



# Tosca Markets

## Terms & Conditions

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## Introduction

This document is important and contains the terms on which we provide our online foreign exchange, bullion, CFD and derivative trading (the "Services") to you.

Due to CFTC regulatory restrictions and in accordance with the Dodd-Frank Act, Tosca Markets CANNOT OPEN ACCOUNTS FOR RETAIL CUSTOMERS WITH RESIDENCE IN THE UNITED STATES\*.

It is essential that you read and understand these terms and we will ensure that you have a proper opportunity to do so by not allowing you to trade until you have confirmed to us that you have read these terms. If you have any questions please let us know.

**Tosca Markets is authorised and regulated by the Financial Conduct Authority (FCA Firm Reference No. 502635).**

## 1. The Agreement Between Us

### 1.1. The agreement between us (this "Agreement" comprises:

- these terms and conditions; and
- the terms and matters set out in the Account Opening Application Form and any sub mandates;

#### 1.1.1.

This Agreement represents all the terms agreed between us regarding the Services unless we have agreed in writing to supplement or vary this Agreement.

#### 1.1.2.

Unless otherwise agreed with you in writing, we are treating you as a retail client for the purposes of the rules of the Financial Conduct Authority (the "FCA"). You agree that you are responsible for keeping us informed about any change to your circumstances as this could affect our categorisation of you.

### 1.2. Effective Date

#### 1.2.1.

This Agreement shall come into force on the earlier of the date you complete and sign the Account Opening Application Form and the date you begin to use the Services (being a day we are open for business or the next business day if we are not, a "Business Day"). Our obligations under this Agreement in relation to our Services shall become effective on the Business Day we receive a transfer of funds into your account.

### 1.3. Cancellation rights

#### 1.3.1.

You have a right to cancel this Agreement within 14 days of the Business Day we receive the completed Account Opening Application Form from you. If you would like to cancel this Agreement please let your contact at Tosca Markets know or write to us at Tosca Markets, 12-14 Wilfred Street, London SW1E 6PL or email us on accounts@toscamarkets.com.

#### 1.3.2.

If you do not exercise this right to cancel within the requisite time period, you will still be entitled to exercise your right under Term 32.1.1 of Section 2 of the Agreement to terminate the Agreement.

#### 1.3.3.

You must note that the right to cancel and the right to terminate under the Agreement only relate to cancelling or terminating the Agreement. Cancellation or termination will not affect the completion of transactions initiated prior to us receiving your notice of cancellation or termination. Cancellation or termination will not affect your or our accrued rights, indemnities, existing commitments or any other contractual provision intended to survive termination of this Agreement.

#### 1.3.4.

No penalty will apply on cancellation, however, you will pay our fees on a pro-rata basis to the date of cancellation and any additional expenses necessarily incurred by us (or a third party) in cancelling this Agreement and any losses necessarily realised in settling or concluding outstanding transactions and transferring your funds back to you.

#### 1.3.5.

You should note that we will provide the Services to you until we receive notice of cancellation pursuant to your cancellation right and if you do cancel the amount you receive back may be less than your initial investment due to fluctuating market values, payment of any fees due to us, costs we incur and any costs incurred by us due to circumstances outside our control.

\*A United States resident means any of the following: any natural person resident of the United States; any company, partnership, or other legal entity created or organised under the laws of any jurisdiction of the United States; a branch or agency of a foreign entity located in the United States; a trust of which the trustee is a United States resident; an estate of which a United States resident is the executor or administrator; or any account held for the benefit of a United States resident.

## 2. Terms and Conditions that apply to the Services

### 2.1. Tosca Markets

Tosca Markets is authorised and regulated by the Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS. We are entered on the FCA Register and our firm reference number is 502635. Our authorisation includes the provision of arranging deals in investments and non-advised dealing services and such services comprise our main business activities.

Our principal place of business is Tosca Markets, 12-14 Wilfred Street, London SW1E 6PL (we will notify you of any change to our principal place of business) our telephone number is +44 20 70 360 868 and our email address is accounts@toscamarkets.com

### 2.2. Non-advised dealing services

#### 2.2.1.

Unless we have agreed to provide you with investment advice and given you a personal recommendation in relation to a particular transaction, we offer "non-advised dealing services" which means us buying from you or selling investments to you or buying or selling investments on your behalf when you do not wish us to advise you on the merits or the suitability of the transaction for you.

#### 2.2.2.

Any instructions you give us in relation to non-advised dealing services must be given by you through our online foreign exchange, bullion, CFD and derivatives transaction systems (the "Online Platform") unless we agree otherwise.

#### 2.2.3.

We will provide you with prices at which the relevant currency, bullion, CFD or derivative can be purchased or sold either verbally or via the Online Platform.

#### 2.2.4.

You are required to settle each transaction on the date agreed with us for the settlement or if there is no such date, then the second business day after the execution of an order by us or on such other date as we may determine (the "Value Date").

### 2.3. Appropriateness

#### 2.3.1.

Even if we are not providing you with investment advice, for certain types of investment (considered by the FCA to be complex investments) when we receive instructions to deal on a non-advised basis we are required under the FCA rules to assess the appropriateness of such instructions by reference to your knowledge, experience and understanding of the risks involved. Should we not have sufficient information to make this assessment we reserve the right not to act on instructions received from you.

