



Terms and conditions

# **Supplementary terms**

Binary Investments (Europe) Ltd

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# Table of contents

1. Introduction	3
2. Complaints and disputes	3
3. Client categorisation	3
4. Protection of your funds	4
5. Know Your Customer	4
6. Negative balance protection	5
7. Security and privacy	5
8. Order execution policy	6

## 1. Introduction

- 1.1. These supplementary terms and conditions, which may change from time to time, apply to all clients whose accounts are registered with Binary Investments (Europe) Ltd, licensed under the Investment Services Act (Cap. 370, Laws of Malta) ("the Act") to carry on investment services in the EU, authorised and regulated by the Malta Financial Services Authority ("MFSA"), having its registered office address at Triq L-Imdina, Zone 1, Central Business District, Birkirkara, Malta, CBD, Triq L-Imdina, 1010.
- 1.2. If there are any inconsistencies or deviations between these supplementary terms and conditions and the rest of the documents on our [Terms and conditions](#) page, these supplementary terms and conditions shall prevail. If any material changes to any of these terms and conditions are made, you will be notified and will be afforded the opportunity to either accept or reject the new terms and conditions.
- 1.3. In providing these services, Binary Investments (Europe) Ltd is bound by the Act, any applicable regulations, by-laws, licence conditions, guidelines, exchange requirements, and other provisions or market practices.

## 2. Complaints and disputes

- 2.1. If you would like to file a complaint about our service, you can send the details related to your complaint to us at [complaints@deriv.com](mailto:complaints@deriv.com). We will investigate your enquiry and send you a final response within 15 working days.
- 2.2. If you are unsatisfied with our response to your complaint, you can submit your dispute to the [Office of the Arbiter for Financial Services](#).
- 2.3. If your complaint relates to our data processing practices, you can submit a formal complaint to the [Information and Data Protection Commissioner](#) (Malta) on their website. Alternatively, you can make a complaint to any supervisory authority within the European Union.

## 3. Client categorisation

- 3.1. General
  - 3.1.1. The level of protection that we offer you depends on which of the following three categories you belong to:
    - 3.1.1.1. Retail clients
    - 3.1.1.2. Professional clients
    - 3.1.1.3. Eligible counterparties

These categories are explained in more detail below. You can always request to be put in a different category, and if your desired category matches your knowledge, experience, and risk tolerance, we will reclassify you.

- 3.1.2. Whichever category you belong to, you are required to provide us with accurate information and to advise us of any changes that are made to any information you provide so that we can act in your best interest. Failure to do so could have a negative effect on the service that we are able to offer you.

- 3.2. Retail clients
  - 3.2.1. When you open a Deriv account, you will be classified as a retail client. We will send you reports to make you better informed of the nature of different products, markets, and risks, as well as the costs of the transactions and services that we undertake on your behalf. You will be covered by the highest possible regulatory protection, but you will also get frequent risk warnings and appropriateness tests.
  - 3.2.2. If you wish to be in a different category, please submit a request by going to the Account categorisation tab in your Profile settings. We will then need to establish whether you can make your own investment decisions and understand the risks involved. We reserve the right to accept or reject your request for a change of category.

### 3.3. Professional clients

3.3.1. As a professional client, your legal protection will be less than that of a retail client. You might consider submitting a request to be classified in this group if you feel comfortable with no longer receiving the following from us:

- 3.3.1.1. Appropriateness tests for your requested service or product
- 3.3.1.2. Risk warnings related to transactions and investments
- 3.3.1.3. Educational materials
- 3.3.1.4. Our reports
- 3.3.1.5. Protection under the Investor Compensation Scheme

At any time that you wish to increase your legal protection, you can request to be reclassified from a professional client back to a retail client.

