



## **Futures Terms**

JULY 2014

<http://www.bby.com.au>

## **BBY FUTURES CLIENT AGREEMENT BETWEEN THE CLIENT AND BBY LTD ABN 80 006 707 777 AFSL NO. 238095 (BBY)**

### **PART A**

#### **FUTURES CLIENT AGREEMENT**

The following terms and conditions (**Terms**) apply if the Client is to trade in Futures and future options with BBY acting as order placement agent (including, but not limited to, ASX 24 Futures with Market Participants ABN AMRO Clearing Sydney Pty Ltd and [ADM Investor Services International Limited](#), as Executing and Clearing Broker's for those trades). If the Client wishes to engage in "Give-Up" arrangements, then **Part B** of these terms will apply to the clients' trading.

The Client and the BBY agree and acknowledge as follows:

#### **1. INSTRUCTIONS**

The Client may from time to time instruct BBY to deal in Futures. Such instructions may be given to BBY directly, or if the Client has been granted access to the BBY online system (CQG), the Client may place its orders directly into CQG. In either case, the Client's order will be communicated to the Market Participant as being an order placed by BBY, despite the fact that BBY is acting as the Client's agent.

BBY may at any time, in its absolute discretion, refuse to accept any (or may place a limit on any) order from the Client.

BBY will not confirm the receipt of, nor will it be responsible for verifying the authenticity of any instructions given to it by or on behalf of the Client.

#### **2. ARRANGEMENTS BETWEEN BBY AND THE MARKET PARTICIPANT**

BBY is **not admitted** as a participant of ASX 24 or ASX Clear (Futures), or any other futures market.

BBY has an arrangement with one or more Market Participants (each referred to in these Terms as "the Market Participant", as applicable) for the execution and clearing of Futures Transactions.

Under the arrangements with the Market Participant, BBY will, as the Client's agent, place orders to buy or sell or otherwise deal in Futures with the Market Participant. However, BBY will place the order with the Market Participant in BBY's name (and not in the name of the Client), despite the fact that BBY is acting as the Client's agent. In carrying out this function, BBY (as the Client's agent) and the Market Participant are bound by the ASIC Market Integrity Rules, the ASX 24 Operating Rules and the customs, usages and practices of ASX 24, to the extent that the futures contract is an ASX 24 Futures contract. For Futures Transactions that occur on other financial markets, the parties are bound by the rules, customs, usages and practices of the relevant market.

#### **3. NATURE OF BBY'S OBLIGATIONS**

Despite that BBY may act in accordance with the instructions of, or for the benefit of, the Client, the Client acknowledges that any Futures Transaction arising from any order submitted to ASX 24, or any other market is entered into by the Market Participant as principal, and not BBY nor the Client.

In relation to all trades conducted on ASX 24 by the Market Participant and all Contracts registered by the

Market Participant with ASX Clear (Futures), neither BBY nor the Client has any rights whether by way of subrogation or otherwise, against any person or corporation other than, in the case of BBY, the Market Participant or, in the case of the Client, BBY.

#### **4. CLIENTS THAT TRADE IN OTHER PRODUCTS OFFERED BY BBY**

If the Client trades in other products offered by BBY, then the Client may have one or more Trading Accounts with BBY. Since the method of dealing may differ significantly with little interaction among those Trading Accounts, the calculations, reporting and administration may be performed by BBY separately for each Trading Account, so that (among other things, without limitation):

- (a) Margin calculations are managed and enforcement action is taken for each Trading Account separately; and
- (b) BBY may at any time aggregate one or more Trading Accounts (for reporting or managing Margins or otherwise for the purposes of these Terms).

#### **5. CREDITWORTHINESS**

The Client agrees that BBY may make such enquiries as it thinks fit of any person, including the Client's employer, bank or a credit agency relating to the Client's creditworthiness.

#### **6. DOCUMENTS RECEIVED BY THE CLIENT**

The Client agrees and acknowledges that it has been given a document by BBY that:

- (a) explains the nature of Futures;
- (b) explains the nature of the obligations assumed by the Client when the Client instructs BBY to arrange for the entry into a Futures Transaction on behalf of the Client;
- (c) is a Product Disclosure Statement (to the extent BBY is required under the Corporations Act to give a Product Disclosure Statement to the Client); and
- (d) sets out the specifications and details of the essential terms of each kind of Futures in which BBY deals.

#### **7. TRADING IN FUTURES**

##### **7.1 Risks of trading in Futures**

The Client acknowledges and agrees that:

- (a) it understands the risks involved in dealing in Futures and accepts those risks are its own responsibility, and not the responsibility of BBY; and
- (b) it has given consideration to its objectives, financial situation and needs and has formed the opinion that dealing in Futures is suitable for the Client's purposes.

### 7.2 CQG

If the Client has been granted access to CQG, the Client agrees and acknowledges:

- (a) there are significant risks in trading through a system in which is serviced by means of computer and telecommunications systems. The access to electronic order entry facilities cannot be operated in all circumstances without error including, without limitation, errors in computer programs and telecommunications systems. These errors may result in, among other things, a delay in telecommunications services to the user, interrupted service, faults, inaccuracies in the provision of service or inaccuracies generally;
- (b) the Client will follow and abide by any policy and operational guidelines provided by BBY in relation to access and denial to CQG, including access security procedures, and to risk management issues before an order is executed via CQG;
- (c) only Authorised Persons nominated by the Client or nominated persons as authorised by BBY may have access to CQG;
- (d) the Client and BBY will agree in writing to pre-determined order or position limits, including volume per order limit, an aggregate loss limit and an aggregate net session limit, for the Client's trading in Futures Transactions. The Client understands and agrees that orders in excess of the agreed pre-determined limits may be rejected by BBY and/or CQG;
- (e) BBY may in its absolute discretion amend the pre-determined order or position limit and advise the Client in writing of such an amendment as soon as practicable after that;
- (f) the Client, its officers, agents and employees will only access CQG in a manner which ensures fairness, efficiency and ongoing protection of market integrity and will comply with all relevant Corporations Act requirements relating to antifraud, anti-manipulation, conduct that is likely to mislead or deceive, and any other requirements regulating abusive market conduct;
- (g) BBY will arrange for the execution of a Client order as it is received by BBY through CQG and that the order of receipt of a Client's order may not necessarily correspond with the sequence in which the Client made the order using CQG; and
- (h) the Client has demonstrated to the satisfaction of BBY that it has sufficient financial resources to meet its obligations under these Terms.

### 7.3 ASX 24 Data

Where the Client has access to CQG, the Client acknowledges that:

- (a) data made available to the Client by access to electronic order entry facilities is not the property of BBY and remains the valuable property of ASX 24 or other market operator or data supplier; and
- (b) the Client is prohibited from publicly displaying, redistributing or re-transmitting the data in any way without having executed a Market Data Distribution Agreement or similar agreement with ASX 24 or other market operator or data supplier.

