



# Terms and Conditions

**Issue Date:** 07 September 2018

Monex Securities Australia Pty Ltd

**AFSL No:** 363972 | **ABN:** 84 142 210 179

**Registered Office:** Level 2 - The Bond, 36 Hickson Road Sydney NSW 2000

Monex Securities Australia Pty Ltd ('Monex AU', 'we', 'us', 'our')  
AFSL 363972 | ABN 84 142 210 179

Please retain these Terms and Conditions for future reference.

## **SECURITIES TRADING TERMS AND CONDITIONS**

### Definition and Interpretation

**"Agent"** means any broker, custodian, sub-custodian or sub-sub-custodian appointed by us including international brokers, international custodians, international clearers and banks; Please contact us if you would like further information pertaining to our appointed Agents.

**"Agreement"** means these Terms and Conditions.

**"Application"** means the Monex AU Securities Trading Account opening form provided with these Terms and Conditions or provided online.

**"Custodian"** means any entity we appoint to hold your Securities in accordance with these Terms and Condition.

**"Dormant Account"** means a Portfolio or Securities Trading Account held with Monex AU whereby no securities trading and/or deposits or withdrawals made to/from your nominated Portfolio or securities trading account held with us for a period greater than 12 months since the last trade or transaction processed within your account. The payment of fees or the receipt of interest is not considered to be withdrawals or deposits.

**"Fee Schedule"** means the fee schedule contained on our website at [www.monexsecurities.com.au/page/fee/](http://www.monexsecurities.com.au/page/fee/)

**"House Funds"** means the property of Monex AU

**"Monex AU, we, our and us"** means Monex Securities Australia Pty Ltd | AFSL 363972.

**"Monex BOOM"** means Monex BOOM Securities (H.K) Limited, Licensed by the Securities and Future Commission for Type 1 (dealing in securities) and Type 7 (providing automated trading services) regulated activity (CE Number AEF 808), registered office at 25/F, AIA Tower, 183 Electric Road, North Point, HONG KONG.

**"Periodic"** means a specific period as defined by Monex AU.

**"Portfolio"** and **"Account holding"** means all Securities held from time to time by an Agent or by us on your behalf under these Terms and Conditions;

**“Price-quoting services”** means all real time and delayed unit prices accessible by you online once you have opened a Monex AU Securities Trading Account. Your access to contents is provided to you by the Monex BOOM group of companies (“Monex BOOM”).

By opening a Monex AU Securities Trading Account, you agree to also be a customer of Monex BOOM solely for the purposes of accessing contents in the price-quoting services and you are deemed to have read, understood and accepted the Monex BOOM terms and conditions hereunder:

*Provision of services* – Contents in the price-quoting services (which may be delayed) are provided to you for information purposes only and is not intended to provide professional advice. You agree that we or Monex BOOM may limit your access to the price-quoting services or may charge you fees based on your usage of the services.

*No warranty* – You expressly acknowledge and agree that the contents in the price-quoting services are provided to you on an “as is” basis and your use of the said contents is at your own risk. Neither Monex BOOM or third-party contents providers make any warranty of any kind whatsoever, express or implied, including without limitation, non-infringement of third party rights or merchantability or fitness for any particular purpose of use, relating to the price-quoting services.

*Use of information* – Monex BOOM and other third-party contents providers endeavour to ensure the accuracy and reliability of the contents but do not guarantee its accuracy or reliability and accept no liability (whether in tort or contract or otherwise) for any loss or damage arising from any inaccuracies or omissions or from any decision, action or non-action based on or in reliance upon the contents in the price-quoting services.

*Limitation of liability* – Neither Monex BOOM nor any third party contents providers, shall be liable to you or anyone else for any direct, indirect, consequential or incidental loss, cost or damage, or any special or punitive damage, including any loss of profits, or for any third party claim of any nature whatsoever, whether related to any access to, reliance on, use of or inability to access to or use the price-quoting services, or caused in whole or in part by the gross negligence of Monex BOOM or any third party contents providers, in procuring, compiling or delivering the price-quoting services.