### 3.4. Eligible counterparties

3.4.1. As an eligible counterparty, you will not receive the following from us:

- 3.4.1.1. Best execution requirements
- 3.4.1.2. Assessment of appropriateness of the requested service or product, as we assume that you appreciate risk disclosures associated with the requested investment services and products that we offer
- 3.4.1.3. Risk warnings and notices related to your transactions
- 3.4.1.4. Our reports
- 3.4.1.5. Protection under the Investor Compensation Scheme

## 4. Protection of your funds

### 4.1. General

- 4.1.1. We may use your money for the purpose of meeting obligations that we have incurred in connection with the margining, adjusting, or settling of your dealings in derivatives.
- 4.1.2. We keep your funds in bank accounts that are separate from our operational accounts. In the event of insolvency, we have loan arrangements between us and our parent company that will always, at minimum, cover any liabilities owed to clients.

### 4.2. Investor Compensation Scheme

- 4.2.1. Your funds are partially protected by the Investor Compensation Scheme (the “Scheme”). If an investment firm that is licensed by the MFSA fails, the Scheme is a rescue fund that offers conditional compensation to that firms’ clients. Ninety per cent of our net liability to you is covered by the Scheme because your investment with us is qualified under the Act. Please note that the maximum amount that you can receive under the Act is €20,000. Even if you have multiple accounts, you will still only be covered up to an aggregate level of €20,000.

## 5. Know Your Customer

- 5.1. When you register for a real account, you are required to provide proof of identity (POI) to verify your age and proof of address (POA) to authenticate your account. We will also require you to complete a financial assessment and provide information on your trading knowledge and experience.
- 5.2. We conduct appropriateness tests to determine if a product or service matches your level of trading skill and risk awareness based on the information that you have given us. If the tests establish that you do not have the required experience and risk awareness for the investment in question, you will be informed of the fact on our website. Similarly, if we cannot get enough information to determine if your expertise is sufficient for a type of trade, you will be informed of this fact when you visit our website.

## 6. Negative balance protection

- 6.1. If your open positions are not closed when the margin level for your DMT5 real account reaches the stop out level, we shall waive your negative balance by crediting your account if your account balance goes into a negative balance. The negative balance is determined by adding all of your negative balances over a 24-hour period across all of your accounts.
- 6.2. The provisions of negative balance protection do not apply in the following situations:
  - 6.2.1. When you open a trade that is considered prohibited
  - 6.2.2. When you are a professional client or eligible counterparty
  - 6.2.3. When a negative balance results from your breach of any of the terms of this agreement

## 7. Security and privacy

- 7.1. General
  - 7.1.1. We operate in full compliance with the General Data Protection Regulation (GDPR) and other applicable data protection laws. These regulatory measures oblige us to use your personal data according to the principles of fair and lawful information processing.
  - 7.1.2. Any processing of personal data undertaken by Binary Investments (Europe) Ltd will be in compliance with the present agreement and the terms of our [Security and privacy policy](#).
  - 7.1.3. We may collect basic tax residence information for the purposes of Common Reporting Standard (CRS) compliance. The tax information that you may provide will only be disclosed to the authorities who are legally charged with collecting this information for CRS reporting. We shall disclose your tax information to them only to the extent that we are legally obliged to. We do not use, disclose, or process this information in any other way at any time.
- 7.2. Profiling and categorisation
  - 7.2.1. We reserve the right to use your data that we collect and assess to profile you in relation to our products. We do this manually with the assistance of automated processing. In this way, we shall be able to provide you with the most appropriate products and services.
- 7.3. Transfer of data
  - 7.3.1. We may need to transfer your personal data to any of our business associates or payment providers within or outside of the EEA, including countries that might not offer an equivalent level of protection of personal data, for the purpose of processing by third parties.
  - 7.3.2. We may also transfer your data to third parties outside the EEA for content delivery services, for customer relationship management services, and for communication and marketing services.
  - 7.3.3. In all instances, we take all reasonably necessary steps to ensure your personal data is treated securely and in accordance with this privacy policy and in compliance with any applicable data protection laws. These steps may include placing a contractual obligation on third parties or ensuring that third parties receiving your data are certified under an approved certification mechanism such as the one on the Privacy Shield framework.
- 7.4. Access to personal data
  - 7.4.1. If a law or regulation or the order of a court of a competent jurisdiction or a governmental or law enforcement agency requires us to disclose your personal or financial information, we shall promptly notify you, as deemed appropriate, to give you the opportunity to seek protection for the information for which disclosure is sought unless we are legally prohibited from doing so. Any such disclosure shall not be interpreted as a breach of these terms and conditions.

