



## Terms and conditions

Last updated 15 September 2021

Opentrader Pty Ltd (ABN 11 638 893 919) is a corporate authorised representative (001280726) of Openmarkets Australia Limited (ABN 38 090 472 012; AFSL 246705). Openmarkets is a Market Participant of ASX, Chi-X and NSX and an ASX Clear and Settlement Participant.



Terms of your agreement with Opentrader Pty Ltd (ABN 11 638 893 919) (Opentrader).

## 1. Your account and agreement with Opentrader

- 1.1 By completing an application with Opentrader you accept and agree to be bound by the terms and conditions set out in this document (**Terms and Conditions**) which become a legally binding agreement between you and Opentrader.
- 1.2 You **must** read and understand these Terms and Conditions. If you do not understand these Terms and Conditions, or any part of them, we recommend you obtain advice from your lawyer before you agree to them.

## 2. Role of Opentrader and our relationship with you

- 2.1 Opentrader Pty Ltd is a corporate authorised representative (number 001280726) of Openmarkets Australia Limited ABN 38 090 472 012, AFSL number 246705. Opentrader is a wholly owned subsidiary of Openmarkets Group Ltd.
- 2.2 You obtain access to the Opentrader platform by completing the sign on process on the Opentrader website. You may use the Opentrader platform on a trial basis and without entering into market transactions. If you open a trading account on the platform, you may use the platform to enter into transactions and you will be required to enter into additional terms and conditions.
- 2.3 Opentrader may arrange for, or engage on your behalf, third party service providers such as stockbrokers, including Openmarkets Australia Ltd. When you engage a third party provider on this basis, any terms and conditions or disclosures applicable to the third party provider's products or service apply to you. Instructions provided to or dealings made with the third party by Opentrader are made on your behalf pursuant to the terms and conditions entered into by you to receive those products or services.

## 3. Trading and transactions

- 3.1 Opentrader may at any time, in its absolute discretion, refuse to accept any Order from, or execute Orders for you.
- 3.2 You must ensure that payment in full in respect of an acquisition of a financial product is received by Opentrader, or where the relevant transaction is made through a third party and settlement is due to the third party, that third party, before the Settlement Date and Time.
- 3.3 You must deliver to Opentrader, or where the transaction is made through a third party and settlement is due to the third party, that third party, all documents and security holder information (including the holder identification number or

personal identification number and, if applicable, holder reference number) no later than two business days before the Settlement Date and Time.

- 3.4 You will be given trade confirmations or statements as required by the Corporations Act and relevant market rules (Confirmation). You authorise Opentrader to give Confirmations to you electronically to the email address notified to Opentrader by you from time to time for this purpose. If a relevant transaction is executed by a third party, the third party may provide the Confirmation to you and you agree that if Opentrader is obliged to provide to you a Confirmation, the Confirmation provided by the third party is also provided on behalf of Opentrader. If the trading account is for joint holders and an email address is not provided for a joint holder, that joint holder authorises Opentrader to send any Confirmation to that joint holder at the email address provided for the trading account and by so sending the Confirmation Opentrader will be taken to have sent the email to that joint holder. Opentrader may not provide you with paper copies of Confirmations.
- 3.5 You agree to promptly check the accuracy of every Confirmation sent to you and to notify Opentrader immediately of any error that you consider may have occurred. In the absence of such notification from you within 24 hours, you will be taken to have accepted the accuracy of the Confirmation.
- 3.6 You acknowledge that, if you fail to make any payment due to Opentrader or deliver any documents or security holder information to Opentrader or otherwise comply with the settlement obligations that you owe to Opentrader or a third party in relation to a transaction (fail to settle), Opentrader may do any one or more of the following:
- a. charge an administration fee calculated by reference to the additional cost which may be incurred by Opentrader (including any fail fees imposed by a securities exchange) as a result of your failure to settle;
  - b. levy a default charge on the amount from time to time outstanding at a rate of up to 15% per annum;
  - c. sell out (or procure the sell-out of) any products purchased (and you are fully responsible for any loss in connection with such sale) and apply the proceeds in reduction of your liability to Opentrader and to recover Opentrader's costs in so acting;
  - d. buy in (or procure the buy in of) any products sold (and you are fully responsible for any loss in connection with such purchase) and recover Opentrader's costs in so acting;
  - e. sell out (or procure the sell-out of) any products otherwise held on your behalf (and you are fully responsible for any loss in connection with such sale) and