### 7.4 Transactions

The Client acknowledges and agrees that:

- (a) the price for a Futures Transaction will be the actual price for the Futures Transaction as effected by the Market Participant, regardless of other quoted or screen-based prices or rates;
- (b) it has a direct and personal strict liability to perform the obligations under each Futures Transaction entered into on its behalf with the Market Participant, whether or not those obligations are guaranteed to BBY by another person;
- (c) as between the Client and BBY, the Client is responsible for discharging, and must discharge, all obligations and liabilities in connection with the Futures Transactions, including making all Margin payments and paying all losses on the Closing Out of Open Positions;
- (d) BBY may be entering into Futures Market Agreements as agent of, and on behalf of, the Client (including pro forma agreements) and the Client will be bound by the terms of those agreements, whether or not the Client has prior notice of their terms and (to the extent permitted by law) BBY will have no liability of any kind whatever to the Client for any default by the Market Participant under a Futures Market Agreement or any other person's default or failure of any kind (such as failure of ASX24 or Clearing House);
- (e) whether the quoted price includes or excludes the Futures Transaction fee or other charges depends on the kind of Futures Transaction, the Trading Account and regulatory requirements, which information may be obtained from the BBY product disclosure document relating to Futures, or by contacting BBY.

## 8. FUTURES MARKET AGREEMENTS

### 8.1 BBY may enter into Futures Market Agreements

In accordance with the arrangements described in clause 2 of these Terms, BBY may enter into one or more Futures Market Agreements with a Market Participant. The Client agrees:

- (a) not to object to, or dispute, the terms of any Futures Market Agreement;
- (b) not to allege that BBY is in breach of these Terms or any duty of care or other duty or obligation to the Client by agreeing to the terms of any Futures Market Agreement; and
- (c) not to take action against BBY for any default by another person under the terms of any Futures Market Agreement or for any other loss to the Client arising under or in relation to a Transaction made under such any Futures Market Agreement for the benefit of the Client (except to the extent of liability which by law cannot be excluded or which BBY expressly accepts under these Terms).

### 8.2 Client may request to inspect Futures Market Agreements

The Client acknowledges that BBY has an absolute discretion in respect of agreeing to the terms of such

Futures Market Agreement and the Client has the right to inspect the terms of all Futures Market Agreements available to BBY and to cease to trade Futures Transactions if it is not satisfied with the terms of any Futures Market Agreement.

### 8.3 Client acknowledgements

The Client acknowledges and agrees that:

- (a) BBY has no actual, implied or ostensible authority to hold itself out as being authorised to speak or act in a manner on behalf of, or as agent for, the Market Participant; and
- (b) the Client acknowledges that when BBY acts as an agent for the Client, BBY will incur a personal obligation when entering into any Futures Transaction on behalf of the Client and agrees to discharge all such obligations.

### 9. AUTHORITY AND CAPACITY OF THE CLIENT

When trading in Futures under these Terms, the Client acknowledges that it is either:

- (a) acting as principal; or
- (b) acting as an intermediary on another's behalf and is specifically authorised to transact the Futures Transactions, by the terms of:
  - (i) an Australian financial services licence under the Corporations Act held by the Client;
  - (ii) a trust deed (if the Client is a trustee); or
  - (iii) an agency contract.

The Client represents and warrants to BBY that:

- (a) where the Client is a body corporate, the Client is (and will remain) duly incorporated under the laws of the place of its incorporation and has full power and authority to enter into this agreement and deal in Futures Transactions, and any person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (b) where the Client is a partnership, the Client has full power and authority to enter this agreement and to deal in Futures Transactions, and the person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (c) where the Client is a natural person, the Client has legal capacity to execute this agreement; and
- (d) in any of the above cases, where the Client enters this agreement as trustee, the Client has full power and authority as such trustee to enter this agreement and to deal in Futures Transactions and:
  - (i) it has the right to be indemnified out of the assets of the trust for all liabilities incurred under this agreement;
  - (ii) it will remain the owner of any Margin unless it disposes of it in accordance with this agreement;
  - (iii) BBY can be subrogated to its right of indemnity;
  - (iv) the transactions contemplated by this agreement are for the benefit and in the best interests of the beneficiaries of the trust; and
  - (v) it has properly exercised its trust powers and has full authority under the trust to enter into the document containing this agreement.

### 10. AUTHORISED PERSONS

Each of the persons specified as an Authorised Person of the Client is authorised to provide any and all instructions to BBY on behalf of the Client for the purposes of these Terms. The Client is bound by all such instructions.

This authority includes giving instructions to enter into Futures Transactions and Close Out Open Positions. BBY is not bound to accept, but may accept and if it does so is not liable for accepting instructions from any other person on behalf of the Client. The Client may make changes to the persons who are Authorised Persons for the Client by giving BBY notice in writing of that.

The Client must give BBY reasonable prior notice of the absence or unavailability of any Authorised Person. The Client must ensure that there are sufficient Authorised Persons at all times (including 24 hours a day and 365 days a year including week days and weekends, vacation periods and despite illness). The Client acknowledges that BBY must be able to contact the Client's Authorised Persons at all times.

### 11. COMMISSIONS AND FEES

The Client must pay to BBY commissions, fees, taxes and charges at the rates determined by BBY from time to time and notified to the Client.

The Client agrees to BBY paying its representatives, authorised representatives and licensee partners (as the case may be) a set portion of the commissions, fees, charges or other amounts payable (not exceeding 55%) that the Client pays to BBY as either their remuneration or as a referral fee. BBY confirms that neither BBY nor its representatives, authorised representatives nor licensee partners have discretion over the portion of fees to be paid in each instance. The Client agrees that the Client gives their clear and express consent to BBY making such payments and to BBY's representatives, authorised representatives and licensee partners (as the case may be) receiving such payments.

### 12. MARGIN

The Client agrees and acknowledges that:

- (a) the Market Participant may Call for payment of Margin such money or property (or Call for the lodgment of Approved Securities in lieu thereof) by BBY as the Market Participant, in its absolute discretion, feels is necessary to protect itself from the personal obligation incurred by dealing in Futures on behalf of BBY;
- (b) BBY may Call for payment of Margin such money or property (or Call for the lodgment of Approved Securities in lieu thereof) as BBY, in its absolute discretion, feels is necessary to protect itself from the personal obligation incurred by dealing in Futures on behalf of the Client;
- (c) should BBY fail to meet the Call (or lodge Approved Securities) then the Market Participant may (without prejudice to any other rights or powers under the agreement between this Market Participant and BBY) and without creating an obligation to do so, Close Out, without notice, all or some of the BBY's Open Positions;
- (d) should the Client fail to meet the Call (or lodge Approved Securities) then BBY may (without prejudice to any other rights or powers under these Terms) and without creating an obligation to do so, arrange for the Market Participant to Close Out, without notice, all or some of the Client's Open Positions;
- (e) the time for payment of Margins is of the essence and if no other time is stipulated by BBY prior to Calling a Margin then the Client is required to

- comply within twenty-four (24) hours;
- (f) liability to pay the Initial Margin accrues at the time the Trade is executed regardless of when a Call is made;
  - (g) liability to pay Margin accrues at the time the Margin comes into existence regardless of when a Call is made;
  - (h) BBY may withdraw funds from the client's account for which BBY has authority over to pay itself any Initial Margin or Margin owed by the client pursuant to this clause;
  - (i) BBY is responsible to pay in cash any deficit owing to the Market Participant after closure and that if BBY defaults in payment of such deficit, the Market Participant may realise any securities held by the Market Participant and apply the proceeds against that deficiency; and
  - (j) the Client is responsible to pay in cash any deficit owing to BBY after closure and that if BBY defaults in payment of such deficit, BBY may realise any securities held by BBY and apply the proceeds against that deficiency.