#### 2.3.2.

If we consider that (with regard to the information we hold about you) a transaction is inappropriate, we shall warn you of this. If you wish to proceed with the transaction after having been given this warning, you shall be solely responsible for that decision.

### 2.4. Confirmations

#### 2.4.1.

When we deal for you on a non-advised basis we will provide you with a notice in electronic form confirming the execution of your order and providing you with details of the transaction (such as the price and any rate of exchange used for a currency conversion). You should check the confirmation carefully and let us know immediately of any errors. Unless you let us know within 24 hours that there is an error in the confirmation we send you it will be deemed to be binding on you (in the absence of manifest error).

### 2.5. Best execution

#### 2.5.1.

When we execute an order on your behalf the FCA rules require us to take all reasonable steps to obtain the best possible result for you taking into account

a number of relevant factors. In order to comply with our obligations in relation to best execution we have in place an order execution policy which is available on our website. Our order execution policy is reviewed periodically and also whenever a material change occurs that affects our ability to continue to provide best execution. By entering into this Agreement you confirm that you agree to this policy.

#### 2.5.2.

Please note that specific instructions from you in relation to the execution of orders may prevent us from following our order execution policy in respect of the elements of execution covered by the specific instruction.

#### 2.5.3.

When we enter into transactions on your behalf denominated in a foreign currency other than the base currency of your account (as such base currency is provided for in the Account Opening Application Form) we may carry out any necessary foreign exchange transactions (together with any hedging transactions on a transaction by transaction basis) on the settlement date for the transaction rather than the trade date at our then prevailing rates of exchange.

#### 2.5.4.

Payments into your account may where necessary be converted into the base currency of your account.

### 2.6. Capacity

#### 2.6.1.

Unless we agree otherwise at the time of dealing, we will be the counterparty to all your transactions and act as a principal and not as agent on your behalf. Unless we agree otherwise, we will treat you alone as our client for all purposes and you shall be directly and fully responsible for performing the obligations under each transaction we enter in with you or on your behalf. We do not have nor do we seek to have any relationship with any third party on whose behalf it may be claimed you are acting.

### 2.7. Aggregation

#### 2.7.1.

Subject to the FCA rules, we may aggregate transactions in respect of your account with those of other clients and of our employees and associates (including any holding company or subsidiary company (as defined in the Companies Act 2006) from time to time, of ours and/or any subsidiary company of any such holding company, an "Associated Company") and their employees without asking you first. We will only aggregate your order if we believe it is likely that the aggregation of your order will work overall to your advantage. However, you should note that the effect of aggregation may work to your disadvantage in relation to a particular order.

### 2.8. Use of our Online Platform

#### 2.8.1.

You will be able to enter orders at the exchange rates and prices displayed on the Online Platform.

#### 2.8.2.

The ownership of materials and text contained on our website, accessed from it, or otherwise distributed to you by us, is confidential and protected by copyright. You agree that this material and text is for your own personal use and that you will not disclose it to anyone else. All electronic communications between parties in the course of business may be monitored by us in accordance with relevant law.

#### 2.8.3.

We will notify you of your Online Platform account password by phone, letter or email. Your personal information will be requested as a means to verify your identity before the password is released over the telephone. Your password is strictly confidential and you agree to take full responsibility for all transactions, loss, costs and expenses, should any transaction be accepted and concluded by us after the password has been provided to you.

#### 2.8.4.

You agree that by using the Online Platform you have given your prior express consent to receive and transmit instructions for execution outside a regulated market or multilateral trading facility.

**2.8.5.**

You will provide us with a list of people authorised to access the Online Platform on your behalf (each an "**Authorised User**"). You shall notify us immediately when any new person becomes an Authorised User or when any existing Authorised User is no longer entitled to be an Authorised User. Upon receipt of such notice, the change in Authorised User is effective immediately (or on such date as specified in the notice). However such notice shall not affect any instructions already executed prior to receipt of such notice. All instructions given and accepted by an Authorised User will be deemed to be instructions authorised by you and shall be binding on you.

**2.8.6.**

You must ensure that each Authorised User quits and closes the internet browser after using the Online Platform.

**2.8.7.**

You will advise us immediately if you have any reason to believe that your login and password have not been kept secure and confidential or may otherwise have become known to others.

**2.8.8.**

We may at any time without notice to you suspend, withdraw or deny access to the Online Platform for any reason including but not limited to security, quality of service, failure by you to pay an amount when due or breach by you of any provision of this Agreement.

## **2.9. Transmission of orders**

**2.9.1.**

Unless otherwise agreed by us, all orders to trade must be given to us through the Online Platform. Such order shall not take effect unless actually received by us.

**2.9.2.**

We will endeavour to advise you promptly if such circumstances arise, however we are under no obligation to provide you with our reasons for not acting on your orders. We will not be liable to you in any way if we refuse to follow your orders.

## **2.10. Orders binding**

**2.10.1.**

When you click the submit button to enter an order through our Online Platform (or give us an order by any other means we may agree) we will be under no obligation to accept it or, if accepted, under no obligation to execute it. Unexecuted orders may be cancelled at our discretion. Once an order has been entered into our Online Platform it may not be altered or cancelled.