apply the proceeds in reduction of your liability to Opentrader and to recover Opentrader's costs in so acting;

f. apply any cash held by Opentrader (or to which Opentrader has access) on your account, or payments received for or from you in reduction of your liability to Opentrader; or

g. cancel any of your unexecuted Orders,

and you authorise Opentrader and each of its directors and employees as your attorney to give instructions on your behalf in respect of your holdings including without limitation any broker sponsored CHESS holdings, or held by a related body corporate or affiliate of Opentrader in nominee holdings, and in respect of call deposit facilities or cash management trust accounts on which either Opentrader is authorised to give instructions, to enable Opentrader to realise those products or funds and apply the proceeds in reduction of your liability to Opentrader and to recover Opentrader's costs in so acting.

3.7 You must pay or reimburse Opentrader any such administration fees and default charges (together with any GST payable on those amounts) immediately upon demand or at Opentrader's option it may deduct such administration fees and default charges (and any GST) from any sale proceeds or other amounts otherwise payable to you.

3.8 The manner in which Opentrader may exercise or not exercise, or the timing of or any delay in any exercise by Opentrader of, any right of Opentrader under this clause is not to be taken to be financial product advice by Opentrader to you, and you must not represent to any person that it is financial product advice by Opentrader.

3.9 Opentrader will not be liable to you for any failure by Opentrader to exercise (or any delay in the exercise by Opentrader of) any right Opentrader may have against you, or any loss incurred by you as a result of Opentrader not exercising any of its rights against you immediately, or at all, following any failure by you to comply with your obligations.

3.10 You acknowledge:

a. Opentrader, and its related bodies corporate, may deal in financial products on the ASX or Chi-X as principal;

b. that in certain circumstances, Opentrader may (either acting for another client or on its own account) enter into the opposite position in a transaction with you, as principal;

c. you consent to Opentrader entering into any such transaction with you; and

d. you agree that such consent shall continue until it is revoked in writing by you.

3.11 If an Order was opened prior to an update to the Opentrader Financial Services Guide (FSG Update) and that Order remains open (i.e. not yet settled) until after the FSG Update, that Order (including any fees we may charge you on that Order) will be based on the relevant Financial Services Guide that was in force prior to the FSG Update.

#### **4. Advice**

- 4.1 You agree Opentrader is not responsible for any loss arising from any investment or dealing you make relying on advice given by Opentrader where that advice is given in accordance with applicable laws.
- 4.2 You acknowledge that Opentrader is not required to monitor or manage your investments and that Opentrader will not act with discretion for you in respect of your investments unless you have entered into a separate agreement with Opentrader.
- 4.3 If Opentrader gives advice, Opentrader shall exercise due skill, care and diligence but does not guarantee the repayment of capital or the performance of any investments or otherwise make any representation concerning the performance of your investments, account or any particular transaction.
- 4.4 You acknowledge that Opentrader does not provide personal advice and any advice provided by Opentrader is general in nature and does not take into account your objectives, financial situation or needs. You agree that you shall:
- a. assess the appropriateness of each investment, trading or financial decision having regard to your particular needs, financial situation and objectives;
  - b. where applicable, obtain, read and understand the relevant Disclosure Statement;
  - c. if you determine you require personal advice, seek personal advice from someone other than Opentrader.