### 13. RIGHT TO REFUSE TO DEAL

The Client acknowledges that:

- (a) the Market Participant reserves the right to refuse to deal on behalf of BBY in relation to any dealings in Futures Transactions (other than Closing Out existing Open Positions held in the Market Participant's account on behalf of BBY) or limit the number of Open Positions held on behalf of BBY or both; and
- (b) BBY reserves the right to refuse to deal on behalf of the Client in relation to any dealings in Futures Transactions (other than Closing Out existing Open Positions held in BBY's account with the Market Participant on behalf of the Client) or limit the number of Open Positions held on behalf of the Client or direct the client to close out some or all of its Open Positions in its absolute discretion. BBY will inform the Client of any refusal or direction at or before the time of the Client placing the Order or as soon as possible thereafter.

### 14. REPRESENTATIONS AND WARRANTIES

The Client represents and warrants to BBY as of the date of these Terms and as of the date of each Futures Transaction, that:

- (a) it has authority to enter into these and each Futures Transaction;
- (b) the person executing these Terms and instructing BBY to enter into each Futures Transaction has been duly authorised to do so (including all Authorised Persons);
- (c) these Terms and the obligations created under them are binding upon it and enforceable against it (subject to applicable principles of equity and limitations on creditors' rights generally) and do not and will not violate the terms of any other agreement to which it is bound;
- (d) it does not enter into any Transaction by way of gaming or wager;
- (e) it enters into any Futures Transaction wholly and exclusively for business or investment purposes and not for any private or domestic purpose;

- (f) it has made its own independent decision to enter into each Futures Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors (including legal and financial) as it considers necessary including a consideration of its financial position and objective;
- (g) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of each Futures Transaction;
- (h) it is also capable of assuming, and assumes the risks of all Futures Transactions;
- (i) It will comply with these Terms and all applicable legislation and the Exchange Rules and the directions, decisions and requirements of the Relevant Market and the customs and usages of the Relevant Market, and that all Futures Transactions are subject to the Exchange Rules;
- (j) it will not place any order with BBY which would cause it or BBY to breach any law or any Exchange Rule;
- (k) BBY is not acting as a fiduciary for, or an advisor to, it in respect of any Futures Transaction;
- (l) if the Client is a body corporate, no resolution has been passed and no petition has been presented or order made for the Client's winding up or liquidation and no action has been taken to appoint a liquidator, administrator or a receiver or manager in respect of the Client;
- (m) if the Client is a body corporate, all of its directors have validly executed a deed of guarantee and indemnity (in respect of the Client's obligations under these Terms) in favour of BBY in the form required by BBY;
- (n) if the Client is a natural person, he or she is of full age and sound mind and legally competent and no bankruptcy notice has been issued against the Client;
- (o) no Default Event, or event which with the giving of notice, lapse of time or fulfilment of any conditions would be likely to become a Default Event, has occurred or continues unremedied;
- (p) all the information given by the Client to open the Futures Trading Account is true and correct.

### 15. TERMINATION

#### 15.1 Termination of these Terms

Either the Client or BBY may terminate these Terms upon 3 Business Days' notice in writing to the other. Termination will be effective upon receipt of the notice by the other party. Notice may be given on behalf of the Client to BBY by the Client's agent. BBY may give notice to the Client by giving it to the Client's agent.

Upon termination of these Terms, unless otherwise agreed in writing, BBY will instruct the Market Participant to Close Out all the Client's Futures Transactions and Close Out, abandon or exercise any of the Client's Options not yet exercised.

The rights of BBY and obligations and liabilities of the Client in respect of any Futures Transactions, Open Positions and Options and the rights to indemnification

and limitation of liability of BBY, survive termination of these Terms.

### 15.2 Futures Market Agreement

The Client acknowledges that:

- (a) without affecting any existing obligations or liabilities, either BBY or the Market Participant may terminate a Futures Market Agreement at any time by giving the other notice in writing to that effect; and
- (b) upon termination of a Futures Market Agreement, unless otherwise agreed in writing the Market Participant will Close Out all BBY's Futures Transactions and Close Out, abandon or exercise any Options not yet exercised.

## 16. CONFIRMATIONS

The Client must examine the terms of each Futures Transaction confirmation immediately upon receipt and, unless the Client notifies BBY in writing within 24 hours of receipt, disputing the Futures Transaction, the Client agrees that the contents of the confirmation, in the absence of manifest error, will be conclusive evidence of the executed Futures Transaction. The failure by BBY to provide to the Client a confirmation of a Futures Transaction will not prejudice or invalidate the terms of that Futures Transaction.

The Client will, notwithstanding any dispute, continue to satisfy the Client's obligation to make Margin payments made by BBY in respect of a Transaction as if the details contained in the confirmation are correct and not the subject of dispute.

The Client acknowledges that BBY may from time to time appoint an agent to provide the confirmation and the confirmation may be a joint confirmation covering the services of BBY and of another person for the same Transaction.

## 17. CANCELLATION OF TRADES

### 17.1 Authorisation with respect to cancelled transaction

The Client authorises BBY, and agrees that BBY may, without the Client's consent, cancel or amend (or request or agree to the cancellation or amendment of) any Futures Transaction.

### 17.2 Obligations cease with respect to cancelled transaction

The obligations of BBY and the Client relating to settlement and clearing of a transaction cease to apply in respect of a cancelled transaction from the time it is cancelled.

## 18. SETTLEMENT OF OPEN POSITIONS

### 18.1 Client may instruct BBY to Close Out

If the Client wishes to Close Out an Open Position earlier than by other agreement with BBY, the Client must instruct BBY accordingly with at least two Business Days' notice prior to the intended settlement date for Close Out of any that Open Position, subject to prevailing market conditions or as otherwise agreed with BBY.

### 18.2 Standing instructions to BBY regarding Open Positions

In respect of each Open Position, subject to:

- (a) prior Close Out of that Open Position; or
- (b) the express agreement pursuant to clause 18.3 to settle that Open Position,

BBY is instructed:

- (c) to vary the Open Position (in which case it will be deemed to be a new Futures Transaction) so that its settlement date is deferred to a Business Day to be agreed between BBY and the Client (and failing agreement by 5:00p.m. on the Business Day immediately prior to the then applicable settlement date as agreed previously, and
- (d) to arrange for the Market Participant to Close Out the Open Position and enter into a new Transaction for the same Underlying Security and being the same bought or sold position except that the settlement date is to be one Business Day later and adjusted for any interest differential.

### 18.3 No physical settlement

The Client acknowledges and agrees that there will be no physical settlement of any Futures Transaction and that BBY reserves the right to Close Out any open Futures Transactions as early as 72 hours prior to the settlement date and time to avoid physical settlement.

## 19. DEFAULT

### 19.1 Default Events

It is a Default Event, whether or not it is within the Client's control, if:

- (a) any moneys owing by the Client to BBY under these Terms are not fully and punctually paid to BBY or satisfied as and when they become due (including in respect of any Margin requirement);
- (b) the Client fails to discharge fully and punctually all of the obligations it owes to BBY under a Futures Transaction or which were incurred by BBY on behalf of the Client in respect of a Futures Transaction;
- (c) the value of the Client's Open Positions exceeds the limit imposed by BBY from time to time;
- (d) the Client fails to transfer the underlying financial products following the exercise of an Open Position, or otherwise fails to complete a contract for the transfer of financial products;
- (e) the Client fails to duly and punctually perform and observe any other obligation under these Terms (including under the terms of any facility) or any other agreement with BBY;
- (f) any representation made by the Client or on the Client's behalf is incorrect or misleading in any material particular;
- (g) the Client stops payment of the Client's debts or ceases or threatens to cease carrying on business;
- (h) the Client enters or proposes to enter into any scheme of arrangement or compromise with the Client's creditors or calls a meeting to discuss a contemplated scheme of arrangement or compromise;
- (i) a receiver or receiver and manager or administrator is appointed to the Client or any of the Client's assets;
- (j) if the Client is a body corporate, a resolution is passed or a petition is presented or an order is made for the Client's winding-up or liquidation or an administrator is appointed;
- (k) if the Client is a body corporate, a director has not given a valid deed of guarantee and indemnity (in respect of the Client's obligations under these Terms

in favour of BBY in the form required by BBY.