## **2.11. Margin Deposit**

**2.11.1.**

Before executing any order, we may in our absolute discretion require a deposit of such amount as we may specify in respect of any actual, anticipated or contingent liability you may have to us in respect of anticipated or existing open positions which you have or will have with us (the "**Margin Deposit**".)

## **2.12. Cleared funds**

**2.12.1.**

You must at all times have sufficient cleared funds with us before we will execute any order. We will indicate to you the sum required as the Margin Deposit for each order.

## **2.13. Profits, Losses and Interest Charges on Open Positions**

**2.13.1.**

For any open position held by you, we shall from time to time credit your account with profits and interest earned, or debit your account for losses and interest incurred from the date agreed with us until the Value Date (as defined in Term 2 above) or until the position is closed or liquidated, in the following manner:

- for buying of one currency against the sale of another currency and the currency bought has a higher interest rate than the currency sold, interest arising therefrom shall be credited to your account;
- for selling of one currency against the purchase of another currency and the currency sold has a higher interest rate than the currency bought, interest arising therefrom shall be debited to your account;
- for bullion contracts, interest arising from buying or selling bullion shall be credited or debited to your account;
- in the case of a negative interest rate, interest arising therefrom shall be debited to your account;
- in the case of CFDs, we will charge an interest rate in respect of each [long (or bought)] open position and:
  - in the case of long (or bought) positions we will settle the difference between the price or level at which we entered into the transaction with you and the price or level of the subject matter (or underlying) on the Value Date, if it is higher we will pay the difference to you but if it is lower you will pay the difference to us;
  - in the case of short (or sold) positions we will settle the difference between the price or level at which we entered into the transaction with you and the price or level of the subject matter (or underlying) on the Value Date, if it is lower we will pay the difference to you but if it is higher you will pay the difference to us.

**2.13.2.**

In all cases, interest shall be at the rate we determine from time to time and published on our website.

## **2.14. Advances and Interest Rate**

**2.14.1.**

If you are not able or not willing to settle any transaction on the Value Date or on such date as we shall require settlement, we may (but without obligation to do so) make an advance to you of such amount as is necessary for direct settlement of any transaction in whole or in part and you undertake to repay the US dollar equivalent (at the exchange rate or rates as we shall stipulate) upon demand with interest therein at the rate of 3% per annum above the prime lending rate in the United States for the time being in force, calculated on a daily basis from the date of such advance up to and including the date of repayment in full. Interest at the above rate shall be chargeable on the following items:

- Any part of the Margin Deposit or additional Margin Deposit not paid or deposited in the form of cash; and
- Any amount due to us which remains outstanding.

**2.14.2.**

This Term 14 shall not be construed as binding us to make any advance to you nor shall it prejudice any of the rights and remedies we have against you or any other persons under this Agreement or otherwise conferred by law.

## **2.15. Forced Liquidation**

**2.15.1.**

You are required to maintain a sufficient level of Margin Deposit. We reserve our right to close out all open positions:

- if at any time the Margin Deposit held by us is approaching or is no longer sufficient to cover the negative mark to market value of any or all open positions that you have with us; or
- if at any time the pre-agreed credit limit assigned to you is no longer sufficient to cover the negative mark to market value of any or all open positions that you have open with us.

**2.15.2.**

We shall have the right, in our absolute discretion, to determine the mark to market value from time to time. In addition to other remedies available to us, if you fail to pay an amount when due under this Agreement, we have the right to close (by either buying or selling) any or all of your open positions.

## **2.16. Quoting error**

**2.16.1.**

We will use all reasonable endeavours to provide up-to-date quotes for all currencies, bullion and other instruments traded on or through our Online Platform however we give no assurance that the prices quoted are accurate.

## 2.16.2.

In accordance with Term 29.1 in this Section 2, should a quoting error occur due to a typographical error or other obvious mistake in a quote or indication (the "Quoting Error"), we are not liable for any damages, claims, losses, liabilities or costs arising from the Quoting Error. We reserve the right to make the necessary adjustments to correct the Quoting Error and close any position opened on the basis of a Quoting Error. Any dispute arising from a Quoting Error will be resolved on the basis of the fair market value, as determined by us acting reasonably, of the relevant currency at the time such Quoting Error occurred.

## 2.17. Credit Limits

### 2.17.1.

We may, but have no obligation to, grant you a credit limit in an agreed currency that can be offset against a negative mark to market value on an open position, or an amount applicable to unsettled trading losses to some or all trades (either individually or in aggregate or both).

### 2.17.2.

If the negative mark to market of an open position is approaching or has exceeded your credit limit, we reserve the right to require you to pay an amount in addition to the Margin Deposit in our absolute discretion. Any credit limit we set may be reduced or withdrawn at any time by giving you notice in writing.

### 2.17.3.

If we act on an instruction which would result in a credit limit being exceeded:

- we are not obliged to advise you of this;
- you will be liable to us for all amounts due to us including those above any credit limit;
- we are not obliged to act upon any subsequent instruction where a credit limit may be exceeded.

