



GENERAL TERMS AND CONDITIONS

Date updated: 17 December 2019

MARS CAP LIMITED

NZBN 9429047344570 | FSP No. 661531

Please read these Terms and Conditions and our other policies (together, the *terms*) in full, as we provide our products and services in accordance with these Terms and Conditions.

1. INTRODUCTION

- 1.1. It is important that the **customer** (*you*) carefully reads, understands, and keeps these **terms**. These **terms** outline both the **customer's** and our **rights, responsibilities, and obligations** that may arise when the **customer** operates an account with Mars Cap Limited (*MCL, we, us, our*), and/or when the **customer** use the **products** and **services** we provide.
- 1.2. **Transactions** and the trading of **financial products** covered by these **terms** involve the risk of loss (for example, due to market movements). You should not enter into **transactions** covered by these **terms** if you do not understand the risks associated with trading in **financial products**. It is your responsibility to monitor your **transactions** and understand the risks.
- 1.3. If a **customer** requests, and we agree to provide the **customer** with, access to the **MCL Trading Platform (MARSAUTON)**, then these **terms** will govern the **customer's** use of, and access to the **MCL Trading Platform (MARSAUTON)** and any of our **products and services**.
- 1.4. If you still have questions or need more information about trading in **financial products**, these **terms** or the **application form**, please obtain independent advice from your professional adviser. We do not provide **financial advice**.
- 1.5. Where we agree to provide you with access to the **MCL trading platform (MARSAUTON)**, you will have access to such services and features as we may, in our sole discretion, agree to make available to you from time to time through the **MCL trading platform (MARSAUTON)**, or MCL officers or employees. Our website terms of use are available on the MCL website, and may be updated from time to time without prior notice to you.
- 1.6. These **terms**, together with all **transaction instructions** (including all **transactions** entered into through the **MCL trading platform (MARSAUTON)**, all **confirmations**, and any other agreements entered in to between MCL and the customer (including the MCL website terms of use and MCL Privacy Policy) form one agreement between the **customer** and us (*the Agreement*).
- 1.7. All of our **products** and **services** are subject to these **terms**.
- 1.8. MCL reserves sole right to amend these **terms** from time to time, as deemed appropriate. MCL will notify all **clients** should such updates occur, and provide all **clients** with the most recent version of these **terms**, which are also available on the **MCL website**, and upon request from any MCL officers or employees.

2. COMPLAINTS AND DISPUTE RESOLUTION

Terms and Conditions

- 2.1. If you are unhappy with our **products**, or the **services** you have received from us, we will do our best to resolve your concerns for you, and welcome any feedback you may have.
- 2.2. We may request further information from you to assist with our inquiries. We will make every effort to answer or resolve your questions or complaints quickly, effectively and fairly.
- 2.3. If you remain dissatisfied with the way your complaint has been handled by us, and we are unable to reach a satisfactory resolution as agreed by you and us, you have access to our external dispute resolution service, Financial Dispute Resolution Service (*FDRS*). MCL is a member of FDRS, membership number 5397. This dispute resolution service is available only to **retail clients**.
- 2.4. If you would like more information on our feedback and complaints process, or dispute resolution process, please contact us directly at:
 - i. Level 12, 36 Kitchener Street, Auckland Central, Auckland, 1010 , New Zealand;
 - ii. Compliance@marscap.co.nz / +64-9869-6555

3. THE MCL TRADING PLATFORM AND YOUR MCL ACCOUNT

- 3.1. In order for us to establish your account with MCL, you will need to complete and return to us your completed Application Form (which may be provided to you via email, online or in printed format) and the required identification documentation (as per the identity documentation and verification guidelines attached with the MCL application form). MCL may, in its absolute discretion, accept or decline to provide any one or more of the **products** and/or **services** you seek to obtain from us, or decline your application to open an account with us.
- 3.2. Our Agreement is effective from (the earlier of):
 - i. The time MCL accepts your application to open a MCL account as detailed in your Application Form;
 - ii. The time we otherwise agree to provide our products and/or services to you, by way of a trial; or
 - iii. The time you first submit a **transaction instruction** in respect of a **product** with MCL, or otherwise instruct MCL to provide **services** to you.
- 3.3. By completing and submitting an application form to open an account with MCL, you:
 - i. authorise MCL to open an Account for you; and

- ii. acknowledge and agree that you have read and understood all documentation provided to you, including these **terms**, and any supplementary documentation in relation to any MCL **products** and/or **services** (including, but not limited to, information booklets or factsheets about a particular **product** and/or **service**) you request MCL to make available to you.