*Copyright* – You acknowledge that contents in the price-quoting services are protected by copyright and these contents may not be modified, reproduced, stored in a retrieval system, transmitted, copied, distributed or used in any other way for commercial or public purposes in any form by any means without the prior written consent of Monex BOOM and respective third-party contents providers. For the avoidance of doubt, Monex BOOM and other third parties own all displayed trademarks, logos and service marks.

*Indemnification* – You will indemnify and hold harmless Monex BOOM and other third-party contents providers, against all claims, liability, losses, damages and expenses, including, without limitation, legal fees and costs (on a full indemnity basis) arising out of or incurred as a result of any claims made, or litigation, brought against Monex BOOM and other third-party contents providers, as a result of your use of the price-quoting services or any part thereof.

**“Proscribed Person”** means a person who appears to us either:

- (a) to be a proscribed person or entity under the Charter of the United Nations Act 1945 (Cth);
- (b) to be in breach of the laws of any jurisdiction relating to money laundering or counter-terrorism;
- (c) to appear in a list of persons with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or
- (d) act on behalf, or for the benefit of, a person listed in subclauses (a) – (c).

**“Securities”** means listed securities on an Australian or foreign country stock exchange and may include (but is not limited to) stocks, shares, bonds, debentures, warrants or other debt securities, notes, rights, units, options and any other instruments representing rights to receive, purchase or subscribe for value other than cash;

**“Settlement Currency”** means the currency in which the price of a security is denominated. This is the currency that must be paid for a purchase of that security and the currency that will be received on the sale of that security. The Settlement Currency is not always the same as the national currency of the exchange on which the security is traded.

**“Terms and Conditions”** means this document, setting out the Agreement between you and Monex AU also referred to hereafter as ‘Agreement’, as amended from time to time.

**“you or your”** means the person or persons named in the application form to deal in Securities.

## **General**

1. This document, together with the Financial Services Guide (FSG), as amended from time to time, that outlines the terms of the Agreement between you and us. In the event of any inconsistency between this Agreement and other contracts, documents, or verbal representations between you and us, these terms shall prevail to the extent of the inconsistency.
2. No failure by us to exercise, and no delay by us in exercising any right, power or remedy in connection with these terms will operate as a waiver of that right, power or remedy. No single or partial exercise of any right, power or remedy will preclude any other or further exercise of such right, power or remedy.
3. You acknowledge that we do not provide any personal financial advice in relation to any products or services offered to you. We do not provide managed discretionary account services. Refer to our FSG on the financial products and services we provide in accordance with our Australian

Financial Services License (AFSL) issued by the Australian Securities and Investment Commission (ASIC).

4. When you apply for an account with us, our Terms and Conditions will apply to all dealings between you and us and any Agent appointed by us.
5. By entering into this Agreement with us or placing an order with us, you represent and warrant that you are residing in a jurisdiction where it is legal for you to deal in the products we provide.
6. Any dealings between our appointed Agent/s, and us or between you and our appointed Agent/s, may also be subject to the Terms and Conditions or trading rules of our Agent. We have entered into an agreement with MONEX BOOM as Agent on your behalf. Please contact us if you would like a copy of the Terms and Conditions of our appointed Agents.
7. You and Monex AU are bound by the local laws, rules, procedures customs, usages and practices, including as to taxation, of the country in which any dealing is either wholly or partly transacted under these Terms and Conditions. You agree that in the event of an inconsistency between these Terms and Conditions and the local laws, rules, procedures, customs, usages and practices, the latter will prevail to the extent of the inconsistency.
8. You acknowledge that these Terms and Conditions are governed by the laws of New South Wales, Australia and the non-exclusive jurisdiction of New South Wales.

