**

- 3.1 Optiver Australia Pty Limited is regulated in Australia by the Australian Securities and Investments Commission under Australian Financial Services Licence No. 244145. Its registered office is at 39 Hunter Street, Sydney NSW 2000 Australia.
- 3.2 Optiver Trading Hong Kong Limited is regulated in Hong Kong by the Securities and Futures Commission under CE No. APO583. Its registered office is at 25/F, 33 Des Voeux Road Central, Hong Kong. Optiver Trading Hong Kong Limited is a member of the Hong Kong Stock Exchange and acts as our executing broker in Hong Kong. In other markets, we act through third party brokers. Optiver is not a registered securities or commodities broker-dealer in the United States and these Terms should not be construed as an offer to buy or sell securities or derivatives in the United States.

### **4. Counterparty's Authority**

Each of you and us represent and warrant to the other that it has the authority and power necessary to place RFQs and/or complete Transactions under these Terms and that it will comply with all Applicable Regulations.

### **5. Relationship with us and pre-hedging**

- 5.1 You acknowledge that in placing a RFQ with us, we will not be acting as your agent or providing any other financial services and, subject to clause 5.3 below, that you will be acting as principal and not as agent for any other party.
- 5.2 Subject to clause 5.3 below, any Transactions will be conducted on a principal to principal basis and you acknowledge that Optiver may also receive or make RFQs and be involved with transactions with other Institutional Investors in relation to financial products.
- 5.3 We acknowledge that you may represent, or act as authorised representative, for a client of yours or for the benefit of another third party (each a "Client") when entering into a Transaction with us, provided that:
  - (a) you represent that you are duly authorised to enter into these Terms and act for such parties;
  - (b) in the event that you require us to settle directly with a Client you will provide us with the requisite settlement details in advance of the relevant Transaction and should such details not be provided in good time, we shall settle with you and you shall be responsible for on-settlement and any related costs with your Client; and
  - (c) you alone shall be liable in accordance with these Terms in relation to any Transaction entered into on behalf of your Client.
- 5.4 You acknowledge that we may engage in pre-hedging activities consequent upon receipt of an RFQ and prior to execution of a Transaction in order to hedge our potential risk.

### **6. Trading Activities**

- 6.1 Unless we are defined as an "Execution Broker" in a "give-up" agreement between us as contemplated in clause 6.2 below, in which case the terms of such agreement shall apply in respect of the subject matter of that "give-up" agreement, you acknowledge each RFQ we issue with respect to any proposed Transaction is subject to your execution, or instruction to your broker as relevant, to complete the Transaction.

- 6.2 Each party maintains responsibility for the performance and settlement of its obligations for each Transaction, either by delivery versus payment (DVP) settlement, or by crossing the Transaction directly, or by having the Transaction crossed by an executing broker engaged by each of the parties and given-up to their respective clearing brokers, or by confirming the Transaction to the relevant exchange, as the case may be (and, for the avoidance of doubt, notwithstanding any "give-up" agreement executed between us in which Optiver is defined as "Execution Broker", Counterparty acknowledges that Optiver has not been engaged to provide an executing broker service by the Counterparty).
- 6.3 We reserve the right to refuse to provide a response to a RFQ in our absolute discretion for any reason. You acknowledge that we are not required to enter into a Transaction, where to do so would constitute a breach of the Applicable Regulations. We will give notice of any refusal to act as soon as practicable but we shall not be liable for any loss whatsoever arising out of or in connection with our refusal.
- 6.4 Where requested by the Counterparty, Optiver may agree to quote or price "clean", i.e. reflecting a price or bid-ask spread without implicit costs associated with a trade. If applicable, such costs shall be disclosed in the trade confirmations. Notwithstanding the terms of any "give-up" agreement executed between us in which Optiver is described as "Execution Broker" and you as "Customer", Counterparty expressly acknowledges that any such agreement by Optiver to receive such payment shall not be construed as a service charge or commission and shall not change the principal-to-principal relationship between the parties.

## **7. Recording Conversations**

You acknowledge that we may record telephone conversations with you to ensure that the material terms of each Transaction, and any other material information relating to a Transaction, is accurately recorded. We may record telephone conversations even if not required to do so by Applicable Regulations.

## **8. Compliance with Applicable Regulations**

- 8.1 You will comply with all Applicable Regulations relating to anti-money laundering and financing of terrorism. You agree to provide us on request with all information that is necessary or appropriate for us to comply with such laws, including the provision of all necessary information for us to respond to any demand or requests from a relevant regulatory authority.
- 8.2 You must comply with any reasonable identification and/or identity verification checks or procedures that we may specify from time to time in relation to you or any other person for whom you place RFQs and/or enter into Transactions under these Terms.
- 8.3 You acknowledge that we may, in our reasonable discretion, refuse to conduct Transactions with you, cancel any Transactions or orders, or delay, block or freeze any Transactions if we believe it necessary to comply with Applicable Regulations relating to anti-money laundering and financing of terrorism and in accordance with our own internal policies and procedures. In these circumstances, we will not be liable to you for any resulting loss.