4. CONDITIONS OF USE

- 4.1. Each **customer** agrees to use the **MCL trading platform (MARSAUTON)** strictly in accordance with any instructions for the operation and use of the **MCL trading platform (MARSAUTON)** that we provide to the **customer**.
- 4.2. You acknowledge that we will not provide legal, tax, financial or accounting advice to you at any point in time as part of the **services** that we provide to you in accordance with these **terms**. By these **terms**, MCL does not act in a fiduciary capacity and does not any fiduciary obligations to you in respect of any **products** and/or **services**, unless otherwise expressly stated.
- 4.3. The **customer** agrees that, to the maximum extent permitted by law, MCL will not be liable for any loss (direct or indirect) incurred by the **customer** in connection with:
 - i. A **transaction** entered into under these **terms**;
 - ii. A default by the **customer** of any of its obligations and representations under these **terms**;
 - iii. The validity or invalidity of any **transaction instructions** received by MCL;
 - iv. MCL acting or not acting upon any **transaction instructions**, including any delay in processing any **transaction instruction**; or
 - v. The **customer's** failure to comply with any relevant **terms** for giving an **transaction instructions**,except to the extent that such loss arises directly from the negligence or fraud of MCL, its officers its employees. To the maximum extent permitted by law, the **customer** agrees to indemnify MCL and keep MCL indemnified from, and against all actions, demands, liabilities, costs, charges, damages, losses and expenses and consequences of any of the above.
- 4.4. MCL accepts no liability, express or implied, for any failed transmission of **transaction instructions**, or carrying out the **customer's transaction instructions**.
- 4.5. The **customer** understands that using electronic means to provide **transaction instructions** is not a secure means of sending such instructions.

Terms and Conditions

4.6. The **customer** is aware of the risk involved in providing **transaction instructions** to MCL by electronic means, including the risk that the **transaction instructions** may:

- i. Be incomplete or inaccurate;
- ii. Be fraudulently, mistakenly given, or altered, or not otherwise authorised by the **customer**; and
- iii. Not be received in whole by MCL,

and that MCL may nevertheless, accept, rely and act on such instructions.

4.7. Because of the convenience and associated benefits of the **customer** issuing **transaction instructions** via electronic means, and for MCL to receive **transaction instructions** via electronic means, the **customer** accepts the risk of MCL accepting instructions that are incomplete, inaccurate, fraudulently or mistakenly given, or not received in whole by MCL.

4.8. To the maximum extent permitted by law, the **customer** agrees to indemnify MCL and keep MCL indemnified from, and against all actions, demands, liabilities, costs, charges, damages, losses and expenses and consequences of acting wholly or partly in accordance with a **transaction instruction**, provided that act or omission was not caused by MCL's negligence or fraud.

4.9. **Transactions as valid and binding:** unless MCL cancels a **transaction** or **transaction instruction** in accordance with these **terms**, such **transaction** or **transaction instruction** will be valid and binding even in the absence of any confirmations or acknowledgments sought by MCL as per these **terms** being provided by the **customer**.

4.10. If a **customer** would like to have a person who holds Power of Attorney to transact on their behalf and have access to their MCL trading platform, and/or to issue any **transaction instructions**), the **customer** should contact MCL to make appropriate arrangements for them.

