

**E*TRADE AUSTRALIA TERMS AND CONDITIONS
FOR DIRECT BROKING TRADING CUSTOMERS**

By opening an account with ETRADE Australia Securities Limited ("E*TRADE Australia") through Direct Broking Limited (the New Zealand referring broker, "Direct Broking") the client agrees to the following terms and conditions.

Account Opening

- 1 The client warrants that if the client is:
- (a) more than one person or entity, each such person or entity shall be jointly and severally liable under the Terms and the Sponsorship Agreement;
 - (b) acting as a trustee, the client has authority to be bound by the Terms and the Sponsorship Agreement both personally and as trustee;
 - (c) a corporation, the company is registered under the Companies Act 1993, or the Companies Reregistration Act 1993 and the principal place of business of the client is in New Zealand; or
 - (d) a natural person and 18 years of age or over.
- 2 The client undertakes to notify Direct Broking immediately of any change to its identity, address or personal particulars and the client authorises Direct Broking to convey such information to E*TRADE Australia.
- 3 The client shall provide such information as is requested by Direct Broking to open an account with E*TRADE Australia and shall provide such identification information as Direct Broking in its sole discretion considers necessary. The client shall provide any additional information and identification that Direct Broking may require from time to time to enable Direct Broking and or E*Trade Australia to comply with their respective laws and regulations.
- 4 The client warrants and represents:
- (a) that the information the client supplies is accurate, complete and truthful;
 - (b) that the client is constituted by no more than three persons;
 - (c) that the client will be at all times in a position to meet all commitments on the part of the client arising from transactions under these Terms; and
 - (d) that the client is not a person with whom Direct Broking or E*TRADE Australia is not lawfully entitled to deal pursuant to any statute, law, rule or regulation in or outside Australia.

Dealing

- 5 **Agency**
- 5.1 The client agrees that Direct Broking acts as agent of the client for the specific purposes of:
- (a) Receiving from the client and referring to E*Trade Australia orders in respect of Australian securities; and
 - (b) Collecting from the client all monies required to settle orders in respect of Australian securities (including all brokerage and other monies payable to E*Trade Australia pursuant to these Terms) and providing those settlement monies to E*Trade Australia.
- 5.2 The client acknowledges that Direct Broking acts as agent of E*Trade Australia for the specific purposes of:
- (a) Verifying the identity of the client to enable E*Trade Australia to comply with applicable Australian laws;
 - (b) Sending to the client a contract note in respect of each trade of Australian securities that the client enters into pursuant to these Terms; and
 - (c) Such other matters as agreed between E*Trade Australia and Direct Broking from time to time.
- 5.3 The client represents that it acts as principal and not as agent for any other party.

6 **Customs Usages and Practices of ASX**

- 6.1 The client acknowledges and agrees that all orders placed with E*TRADE Australia through Direct Broking are placed subject to the customs, usages and practices of the ASX,

the SCH Business Rules, ASX Business Rules and the Corporations Act together with the terms and conditions set out in each contract note issued in respect to each transaction.

7 **Trading Generally**

- 7.1 The client may, or may instruct Direct Broking to deal on behalf of the Account provided there are sufficient Cleared Funds or Cleared Financial Products in the nominated account and such amounts comply with the requirements set out in the E*TRADE Australia Website.
- 7.2 All Financial Products trading transactions between the client and E*TRADE Australia are subject to the Corporations Act, the ASX Business Rules, the SCH Business Rules, the customs and usages of the ASX and the SCH and the terms and conditions set out in the contract note issued by Direct Broking on behalf of E*TRADE Australia and defined in ASX Market Rules 7.9.1(b)((i), (ii) and (iii)), in relation to each transaction. The client acknowledges that any contract note is issued subject to the matters set out in those rules.
- 7.3 Each order instruction through Direct Broking to, E*TRADE Australia is given with the intention that it will be transmitted to the market for execution.
- 7.4 The client warrants that all orders placed and any trade conducted by it is lawful.
- 7.5 Direct Broking and E*TRADE Australia reserve the right not to accept and/or to remove without notice any order that it in its sole discretion considers may detract from an orderly market or which it believes is manipulative.
- 7.6 The client acknowledges that any order placed will remain open until cancelled by the client, by Direct Broking, or by E*TRADE Australia in accordance with these Terms or purged by ASX SEATS. The client acknowledges that Direct Broking and E*TRADE Australia do not accept responsibility for reinstating lapsed orders or for contacting the client to seek new instructions.