- (l) if the Client is a body corporate, the Client has not given notice to BBY of a change in the directors of the Client within seven days of that change taking effect (regardless of if or when notice of that change has been given to any regulatory authority);
- (m) if the Client is a natural person, the Client dies or becomes of unsound mind or a bankruptcy notice is issued against the Client;
- (n) any security created by any mortgage or charge binding upon the Client or the Client's assets becomes enforceable and the mortgagee or the charge takes steps to enforce the security;
- (o) the Client's indebtedness becomes immediately due and payable, or capable of being declared due and payable, prior to its stated maturity, by reason of the Client's or any other persons default;
- (p) in the absence of the Client making alternative arrangements, the Client or its Authorised Person is not contactable by telephone, by BBY within 12 hours, in order for BBY to obtain instructions with respect to an Open Position;
- (q) the Client is presumed to be insolvent under the Corporations Act or equivalent legislation for a natural person or other legal entity to the extent its insolvency is regulated other than under the Corporations Act; and
- (r) if the Client acts as a trustee (or acts as the agent of another person and that other person is a trustee), the Trust is terminated or vests or a distribution of capital of the Trust is made which would result in there being insufficient assets of the Trust to meet the Client's liabilities under any Futures Transaction or these Terms.

### 19.2 Action following a default event

Upon or at any time after a Default Event occurs, BBY, without prejudice to any other rights it may have, has the right and power (but not the obligation), in its absolute discretion and without notice to the Client, to do anyone or more of the following:

- (a) immediately terminate the Futures Trading Account or these Terms;
- (b) arrange for the Market Participant to Close Out or attempt to Close Out all or any Open Positions (even though the settlement date has not arrived);
- (c) enter into, exercise or cause to be entered into or exercised, one or more Futures Transactions to close out one or more Options or other Open Positions in accordance with those Operating Rules;
- (d) enter into, exercise or cause to be entered into or exercised, one or more Options in accordance with those Operating Rules;
- (e) enter into, exercise or cause to be entered into or exercised, any other rights conferred by the Operating Rules or these Terms, or perform any other obligations arising under the Operating Rules or these Terms, in respect of those Open Positions;
- (f) adjust the value date of a Closed Out forward Futures Transaction by bringing such date back to a current date or such other date determined by BBY in its discretion;
- (g) enter into other agreements, including foreign

exchange transactions, options, forward agreements, swaps or other arrangements to obtain equivalent or similar rights to those Closed Out or terminated;

- (h) take action as BBY considers reasonably appropriate to mitigate or limit its potential loss arising from the Client's default, including by entering into transactions for itself or as agent for the Client and without any obligation to reinstate a Client's Transactions or equivalent positions;
- (i) sell any of the Client's property held by BBY (including selling any Derivative whether or not linked in any way to any other Transaction) or apply a Trading Account (after deduction of costs associated with any sale) to satisfy any amounts due to BBY;
- (j) combine, consolidate, merge or apply all or any part of any credit balance standing to any account of the Client with BBY or any amount available to BBY (including any funds held in the Client's account for which BBY has authority over) by way of set-off, lien or counterclaim in or towards satisfaction of any money due and payable by the Client to BBY or by BBY to the Client under these Terms;
- (k) realise any guarantees or securities lodged by the Client or on its behalf;
- (l) calculate the aggregate amount owed by the Client to BBY (after allowing any aggregate amount owed by BBY to the Client) and any such amount is immediately due and payable;
- (m) exercise any other power or right which BBY has under these Terms, at law or in equity; and
- (n) arrange for the Market Participant to do any of the things referred to in any of the above paragraphs.

BBY will not lose any of its rights under this clause by reason of any delay in the exercise of the right and if BBY does exercise any right under this clause it may do so at any time and in any manner. It is expressly acknowledged by the Client that any delay or forbearance by BBY in Closing Out (or arranging for the Market Participant to Close Out) a Futures Transaction or terminating a Trading Account is not a waiver of its rights unless expressly stated to be so by written notice signed by a director of BBY.

If BBY exercises its rights under this clause to Close Out (or arrange for the Market Participant to Close Out) an Open Position, the Closing Out will be effected on the Client's authority (which the Client hereby authorises) and at the Client's risk and expense and in the Client's name as if the Client had given notice on the date that BBY exercises its right (and without limitation, BBY may waive any notice period otherwise required).

BBY may elect:

- (a) to convert the Client's account into Australian currency as at times chosen by it; and
- (b) if the Client defaults under these Terms to convert any amount owed by the Client to it into Australian currency at the date of the Client's default, and BBY is entitled to retain any benefit in respect of the conversion rate provided that it is determined by BBY at exchange rates reasonably determined by BBY in accordance with published exchange rates available from financial institutions.

The Client is bound by any such conversion and must pay the amount so converted in Australian currency.

### 20. TAPE RECORDING

The Client acknowledges that BBY may record telephone conversations between the Client and BBY. If there is a dispute between the Client and BBY, the Client has the right to listen to any recording of those conversations. Nothing in these Terms obliges BBY to keep a recording longer than 90 days.

### 21. AMENDMENT

These Terms may be amended by BBY from time to time. BBY will give the Client 10 days notice of any amendment, after which time, the amendment will become effective.

### 22. DEALING AS PRINCIPAL

The Client acknowledges that BBY may, in certain circumstances permitted under the Corporations Act, take the opposite position in a transaction in Futures Transactions, either acting for another client or on its own account.

### 23. CLIENT TO PROVIDE INFORMATION

The Client acknowledges that, in relation to BBY's Trading on any futures market:

- (a) BBY must, upon the Market Participant's request, provide all information and documentation relevant to that Trading, to the Market Participant; and
- (b) the Market Participant is authorised by BBY to provide the information and documentation to ASIC and/or ASX 24.

Where such a request relates to the Client or any order that the Client has given to BBY, the Client must take all reasonable steps to deliver the requested information or documentation to BBY, or cause the requested information or documentation to be delivered to BBY. The Client authorises BBY to produce the information or documentation to the person making the request.

### 24. APPOINTMENT OF ATTORNEY

The Client acknowledges that BBY has appointed the Managing Director of ASX Clear (Futures) as BBY's attorney to do all things necessary to transfer any Open Position held by the Market Participant on BBY's behalf to another Market Participant where the Market Participant status of the Market Participant has been suspended or terminated.

### 25. BENEFIT TO MARKET PARTICIPANT ON REGISTRATION WITH ASX CLEAR (FUTURES)

The Client acknowledges that any benefit or right obtained by the Market Participant upon registration of a contract with ASX Clear (Futures) by way of assumption of liability of ASX Clear (Futures) under any contract or any other legal result of such registration is personal to the Market Participant and the benefit of such benefit or right does not pass to BBY.

### 26. INDEMNITY

If as a result of breach by the Client of these Terms or other agreement with BBY, or as a result of or any representation or warranty made under these Terms being untrue or incorrect, or a Default Event. BBY or any of its employees, agents and representatives (each an **Indemnified Person**) suffers any claim, liability, direct or consequential loss or incurs any cost, charge or expense of any nature, the Client must on demand fully indemnify each Indemnified Person and keep each of them fully indemnified in respect of such claim, liability, loss, cost, charge or expense.