### **Trading with Us**

9. By completing an application with us, you agree to appoint us to execute, arrange facilities for execution of trades in Securities and to arrange associated settlement and custody services.
10. You authorise us to send an electronic confirmation for any dealing, or any notice to you, to the nominated email address provided to us in your Application or by contacting our office.
11. Orders to buy or sell Securities:
  - (a) may only be valid for terms that we determine from time to time and within the maximum terms allowed on the relevant stock exchange; <sup>[L]</sup><sub>[SEP]</sub>
  - (b) may be rejected or refused, for any reason, however without limiting the circumstances in which we may reject or refuse to arrange for execution of an order, these reasons may include:
    - i. there are insufficient cleared funds deposited in your account; <sup>[L]</sup><sub>[SEP]</sub>
    - ii. application of the relevant market rules requires it; and <sup>[L]</sup><sub>[SEP]</sub>

iii. where Securities required for settlement of a trade are not available. <sup>[1]</sup><sub>SEP</sub>

12. You may give us an order to buy or sell Securities or otherwise deal with Securities through our secure online trading platform . At our discretion, we may accept from time to time orders by telephone. If doing so, we will require certain information for us to reasonably accept your order/s. It is your responsibility on ensuring the accuracy of the information to fulfil your order. While we will make reasonable attempts to authenticate such instructions, it is your responsibility to ensure your account details and personal information that may be used to identify you when placing orders with us kept secure and not disclosed to others without your consent. This may include log in credentials and other identifiable information that associates you to your MONEX AU trading account.
13. You acknowledge that while we will take all reasonable attempts to enter or place your instructions to buy or sell securities as efficiently as possible, we will not be liable for any claims for lost opportunity should delays be experienced due to system outages by us or our Agents. Further, you acknowledge that we will make all reasonable attempts to fulfil any instruction on your behalf to amend or cancel orders as within a reasonable timeframe (where possible) and inform you when orders are filled prior to an amendment or cancellation instruction being cancelled.
  - (a) If an order placed by you is filled prior to a cancellation or amendment instruction taking effect, you will accept the transaction(s) on the original terms when the order was placed.
  - (b) You agree to issue specific cancellation or amendment instructions with respect to an existing order and not to attempt to effect such changes by placing a second or duplicate order. You will be solely responsible and liable for any duplicate orders that you place. Monex AU will not be liable for any amendments attempted by you. <sup>[1]</sup><sub>SEP</sub>
14. Where we consider there is a discrepancy or dispute about an order or instruction you have given us, we may take, without prior notice to you, any action which in our reasonable opinion we consider necessary to close any open position the subject of the dispute, for example, by selling Securities on your behalf.
15. We reasonably endeavour to execute or arrange execution of your instructions. You agree Monex AU will not be responsible for delays or errors in the transmission or execution of your orders, and you acknowledge that international time differences and timing of public holidays or other similar observances may lead to delays in receipt of instructions and execution by our Agents. You agree you will complete any further documentation when required by us to satisfy any statutory or regulatory requirements associated with these Terms and Conditions or as required by us or our Agents, including provision of taxation declarations

and residency declarations. You must as soon as practicable advise us of any material change in your circumstances that would invalidate any such taxation and residency declarations already provided. If we are so advised, we are entitled to terminate the services provided to you immediately by giving written notice to you, and the provisions of clauses 65 to 69 of these Terms and Conditions will apply.

16. Any account that has remained inactive for a period of twelve (12) months will be deemed to be a Dormant Account. If we are unable to make contact with you (the account holder) after three reasonable attempts to do so using the contact information provided by you, or are unable to return the funds to you, any Securities in the account may be sold at the discretion of Monex AU. The proceeds of such sale together with any other funds or cash balances in the account will be subject to the fees outlined in our Fee Schedule. Funds in Dormant Accounts will be classified as unclaimed money in accordance with either the Corporations Act 2001 (Cth) or the Unclaimed Money Act 1995 (NSW).