5. CLIENT ACKNOWLEDGMENTS, UNDERTAKINGS, WARRANTIES AND RESPONSIBILITIES

5.1. As at the date of this Agreement and each time a transaction is entered into and/or when you acquire any **products** and/or **services** from us, it is your responsibility, unless we notify you in writing otherwise, to:

- i. Ensure you have the power and authority to enter into any **transactions**, to acquire our **products** and/or **services**, instruct us and communicate your instructions with us, and have the power and capacity to perform and fulfil your obligations under these **terms**;

Terms and Conditions

- ii. ensure you understand the MCL **products** and **services** information we provide (including these **terms**), before you make a decision to act on it;
- iii. make sure you have adequate information to choose the MCL **products** and **services** that meet your needs, by asking us to clarify anything you do not understand, and seek independent legal advice and/or financial advice where you believe it to be necessary;
- iv. ensure you understand your rights and obligations and our dispute resolution process before you choose to open your account with MCL, or select any other **product** and/or **service** we offer;
- v. inform us promptly if you change any of your personal details (including payment details, address details and name), and make sure that we have acted on this change;
- vi. ensure that any and all information provided to us are accurate, authentic, up to date, true and complete and not in any way misleading, or allow the information to be represented to us in a misleading way, in any shape or form;
- vii. (if you are a business/corporate client) remain validly incorporated and that no resolution has been passed, and no petition has been presented or order made for your insolvency;
- viii. (if you are an individual client) confirm that you are of full age and sound mind, and legally competent to enter into a contract, and that no steps have been taken, or legal proceedings started or threatened against you for your insolvency;
- ix. advise us if any proceedings under any relevant laws, including the Insolvency Act 2006, or its amendments, are brought against you, and advise us if yourself or any Authorised Signatory or Power of Attorney is adjudicated bankrupt;
- x. ensure that you have sufficient funds in your trading account to meet any trading requirements, including MCL fees and charges;
- xi. check your trading account transaction history to ensure transactions and its recording are accurate. You must inform us of any discrepancy or error as soon as you become aware of such issues, and notify us in writing within 30 **business days** of the date of the **transaction** in dispute. If we do not receive your written notification of any errors and/or discrepancies, you waive any rights of remedy against us;
- xii. acknowledge that we provide our **products** and **services** under these **terms** in reliance on your representations and warranties, and that these representations and warranties survive the entering into of any agreements with us;

- xiii. acknowledge that MCL will not allow a **customer** to instruct us with any **transaction instructions** or enter into a **transaction**, where that **transaction instruction** (if put into effect) or that **transaction** (if entered into) would result in a breach of any relevant laws or your obligations to MCL;
- xiv. acknowledge that the **MCL trading platform (MARSAUTON)** displays live prices linked directly to current market movements which are indicative, and that MCL officers and employees rely on the same underlying trading platform when responding to a customer's request for quotation. Accordingly, each **customer** understands and agrees that any exchange rates or other prices communicated with a **customer** or quoted by MCL to a **customer** are subject to change without notice, up until the point in time at which the **customer** issues to us a **transaction instruction** which is formally accepted by us in accordance with these **terms**; and
- xv. MCL accepts no liability for adverse exchange rate movements prior to acceptance of a **transaction instruction**.

6. CLIENT INSTRUCTIONS AND TRANSACTIONS BINDING UPON ACCEPTANCE

- 6.1. A **customer** and MCL are legally bound by a **transaction** from the time the **transaction instruction** is received, or deemed received by MCL. We will be deemed to have received and accepted a **transaction instruction** only when:
- i. a **customer** or **authorised person** issues a **transaction instruction** through the **MCL trading platform (MARSAUTON)**; and
 - ii. the electronic message containing the **customer's transaction instruction** is received by our system, and a record of it is entered into our database.
- 6.2. The **customer** understands and acknowledges that whilst MCL will endeavour to ensure availability of its electronic services, including the **MCL trading platform (MARSAUTON)**, there may be instances where the transmission of a **transaction instruction** through the **MCL trading platform (MARSAUTON)** may not be received by us, for reasons including, but not limited to, mechanical, software, computer, telecommunications or electronic failure. In such circumstances, we will not be deemed to have received or accepted any such **transaction instruction** in accordance with these **terms**.
- 6.3. MCL will endeavour to communicate that acceptance to a **customer** through the **MCL trading platform (MARSAUTON)** at the time of acceptance of a **transaction instruction** via automated electronic notifications to a **customer**. We will send out details of the accepted **transaction** where and as required by law. The **transaction** is binding whether or not a **customer** receives any such communication or confirmation. Automated electronic notifications may be unavailable if our system experiences an outage.