#### **5. Wholesale clients**

- 5.1 This clause applies if you are a wholesale client or professional investor.
- 5.2 You represent and warrant to Opentrader that:
- a. you are a wholesale client as that term is defined in s761A and s708(8) of the Corporations Act or you are a professional investor under the Corporations Act;
  - b. none of the financial products or services provided to you by Opentrader is for use in connection with a business;

- c. if you qualify as a wholesale client pursuant to s761(7)(c) or 708(8) of the Corporations Act, in each of the 2 financial years preceding each investment you make with Opentrader as a wholesale client, you had:
  - i. a gross income of \$250,000 or more per annum; or
  - ii. net assets of at least \$2.5 million; and
  - iii. your income or assets assessed by a qualified account who produced a certificate verifying your income or assets not less than 6 months prior to making the investment with Opentrader;
- d. you will not seek to make any investment as a wholesale client, and you will notify Opentrader immediately, if at any time you cease to be a wholesale client or professional investor.

5.3 You acknowledge and agree that:

- a. Opentrader will rely upon the representations and warranties above and but for you making the representations and warranties Opentrader would not provide services to you as a wholesale client;
- b. Opentrader will treat you as a wholesale client and not as a retail client under the Corporations Act and you will:
  - i. not receive any statutory protections afforded to retail clients; and
  - ii. not receive for the purposes of investments made as a wholesale client disclosure document from Opentrader regarding the products or services in which you invest including a Financial Services Guide or Product Disclosure statement

## 6. Trading Systems

- 6.1 Opentrader may provide to you, or arrange for you to have access to, electronic trading systems through which you are able to enter Orders for delivery to trade execution providers.
- 6.2 You acknowledge that all Orders submitted by you through an electronic trading system are routed to a third party execution provider and:
  - a. may be executed manually by a trade operator or through an automated order system operated by the third party. Execution of an Order is subject to the availability of the third party execution provider and the operation of their automated order system and may be delayed or rejected by the third party execution provider;
  - b. any reporting of the status of an Order in an electronic trading system is subject to receipt by Opentrader or its electronic trading system of transaction reports from the third party execution provider; and

- c. the third party execution provider may purge orders from its trading platform and these Orders will not be automatically resubmitted by the electronic trading system.

6.3 You:

- a. are responsible for all Orders submitted through an electronic trading system, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry;
- b. are bound by any agreement entered into by you or on your behalf in reliance on such Orders;
- c. are liable for any reasonable expense incurred by Opentrader in reliance on such Orders; and
- d. accept the sole risk and responsibility for Orders submitted by it through an electronic trading system Service, including any Order submitted in error;
- e. accept that Opentrader is not responsible for the acts and omissions of the third party execution provider or any error in execution, reporting or management of an Order by the third party execution provider and that you have a direct relationship with the third party execution provider relating to their services.

6.4 Opentrader is not in any way responsible or liable to you for any loss that results from your use of any electronic trading system or from any failure, error or defect of or in an electronic trading system and;

- a. you are solely responsible for assessing the adequacy of the system and for deciding whether or not to use it; and
- b. it is your responsibility to obtain, at its own expense, all hardware and software to be used by you in connection with use of the system.

## 7. Instructions

7.1 You acknowledge and agree that;

- a. you are and will at all relevant times be authorised to make communications to Opentrader by email;
- b. communication by email is not a secure means of communication and involves higher risks of distortion, manipulation and attempted fraud;
- c. you authorise Opentrader to accept and act without any inquiry upon, communications (including instructions) provided by email which appear to Opentrader to have been provided by or for you; and
- d. you indemnify Opentrader in respect of any and all claims, liabilities, direct or consequential losses, costs, charges or expenses (of any nature) incurred or

suffered by Opentrader as a result of Opentrader acting on communications (including instructions) provided by email.