## 2.18. Authorisation Limits

### 2.18.1.

You may notify us of an authorisation limit applicable to some or all trades either in general or for particular Authorised Users. You may withdraw any such authorisation limit at any time by giving us notice in writing. We may, in our absolute discretion, impose an authorisation limit on you and/or any Authorised Users or vary any such limit at any time by giving you notice in writing in accordance with Term 27 of this Section 2.

## 2.19. Material interests and conflicts

### 2.19.1.

As part of an international organisation which provides a number of services to a range of clients, there may be times when there is a conflict between our interests, or the interest of an Associated Company and the duty we owe to you or any other client, or a conflict between the differing interests of two or more clients to whom in each case we owe a duty. Under the FCA rules we are required to have in place arrangements with a view to taking all reasonable steps to prevent such conflicts of interest constituting or giving rise to a material risk of damage to the interests of our clients. We have established a comprehensive conflicts of interest policy to identify and manage such actual or potential conflicts of interest. Where we do not consider that the arrangements under our conflicts of interest policy are sufficient to manage a particular conflict, we will inform you of the nature and/or source of the conflict. Our full conflicts of interest policy is available on request.

## 2.20. Client money

### 2.20.1.

All amounts held in your account will be received and held by us as client money and segregated ("Segregated Funds") by us in accordance with the FCA rules. Unless you have notified us in writing to the contrary, we may hold Segregated Funds in a segregated account located outside the UK or pass money held on your behalf to an intermediate broker, settlement agent or counterparty located outside the UK. The legal and regulatory regime applying to any such person may be different from that of the UK and in the event of the insolvency or any equivalent failure of that person, your money may be treated differently from the treatment which would apply if the money was held in a segregated account in the UK.

## 2.20.2.

You agree that in the event that there has been no movement on your account for a period of at least six years (notwithstanding any payments or receipts of charges, interest or similar items) and/or we are unable to trace you despite having taken reasonable steps to do so, we may release your money from the segregated account and use it as our own.

## 2.21. Confidentiality

### 2.21.1.

We will use reasonable endeavours to ensure that all confidential information relating to you and your account is kept confidential. However, you authorise us to disclose information (confidential or not):

- to our employees (or employees of our agents, nominees or custodians or other persons appointed by us in connection with your account) on a need-to-know basis;
- to the FCA and any other regulatory authority, to the extent that they are entitled to the information sought;
- otherwise as may be required by law, best investment business practice, industry regulations or codes of practice;
- in the circumstances described in Term 22 below.

## 2.22. Data Protection

### 2.22.1.

When you provide your personal data on the Account Opening Application Form or otherwise you confirm that it is current, accurate and complete. We will use your personal data in accordance with the Data Protection Act 1998.

### 2.22.2.

You agree that we may check your personal information with other information that you provide or that is held by us about you to verify your identity and other information relating to you and we may also carry out credit assessments on you. In doing so, your personal information may necessarily be disclosed to third parties.

### 2.22.3.

All personal information about you, including sensitive personal information, that we acquire may be stored (by electronic and other means) and used by us in the following ways:

- to enable us to provide Services to you;
- to respond to requests for information from you;
- to follow up with you after you request information to see if we can provide any further assistance;
- for statistical purposes and for market and product analysis;
- to develop and improve the products and Services we provide and/or may provide to you (and/or to your organisation);
- for our own administrative purposes (including, but not limited to, maintaining our records) and compliance purposes;
- for the prevention of fraud or other crime and its detection;
- to prevent or detect abuses of our Services or any of our rights and to enforce or apply our terms and conditions and/or other agreements or to protect our (or others') property or rights;
- to contact you (for example, by telephone, fax, e-mail or other means) to let you know about products or Services that we think may be of interest to you;
- to permit our Associated Companies also to contact you (for example, by telephone, fax, email or other means) to let you know about products or services that they think may be of interest to you;
- we may from time to time carry out or instruct others to carry out certain money laundering checks imposed on us by law required for the prevention and detection of crime, money laundering and, in particular, international terrorist financing. We may use staff employed by Associated Companies, whether in this country or overseas or, if appropriate, we will engage specialist contractors to carry out such work whether here or abroad. In any event, any staff involved in such checks will be specially trained and will not share information about you with any third party unless permitted by law to do so. Such staff shall at all times only act in accordance with our instructions and any such checks will be carried out in a secure environment. You hereby agree to the sharing of your personal information in this way for these purposes. Please note that we may use electronic verification services for identification purposes.

#### 2.22.4.

Except where indicated above, we will not provide your personal information to organisations outside of our Associated Companies to use for their own marketing purposes without your consent but we may disclose your personal information outside of our organisation:

- to other organisations we may engage to perform, or assist in the performance of, our Services or to advise us, provided that they will only be given access to your personal information to perform such assistance, services or advice and not for other purposes. We shall endeavour to ensure that any such organisation undertakes to adopt appropriate security measures in respect of your and others' personal data;
- in circumstances in which we may be required or authorised by law, court order, regulatory or governmental authorities to disclose your personal information.

#### 2.22.5.

We may sometimes transfer your personal information to countries that do not provide the same level of data protection as the UK. If we intend to do this, then where practical and appropriate, before doing so we will put contractual arrangements in place to ensure the adequate protection of your information and we shall endeavour to ensure that any such contractual arrangements comply with the standards required by the UK Information Commissioner.