### **Client Money**

17. All money deposited with us by you or by a person acting on your behalf will be held in one or more segregated client trust accounts maintained pursuant to S981 (A-F) of the Corporations Act 2001 (Cth) This account separates your funds from our House Funds and will not be used for our internal purposes such as working capital. However, your funds will be co-mingled with the funds of other clients. This means that the segregated client account does not afford you absolute protection.
18. Pursuant to the S981 Corporations Act 2001 (Cth), we may make payments out of the client money account in accordance with the written direction of a person entitled to the money, for defraying brokerage and other proper charges, paying us money which we are entitled, for making a payment otherwise authorised by law or pursuant to the operating rules of a licensed market and as otherwise permitted by you.
19. You authorise us to immediately withdraw money from the client trust account to pay our Agents for transactions they execute on your behalf.
20. We are entitled to keep any interest earned in the client trust account.
21. Our Agent or we may deposit in one or more cash accounts all moneys received on your behalf relating to your Portfolio. A cash account may be held in our name or that of the Agent or in your name, as required for the purpose of trading in Securities. Your money may also be transferred to other persons such as an exchange or clearing house or custodian located outside Australia. Where this is the case, the legal and regulatory regime applying to such a person will be different from that of Australia and, in the

event of failure of such a person, this money may be treated in a different manner from that which would apply if the money was held by such a person in Australia. Any such account will be denominated in the AUD and may be on the Terms and Conditions imposed by any Agent of ours who holds a cash account on your behalf. You agree to pay our Agent or us all fees and charges and indemnify us for any liabilities arising from the operation of cash accounts by us or our Agent on your behalf.

### **Currency Conversions and Payments**

22. Unless stated otherwise, all confirmations for sale or purchase of Securities will be for your account in the Settlement Currency of the Security in which you have chosen to deal. You agree that you will bear the foreign exchange risks of trading in Securities including, but not limited to, the risks of cash held, of dividends or other income payments received, of expenses or other liabilities incurred and of exchange controls or other laws that may prohibit or impose costs on transfers of Securities or transfers of funds across international borders. Please refer to our Risk Disclosure statement on further information pertaining to foreign exchange risks. Our Risk Disclosure statement can be accessed from Equity Brochure via our website or by contacting us.
23. Any dividend, interest or any other cash payment to which you are entitled in relation to any Securities held on your behalf, may be credited to your account less relevant withholding tax and any other applicable charges. Please refer to our Fee Schedule published on our website.
24. The Agent will withhold tax at the treaty rate applicable under the local laws.
25. You agree and acknowledge that any foreign exchange transactions on your portfolio (or account) will be facilitated by us and our choice of a selected member of our appointed panel of foreign exchange providers at current rates of dealing for such transactions acting as principal. Foreign exchange transactions relating to trading activity will take place on the relevant trade settlement date, not on the trade date. You agree that Monex AU will not be liable for any loss suffered by you as a result of the conversion of an amount to or from one currency to another or as a result of the timing of the conversion.

Monex AU offers foreign exchange only for the purpose of settlement of trades. A variable foreign exchange spread charge may be incurred for providing this option, not exceeding a 2% deviation from the underlying wholesale spread (bid/offer) as provided to Monex AU.

26. In determining whether to accept payments from you under this Term, we will have utmost regard to our duties under law regarding the prevention of fraud, countering terrorist financing, insolvency, money laundering and/or tax offences. To this end, we may at our absolute discretion having regard to



the law, reject payments from you or a third party and return funds to source. In particular, we may not accept payments from a bank account if it is not evident to us that the bank account is in your name.