## **9. Errors**

- 9.1 We will not be responsible for failure to give effect to, or for delays or errors in giving effect to, the Transaction as a result of any errors or omissions made by you and/or your broker. You may contact Optiver if you believe a Transaction has been effected in error or not in accordance with the agreed Transaction. We will consult with our broker or the relevant exchange to endeavour to rectify any errors or omissions made by Optiver to our broker or to the relevant exchange in effecting the agreed Transaction.
- 9.2 We are entitled to rely on any document or communication which we reasonably believe to be a notification or an oral communication made by you without further enquiry.

## 10. Confidentiality

You and Optiver will treat all Confidential Information as confidential. Both parties agree that each party (in this clause 10, "X") may disclose the other party's (in this clause 10, "Y") Confidential Information to X's affiliates on the basis that the affiliates will treat such information as confidential and that X and its affiliates may disclose Y's Confidential Information to a third party in the following circumstances:

- (a) To those who provide services to X or act as X's agents on the understanding that they will have a commensurate obligation to keep the Confidential Information confidential;
- (b) To those who provide services to X or act as X's agents in making any trade or transaction reports for Y in respect of Transactions for the purposes of making any such trade or transaction reports;
- (c) To anyone whom X or X's affiliates may transfer or assign any of its or their rights or obligations under or in respect of, or enter into a Transaction in connection with, these Terms, in each case on the understanding that it or they will have a commensurate obligation to keep the Confidential Information confidential;
- (d) To any regulator, or to any other entity where X, X's affiliate, or X's agent, is required to do so by Applicable Regulations (including, without limitation, any transaction reporting, market transparency, or position reporting requirement), or by court order, or in order to provide services to Y; or
- (e) With the prior written consent of Y.

## 11. Privacy

- 11.1 In the course of conducting our business including processing RFQs or Transactions, we may collect or receive personal information about you, your directors, officers or relevant employees.
- 11.2 You consent to the collection, use and disclosure of any such personal information as described in our Privacy Policy and which can also be located on our Website ([www.optiver.com](http://www.optiver.com)).
- 11.3 You represent and warrant that you have undertaken all the necessary procedures under the Applicable Regulations in the collection of personal information to be delivered to Optiver.

## 12. No partnership

Nothing in these Terms or any other document between you or us shall create any partnership, joint venture, or relationship of principal and agent between you and us hereto or any relevant affiliates or subsidiaries, or provide either you or us with any right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

## 13. Liability

- 13.1 You acknowledge that Optiver will not be liable in contract or tort (including negligence) or for breach of statutory duty or otherwise, for any indirect or consequential losses of any kind whatsoever (including loss of profit) arising under or in connection with these Terms.
- 13.2 Nothing in these Terms limits or excludes a party's liability:
  - (a) for losses suffered by the other party arising out of the first party's fraud, wilful misconduct or deceit;
  - (b) for any liability that cannot be excluded or limited by law.
- 13.3 In the event of a delay in or failure of the settlement of a London Cross which is attributable directly or indirectly to any act, omission or conduct of a party or a party's clearing participant (a "**Settlement Failure**"), that party (the "**Defaulting Party**") irrevocably agrees to indemnify the other party (the "**Non-Defaulting Party**") against any and all losses, damages, costs and

expenses (each a "**Loss**") which the Non-Defaulting Party may incur or suffer through or arising from the Settlement Failure. For the avoidance of doubt, a Loss shall include but not be limited to the amount of:

- (a) any reasonable legal fees incurred by the Non-Defaulting Party;
- (b) any dividends which would otherwise have been due to the Non-Defaulting Party, together with (without limitation) such additional amounts as are necessary to ensure that the Non-Defaulting Party receives and retains the same amount in respect of any such dividends as it would have received and retained had it received payment of each relevant dividend directly from the dividend payer; and
- (c) any costs of covering the Non-Defaulting Party's short positions in any financial instruments.

- 13.4 Without prejudice to any other rights that Optiver may have, hereunder or otherwise, you shall on demand indemnify and keep indemnified Optiver against any and all claims, losses, liabilities, obligations, damages, penalties, actions, judgments, suits, costs, fees, expenses (including reasonable legal fees and expenses) commissions, taxes or disbursements of any kind or nature whatsoever ("**Liabilities**") which may be suffered or incurred by Optiver or our related entities, subsidiaries or our or their officers, employees, representatives or agents as a result of your dealings in financial products with us or provision of Brokerage Services to us under these Terms causing Optiver or our related entities, subsidiaries or our or their officers, employees, representatives or agents to be in violation of, to the extent applicable, President of the United States' Executive Order 13959 of 12 November 2020, any amendment thereto or replacement thereof, and any of its implementing rules and regulations, other than Liabilities which result from our negligence, fraud or wilful default.

#### **14. Information provided by Optiver**

You acknowledge anything provided in writing by us will be provided in response to a RFQ or Transaction request and will be general factual information only. No information provided should be construed as financial advice by Optiver to you that you can rely on.