#### 2.22.6.

We have security procedures covering the storage and disclosure of your personal information to prevent unauthorised access and to comply with our legal obligations.

#### 2.22.7.

You may be entitled to ask us for details of the personal information that we hold about you, the purposes for which it is being or will be processed and the recipients or classes of recipients to whom it is being or will be disclosed. If you would like to request copies of this information, please contact us. We may charge a fee for providing this information to you (details of which are available upon request). If you make a written request to us, we will also correct, delete and/or block personal information from further processing if that information proves to be inaccurate.

### 2.23. Cookies

#### 2.23.1.

Cookies are small pieces of information sent by a web browser so it can later be read back from that browser. Cookies may be used on some pages of our Online Platform and website to provide users with a more customised browsing experience. Cookies are not used to determine the personal identity of anyone merely visiting our website.

#### 2.23.2.

You can choose whether and how a cookie will be accepted by changing your preferences and options in your browser. However you may not be able to access some parts of the website and Online Platform if you choose to disable the cookie acceptance. We therefore recommend you enable cookie acceptance to benefit from all the services on our website and the Online Platform.

### 2.24. Intellectual Property

#### 2.24.1.

You agree that we are the sole owner (except to the extent owned by any third party licensors and except to the extent licensed by any of our Associated Companies) of all right, title and interest in the Online Platform and any information or data generated by the Online Platform.

#### 2.24.2.

At no time shall you enter into commitments for us or in our name or use our intellectual property for any purpose whatsoever. You will not use our name or intellectual property without our prior written approval nor will you represent yourself as being affiliated with, or authorised to act for us.

### 2.25. Complaints and Disputes

#### 2.25.1.

If you have a complaint in respect of our Services you can in the first instance write to our Compliance Officer. Details of our internal complaints policy are

available on request. If you are dissatisfied with the result of our complaints procedure you may be able to complain directly to the Financial Ombudsman Service. The Financial Ombudsman's Service can be contacted by telephone on 0800 023 4567 or you can find further details on their website [www.financial-ombudsman.org.uk/consumer/complaints.htm](http://www.financial-ombudsman.org.uk/consumer/complaints.htm)

### 2.26. Compensation

#### 2.26.1.

We are covered by the Financial Services Compensation Scheme ("FSCS"). If we are unable to meet our liabilities in respect of investment business, if you make a valid claim you may be entitled to redress from the FSCS in respect of the investments that we arrange. This depends on the type of business and circumstances of the claim. Most types of investment business are covered for 100% of the first £50,000. Further information is available from us or from the Financial Services Compensation Scheme, 7th Floor, Lloyds Chambers, 1 Portsoken Street, London E1 8BN. You should note that this scheme is not normally available to professional clients (as defined in the FCA rules).

### 2.27. Communicating With Each Other

#### 2.27.1. Communication to us by post

Unless we advise you to the contrary, our address for written communication is Tosca Markets, 12-14 Wilfred Street, London SW1E 6PL.

#### 2.27.2. Communication to us during a face to face meeting or by fax or telephone

We will (subject to Term 10 of this Section 2) act upon instructions received during a face to face meeting, by telephone or fax but we cannot accept any responsibility for any inconsistency between face to face, telephoned or faxed instructions and any subsequent written confirmation.

#### 2.27.3. Email communications

You agree that we may communicate with you by email and (subject to Term 10 of this Section 2) act on instructions received via email from you. You acknowledge and accept the risks inherent in email, particularly of its unauthorised interception and of its not reaching the intended recipient. Please notify us in writing if you do not consent to the use of email as a means of communication in relation to this Agreement and its subject matter.

#### 2.27.4. Communication to us by your nominated third party

If you authorise us to accept the instructions of a nominated third party we will do so until we receive notice to the contrary from you. The same rules apply to face to face, written, telephoned, faxed or emailed instructions received from a

third party as they do to instructions received from you and you must ensure that your nominated third party complies with these rules.

#### 2.27.5. Communications by us to you

We will write to, fax, telephone or email you and/or, as appropriate, a third party authorised by you, at the address(es) and the other contact details as set out in the Account Opening Application Form or any other address(es) and other contact details you notify to us in writing. To help us manage and administer your account properly our representatives or employees may occasionally call you on the telephone or visit you without clearing this with you first.

#### 2.27.6. Apparent instructions

As long as we act reasonably, you authorise us to rely on instructions by whatever means transmitted which appear or purport to be sent by you or a third party authorised by you.

#### 2.27.7. Receipt of instructions and notices

If an instruction or notice from you is received by us outside business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in England), the instruction or notice is deemed to have been received by us on the next business day following receipt.

Any notice posted on our website will be deemed to have been given 3 days after the notice was posted.

### 2.28. Your undertakings

#### 2.28.1. Authority

You undertake that you have full power and authority to enter into, and to instruct us, on the terms of this Agreement.