- 6.4. We accept no responsibility for any error in the terms of any **transaction instruction** issued by a **customer**. If a **customer** becomes aware of an error in the terms of any **transaction**, it is the **customer's** duty to notify us as soon as possible.
- 6.5. The **customer** acknowledges and accepts that MCL will endeavour to act on all **customer transaction instructions** as soon as reasonably practicable, but makes no guarantee (express or implied) that all **customer transaction instructions** will be fulfilled due to any service failures, and subject to the limits in service availability described in these **terms**.
- 6.6. MCL will not provide any update or alert on any price and/or margins changes (including increase, non-movement or decrease). The **customer** acknowledges, agrees and accepts that it is their sole responsibility to monitor price and/or margin changes, and that MCL will not be responsible for any trading losses, account deficits and associated fees as a result of price and/or margin changes.

7. AUTHORISED PERSONS

- 7.1. Each **customer** acknowledges and agrees that:
- i. each **authorised person** shall be appointed under an **authorisation**, and has authority to issue **trading orders** or **transaction instructions** through the **MCL trading platform (MARSAUTON)**, and is competent to use the **MCL trading platform (MARSAUTON)**. The **customer** will be bound by the terms of any **transactions** that result of any and all instructions issued or communicated to us by an **authorised person**;
 - ii. the **customer** is responsible for and bound by any **transaction instruction** issued through the **MCL trading platform (MARSAUTON)** through the log in of an **authorised person** on behalf of that **customer**, and we may assume the authenticity of and act on such instruction without any enquiry as to the identity of the person giving the instruction; and
 - iii. use of the **MCL trading platform (MARSAUTON)** via third parties may expose the **customer** and the **customer's** business (if applicable) to an increased risk of fraudulent use of the system by **authorised persons** or third parties and that the **customer** accepts that risk.

8. SECURITY

- 8.1. Each **customer** shall ensure that all passwords, encryption keys or other access procedures and security information for the use of the **MCL trading platform (MARSAUTON)** are kept completely secure and confidential and are used in accordance with any instructions we may provide. Do not provide your username, password, or any other information relating to your **MCL trading platform (MARSAUTON)** access to any third parties or individuals. MCL will treat the

Terms and Conditions

customer has having voluntarily compromised their **MCL trading platform (MARSAUTON)** access, and will not assume any obligations or liabilities.

- 8.2. Each **customer** agrees to notify us immediately if the **customer** or any **authorised person** suspects that the security of any such access procedure or security information (or any part of it) may have been compromised or any unauthorised use may have occurred. Despite this, the **customer** remains liable for all **transaction instructions** that are processed by us before such notification.

9. COMMUNICATIONS

- 9.1. Communications and other notices are to be given in writing and may be sent by personal delivery, or post, and subject to the relevant clauses in these **terms**, by phone, or email.
- 9.2. Each communication must be sent to the address of the relevant **customer** as per MCL's records held for that respective **customer**, and to the official MCL communication address provided to the **customer**, or to any other address advised by at least 5 **business days'** prior notice.
- 9.3. A communication with us will be effective only when actually received. A communication to the **customer** will be effective when received, and will be deemed to have been received:
- i. In the case of personal delivery, when delivered at the specific address;
 - ii. If posted, five **business days** after the day of posting; and
 - iii. If emailed by us, at the time we receive an acknowledgment of receipt of deliver from the **customer's** email address or (if earlier), at the end of two **business days** after the day the email was sent, unless a notice of non-deliver is received by us,

provided that if any communication is received after 5.00pm NZST, on a **business day** or on a day that is not a **business day**, it will be deemed to have been received on the next **business day**.

- 9.4. MCL will only accept transaction instructions submitted via the **MCL trading platform (MARSAUTON)**. MCL may refuse to act on any phone or email instructions.