- 7.2 You acknowledge that you are, and remain, solely liable and responsible for all acts and omissions of any person you authorise to provide instructions to Opentrader regarding your account or transactions even if (but not limited to) the act or omission of the authorised person was outside of their actual or ostensible authority or was in error, or was fraudulent, negligent, in breach by Opentrader of contractual, statutory or fiduciary duties or was criminal.
- 7.3 Opentrader is under no obligation to verify the authenticity of any instruction or purported instruction and may act on any instruction, without further enquiry or delay, from any person that Opentrader reasonably believes to be you or an authorised person. Opentrader in its sole discretion may (without the need to provide any reason) decline your instructions and not act on a particular instruction given, or purported to be given, and may defer action or seek further information (including a verification of an instruction) as Opentrader may see fit.
- 7.4 You agree Opentrader is not liable for any loss, cost or expense or inconvenience suffered or incurred by you as a result of Opentrader not acting, or delaying to act on, an instruction, or cancelling a transaction. You acknowledge that Opentrader is not responsible for missed market opportunities during the time required to comply with our internal procedures, including for opening accounts and verifying client information.

## **8. Indemnity and liability**

- 8.1 Opentrader is not liable to you for loss caused by or arising from, whether directly or indirectly:
- a. any delay, fault, failure in or loss of access to Opentrader services;
  - b. any failure, malfunction or defect of Opentrader software, electronic or mechanical equipment, or telecommunication channels or connections or any electronic trading system provided by Opentrader or any third party;
  - c. any delay or failure by Opentrader in acting on an order or instruction from you;  
or
  - d. any misinterpretation of instructions from you which are unclear, ambiguous, incomplete or not specific.
- 8.2 You must, to the maximum extent permitted by law, at all times and from time to time, indemnify and keep each of Opentrader and its related bodies corporate and any of their respective directors, officers, contractors, agents and employees (each an Indemnified Person) harmless from and against all liabilities, losses, damages, costs or expenses directly or indirectly suffered by the Indemnified

Person and from and against all actions, proceedings, claims for damages made against the Indemnified Person as a result of:

- a. any transaction entered into by Opentrader on your behalf;
- b. any delay in the execution of an Order or instruction
- c. any use of an electronic trading system;
- d. any failure by you to settle;
- e. any other breach by you of these Terms and Conditions;
- f. any breach by you of any other agreement with Opentrader;
- g. any breach by you of any representation or warranty made or taken to have been made by you not being true or correct; and
- h. any instruction given to Opentrader.

## **9. Fees and commission**

- 9.1 You agree to pay all Fees attributable to the services we provide you, including our fees and any fees charged by a third party in relation to the services.
- 9.2 Opentrader reserves the right to vary our fees at any time in accordance with this agreement.
- 9.3 We are not obliged to transfer financial products purchased where payment for them remains outstanding.
- 9.4 Unless expressly stated otherwise, all fees, charges and other consideration to be provided under these terms and conditions are GST inclusive. Unless a fee is expressly stated to be exclusive of GST, you agree to pay us the GST amount.

## **10. Information**

You warrant that all information provided by you to Opentrader is, or will be when given, accurate, true and correct and further agree to immediately notify Opentrader in writing upon becoming aware that such information is no longer accurate, true and correct. You agree that Opentrader may share such information, as well as your account details and information regarding your transactions with Opentrader's related bodies corporate on a confidential basis as Opentrader considers appropriate. You also consent to Opentrader disclosing this information and your account details to any regulatory authority or otherwise in accordance with the Opentrader Privacy Policy and consent to Opentrader using such information and your account details for the purposes of monitoring compliance by you or Opentrader with its regulatory and contractual obligations and resolving disputes. You may request access to the personal information that Opentrader holds about you.

## **11. Electronic identity verification**

- 11.1 Opentrader may use the personal information collected about you for the purposes of verifying your identity in accordance with our obligations under Anti-Money Laundering Laws. Conducting an electronic verification of your identity may involve Opentrader disclosing your personal information which you provide to us to the Official Record Holder or issuer of your identity record (eg. drivers' licence or passport) via third party providers which utilise the government managed Document Verification System (DVS).
- 11.2 Opentrader will receive a report from the Official Record Holder or issuer of your identity record through the DVS. When conducting customer identification Opentrader may disclose personal information about you to a credit reporting agency for the purposes of providing an assessment as to whether the personal information matches (in whole or part) personal information contained in a credit information file in the possession or control of the credit reporting agency. The credit reporting agency may provide Opentrader with the assessment and the credit reporting agency may use the personal information about you including your name, residential addresses and date of birth contained in credit information files of other individuals, for the purpose of preparing the assessment. By agreeing to these terms and conditions, you consent to electronic identity verification and to Opentrader providing your personal information to a credit reporting agency.