27. You agree that we may enter into custody agreements with a Custodian to enable the provision of custodial services to you in relation to Securities. You consent to the Custodian engaging at their discretion a sub-custodian who may in turn engage a sub-sub-custodian. If we do enter into custody arrangements with an Agent or Agents, your Securities will be held by the custodian (or sub-custodian or sub-sub custodian as relevant) on your behalf. You will retain beneficial ownership (but not legal ownership) of your Securities. This means that the name of the relevant Agent rather than your name will appear on the share registry. Upon your request, we will acknowledge the manner in which the Securities are held. We acknowledge that we are prohibited from taking or granting any charge, mortgage, lien or other encumbrance over, or in relation to, your Securities held by a Custodian, unless:
  - (a) it is for expenses and outlays made within these Terms and Conditions (other than our unpaid fees); or
  - (b) in accordance with your written instructions as set out in these Terms and Conditions or otherwise.
28. If we do enter into custody arrangements with an Agent or Agents, we will provide you with written notice of and the contact information of the custodian as soon as reasonably practicable after arranging for your Securities to be held by that custodian (and in any event before your Securities are held by that custodian).
29. The Custodian that holds your Securities holds it in an account with securities owned by other customers but will retain records relevant to those assets in a way that enables it to readily identify those Securities that are held on your behalf. The records will also include information about the transactions undertaken and how, by whom and when they were authorised. Upon request, we will make these records available to you.
30. We will apply reasonable verification procedures for the appropriately frequent reconciliation and checking of your Securities.
31. In accordance with the Applicable Regulations, we will provide information about Transactions by providing you with a Statement. The Statement will contain all the information required to confirm Transactions and will be posted on our secure online trading platform and you can access on your own behalf. You need to notify us If you elect to receive your Statements by post, we reserve the right to levy a charge from your account. Please refer to the Equities Brochure for detail.

32. While we will use reasonable care in selecting our Agents, we are not liable for any losses incurred by you by reason of any act, omission, fraud or negligence of the Agents or in relation to the holding of or dealing with your Securities by the custodian(s) unless we have failed to exercise reasonable care in selecting the Agent.

Notwithstanding clause 13, we will be liable to you if you suffer loss in respect of your Securities due to a failure by the Custodian or Agent to comply with its duties under these Terms and Conditions and any other agreement relating to the holding of your Securities or to observe reasonable standards generally applied by providers of custodial or depository services for holding property such as Securities.

33. Clause 13 will not apply to the extent that the loss arises from the insolvency of the Custodian or Agent and we have taken reasonable care in engaging and monitoring compliance by the Custodian or Agent.

34. You agree that we will not be held accountable for any errors in communication, provision of data and the operation of a trading floor or stock exchange or any depository or clearing house and that in the event that information communicated to us from other parties is found to be inaccurate, misleading or false, we will not be held liable for any loss or liability that ensues.

35. We and our Agents may use price-quoting services from time to time in connection with the provision of the services provided by our Agents. The prices provided may not necessarily be real-time prices. You agree we will not be liable to you for any loss resulting to you caused by any inaccuracy in the information or advice supplied by price quoting services or by our Agents. You agree that we may limit your access to price quoting services or may charge you fees based on your usage of these services.

### **The Nature of Our Products**

36. You agree that when dealing in Securities in accordance with our Terms and Conditions, you do not have the right to obtain physical delivery of these securities where these securities are registered in the name of our appointed Agent on your behalf. You also agree that our Agent may exercise any rights that we or any other Agent may have under these Terms and Conditions.

37. Trading in Securities with us is only offered in relation to Securities listed on selected exchanges nominated by us in our discretion for legitimate business, prudential or regulatory reasons. We reserve the right to withdraw an exchange or a Security from our trading service. We will give you reasonable notice of any withdrawal and you must give us instructions on how to deal with any affected Securities by the time specified in the notice. If you fail to respond by the stated time in the notice, we will have the right to sell any affected Securities on your behalf and to credit the

proceeds (net of any deductions or set-offs that we are entitled to make) to your account.

38. Since your name does not appear on the share registry, you will not receive notification of corporate actions. We are not obligated to notify you of any proposed corporate actions (including, but not limited to, takeovers, bonus issues, stock splits, consolidations, rights issues, or buy backs) in relation to Securities held by you and cannot be held liable for any failure for you to act on any corporate actions. We will not be liable for any failure to take action in relation to proposed corporate actions.
39. You instruct us that your default election for Corporate Actions is to receive cash. We reserve the right to offer alternative elections on specific Corporation Actions at our discretion and we will process your instructions accordingly. However, we also reserve the right to take no action in relation to any voluntary corporate actions for legitimate business, prudential or regulatory reasons.
40. We are not obliged to provide you with any notice of a general meeting of an issuer of Securities and you are not entitled to exercise voting rights in relation to any Securities or to attend any such general meeting.
41. We do not provide you with copies of annual reports or company announcements of an issuer of Securities. You may request that we obtain copies of particular documents and if we are able to do so such documents will be provided upon payment of our specified fee on the Fee Schedule. <sup>[L]</sup><sub>[SEP]</sub>
42. You agree that the transactions conducted with non-Australian listed securities will not be subject to any rules of the ASX and you will not receive the benefit of coverage under the National Guarantee Fund or any equivalent fund operating in the jurisdiction of the Exchange.
43. No short selling of Securities will be allowed. You must own the Securities that you wish to sell (as evidenced by our records).
44. There may be substantial holding disclosure obligations in relevant foreign jurisdictions in respect of your ownership of Securities. You acknowledge that you are responsible for making any substantial shareholding disclosures or notifications as required under the relevant laws applicable to the Securities. We do not provide advice on your obligations to make such disclosures and you should obtain independent advice. You agree to notify us if you are or will become a substantial shareholder.