#### **15. Representations and warranties**

- 15.1 Each party represents and warrants to the other that on the date these Terms come into effect and as of the date of each RFQ or Transaction:
- (a) it has full capacity, power and authority to enter into, deliver and perform its obligations under and in accordance with these Terms;
  - (b) it is duly incorporated or created and validly existing under the laws of the jurisdiction of its incorporation or creation;
  - (c) the obligations under these Terms that are intended to bind it are fully binding upon it and enforceable against it;
  - (d) the entry into and performance of these Terms do not and will not conflict with any laws applicable to it or its constitutional documents;
  - (e) there are no existing agreements or arrangements with third parties or orders, judgments or decrees the terms of which prevent it from entering into these Terms nor are there any actions, suits, proceedings or regulatory investigations pending or threatened against or affecting it that may affect its ability to perform its obligations under these Terms; and
  - (f) it has and will continue to have or hold all necessary licences, permits, consents and regulatory approvals necessary to perform its obligations under these Terms.
- 15.2 You represent and warrant to us that:
- (a) any information you have given to us is complete, accurate and not misleading and, where you subsequently determine that any information previously given to us was incomplete, inaccurate or misleading, you will notify us as soon as possible; and

- (b) at all times your dealings in financial products with us or provision of Brokerage Services to us under these Terms comply with and do not cause us to be in violation of, to the extent applicable, President of the United States' Executive Order 13959 of 12 November 2020, any amendment thereto or replacement thereof, and any of its implementing rules and regulations.

15.3 You represent and warrant to us that you are either:

- (a) a non-resident of Australia for Australian tax purposes whose involvement in these Terms does not occur in carrying on business in Australia at or through a permanent establishment; or
- (b) a resident of Australia for Australian tax purposes whose involvement in these Terms occurs in carrying on business in a country outside Australia at or through a permanent establishment.

## 16. Conflict with Applicable Regulations and other agreements

16.1 In the event of any conflict between these Terms (or any portion thereof) and any Applicable Regulations or other agreement now existing or hereafter entered into between the parties, then:

- (a) the Applicable Regulations will prevail over these Terms (or that portion); and
- (b) unless otherwise agreed, these Terms will prevail over the other agreement.

16.2 Where, in the circumstances contemplated in clause 1.3 above, a Transaction is executed subject to your terms of business, in the event of a conflict between your terms of business and the clauses of these Terms that are deemed to be incorporated into your terms of business, the incorporated clauses shall prevail.

## 17. Material Interests

Optiver is a full service securities firm and market maker. It is therefore possible that Optiver or its related entities, subsidiaries or its or their officers, employees, representatives or agents (together "the Optiver Group") or another client of the Optiver Group may have interests, relationships and/or arrangements that give rise to conflicts of interest in relation to business that is transacted with you. Such conflicts of interest will be managed in accordance with our established policies and procedures. We shall take all reasonable steps to ensure that you receive fair treatment in the event that we have any such interest, or in the event of an actual or potential conflict of interest arising.

## 18. No Fiduciary Duty

You acknowledge and agree that:

- (a) these Terms and the trading of financial products between us pursuant to these Terms;
- (b) any prior relationship between us; and
- (c) any representations made by us to you in connection with these Terms or otherwise prior to the date on which you receive these Terms,

do not represent or imply any fiduciary relationship or any other category of commercial relationship recognised at law or in equity as giving rise to forms of specific rights and obligations, except the contractual rights expressly set out in these Terms. In conducting Transactions with you, we will be acting solely pursuant to a contractual relationship with you on an arm's length basis and will not be acting as fiduciary to you or any other person (including your Clients). By accepting these Terms you will be deemed to have provided your informed consent to the exclusion of any such fiduciary relationship or duty.

## 19. Termination

19.1 These Terms may be terminated at any time with immediate effect by either party giving written notice to the other party.

- 19.2 Each party shall remain responsible for their obligations with respect to any actions and events taken or occurred prior to such termination which, for the avoidance of doubt, includes any obligations in relation to any outstanding trading activities.
- 19.3 Where, in the circumstances contemplated in clause 1.3 above, a Transaction is executed subject to your terms of business in the course of Brokerage Services, the clauses deemed to be incorporated into your terms of business in accordance with Clause 1.3 shall remain in full force and effect in respect of that Transaction notwithstanding the termination of these Terms.

## **20. Amendments**

We may amend these Terms by written notice to you. Amendments will become effective on the date specified by us. Unless otherwise agreed, an amendment will not affect any outstanding Transaction or any legal rights or obligations which may have already arisen.

## **21. Notices**

Unless otherwise agreed in writing, all notices to be given by us to you under these Terms shall be given at your last known address. All notices to be given by you to us shall be sent to the relevant registered office in clause 3 above.

## **22. Interpretation**

A reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.

## **23. Third Party Rights**

The parties do not intend to confer any rights on any person not a party to these Terms pursuant to the Contracts (Rights of Third Parties) Act 1999, and the parties may amend, vary or terminate these Terms in such a way as may affect any rights or benefits of any other person without their consent.

## **24. Governing Law and Jurisdiction**

These Terms are governed by and shall be construed in accordance with English law. Any dispute arising out of or in connection with these Terms, including any question regarding their existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("**SIAC**") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be Singapore.

The Tribunal shall consist of one arbitrator.

The language of the arbitration shall be English.