### 27. GUARANTEE AND INDEMNITY

27.1 The terms of this clause 27 are the terms which are incorporated into the Deed of Guarantee and Indemnity made by the person who executes as "guarantor" Guarantor that part of an application form which expressly refers to and incorporates by reference these terms into that deed.

27.2 The Guarantor guarantees to BBY the performance by Client of its obligations under these terms and agrees to indemnify and to keep indemnified BBY and its employees, agents and representatives against any and all liability or loss (including any consequential loss or damage suffered by BBY) arising from, and any reasonable costs (including any reasonable legal costs and expenses on a solicitor and own client basis), damages, charges and expenses incurred by BBY arising out of any default, whether by act or omission, of the Client:

- (a) to pay BBY any moneys which are due and payable by you pursuant to these terms or the Client's trading; or
- (b) to fulfil its obligations to BBY under these terms.

27.3 This guarantee and indemnity are principal and continuing several obligations of each person who signs this document as Guarantor notwithstanding termination of all or any part of the Client's account with BBY, or these terms and will not be affected in any way by:

- (a) any indulgence, delay or period of grace allowed by BBY to you or a Guarantor;
- (b) any modification or variation of the Facility or the Terms of dealing between Client and BBY;
- (c) whether any other person has signed this document as a "Guarantor" or given any other credit support to BBY regarding the Clients' obligations to BBY;
- (d) any other thing that would otherwise affect the obligations of a Guarantor; or
- (e) any change in the constitution of BBY, the Client or the Guarantor.

27.4 To the extent permitted by law, this guarantee and indemnity are in addition to and will not merge with, or be affected by, any other security held by BBY in respect of the obligations of the Client or the Guarantor, now or in the future, notwithstanding any rule of law or equity, or any statutory provision to the contrary.

27.5 The Guarantor acknowledges that:

- (a) BBY may in its sole discretion choose to enforce this document against any one or more persons who have signed this or another document as "Guarantor" or other provider of credit support to BBY regarding your obligations to BBY;
- (b) this guarantee and indemnity applies to the the Client's account from the time of commencement of the account even if before the date of this document;
- (c) it will do everything to discharge its obligations under this guarantee and indemnity;
- (d) whoever executes this document on behalf of the Guarantor has the power and authority to do so;
- (e) it has read the terms of the account; and
- (f) it will pay on demand of BBY a sum equal to all moneys due and payable by the Client to BBY under the Client's account with BBY and the amount of BBY's loss suffered or liability incurred in relation to

that without set-off or counter claim.

27.6 This guarantee and indemnity are governed by the laws in force in New South Wales and the Guarantor submits to the non-exclusive jurisdiction of the Courts of that State.

### 28. PRIVACY

BBY agrees to comply with its obligations under the Privacy Act 1988 (Cth) (as amended from time to time) to the extent relevant to these Terms.

### 29. GOVERNING LAW

These Terms are governed by the law in force in New South Wales and the Client and BBY submit to the non-exclusive jurisdiction of the courts of New South Wales and courts which may hear appeals from those courts.

### 30. JOINT AND SEVERAL LIABILITY

If the Client constitutes more than one person then each of those persons is jointly and severally bound by these Terms and BBY is entitled to act on the instructions of any one of those persons.

### 31. INTERPRETATION

Unless the contrary intention appears:

**Application** means an application to open a Futures Trading Account with BBY (or if that account was transferred to BBY for another person, the application by the Client to open that account with that other person).

**ASIC Market Integrity Rules** means ASIC Market Integrity Rules (ASX 24 Market) 2010 made by ASIC under section 798G(1) of the Corporations Act.

**ASX 24** means the market operated by Australian Securities Exchange Limited (ACN 000 943 377) under the Australian Market Licence (Australian Securities Exchange Limited) 2002

**ASX 24 Futures** means a futures contract that may be traded on ASX 24.

**Futures Trading Account** means a Trading Account opened with BBY for the purpose of trading Futures, in accordance with these Terms.

**ASX 24 Operating Rules** means the operating rules of ASX 24 as amended from time to time.

**ASX Clear (Futures)** means ASX Clear (Futures) Pty Limited (ACN 050 615 864).

**Authorised Person** means the person (if any) described as the authorised agent of the Client in the Application or another person notified by the Client to BBY in writing.

**Call** means a demand for payment of a sum of money made upon BBY by the Market Participant or upon the Client by BBY as the context requires.

**Close Out, Closed out and Closing Out in relation to a Futures Transaction** mean discharging or satisfying the obligations of the Client, BBY and the Market Participant (as the context requires) under the Futures Transaction and this includes:

- (a) by delivering the amount or value of the underlying financial product in accordance with the terms of the Futures Transaction; or
- (b) as a result of the matching up of the Futures Transaction with a Futures Transaction of the same kind under which the Client or BBY (as the context requires) has assumed an offsetting opposite position; and

(c) making adjustments for fees and charges.

**CQG** means the online trading system used by BBY for the purpose of arranging Futures Transactions to be executed by the Market Participant.

**Exchange Rules** means the ASIC Market Integrity Rules, ASX24 Operating Rules, ASX Clear (Futures) Operating Rules, or any other relevant rule or law relating to the trading of futures contracts as contemplated by this agreement.

**Futures** means an ASX 24 Futures contract or any other futures contract that the client trades in under the arrangement contemplated by this agreement, including Futures Options.

**Futures Market Agreement** means an agreement entered into by BBY with a Market Participant pursuant to which BBY enters into or arranges Futures Transactions on behalf of the Client.

**Futures Option** means the right or obligation to buy or sell a futures contract.

**Futures Transaction** means a transaction that is executed by a Market Participant on ASX 24.

**Market Participant** means a participant of ASX 24 admitted under the ASX 24 Operating Rules, or a participant of any other financial market as the context requires.

**Open Position** means a position that exists where the obligations under a Futures Transaction held by a party, which has not been Closed Out, are yet to be performed.

**Trading Account** means an account opened with BBY for the purpose of trading in financial products.

Other words and phrases defined in the ASIC Market Integrity Rules (ASX 24 Market) 2010 or the Operating Rules of ASX 24 or ASX Clear (Futures) have the meaning given to them in the applicable rules. Copies of these rules are available on request.

Words expressed in the singular include the plural and vice versa.

A reference to a document or agreement includes any variation or replacement of it.

## PART B

### FUTURES GIVE-UP CLIENT AGREEMENT BETWEEN THE CLIENT AND BBY LTD ABN 80 006 707 777 AFSL NO. 238095 (BBY)

The following terms and conditions (**Terms**) apply if the Client is to trade in Futures with a give-up arrangement in place.

The Client and the BBY agree and acknowledge as follows:

#### 1. INSTRUCTIONS

The Client may from time to time instruct BBY to deal in Futures and Futures Options. Such instructions may be given to BBY directly, or if the Client has been granted access to the BBY online system (**CQG**), the Client may place its orders directly into CQG. In either case, the Client's order will be communicated to BBY's Market Participant (**Executing Broker**) as being an order placed by BBY to be designated as an order for the Client. The Client acknowledges that the Executing Broker may then

give up that order to a Clearing Broker, in which case the Client will then owe their obligations directly to the Clearing Broker (and not to the Executing Broker or BBY).