## 2.28.2. Information

You undertake:

- that all the information you have supplied to us in the Account Opening Application Form during meetings with us or otherwise is complete and accurate;
- to notify us promptly of any change to the information supplied by you in the Account Opening Application Form or otherwise;
- to supply us with all information, documentation or copy documentation that we require in order to allow us to carry out our account opening procedures and carry out ongoing monitoring of you;
- to provide us with any additional information which may be reasonably required by us in order that we can fulfil our legal, regulatory and contractual obligations in connection with or relating to this Agreement.

## 2.28.3. Your investments

You undertake that:

- (unless otherwise agreed with us) the investments and cash within your account are within your beneficial ownership and are and will remain, for the term of this Agreement, free from all liens, charges and any other encumbrances;
- while this Agreement continues you will not, except through us, deal, or authorise anyone else to deal in the investments in your account;
- while this Agreement continues you will not, either directly or indirectly, cause us to incur any liability to any third party which is not anticipated by the express terms of this Agreement.

## 2.28.4. Documents

You undertake to sign and/ or produce, by the time we ask you to, any documents we need to enable us to carry out our duties under this Agreement.

## 2.28.5. Indemnity

You (and where you are an individual or individuals your personal representatives) indemnify us on our written demand against all proceedings, actions, costs and expenses, claims, demands and/or other liabilities incurred by us, our agents, or any nominee or custodian, as a consequence of:

- the acceptance of instructions from you or any Authorised User over the telephone or by fax or by email or via the Online Platform;
- any breach by you or any Authorised User of any of the terms of this Agreement.

## 2.28.6.

This indemnity shall not apply to the extent of any liability caused by a breach of this Agreement by us or the negligence, fraud or wilful default of us, our agents, a nominee or custodian.

## 2.29. The extent of our responsibility for our actions and the actions of others

### 2.29.1. Our responsibility

We will carry out our duties with reasonable skill, care and diligence and in accordance with the instructions and authority you have given us. As long as we do this, we cannot and do not accept any liability for loss (or the loss of an opportunity to gain) which arises from the provision of our Services for and on your behalf. We shall not be liable under any circumstances for any direct, indirect or consequential loss incurred as a result of a delay in funds reaching you.

### 2.29.2. We accept responsibility for our own nominee(s)

We accept responsibility for the acts or omissions in respect of this Agreement of any nominee company controlled by us or controlled by one of our Associated Companies.

### 2.29.3. Custodians / agents (other than our own nominee(s))

We will exercise reasonable care in our choice of nominees, custodians or agents and we will monitor their continuing suitability. As long as we do this (and as long as the losses do not arise directly from our negligence, fraud or wilful default) we cannot and do not accept responsibility for loss arising from the default of a nominee (other than our own nominee), a custodian or agent whether the loss arises from the loss of funds, investments, title documents or otherwise.

## 2.29.4. Events outside our reasonable control

We cannot and do not accept responsibility for losses you suffer as a result of our (or our agents, nominees, custodians or others appointed by us) failing to comply with these terms (or terms or matters contained in the Account Opening Application Form) as a result of circumstances outside our or their reasonable control. These circumstances would include, but not be limited to, interruption of power supply, electronic equipment or supplier failure.

Neither objectives nor restrictions will be deemed to be breached as a result of changes in the value of investments caused by movements in the market.

## 2.29.5. Market Disturbances

We may give a notice (a "Disturbance Notice") to you at any time if we form the view that market or trading conditions in the relevant market for the currency, bullion or other instrument concerned are seriously disturbed. This includes circumstances where, in our opinion, deposits in the currency, bullion or the instrument concerned are not available to us in the ordinary course of business in the relevant market or because of national or international financial, political or economic circumstances or exchange controls, it is impractical. When a Disturbance Notice is given, our obligations will be suspended while we negotiate alternative arrangements with you. If we reach agreement before the Value Date, those alternative arrangements will apply. If we do not reach agreement within that period, we will each be released from our obligations under the relevant transaction.

## 2.29.6. Preservation of rights under the Financial Services and Markets Act 2000 and the regulatory system

Nothing in this Agreement is intended to have, or has, the effect of excluding or restricting our duties or liabilities to you under the Financial Services and Markets Act 2000 or the regulatory system.

## 2.29.7. Agency status

In any circumstances in which we act as your agent you will be bound by our actions. These circumstances may include but not be limited to our dealing with a third party on your behalf or arranging for a third party to receive or hold your money. Nevertheless, none of the Services shall give rise to any fiduciary or equitable duties which would prevent or hinder us or any Associated Company in transactions with or for you, including programme trades, acting as both market maker and broker, or acting as agent in dealing with other associates or clients and obtaining a profit from any such activity.

## 2.30. Delegation and use of Associated Companies/agents

### 2.30.1.

We may delegate any of our responsibilities under this Agreement to a third party.

## 2.31. Charges

### 2.31.1.

You agree to pay us the charges for our Services as notified to you through the Online Platform. Our website and other notifications to you set out:

- the basis of calculation of our charges;
- how frequently they are to be paid;
- (where relevant) whether any other payment is to be received by us (or to our knowledge by an Associated Company) in connection with transactions we carry out with or for you in addition to, or in lieu of, our charges.

### 2.31.2. Expenses

You agree to reimburse us for all the costs and expenses we incur in the carrying out of our Services. The costs will include, but not be limited to:

- any costs and expenses referred to in the Account Opening Application Form and/or otherwise notified to you;
- transaction costs;
- commissions, transfer fees, registration fees, taxes and similar liabilities and costs.