8 **Cancellation of trades**

- 8.1 E*TRADE Australia reserves the right to cancel trades pursuant to or as contemplated by ASX Business Rules, practices and procedures of the ASX and the relevant clearing house without the client's consent.

Execution and Settlement

9 **Acknowledgements**

- 9.1 The client acknowledges that:
- (a) They wish to utilise the execution and settlement services of E*TRADE Australia;
 - (b) The client will execute a Sponsorship Agreement with E*TRADE Australia;
 - (c) E*TRADE Australia will not provide the client with any legal, tax, financial, investment or accounting advice or advice regarding the suitability or profitability of any Financial Product or investment and, to the extent permitted by law, will have no liability (including for any negligence) with respect to the transactions (including any diminution in value) in or for the client, the Account and the client's investment decisions;
 - (d) E*TRADE Australia does not operate discretionary accounts;
 - (e) where the client has elected to receive contract note details by electronic means only, the client accepts that the conditions set out in ASX Market Rules 7.9.1(b)((i), (ii) and (iii) apply;
 - (f) where the client provides Direct Broking or E*TRADE Australia with Tax File Numbers, these numbers may be passed on to the provider of the bank account,

- E*TRADE Australia and share registries with whom the client holds Financial Products;
- (g) E*TRADE Australia or Direct Broking may at its sole and absolute discretion close the Account or refuse instructions to purchase or sell Financial Products on behalf of the client or cancel any order or trade or generally prohibit or restrict client's ability to trade Financial Products in or from the Account without providing any reason for doing so. E*TRADE Australia will notify the client of any such refusal or Account closure as soon as is practicable; and
- (h) Without limiting clause 9.1(g), E*TRADE Australia and/or Direct Broking may refuse to accept instructions from the client to buy or sell Financial Products unless the client has met the Account opening requirements set out in the Terms and on the E*TRADE Australia Website. The client acknowledges that certain orders at E*TRADE Australia's sole discretion may be subject to manual review and entry which may cause delays in the processing of the client orders. The client acknowledges that the order will be executed at the price available on the ASX (subject to any limit imposed by the client), which may be different from the price at which the Financial Product is trading when the client order was entered on to the Service.
- 9.2 The client acknowledges that E*TRADE Australia uses Automated Client Order Processing, which may involve the matching of the client's order with an opposite order from another of its clients or with E*TRADE Australia when it deals as principal. The client agrees that where a client order is matched with an opposite order from another of its clients, E*TRADE Australia is entitled to charge brokerage to both parties to the transaction.
- 9.3 The client authorises the accumulation and price averaging of two or more market transactions into a single confirmation/contract note.
- 10 Electronic Communications**
- 10.1 The client will be responsible for the confidentiality and use of any user ID, Log-on password, trading password and telephone password provided to them, and agrees that they will not disclose these to any other person.
- 10.2 The client agrees not to contest the validity or enforceability of Electronic Communications between the client and E*TRADE Australia in any legal proceedings between the parties and also irrevocably waive any right to raise any defence or waiver of liability based upon the absence of a memorandum in writing or of a failure of execution.
- 10.3 E*TRADE Australia may maintain a transaction log consisting of a copy of all instructions received from the client by Electronic Communications. In the event of a dispute, the log will be conclusive evidence of the details of the communications contained in it except in the case of a manifest error. To the extent permitted by law (including for any negligence) E*TRADE Australia is not liable for any Loss incurred by the client as a result, directly or indirectly, of any inaccuracies or lack of timeliness in the information appearing on the log.
- 10.4 The client must re-transmit any instruction to place an order contained in an Electronic Communication if the functional acknowledgment received indicates a malfunction or E*TRADE Australia notifies the client that the message was received in an incomplete or garbled form.
- 10.5 The client is responsible for establishing their own agreements with third party networks (including without limitation Internet service providers) involved in the transmission of Electronic Communications initiated by the Client to E*TRADE Australia including any connect time or other charges of those third parties.