BBY may at any time, in its absolute discretion, refuse to accept any (or may place a limit on any) order from the Client. BBY will not confirm the receipt of, nor will it be responsible for verifying the authenticity of any instructions given to it by or on behalf of the Client.

### 2. ARRANGEMENTS BETWEEN BBY AND THE EXECUTING BROKER

BBY is **not admitted** as a participant of ASX 24 or ASX Clear (Futures) or any other futures market.

BBY has an arrangement with one or more Executing Brokers (each referred to in these Terms as "the Executing Broker", as applicable) for the execution and clearing of Futures Transactions.

Under the arrangements with the Executing Broker, BBY will, as the Client's agent, place orders to buy or sell or otherwise deal in Futures with the Executing Broker. In placing orders for the Client with the Executing Broker, BBY acts as the Client's intermediary and facilitator and not as an Executing Broker or Clearing Broker.

### 3. CREDITWORTHINESS

The Client agrees that BBY may make such enquiries as it thinks fit of any person, including the Client's employer, bank or a credit agency relating to the Client's creditworthiness.

### 4. TRADING IN FUTURES

#### 4.1 Risks of trading in Futures

The Client acknowledges and agrees that:

- (a) it understands the risks involved in dealing in Futures and accepts those risks are its own responsibility, and not the responsibility of BBY; and
- (b) it has given consideration to its objectives, financial situation and needs and has formed the opinion that dealing in Futures is suitable for the Client's purposes.

#### 4.2 CQG

If the Client has been granted access to CQG, the Client agrees and acknowledges:

- (a) there are significant risks in trading through a system in which is serviced by means of computer and telecommunications systems. The access to electronic order entry facilities cannot be operated in all circumstances without error including, without limitation, errors in computer programs and telecommunications systems. These errors may result in, among other things, a delay in telecommunications services to the user, interrupted service, faults, inaccuracies in the provision of service or inaccuracies generally;
- (b) the Client will follow and abide by any policy and operational guidelines provided by BBY in relation to access and denial to CQG, including access security procedures, and to risk management issues before an order is executed via CQG;
- (c) only Authorised Persons nominated by the Client or nominated persons as authorised by BBY may have access to CQG;
- (d) the Client and BBY will agree in writing to pre-determined order or position limits, including

volume per order limit, an aggregate loss limit and an aggregate net session limit, for the Client's trading in Futures Transactions. The Client understands and agrees that orders in excess of the agreed pre-determined limits may be rejected by BBY and/or CQG;

- (e) BBY may in its absolute discretion amend the pre-determined order or position limit and advise the Client in writing of such an amendment as soon as practicable after that;
- (f) the Client, its officers, agents and employees will only access CQG in a manner which ensures fairness, efficiency and ongoing protection of market integrity and will comply with all relevant Corporations Act requirements relating to antifraud, anti-manipulation, conduct that is likely to mislead or deceive, and any other requirements regulating abusive market conduct;
- (g) BBY will arrange for the execution of a Client order as it is received by BBY through CQG and that the order of receipt of a Client's order may not necessarily correspond with the sequence in which the Client made the order using CQG; and
- (h) the Client has demonstrated to the satisfaction of BBY that it has sufficient financial resources to meet its obligations under these Terms.

### 5. AUTHORITY AND CAPACITY OF THE CLIENT

When trading in Futures under these Terms, the Client acknowledges that it is either:

- (a) acting as principal; or
- (b) acting as an intermediary on another's behalf and is specifically authorised to transact the Futures Transactions, by the terms of:
  - (i) an Australian financial services licence under the Corporations Act held by the Client;
  - (ii) a trust deed (if the Client is a trustee); or
  - (iii) an agency contract.

The Client represents and warrants to BBY that:

- (a) where the Client is a body corporate, the Client is (and will remain) duly incorporated under the laws of the place of its incorporation and has full power and authority to enter into this agreement and deal in Futures Transactions, and any person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (b) where the Client is a partnership, the Client has full power and authority to enter this agreement and to deal in Futures Transactions, and the person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (c) where the Client is a natural person, the Client has legal capacity to execute this agreement; and
- (d) in any of the above cases, where the Client enters this agreement as trustee, the Client has full power and authority as such trustee to enter this agreement and to deal in Futures Transactions and:
  - (i) it has the right to be indemnified out of the assets of the trust for all liabilities incurred under this agreement;
  - (ii) it will remain the owner of any Margin unless

it disposes of it in accordance with this agreement;

- (iii) BBY can be subrogated to its right of indemnity;
- (iv) the transactions contemplated by this agreement are for the benefit and in the best interests of the beneficiaries of the trust; and
- (v) it has properly exercised its trust powers and has full authority under the trust to enter into the document containing this agreement.

### 6. AUTHORISED PERSONS

Each of the persons specified as an Authorised Person of the Client is authorised to provide any and all instructions to BBY on behalf of the Client for the purposes of these Terms. The Client is bound by all such instructions.

This authority includes giving instructions to enter into Futures Transactions and Close Out Open Positions. BBY is not bound to accept, but may accept and if it does so is not liable for accepting instructions from any other person on behalf of the Client. The Client may make changes to the persons who are Authorised Persons for the Client by giving BBY notice in writing of that.

The Client must give BBY reasonable prior notice of the absence or unavailability of any Authorised Person. The Client must ensure that there are sufficient Authorised Persons at all times (including 24 hours a day and 365 days a year including week days and weekends, vacation periods and despite illness). The Client acknowledges that BBY must be able to contact the Client's Authorised Persons at all times.

### 7. COMMISSIONS AND FEES

The Client must pay to BBY commissions, fees, taxes and charges at the rates determined by BBY from time to time and notified to the Client.

The Client agrees to BBY paying its representatives, authorised representatives and licensee partners (as the case may be) a set portion of the commissions, fees, charges or other amounts payable (not exceeding 55%) that the Client pays to BBY as either their remuneration or as a referral fee. BBY confirms that neither BBY nor its representatives, authorised representatives nor licensee partners have discretion over the portion of fees to be paid in each instance. The Client agrees that the Client gives their clear and express consent to BBY making such payments and to BBY's representatives, authorised representatives and licensee partners (as the case may be) receiving such payments.

### 8. MARGIN

The Client agrees and acknowledges that the Executing Broker and the Clearing Broker may Call for payment of Margin such money or property (or Call for the lodgment of Approved Securities in lieu thereof) by BBY as the Executing Broker or Clearing Broker, in their absolute discretion, feel is necessary to protect themselves from the personal obligation incurred by dealing in Futures on behalf of the Client. However BBY will not call for Margin from the client and will not contact or notify the Client of any Margin Call given to the Client by the Executing Broker or the Clearing Broker. The Client agrees that their obligations to pay Margin to the Executing Broker or the Clearing Broker (as the case may be) is personal to the Client and that BBY has no obligation or liability to pay Margin to the Executing Broker or the Clearing Broker on the Client's behalf.

### 9. RIGHT TO REFUSE TO DEAL

The Client acknowledges that:

- (a) the Executing Broker and/or the Clearing Broker reserves the right to refuse to deal on behalf of BBY in relation to any dealings in Futures Transactions (other than Closing Out existing Open Positions held in the Executing Broker or Clearing Broker's account on behalf of the Client) or limit the number of Open Positions held on behalf of the Client, or both; and
- (b) BBY reserves the right to refuse to deal on behalf of the Client in relation to any dealings in Futures Transactions (other than Closing Out existing Open Positions held in the Executing Broker or Clearing Broker's account in the name of the Client) or limit the number of Open Positions held on behalf of the Client or both. BBY will inform the Client of any refusal at or before the time of the Client placing the Order or as soon as possible thereafter.