We shall retain a lien and security interest over any assets within your account to the extent that any charges, costs, losses or claims for which you are liable to us remain unpaid. We will notify you of any disposal of any assets of yours we may be holding pursuant to rights under a lien or security interest. Such disposal will

occur if you fail to make payments to us when due. The lien or security interest will apply in respect of each asset or type of asset or class of asset comprised within your account from time to time to the extent of your indebtedness to us.

In the event of default or late payment of any sum due to us we reserve the right to charge interest at a rate not exceeding the effective cost to us of borrowing in the relevant money markets an amount equal to the sums due or such other rate as we may have notified to you.

#### **2.31.3. Changes in charges**

Our charges may be changed from time to time. We will let you have 30 calendar days' written notice of any changes to our charges before we implement them.

#### **2.31.4. Payment of charges and expenses**

You authorise us to deduct the charges and expenses due in relation to the provision of our Services under this Agreement and all related charges and expenses from your account at the times and frequency which have been notified to you. If there are insufficient cash balances on the account you authorise us to liquidate positions or sell any assets we may be holding to the extent necessary to cover the accrued charges and expenses. If we cannot collect charges and expenses in this way we will invoice you and the invoice will be payable on receipt.

### **2.32. Ending the Agreement**

#### **2.32.1. Notice of ending**

##### **2.32.1.1.**

You may end this Agreement by giving us written notice at any time - this Agreement will end when we receive your notice (or on a later date specified by you in such notice).

##### **2.32.1.2.**

We may end this Agreement by giving you written notice at any time - this Agreement will end when you receive our notice (or on a later date specified by us in such notice).

##### **2.32.1.3.**

We may also end this Agreement with immediate effect by written notice if either you breach any of the terms of the Agreement or we need to do so for regulatory or operational reasons.

#### **2.32.2. Transactions in progress**

When this Agreement ends, transactions already initiated to which we or our agents are committed will be completed.

#### **2.32.3. Consequences of ending**

When this Agreement ends we shall liquidate or close out all open positions and may charge you for:

- periodic charges which have accrued through to the date of termination which shall become immediately due and payable;
- any additional expenses we or our agents necessarily incur on termination of this Agreement;
- any losses necessarily realised by us in settling or concluding outstanding obligations.

Within two days of termination of this Agreement, you will return or destroy all passwords and log-in information received from us in accordance with our written instructions.

Termination of this Agreement is without prejudice to the accrued rights and liabilities of the parties except in the case of termination under Term 32.1.3 which shall relieve us of any obligations set out in this Agreement or arising out of transactions contemplated by this Agreement, including any obligations arising out of any transaction already entered into with us.

Terms 28.5, 29.1 and 33.10 in this Section 2 shall survive termination of this Agreement.

#### **2.32.4. Investments**

When this Agreement ends we will account to you promptly for any assets we may be holding for you.

However, we shall retain a lien and security interest over any assets within your account to the extent that any charges, costs, losses or claims for which you are liable to us remain unpaid.

### **2.33. General**

#### **2.33.1. Amendments**

You must notify us in writing of any proposed amendments to this Agreement which will take effect only when accepted by us in writing.

We may amend this Agreement at any time. Amendments proposed by us will take effect on the date notified to you by us, which shall be a date not less than 10 business days after the date of issue of our notice unless circumstances (such as legal or regulatory requirements) dictate a shorter period.

#### **2.33.2. Time of essence**

Time shall be of the essence in respect of all your obligations under this Agreement (including any transaction).

#### **2.33.3. Assignment / transfer**

This Agreement is personal to you and you may not assign or transfer any of your rights or responsibilities under it without our prior written consent. We may assign or transfer our rights and responsibilities under this Agreement to an Associated Company upon giving you written notice. We may assign or transfer our rights and responsibilities under this Agreement to a third party but will give you 30 calendar days' prior written notice if we intend to do so.

#### **2.33.4. Rights and remedies**

The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

Neither the failure nor delay on our part in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude us from any other or further waiver of any right or remedy.

#### **2.33.5. Severance**

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **2.33.6. No rights under Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### **2.33.7. Language**

This Agreement is supplied in English and all communications from us to you for the duration of this Agreement shall be in English.

#### **2.33.8. Telephone calls**

Telephone calls (and other communications as defined by the Regulation of Investigatory Powers Act 2000) between us may be recorded to maintain the quality of our service to you. All recordings shall be and remain solely our property and will be accepted by you as conclusive evidence of instructions or conversations so recorded. You agree that we may deliver copies of transcripts of such recordings to any court, regulatory or government authority.

#### **2.33.9. Cooperation in proceedings**

If any action or proceeding is brought by or against us in relation to this Agreement or arising out of any act or omission by us required or permitted under this Agreement, you agree to co-operate with us to the fullest extent possible in the defence or prosecution of such action or proceeding.

#### **2.33.10. Governing law**

This Agreement is governed by and shall be construed in accordance with the laws of England and shall be subject to the non-exclusive jurisdiction of the English courts.