- 10.6 Neither party is liable to the other for any Loss suffered by the other party due to a force majeure event.
- 11 Payments**
- 11.1 The client agrees to pay to E*TRADE Australia brokerage, commission, taxes and duties and other fees notified to the client from time to time and as they apply to all matters relating to the Account and transactions on behalf of the client and services provided to the client.
- 11.2 The client irrevocably directs Direct Broking to debit the client's nominated bank account and pay to E*TRADE Australia all amounts in respect of purchase orders, brokerage, commission, fees, taxes and duties as required for settlements or otherwise required by the ASX and SCH including brokerage (if any) payable to Direct Broking.
- 11.3 The client authorises Direct Broking to appropriate, transfer, credit, apply or pay monies that may be received or held by the client or on the client's behalf in payment of amounts that may be outstanding by the client, to Direct Broking or to E*TRADE Australia.
- 11.4 E*TRADE Australia may appropriate any payments, credits or other sums of money received by the client or on behalf of the client in reduction of any amounts owing by the client to E*TRADE Australia or by the client to Direct Broking or otherwise (including for buy orders placed by the client), whether on the Account or any other account, and may instruct the Direct Broking to transfer monies from the client's nominated bank account to E*TRADE Australia for that purpose.
- 11.5 E*TRADE Australia may charge interest on any debit balances in the Account and any other amounts outstanding by the client to E*TRADE Australia as disclosed to the client from time to time.
- 11.6 The client may not close any Account without E*TRADE Australia first receiving all Financial Products which the Account is liable to deliver for sale and all funds to pay in full for all Financial Products which have been purchased on the Account, including all amounts payable to E*TRADE Australia.
- 11.7 All client property other than Financial Products in which the client has an interest or which at any time are in the possession or control of E*TRADE Australia, shall subject to the ASX and SCH Business Rules be subject to a lien for the discharge of any and all indebtedness or any other obligation that the client may have to E*TRADE Australia. The client must pay E*TRADE Australia the costs and expenses of collection of any such indebtedness or debit balance, including but not limited to, legal costs and disbursements.
- 11.8 Subject to the SCH Business Rules, the client authorises E*TRADE Australia to sell Cleared Financial Products, as necessary to meet any unpaid debt the client owes E*TRADE Australia.
- 12 Settlement**
- 12.1 Where the client, or Direct Broking acting on the client's behalf, instructs E*TRADE Australia to buy Financial Products, the client agrees to pay and authorise payment for those Financial Products to be deducted from the Cleared Funds prior to settlement. E*TRADE Australia is not obliged to transfer Financial Products to the client where payment for those Financial Products has not been received and, until payment of all amounts outstanding from the client to E*TRADE Australia is made in full.
- 12.2 Where a contract for the purchase of Financial Products remains unpaid, after E*TRADE Australia has requested the client to pay for the Financial Products, E*TRADE Australia may sell those Financial Products that are the subject of that contract at the risk and expense of the client and that expense shall include all Loss suffered by E*TRADE Australia including brokerage, and any relevant fees and duties.
- 12.3 If E*TRADE Australia makes a sale of any Financial Products at the direction of the client, and the client has failed to deliver those Financial Products, then E*TRADE Australia is authorised to borrow or otherwise obtain the Financial Products necessary to enable E*TRADE Australia to make delivery, and the client agrees to be responsible for any Loss E*TRADE Australia may incur, including the cost of borrowing and/or obtaining the Financial Products and/or other property. The client agrees that E*TRADE Australia is the client's agent to complete all such transactions and is authorised to make advances and expend monies as required.
- 13 Late & Corrected Reports**
- 13.1 The client understands that E*TRADE Australia from time to time receives late reports reporting the status of transactions. Accordingly, the client will be subject to late reports relating to orders that were previously unreported to the client or reported to the client as being expired, cancelled, or executed. In addition, any reporting or posting errors, including in execution prices, will be corrected to reflect what actually occurred in the marketplace.
- 14 Confirmations, Account Statements, Notices & Other Communications**
- 14.1 It is the responsibility of the client to review upon first receipt, whether delivered to the client by mail, Electronic