### 10. REPRESENTATIONS AND WARRANTIES

The Client represents and warrants to BBY as of the date of these Terms and as of the date of each Futures Transaction, that:

- (a) it has authority to enter into these and each Futures Transaction;
- (b) the person executing these Terms and instructing BBY to enter into each Futures Transaction has been duly authorised to do so (including all Authorised Persons);
- (c) these Terms and the obligations created under them are binding upon it and enforceable against it (subject to applicable principles of equity and limitations on creditors' rights generally) and do not and will not violate the terms of any other agreement to which it is bound;
- (d) it has made its own independent decision to enter into each Futures Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors (including legal and financial) as it considers necessary including a consideration of its financial position and objective;
- (e) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of each Futures Transaction;
- (f) it is also capable of assuming, and assumes the risks of all Futures Transactions;
- (g) It will comply with these terms and all applicable legislation and the Exchange Rules and the directions, decisions and requirements of the Relevant Market and the customs and usages of the Relevant Market, and that all Futures Transactions are subject to the exchange Rules;
- (h) it will not place any order with BBY which could cause it or BBY to breach any law or any Exchange Rule;
- (i) BBY is not acting as a fiduciary for, or an advisor to, it in respect of any Futures Transaction.

### 11. TERMINATION

#### 11.1 Termination of these Terms

Either the Client or BBY may terminate these Terms upon 3 Business Days' notice in writing to the other. Termination will be effective upon receipt of the notice by the other party. Notice may be given on behalf of the Client to BBY by the Client's agent. BBY may give notice to the Client by giving it to the Client's agent.

The rights of BBY and obligations and liabilities of the Client in respect of any Futures Transactions, Open Positions and Options and the rights to indemnification and limitation of liability of BBY, survive termination of these Terms.

#### 11.2 Futures Market Agreement

The Client acknowledges that:

- (a) without affecting any existing obligations or liabilities, either BBY or the Executing Broker or Clearing Broker may terminate a Futures Market Agreement at any time by giving the other notice in writing to that effect; and
- (b) upon termination of a Futures Market Agreement, unless otherwise agreed in writing the Executing Broker or Clearing Broker (as the case may be) will Close Out all of the Client's Futures Transactions and Close Out, abandon or exercise any Options not yet exercised.

### 12. CONFIRMATIONS

BBY will issue trade reports to the Client in relation to Orders entered into by the Client under these terms. The Client acknowledges that confirmations may also be issued to the Client by the Executing Broker or the Clearing Broker as the case may be.

### 13. CANCELLATION OF TRADES

#### 13.1 Authorisation with respect to cancelled transaction

The Client authorises BBY, and agrees that BBY may, without the Client's consent, cancel or amend (or request or agree to the cancellation or amendment of) any Futures Transaction.

#### 13.2 Obligations cease with respect to cancelled transaction

The obligations of BBY and the Client relating to settlement and clearing of a transaction cease to apply in respect of a cancelled transaction from the time it is cancelled.

### 14. SETTLEMENT OF OPEN POSITIONS

Client may instruct BBY to Close Out

If the Client wishes to Close Out an Open Position earlier than by other agreement with BBY, the Client must instruct BBY accordingly with at least two Business Days' notice prior to the intended settlement date for Close Out of any that Open Position, subject to prevailing market conditions or as otherwise agreed with BBY.

### 15. DEFAULT

#### 15.1 Default Events

It is a Default Event, whether or not it is within the Client's control, if:

- (a) any moneys owing by the Client to BBY under these

Terms are not fully and punctually paid to BBY or satisfied as and when they become due (including in respect of any Margin requirement);

- (b) the value of the Client's Open Positions exceeds the limit imposed by BBY from time to time;
- (c) the Clearing Broker refuses to take on the Client's Futures Transactions for any reason whatsoever;
- (d) the Client fails to duly and punctually perform and observe any other obligation under these Terms (including under the terms of any facility) or any other agreement with BBY;
- (e) any representation made by the Client or on the Client's behalf is incorrect or misleading in any material particular;
- (f) the Client enters or proposes to enter into any scheme of arrangement or compromise with the Client's creditors or calls a meeting to discuss a contemplated scheme of arrangement or compromise;
- (g) a receiver or receiver and manager or administrator is appointed to the Client or any of the Client's assets;
- (h) the Client is presumed to be insolvent under the Corporations Act or equivalent legislation for a natural person or other legal entity to the extent its insolvency is regulated other than under the Corporations Act; and
- (i) if the Client acts as a trustee (or acts as the agent of an other person and that other person is a trustee), the Trust is terminated or vests or a distribution of capital of the Trust is made which would result in there being insufficient assets of the Trust to meet the Client's liabilities under any Futures Transaction or these Terms.

#### 15.2 Action following a default event

Upon or at any time after a Default Event occurs, BBY, without prejudice to any other rights it may have, has the right and power (but not the obligation), in its absolute discretion and without notice to the Client, to do any one or more of the following:

- (a) immediately terminate the Futures Trading Account or these Terms;
- (b) arrange for the Executing Broker or Clearing Broker to Close Out or attempt to Close Out all or any Open Positions (even though the settlement date has not arrived);
- (c) enter into, exercise or cause to be entered into or exercised, one or more Futures Transactions to close out one or more Options or other Open Positions in accordance with those Operating Rules;
- (d) enter into, exercise or cause to be entered into or exercised, one or more Options in accordance with those Operating Rules;
- (e) enter into, exercise or cause to be entered into or exercised, any other rights conferred by the Operating Rules or these Terms, or perform any other obligations arising under the Operating Rules or these Terms, in respect of those Open Positions;
- (f) adjust the value date of a Closed Out forward Futures Transaction by bringing such date back to a current date or such other date determined by BBY in its discretion;

- (g) enter into other agreements, including foreign exchange transactions, options, forward agreements, swaps or other arrangements to obtain equivalent or similar rights to those Closed Out or terminated;
- (h) take action as BBY considers reasonably appropriate to mitigate or limit its potential loss arising from the Client's default, including by entering into transactions for itself or as agent for the Client and without any obligation to reinstate a Client's Transactions or equivalent positions;
- (i) sell any of the Client's property held by BBY (including selling any Derivative whether or not linked in any way to any other Transaction) or apply a Trading Account (after deduction of costs associated with any sale) to satisfy any amounts due to BBY;
- (j) combine, consolidate, merge or apply all or any part of any credit balance standing to any account of the Client with BBY or any amount available to BBY by way of set-off, lien or counterclaim in or towards satisfaction of any money due and payable by the Client to BBY or by BBY to the Client under these Terms;
- (k) calculate the aggregate amount owed by the Client to BBY (after allowing any aggregate amount owed by BBY to the Client) and any such amount is immediately due and payable;
- (l) exercise any other power or right which BBY has under these Terms, at law or in equity; and
- (m) arrange for the Executing Broker to do any of the things referred to in any of the above paragraphs.

BBY will not lose any of its rights under this clause by reason of any delay in the exercise of the right and if BBY does exercise any right under this clause it may do so at any time and in any manner. It is expressly acknowledged by the Client that any delay or forbearance by BBY in Closing Out (or arranging for the Executing Broker or Clearing Broker to Close Out) a Futures Transaction or terminating a Trading Account is not a waiver of its rights unless expressly stated to be so by written notice signed by a director of BBY.