10. SERVICE AVAILABILITY

- 10.1. MCL may stop, suspend or alter access to the **MCL trading platform (MARSAUTON)** without notice. MCL may impose specific restrictions and limits on a **customer's** use of the **MCL trading platform (MARSAUTON)**, and may alter, or where there is reasonable cause, withdraw the **MCL trading platform (MARSAUTON)** on a permanent basis at any time. MCL will give 14 days (or such

Terms and Conditions

shorter period as the specific circumstances may reasonably require) prior notice of such action. MCL may also, where there is reasonable cause, withdraw the **MCL trading platform (MARSAUTON)** on a temporary basis at any time without having to give any prior notice.

- 10.2. Subject to the limits of availability described in these **terms**, the **MCL trading platform (MARSAUTON)** is intended to be available 24 hours a day, seven days a week, subject to website and **MCL trading platform (MARSAUTON)** scheduled maintenance from time to time, which may result in the **MCL trading platform (MARSAUTON)** and website being unavailable for a period of time. We will notify you in advance of any scheduled website maintenance, with the exception of unscheduled or emergency website maintenance events.
- 10.3. **Transaction instructions** can be issued at any time provided that the **MCL trading platform (MARSAUTON)** is available.
- 10.4. As electronic services are subject to interruptions or outages for a variety of reasons, access to and use of the **MCL trading platform (MARSAUTON)** is offered on an 'as is, as available basis' only. Accordingly, we give no undertaking and make no representation or warranty (express or implied) as to the availability of the features and services that make up the **MCL trading platform (MARSAUTON)**, or any part of it as relied upon by MCL officers or employees to execute **transaction instructions** manually.
- 10.5. We accept no liability for unavailability of service if a **customer** is unable to complete a **transaction** because the **MCL trading platform (MARSAUTON)** or any part of it as relied upon by MCL officers or employees to execute **transaction instructions** becomes unavailable, including if there are connectivity issues between the **MCL trading platform (MARSAUTON)** and our systems, or if access to the **MCL trading platform (MARSAUTON)** or any part of it is interrupted, prevented, delayed or otherwise adversely affected, in each case for any reason.
- 10.6. Each **customer** acknowledges that, in the event that the **MCL trading platform (MARSAUTON)** (or any part of it as relied on by MCL officers and employees) is unavailable, the **customer** is responsible for ensuring that it has adequate contingency plans to enable it to execute a **transaction** by other means.

11. FEES AND CHARGES

- 11.1. The fees and charges that shall be payable by the **customer** shall be those advised by MCL to the **customer** from time to time.
- 11.2. Notwithstanding the customer's and our obligations and assurances, and all other clauses of these **terms**, each **customer** will be responsible for paying all telecommunication and internet access costs associated with connection to the

internet, the **MCL trading platform (MARSAUTON)**, and any other means of communications with MCL officers or employees for any reason.

12. TERMINATION

12.1. If we determine that **customer** has breached any of these **terms**, or as we see fit in order to protect the security and integrity of the **MCL trading platform (MARSAUTON)**, MCL, any MCL officers or employee, or to otherwise protect our interests, we may terminate a **customer's** use of the **MCL trading platform (MARSAUTON)** in whole or in any part at any time with immediate effect without prior notification to the **customer**. We may also at any time, by giving notice to the **customer**, decide that we are no longer going to provide **products** to or enter into **transactions** with a **customer**. We are not obliged to give notice to a **customer** if it is impracticable to do so. The **customer** will remain liable to us in relation to any **products** already provided by us or **transactions** entered into between us and the **customer**.

12.2. A **customer** may terminate its use of the **MCL trading platform (MARSAUTON)** or our services by written notice to us. Such termination:

- i. Will not be effective unless the notice of termination is received by us;
- ii. Will take effect from no later than 5:00pm NZST on the **business day** after the day on which we have received the notice of termination (*Termination Time*); and
- iii. Will not affect any obligations incurred by a **customer** in respect of the use of the **MCL trading platform (MARSAUTON)** prior to the Termination Time.