## 7.5. Data retention

- 7.5.1. We keep your information for the whole of the duration of your subscription with us. If you choose to close your Deriv account, your data will be kept only until our legal and regulatory obligations on data retention are met. We shall delete your data when the applicable retention period expires. The criteria we use for determining the retention period for your personal data will be any applicable regulatory requirements or legal obligations, including tax and anti-money laundering laws, or to establish or defend potential legal claims.

## 7.6. Your rights

- 7.6.1. You may find below a list of your legal rights regarding your personal data, not all of which may be applicable to you at any one time:
  - 7.6.1.1. Right of access to your personal data: this enables you to request and receive a copy of all the personal data we hold about you.
  - 7.6.1.2. Right of rectification: that is to request the correction of any personal data that we hold about you and are either inaccurate or incomplete.
  - 7.6.1.3. Right to erasure: that is the right to obtain the erasure of your personal data, provided, among others, the personal data in question are no longer necessary in relation to the purpose for which they were collected.
  - 7.6.1.4. Right to restriction and right to object: you have the right to restrict our processing activities or to object to the processing of your personal data.
  - 7.6.1.5. Right to data portability: that is to request a copy of your personal data in a digital format and, where possible, ask us to transfer it to another company.
- 7.6.2. The right to erasure is not an absolute right. We have to comply with retention requirements set out on any applicable laws, including financial regulations and anti-money laundering laws.
- 7.6.3. You can make any of the requests set out in 7.6.1. above by emailing our data protection officer directly at [dpo@deriv.com](mailto:dpo@deriv.com) or by using the contact details on our [Contact us](#) page.
- 7.6.4. If you are unhappy with how we handle your personal data, you can file a complaint with us. If you are not satisfied with the outcome of our internal complaints procedure, or if you consider that your complaint has not been handled correctly, you may lodge a complaint to our lead supervisory authority on data processing practices as explained in further details in our Complaint and disputes section hereabove.

## 7.7. Marketing

- 7.7.1. You have the right to opt out of receiving marketing materials from us. This can be done by either not providing your consent to receiving marketing materials when opening an account with us or by revoking it at any point during the period that you hold an account with us. In both cases, we shall not send any marketing materials to you.

# 8. Order execution policy

## 8.1. General

- 8.1.1. The venues that we use include the following:
  - 8.1.1.1. GBE Brokers Ltd
  - 8.1.1.2. FXOpen UK
  - 8.1.1.3. CFH Clearing Ltd
  - 8.1.1.4. TopFX Ltd

We might change this list in order to achieve best execution. If so, or if we make any other material changes to our order execution policy, we shall notify you.

- 8.1.2. This policy, in conjunction with the terms set out under Order execution in [Trading terms](#), applies to you if you are classified as a retail or professional client. If you are an eligible counterparty, you fall outside the scope of this policy.
- 8.1.3. Our order execution policy includes a set of procedures that are designed to obtain the best possible execution result for you. To do so, in addition to the factors set out in the Order execution section in [Trading terms](#), we will also consider the size and nature of an order. Orders will generally be accepted automatically if they do not exceed our exposure limits and you have enough remaining balance in your account. With every trade placed, we have systems in place that automatically carry out a large exposure check. In the event that the new total exposure result would be greater than or equal to 25% of the eligible capital, the trade will not be placed.

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