If BBY exercises its rights under this clause to Close Out (or arrange for the Executing Broker or Clearing Broker to Close Out) an Open Position, the Closing Out will be effected on the Client's authority (which the Client hereby authorises) and at the Client's risk and expense and in the Client's name as if the Client had given notice on the date that BBY exercises its right (and without limitation, BBY may waive any notice period otherwise required).

BBY may elect:

- (a) to convert the Client's account into Australian currency as at times chosen by it; and
- (b) if the Client defaults under these Terms to convert any amount owed by the Client to it into Australian currency at the date of the Client's default, and BBY is entitled to retain any benefit in respect of the conversion rate provided that it is determined by BBY at exchange rates reasonably determined by BBY in accordance with published exchange rates available from financial institutions.

The Client is bound by any such conversion and must pay the amount so converted in Australian currency.

### 16. TAPE RECORDING

The Client acknowledges that BBY may record telephone conversations between the Client and BBY. If there is a

dispute between the Client and BBY, the Client has the right to listen to any recording of those conversations. Nothing in these Terms obliges BBY to keep a recording longer than 90 days.

### 17. AMENDMENT

These Terms may be amended by BBY from time to time. BBY will give the Client 10 days notice of any amendment, after which time, the amendment will become effective.

### 18. DEALING AS PRINCIPAL

The Client acknowledges that BBY may, in certain circumstances permitted under the Corporations Act, take the opposite position in a transaction in Futures Transactions, either acting for another client or on its own account.

### 19. INDEMNITY

If as a result of breach by the Client of these Terms or other agreement with BBY, or as a result of or any representation or warranty made under these Terms being untrue or incorrect, or a Default Event, BBY or any of its employees, agents and representatives (each an Indemnified Person) suffers any claim, liability, direct or consequential loss or incurs any cost, charge or expense of any nature, the Client must on demand fully indemnify each Indemnified Person and keep each of them fully indemnified in respect of such claim, liability, loss, cost, charge or expense.

### 20. GUARANTEE AND INDEMNITY

20.1 The terms of this clause 27 are the terms which are incorporated into the Deed of Guarantee and Indemnity made by the person who executes as "guarantor" Guarantor that part of an application form which expressly refers to and incorporates by reference these terms into that deed.

20.2 The Guarantor guarantees to BBY the performance by Client of its obligations under these terms and agrees to indemnify and to keep indemnified BBY and its employees, agents and representatives against any and all liability or loss (including any consequential loss or damage suffered by BBY) arising from, and any reasonable costs (including any reasonable legal costs and expenses on a solicitor and own client basis), damages, charges and expenses incurred by BBY arising out of any default, whether by act or omission, of the Client:

- (a) to pay BBY any moneys which are due and payable by you pursuant to these terms or the Client's trading; or
- (b) to fulfil its obligations to BBY under these terms.

20.3 This guarantee and indemnity are principal and continuing several obligations of each person who signs this document as Guarantor notwithstanding termination of all or any part of the Client's account with BBY, or these terms and will not be affected in any way by:

- (a) any indulgence, delay or period of grace allowed by BBY to you or a Guarantor;
- (b) any modification or variation of the Facility or the Terms of dealing between Client and BBY;
- (c) whether any other person has signed this document as a "Guarantor" or given any other credit support to BBY regarding the Clients' obligations to BBY;
- (d) any other thing that would otherwise affect the obligations of a Guarantor; or

- (e) any change in the constitution of BBY, the Client or the Guarantor.
- 20.4 To the extent permitted by law, this guarantee and indemnity are in addition to and will not merge with, or be affected by, any other security held by BBY in respect of the obligations of the Client or the Guarantor, now or in the future, notwithstanding any rule of law or equity, or any statutory provision to the contrary.
- 20.5 The Guarantor acknowledges that:
- (a) BBY may in its sole discretion choose to enforce this document against any one or more persons who have signed this or another document as "Guarantor" or other provider of credit support to BBY regarding your obligations to BBY;
  - (b) this guarantee and indemnity applies to the the Client's account from the time of commencement of the account even if before the date of this document;
  - (c) it will do everything to discharge its obligations under this guarantee and indemnity;
  - (d) whoever executes this document on behalf of the Guarantor has the power and authority to do so;
  - (e) it has read the terms of the account; and
  - (f) it will pay on demand of BBY a sum equal to all moneys due and payable by the Client to BBY under the Client's account with BBY and the amount of BBY's loss suffered or liability incurred in relation to that without set- off or counter claim.
- 20.6 This guarantee and indemnity are governed by the laws in force in New South Wales and the Guarantor submits to the non-exclusive jurisdiction of the Courts of that State.

### 21. PRIVACY

BBY agrees to comply with its obligations under the Privacy Act 1988 (Cth) (as amended from time to time) to the extent relevant to these Terms.

### 22. GOVERNING LAW

These Terms are governed by the law in force in New South Wales and the Client and BBY submit to the non-exclusive jurisdiction of the courts of New South Wales and courts which may hear appeals from those courts.

### 23. JOINT AND SEVERAL LIABILITY

If the Client constitutes more than one person then each of those persons is jointly and severally bound by these Terms and BBY is entitled to act on the instructions of any one of those persons.

### 24. INTERPRETATION

Unless the contrary intention appears:

**Application** means an application to open a Futures Trading Account with BBY (or if that account was transferred to BBY for another person, the application by the Client to open that account with that other person).

**ASIC Market Integrity Rules** means ASIC Market Integrity Rules (ASX 24 Market) 2010 made by ASIC under section 798G(1) of the Corporations Act.

**ASX 24** means the market operated by Australian Securities Exchange Limited (ACN 000 943 377) under the Australian Market Licence (Australian Securities Exchange Limited) 2002.

**Authorised Person** means the person (if any) described as the authorised agent of the Client in the Application or another person notified by the Client to BBY in writing.

**Close Out, Closed out and Closing Out in relation to a Futures Transaction** mean discharging or satisfying the obligations of the Client, BBY and the Executing Broker and/or Clearing Broker (as the context requires) under the Futures Transaction and this includes:

- (a) by delivering the amount or value of the underlying financial product in accordance with the terms of the Futures Transaction; or
- (b) as a result of the matching up of the Futures Transaction with a Futures Transaction of the same kind under which the Client or BBY (as the context requires) has assumed an offsetting opposite position; and
- (c) making adjustments for fees and charges.

**CQG** means the online trading system used by BBY for the purpose of arranging Futures Transactions to be executed by the Executing Broker.

**Exchange Rules** means the ASIC Market Integrity Rules, ASX24 Operating Rules, ASX Clear (Futures) Operating Rules, or any other relevant rule or law relating to the trading of futures contracts as contemplated by this agreement.

**Futures** means an Futures contract or any other futures contract that the client trades in under the arrangement contemplated by this agreement.

**Futures Option** means the right or obligation to buy or sell a futures contract.

**Futures Transaction** means a transaction that is executed by an Executing Broker on ASX 24, or any other financial market that supports futures trading.

**Open Position** means a position that exists where the obligations under a Futures Transaction held by a party, which has not been Closed Out, are yet to be performed.

**Trading Account** means an account opened with BBY for the purpose of trading in financial products.

Other words and phrases defined in the ASIC Market Integrity Rules (ASX 24 Market) 2010 or the Operating Rules of ASX 24 or ASX Clear (Futures) have the meaning given to them in the applicable rules. Copies of these rules are available on request.

Words expressed in the singular include the plural and vice versa.

A reference to a document or agreement includes any variation or replacement of it.

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