## Treating Clients Fairly

At Tosca Markets we are committed to treating our clients fairly ("TCF"). We have reviewed these terms and conditions in the context of TCF and believe that they are in accordance with our TCF commitment. We have also reviewed our internal systems and controls and will continue to monitor the service we provide in the light of client feedback to ensure TCF for our clients.

## 3. Provisions Relevant to Particular Types of Client

### 3.1. Charities

If you are a charity constituted as a trust, the following additional terms apply:

#### 3.1.1. Trustee Act 2000

If you are required to make a policy statement under section 15 of the Trustee Act 2000 we will, in the operation of your account, comply with that policy statement or any revised or replaced policy statement provided by you.

#### 3.1.2. Changes in trustees during the term of this Agreement

At our option this Agreement shall continue in full force and effect notwithstanding any change in the composition of the trustees whether by death, retirement or addition of trustees or otherwise.

#### 3.1.3. Joint and several liability

Each of the trustees accepts joint and several liability for the obligations accepted by you under this Agreement. Save in respect of liability arising directly or indirectly from negligence, fraud or wilful default, the liabilities of the trustees under the terms of this Agreement shall be limited to the assets of the trust from time to time.

### 3.2. Individuals applying jointly

If you are individuals applying jointly, the following additional terms apply:

#### 3.2.1. Acceptance of Instructions

We will accept instructions from any one account holder unless you notify us otherwise.

#### 3.2.2. Death during the term of the Agreement

On the death of any one of you this Agreement will not terminate and we will treat the survivor(s) as the only person(s) entitled to or interested in the account. Should all of you die during the term of this Agreement we shall continue to hold the account according to the investment mandate specified until such time as we are instructed otherwise by the properly appointed executor(s) of the last of you to die.

#### 3.2.3. Joint and Several Liability

Each of you accepts joint and several liability for the obligations accepted by you under this Agreement.

### 3.3. Partnerships

If you are a non-incorporated partnership, the following additional terms apply:

#### 3.3.1. Changes in composition of non-incorporated partnerships

This Agreement shall continue in full force and effect notwithstanding any change in the composition of a non-incorporated partnership whether by the death, retirement or addition of partners to the partnership or otherwise.

#### 3.3.2. Joint and Several Liability

If you are a partner in a non-incorporated partnership each of you accepts joint and several liability for the obligations accepted by you under this Agreement.

### 3.4. Trusts

If you are a trust the following additional terms apply:

#### 3.4.1. Changes in trustees during the term of the Agreement

At our option this Agreement shall continue in full force and effect notwithstanding any change in the composition of the trustees whether by death, retirement or addition of trustees or otherwise.

notwithstanding any change in the composition of the trustees whether by death, retirement or addition of trustees or otherwise.

#### 3.4.2. Joint and several liability

Each trustee accepts joint and several liability for the obligations accepted by you under this Agreement. Save in respect of liability arising directly or indirectly from negligence, fraud or wilful default, the liabilities of the trustees under the terms of this Agreement shall be limited to the assets of the trust from time to time.

## 3.5. Unincorporated associations

If you are members of an unincorporated association, the following additional terms apply:

#### 3.5.1. Changes in membership during the term of this Agreement

At our option this Agreement shall continue in full force and effect notwithstanding any change in the composition of the membership whether by death, retirement or addition of members or otherwise.

#### 3.5.2. Joint and several liability

Each of you accepts joint and several liability for the obligations accepted by you under this Agreement.

## 4. Risk Warnings

You should consider the following risks before trading through our Services.

Trading in foreign exchange, bullion, CFDs and derivatives, particularly margin trading, involves the potential for profit as well as the risk of loss which may vastly exceed the amount of money you commit to any trade or transaction.

You may be required to deposit substantial additional margin, at short notice, to hold your positions. If you fail to provide funds to hold your positions they may be closed without further reference to you.

We cannot guarantee a maximum loss that you may suffer.

Movement in the price of foreign exchange, bullion rates, CFDs and derivatives are influenced by a variety of factors of global origin many of which are unpredictable. Price movements of derivative contracts are influenced by interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programmes and policies of governments, and national and international political and economic events and policies. In addition, governments intervene from time to time, directly and by regulation, in certain markets, particularly markets in currencies and interest rate related contracts and derivatives. Such intervention is often intended to influence prices and may, together with other factors, cause all of such markets to move rapidly in the same direction because of, among other things, interest rate fluctuations.

Violent movements in the price of foreign exchange, bullion rates, CFDs and derivatives may result in action by the market as a result of which you may be unable to settle adverse trades.

Certain investment strategies or hedging techniques, including those involving 'spread' positions or 'straddles', may be as risky as taking simple 'long' or 'short' positions.

Although derivatives can be used for the management of investment risk, some of these products are unsuitable for many investors. Different instruments involve different levels of exposure to risk and in deciding whether to trade in such instruments you should be aware of the issues set out in this risk warning. However, this risk warning cannot disclose all of the risks and other significant aspects of such derivatives. You should not deal in derivatives unless you understand their nature and the full extent of your exposure to risk and losses.

You should therefore carefully consider whether such trading is suitable in light of your own financial position and investment objectives.

If there is anything you do not understand it is recommended that you seek appropriate advice from a suitably qualified person (such as a lawyer, accountant or financial adviser).