13. EVENTS OF DEFAULT

13.1. Each of the following events (whether or not within the control of the **customer**) will be an **event of default**:

- i. **Other breach**: the **customer** breaches or does not comply with any with any obligation under these **terms** or any other agreement with MCL to which it is a party;
- ii. **Misrepresentation**: any representation or warranty made or deemed to be repeated by the **customer** in relation to any **transaction** or these **terms** to which it is a party, is or was untrue or incorrect in any material respect when made or deemed repeated;
- iii. **Security**: any security over any asset of the **customer** is enforced or becomes enforceable;

Terms and Conditions

- iv. **Bankruptcy:** the **customer** is adjudicated bankrupt, or is placed in receivership, or the **customer** enters into any assignment for the benefit of creditors or is subject to any agreement or compromise with creditors, or the liquidation or statutory management of the **customer** commences, or any event preliminary or analogous to the bankruptcy, receivership, administration, liquidation or statutory management of the **customer** occurs;
- v. **Insolvency:** the **customer** is unable to pay, or does not pay, any debt or amount owing to MCL or as a result of any **transaction** as they become due and payable, or becomes insolvent, or the financial position of the **customer** changes adversely to a material extent, in each case in MCL's opinion;
- vi. **Repudiation:** the **customer** disclaims or repudiates, in whole or in part, any **transaction** or these **terms** (or any person on the **customer's** behalf takes such action);
- vii. **Death:** the **customer** dies or becomes legally or medically incapacitated;
- viii. **Enforcement:** any judgment, distress, attachment, execution or other legal process is levied, issued, enforced or obtained on or against the **customer**;
- ix. **Material and adverse effect:** any event occurs, that in our opinion, may materially adversely affect the business, assets or financial condition of the **customer** or the ability or willingness of the **customer** to comply with any obligations as prescribed under these **terms**, or our ability to recover any amount payable or enforce any obligations;
- x. **Unenforceability:** where it is unlawful or impossible for the **customer** to perform any obligations under these **terms**, or any part of these **terms** is claimed to be invalid or unenforceable;
- xi. **Cancellation of consent:** any consent required in connection with any **transaction** or **transaction instruction** is cancelled, withdrawn or modified in a manner unacceptable to us or otherwise ceases to be in full force and effect, or any condition relating to that consent is not complied with, including any event that has a similar effect to any of the above events occurs under the law of any place outside New Zealand;
- xii. **Customer under investigation:** any inspector, investigator or similar officer is appointed under any legislation to investigate a **customer's** business or operations;
- xiii. **Change to beneficial ownership or shareholding:** if there is any change in the legal or beneficial shareholding (other than the pro rata issue of ordinary shares to existing shareholder) or effective control of a **customer** which MCL deem to have, or may potentially have, a material effect to the **customer**;

- xiv. **Limited partnerships:** if before prior written notification to MCL and without our express written consent, any steps are taken for the purpose of termination or the deregistration of the limited partnership, or if the limited partnership is terminated or deregistered. This includes any termination event as referred to in section 86 of the Limited Partnership Act 2008, or if the **customer** ceases to have a general partner at any point in time, or any one or more of the **customer's** general partners is rendered incapacitated or unable to perform their duties in the capacity of a general partner, or if any representation or warranty made or deemed to be repeated by any general partner was untrue, incorrect, or misleading in any shape or form;
- xv. **If the customer is a trustee of a trust:**
- a) Without our prior written consent, any action is taken or proposed to terminate the trust or change the trustees of the trust;
 - b) A breach of trust occurs in relation to the trust;
 - c) The trustee's right of indemnity from the trust assets is impaired in any way; or
 - d) The trust assets and/or the trustee's right of indemnity from the trust assets are insufficient to fully satisfy the trustee's obligations to MCL.

14. EVENTS OF TERMINATION

14.1. An **event of termination** will occur if:

- i. It will be unlawful or impossible for MCL to receive any payment owed to us, or to perform any of our obligations;
- ii. The cost of any **transaction** to us increase as a result of any event or matter than arises or occurs after the date the **transaction** was entered into; or
- iii. It is impracticable for us to perform any obligations under these **terms**, for reasons beyond our reasonable control.