Communication or otherwise all confirmations of transactions and all statements in relation to the Account. Transactions and all such information received by the client shall be binding upon the client, if the client does not object, either in writing or by Electronic Communication, within 48 hours after the confirmation or information is first received. In all cases, E*TRADE Australia reserves the right to determine the validity of client objections to the transaction or to the information contained in such statements.

- 14.2 Any notice, request, demand or other communication may be made personally, by Electronic Communication or by prepaid letter to the client at the client's last notified address or number, as the case may be, and the notice, request, demand or other communication shall be deemed to have been received by the client if made personally when made, if made by Electronic Communication when there is confirmation of receipt by whatever means, or if made by prepaid letter on the Business Day following transmittal or posting as the case may be.

General

15 Commission Disclosure

- 15.1 The client agrees that E*TRADE Australia may pay a commission to Direct Broking in respect of brokerage received by E*TRADE Australia from the client. The client also agrees that E*TRADE Australia may receive commissions from suppliers of information services, banking services and clearing services in respect to the services provided under this agreement to the client from time to time and that each or either of them is entitled to retain such commissions for its own benefit.

16 Information

- 16.1 The client expressly authorises Direct Broking and E*TRADE Australia to obtain reports concerning the client's credit standing and business conduct from credit reference agencies or other sources and authorise the reporting of the client's credit standing and business conduct to those agencies. The client authorises the use and disclosure of information provided by the client to Direct Broking and/or E*TRADE Australia to the extent required by law or any regulatory authority, to comply with these Terms and in any case where the client gives consent.
- 16.2 The client may not download or reproduce any material on the E*TRADE Australia website or any material accessed through the E*TRADE Australia website other than material which is intended to be downloaded by clients for personal use without the express written consent of E*TRADE Australia.
- 16.3 Without limiting Clause 16.2, the client may not use any of the information in the Company Profile service for the purpose of on-selling and may not replicate any of the data or information for any other person or company without the express written permission of the Service Provider. Such permission will not be unreasonably withheld however a fee will be payable for such purpose.

17 General Lien

- 17.1 Subject to the ASX Business Rules and SCH Business Rules the client agrees and acknowledges E*TRADE Australia's right to exercise a lien over all property within its possession or control in the event of non or late payment by the client.

18 Indemnity & Disclaimer

- 18.1 The client agrees to indemnify Direct Broking and E*TRADE Australia, their employees, contractors and agents to the maximum extent possible at law in respect of all Loss arising in any way whether directly or indirectly from the client's conduct, instructions, orders, default or acquiescence and acknowledges that, to the maximum extent permitted by law, Direct Broking and E*TRADE Australia accept no liability for any Loss of any kind for any act it lawfully completes or for any loss resulting from delay disadvantage or misinterpretation of instructions or which may arise from the malfunction or disruption of any system or service upon which it relies.

19 Liability And Indemnity

- 19.1 Subject to those provisions of the Trade Practices Act, the Corporations Act, the Australian Securities & Investments Commission Act and any other rights implied by law which cannot be excluded by agreement between the parties:

- (a) E*TRADE Australia makes no warranties, either express or implied, as to merchantability, fitness for a particular purpose or otherwise (including as to accuracy, currency, availability, completeness of quality) with respect to the goods and services supplied under these Terms, including the Service and the services provided to the client by the Service Providers;
- (b) E*TRADE Australia excludes all liability in contract, tort (including negligence) or otherwise relating to or resulting from use of the Service and for any Loss incurred by the client directly or indirectly including without limitation as a result of or arising out of:
- (i) any inaccuracy, error or delay in or omission from any information provided to the client under the Terms including the Service and the service provided to the client by the Service Providers;
 - (ii) any delays or failures or inaccuracies in the transmission of the Service to the client or service provided to the client by Service Providers, transmission of client orders or instructions or any other communications;
 - (iii) any misinterpretation of client orders or instructions which are unclear, ambiguous, incomplete or not specific;
 - (iv) any delay, fault, failure in or loss of access to the Service or service provided to the client by the Service Providers or Direct Broking;
 - (v) government restriction, exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to the Service or the service provided to the client by the Service Providers, theft, sabotage, war, earthquakes, strikes, force majeure and without limitation, any other conditions beyond E*TRADE Australia's control.
- (c) in no event shall E*TRADE Australia be liable in contract, tort (including negligence) or otherwise for any loss of prospective profits, or expenses or special, indirect or consequential damages resulting from use of the goods or services supplied under these Terms, including the Service;
- (d) E*TRADE Australia's liability shall in any event be limited to:
- (i) in the case of goods, the replacement or repair of the goods; or
 - (ii) in the case of services, the re-supply of the services.

- 19.2 The client acknowledges that the ASX, other participating exchanges and Service Providers may assert proprietary interests in the information provided to the client from use of the Service and that neither the ASX, other participating exchanges or the Service Providers guarantee the timeliness, sequence, accuracy or completeness of the information provided to the client from use of the Service.

- 19.3 The client agrees to indemnify and keep indemnified E*TRADE Australia and all of its officers, employees, agents, related parties and associates against any Loss incurred by them as a result of client use of the Service, E*TRADE Australia relying upon and acting in accordance with any notice, demand or instruction contained in an Electronic Communication or otherwise received by E*TRADE Australia on behalf of the client by Direct Broking or any failure by the client to strictly comply with these Terms.

20 Severability

- 20.1 If any provision of these Terms are held to be invalid, void or unenforceable by reason of any law, rule, administrative order or judicial decision, that determination shall not effect the validity of the remaining provisions of these Terms.

21 Variation And Termination

- 21.1 E*TRADE Australia reserves the right to vary the Terms at any time and may vary the Terms or the terms of the Service by giving the client not less than 5 Business Days notice of the variation, in writing or by Electronic Communication.
- 21.2 E*TRADE Australia may make a variation without prior notice where such variation is necessary to restore or maintain the security of its systems or any accounts.

22 Privacy

- 22.1 Direct Broking and E*TRADE Australia advise that they collect information about the client in order to act on the client's behalf, in the case of E*TRADE Australia, as the

holder of an Australian Financial Services License. Without this information E*Trade Australia, as a holder of an Australian Financial Services License, may not be able to act on behalf of the client and process and complete any transactions that they effect for the client. Direct Broking and E*TRADE Australia advise they may:

- (a) use and disclose client information in relation to their internal administration and operations;
- (b) disclose client information to debt collectors, credit reporting agencies, contractors, their related companies, service providers, parties authorised and/or required by law to collect client information, and each other as disclosed by the Application or otherwise as disclosed by the client in writing.
- (c) use client information to maintain their relationship with the client (and each other as disclosed by the Application or otherwise as disclosed by the client in writing); and/or
- (d) use client information for compliance with relevant legislation and regulations.

22.2 The client may request access to information about the client that E*TRADE Australia or Direct Broking has collected and retained. Access will be granted in accordance with the Privacy Act 1988 (Cth), and in the case of Direct Broking, the Privacy Act 1993 (New Zealand) and they may charge a reasonable fee for such access. If any client information is inaccurate, the client may request that it be corrected.

22.3 If the client is a company, and the client has provided personal information of an officer or employee of the client to us in respect of the Account, the client must show this disclosure statement to its officer or employee.