## **12. Joint Holder**

If you are a joint holder, these terms and conditions bind each person jointly and severally, and each person is authorised to issue instructions to Opentrader and give receipts to Opentrader in relation to any purchase or sale of products or other matters to which these terms and conditions relate.

## **13. Account for Trust**

You warrant that if you enter into this agreement with Opentrader as a trustee, you have the authority to enter into these terms and conditions and any related agreement to these terms in both your personal capacity and as a trustee.

## **14. Telephone recording**

You agree and consent to:

- a. the electronic recording by Opentrader of the telephonic conversations between you and Opentrader with or without an automatic tone warning device;
- b. the use of recordings or transcripts from such recordings for any purpose which Opentrader deems desirable, including without limitation their use as evidence

by either party in any dispute or anticipated dispute between Opentrader and you; and

- c. Opentrader keeping the recording for as long as it sees fit.

## **15. Electronic correspondence**

You hereby nominate your email address (as provided to Opentrader from time to time) for the purpose of receiving all communications and consent to receiving (and authorise Opentrader to use your email address to send to you) any disclosure Document Opentrader is required to provide to you including any updates to these documents. You agree that Opentrader may:

- a. provide to you a link to a Disclosure Document such that you are able to access the document electronically; and
- b. provide to you a Disclosure Document by means of an electronic portal or application service by which you are able to access the documents.

You may opt out of receiving a Disclosure document electronically by giving notice to Opentrader within 7 days of agreeing to these terms and conditions we will arrange for you to receive a hard copy of the documents. You agree that you will retain a copy of each Disclosure Document provided to you by downloading or otherwise making a copy of the document.

## **16. Amendment**

- 16.1 These terms and conditions may be amended by Opentrader from time to time by notice to you. Where the variation is minor or its effect is in the opinion of Opentrader not materially adverse to you, Opentrader may post an update of these terms and conditions on its website or make it available to you in accordance with clause 15. For any other amendment, Opentrader will give you 5 days' notice, after which time the amendment will become effective and such notice may be given in accordance with clause 15.
- 16.2 You acknowledge and agree that by transacting with Opentrader, or by receiving any service from Opentrader, you are bound by these terms and conditions in the form that they appear on the Opentrader website at the time that the transaction occurs or the service is received.

## **17. Termination**

Opentrader may terminate this agreement with you and close your account by giving written notice to you. You may terminate this agreement and close your account by giving written notice to Opentrader. The termination of this agreement does not affect any rights or obligations of the parties which may have accrued prior to the termination of this agreement.

## 18. Governing law

These Terms and Conditions are governed by the law in force in Victoria and you and Opentrader submit to the non-exclusive jurisdiction of the courts of Victoria and courts which may hear appeals from those courts.

## 19. Interpretation

**Disclosure Documents** includes any financial services disclosures under the Corporations Act or other applicable law such as (without limitation) a Financial Services Guide, confirmation, policy documents, Product Disclosure Statement, client agreement and these Terms and Conditions (including any part thereof).

**Fees** means the fees and charges applicable to the services provided to you by Opentrader as set out in the Opentrader Financial Services Guide or as otherwise agreed between you and Opentrader.

**Order** means an order or instruction for the sale, purchase, issue or redemption of financial products to be executed or facilitated by Opentrader.

**Settlement Date and Time** is the date and time that is specified on the relevant transaction confirmation or transaction documentation or as otherwise notified to you by Opentrader or third party.