15. CONSEQUENCES OF EVENTS OF DEFAULT OR TERMINATION

15.1. When or after an **event of default** or **event of termination** occurs, and without affecting other rights we may have, we may by notice to the **customer**:

- i. Suspend, cancel or ceased our provision of any **product** or to process any **transaction**;

Terms and Conditions

- ii. Where an **event of default** occurs, require the **customer** remedy the default and impose conditions or timeframes by which time the default is required to be remedied;
- iii. Declare all or any part of the amounts owing by the **customer** to us to be immediately due and payable, in which case the debt will be due and payable; and
- iv. Exercise all of any of our rights as per these **terms** or at law.

16. CANCELLATION

16.1. We may require the **customer** to confirm details of **transaction instructions** from time to time, for example, when instructions received are not clear or where due to technical or communication outages, only part of the **transaction instruction** is received. In these instances, we will require the **customer** confirm in writing, any or all **transaction instruction** details as being correct. Such confirmations sought will be communicated with the customer via the **MCL trading platform (MARSAUTON)**, or via **authenticated communication methods**. We may cancel the **transaction** relating to the **transaction instructions** needing to be confirmed by the **customer** if the **customer** does not provide such written confirmations to us, within 5 business days of the confirmation being requested. We will not be liable to the **customer** in respect of any such cancellation.

17. SUSPENSION

17.1. We may suspend the provision of any **product** or the completion of any **transaction** if:

- i. We are notified by a person of a dispute over the operation of a **product** or the completion of a **transaction**;
- ii. We are obliged to do so to protect the **customer**, us or any other person who has reasonably claimed an interest in a **product** or **transaction**;
- iii. We become aware of any MCL **product** or **transaction** as not being used in a satisfactory or responsible manner, or against the content of these **terms** by the **customer**;
- iv. A **default** or **termination event** occurs;
- v. We receive contradictory instructions from any person authorised to use a **product**, or to enter into a **transaction** for the **customer**, or provide a **transaction instruction** on behalf of a **customer**; or
- vi. We are required to do so by law.

18. ASSIGNMENT

- 18.1. The **customer** may not assign, transfer or otherwise deal with any of its rights or obligations under our Agreement, except with our prior consent in writing.
- 18.2. We may at any time assign, novate or transfer to any person or otherwise deal with any of its rights and obligations under our Agreement. Each **customer** irrevocably undertakes to us to do all such acts and to execute all such agreements as we may reasonably require to effect or perfect any such assignment, novation or transfer and irrevocably authorises us to do all such acts and to execute all such agreements on the **customer's** behalf and/or in its name.

19. VARIATIONS TO THE MCL TRADING PLATFORM AND ASSOCIATED SERVICES

- 19.1. MCL has the right to, at any time, in our sole discretion, without notice to the **customer**, to change or cancel any of the features or services that make up the **MCL trading platform (MARSAUTON)**, and part of the **MCL trading platform (MARSAUTON)** (including any underlying services as relied upon by MCL officers or employees) or to limit a **customer's** use of the **MCL trading platform (MARSAUTON)** to particular services or products at any time.
- 19.2. We may alter, at any time, in our sole discretion, without notice to a **customer**, the form and content of the **MCL trading platform (MARSAUTON)** information.
- 19.3. Each **customer** acknowledges that any software provided by us to the **customer**, or downloaded by the **customer** for the use of the **MCL trading platform (MARSAUTON)** will be upgraded from time to time and may occur without prior notice. It is the **customer's** responsibility to ensure that such software, including any updates, are suitable for use on its information systems and will not adversely affect it. MCL does not assume any liability in relation to the sustainability of any software at any time.