23 Complaints

23.1 If the client has any complaint about the service provided by Direct Broking or E*TRADE Australia, the client should take the following steps:

- (a) Firstly, for all complaints, contact Direct Broking at Ground Floor, 1 Victoria Street, 6011, Wellington, New Zealand, Telephone 0800 805 777. Direct Broking may refer your complaint to E*TRADE Australia.
- (b) Secondly, if a client's complaint is not satisfactorily resolved using the process described in clause 23.1(a) above and the complaint relates to E*TRADE Australia as execution and settlement agent or CHES Participant, E*TRADE Australia can be contacted by Telephone on +61 1 300 658 355. The client is entitled to have his or her complaint in relation to his or her dealings with E*TRADE Australia considered in a timely manner.
- (c) Thirdly, if the complaint is still not satisfactorily resolved using the processes described in clause 23.1(a) and (b) above, the complaint should be made in writing to the Compliance Officer at E*TRADE Australia.

24 Parties to the agreement

24.1 The client, Direct Broking and E*TRADE Australia are each parties to the agreement constituted by these Terms and each may enforce any rights it has under these Terms against any other party.

25 Governing Law

25.1 These Terms are governed by the laws of New South Wales and the parties agree to the non-exclusive jurisdiction of the courts of New South Wales.

26 Definitions And Interpretation

26.1 In these terms and conditions:

- Account means the client's trading account with E*TRADE Australia.
- ASX means the ASX Limited, ACN 008 624 691.
- ASX Business Rules means the Business Rules of the ASX, the ASX Market Rules, the Australian Clearing House Pty Ltd ACN 003 435 014 ("ACH") Clearing Rules and the ASX Settlement and Transfer Corporation Pty Ltd ACN 008 504 532 ("ASTC") Settlement Rules as amended from time to time.
- Business Day means any day which is not a weekend or gazetted public holiday in New South Wales.
- Cleared Funds means funds available in the client's nominated bank account for the purposes of trading

being the sum of funds in the account plus funds receivable from unsettled sales minus funds needed to pay for unsettled purchases and minus calculated amounts required to meet open purchase orders and minus funds needed to pay for any withdrawals and any uncleared deposits.

- Cleared Financial Products means the client's Holding of Financial Products in the Account in respect of which E*TRADE Australia is the Participant under the Sponsorship Agreement or Financial Products in respect of which E*TRADE Australia in its absolute and sole discretion recognises the client as the holder and in respect of which it will become the Participant under the Sponsorship Agreement. It does not include any Margin Financial Products.
- Electronic Communication means any notice, instruction, demand or other communication by telephone, facsimile transmission, electronic mail or electronic data interchange (including over the World Wide Web).
- E*TRADE Australia means ETRADE Australia Securities Ltd (ABN 93 078 174 973, Australian Financial Services Licence No. 238277).
- E*TRADE Australia Website means the E*TRADE Australia web site located at www.etrade.com.au or such other location as E*TRADE Australia nominates from time to time.
- Financial Products means financial products (as defined in the Corporations Act 2001 (Cth)) traded on ASX and any other exchange notified to you by E*TRADE Australia from time to time, interests in an unlisted managed investment scheme, Contracts for Difference and other derivatives which are not traded on the ASX or any other exchange; or any other financial product (as defined in the Corporations Act 2001 (Cth)) notified to you by E*TRADE Australia from time to time.
- Loss or Claim includes without limitation any expense, costs, liability, claims, damages, fees, taxes, duties, penalties, interest, legal costs (on a full indemnity basis), judgment, consequential, special or indirect loss or loss of prospective profits.
- SCH Business Rules means the Business Rules of the Securities Clearing House operated by ATSC or ACH as amended from time to time.
- Service means the client trading and information service provided by E*TRADE Australia which includes the E*TRADE Australia Internet online and telephone services.
- Service Providers means suppliers of information related to the Service, by persons not controlled by E*TRADE Australia
- Sponsorship Agreement means the CHES sponsorship agreement entered into between the client and E*TRADE Australia.
- Terms means the terms and conditions of E*TRADE Australia and set out herein as amended from time to time.

26.2 Headings are for reference only and do not in any way affect the meaning of the Terms. Words expressed in one gender include all genders. The singular includes the plural and vice versa. Unless the context requires otherwise, words defined in the Corporations Act, ASX Business Rules and the SCH Business Rules have the same meaning in these Terms.