20. CONFIDENTIALITY AND PRIVACY

- 20.1. The Privacy Act 1993 (*the Privacy Act*) contains certain principles relating to the collection, use and disclosure of information relating to individuals. We take our responsibility for your personal information seriously. Your privacy is important to us and we want to be sure that you understand the terms and conditions relating to the way in which we **collect** and use your **personal information**. We will comply with all privacy laws and codes of practice that apply to us.
- 20.2. Our full privacy policies as prescribed in the MCL Privacy Policy apply to all products and services you acquire from us in relation to our New Zealand operations, including our trading platform and website. By using our services (including accessing our trading platform and website), and providing us with **personal information**, you

Terms and Conditions

agree to these **terms**, and consent to our use of your **personal information** in accordance with our privacy policy (as amended from time to time).

20.3. The MCL Privacy Policy is available on the MCL website, and is subject to updates from time to time. MCL will notify **customers** of any changes by posting a public notification on the MCL website. Please refer to the MCL website for any periodic changes.

21. GENERAL

21.1. This agreement is governed by New Zealand law. Both you and MCL agree to submit to the exclusive jurisdiction of the Courts of New Zealand.

21.2. The illegality, invalidity, or unenforceability of any provision or part of this Agreement under the law of any jurisdiction does not affect the legality, validity, or enforceability of such provision under the law of any other jurisdiction or the legality, validity, or enforceability of any other provision or part.

21.3. Any legal action or proceeding arising out of or in connection with these **terms** may be brought in the courts of New Zealand or another court in any jurisdiction that we select, and the **customer**:

- i. Accepts, for itself and in respect of its assets, the non-exclusive jurisdiction of such courts;
- ii. Irrevocably waives any rights of immunity that it or its assets may have;
- iii. Irrevocably waives any objection it may have to any action or proceeding in any such court on the grounds of the venue or inconvenient forum; and
- iv. Consents to service of process in any manner permitted by law.

21.4. For the purposes of any persons confirming their obligations owed to MCL under these **terms** or entering into any agreements with MCL as an **independent trustee** of a trust, that **independent trustee's** liabilities and obligations is/are limited to the net assets of the trust from time to time available to meet such liabilities and obligations, and shall not be personally liable.

22. DEFINITIONS

23. In these **terms**, unless the context otherwise requires or indicates:

Authorisation	A notice in writing given to us by the customer to authorise and authorised person . An authorisation may be amended, supplemented or replaced from
----------------------	--

Terms and Conditions

	time to time, by written notice to us from the customer .
Authorised person	A customer or any other person authorised under an authorisation to enter into a transaction and instruct us in respect of that transaction .
Authenticated communication methods	Any method specified in clause 10.
Business day	A day other than Saturday or Sunday or any public holidays in New Zealand (New Zealand Standard Time).
Collect	As defined in section 2 of the Privacy Act 1993, and does not include receipt of unsolicited information.
Confirmations	In relation to a transaction , any document, reassurances, representation or confirming evidence provided by the customer to MCL.
Customer	A person who enters into a transaction or forms a business relationship with MCL.
Event of default	Any event specified in clause 13.
Event of termination	Any event specified in clause 14.
Financial Product	Has the meaning as set out in section 6 of the Financial Markets Conduct Act 2013.
MCL trading platform (MARSAUTON)	Our online trading platform and service.
MCL Website	The site(s) delivering content on or through the internet, accessible at www.marscap.co.nz or at any other internet address MCL may designate from time to time.
Personal information	Information about an identifiable individual. This would include the client's name, title, company name (where applicable), phone number, email address, business address and other such information that is typically held in a contact list.
Products and services	Each financial product and/or associated service we make available for a customer from time to time.

Terms and Conditions

	MCL may change such offerings from time to time by written notice to the customer .
<i>Terms</i>	The terms and conditions as set out in this document, and any other documents or agreements the customer receives or enters into with MCL. This includes details contained within the MCL account opening and change of details forms, MCL website terms of use and disclaimers, and any other agreements you enter into with MCL.
<i>Transaction</i>	A transaction entered into between the customer and MCL in relation to any MCL products and services in accordance with these terms .
<i>Transaction instruction</i>	An instruction issued through the MCL trading platform by a customer to enter into a transaction through the MCL trading platform (MARSAUTON) , and includes any instruction given by that customer (or an authorised person) on the customer's behalf) in respect of any feature or services that makes up the MCL trading platform (MARSAUTON) .