### **Fees and Remuneration**

45. You agree to pay us by way of deduction from a cash account held on your behalf any commission, fees and charges in connection with the services set out in the Fee Schedule, as varied by us on thirty (30) days notice. We will notify you of the rates and currency notified by either email, or as posted on

our website from time to time together with any fees, taxes or other charges levied by a third party (or our Agents) or in connection with provision of the services and interest on any unpaid amounts at the rate determined by us from time to time.

46. You agree that if you fail to pay any amount due and payable under these Terms and Conditions, we or our Agent may apply any cash held by us, our Agents or you and may sell or dispose of any Securities under our control or the control of our Agents or any other securities of yours under our control and apply the proceeds in satisfaction of the monies owing by you and in payment of any reasonable additional charges incurred by us. You will be liable to us for any shortfall or entitled to any surplus proceeds and you agree to bear the foreign exchange risk associated with any such application of cash. <sup>[1]</sup><sub>[SEP]</sub>
47. Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained. For the avoidance of doubt if you have multiple accounts, we are entitled to set off any liabilities owing to us against any account that is held in your name singly or jointly, even if the liability was not incurred on that account.

### **Warranties and Representations**

48. You warrant that you are authorised to enter into these Terms and Conditions and to authorise us to act on your behalf in Securities transactions.
49. You warrant that if you are a natural person, you are over the age of 18 years and you have full legal capacity to enter into this Agreement.
50. You warrant that if you are not a natural person:
- (a) You are duly organised, constituted and validly existing under the applicable laws of the jurisdiction in which you are constituted;
  - (b) Acceptance of this Agreement, all transactions and the performance of all obligations contemplated under this Agreement have been duly authorised by you; and
  - (c) Each natural person accepting this Agreement, entering transactions and the performance of all obligations contemplated under this Agreement have been duly authorised by you and have been disclosed to us providing all the information and/or documentation required by us.
51. You warrant that you have all necessary authority, powers, consents, licenses and authorisations and have taken all necessary action to enable

you to lawfully enter into and perform this Agreement and such transaction and to grant the powers referred to in this Agreement.

52. You warrant that if you choose to have a power of attorney on your account, you do so at your own risk and are solely responsible for the conduct and liabilities on your account caused directly or indirectly by the use of the agent or attorney.
53. You warrant that any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect.
54. You warrant that you are the sole beneficial owner of all funds you transfer into your account under this Agreement.
55. You warrant that your portfolio is free of any security interest or encumbrance, and you agree that in our discretion we or our Agents may decline to hold on your behalf any Securities of yours affected by any such security interest, encumbrance or other restriction.
56. You warrant that you have obtained your own financial and taxation advice, as necessary, prior to entering into any transactions in foreign jurisdictions and exchanges.

### **Indemnities**

57. Neither we, nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses, whether arising out of negligence, breach of contract, misrepresentation, statute, tort or otherwise, incurred or suffered by you under these Terms and Conditions unless such loss is a reasonably foreseeable consequence arising directly from our respective wilful misconduct or fraud. In no circumstance, shall we have liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with these Terms and Conditions, whether arising out of negligence, breach of contract, misrepresentation, statute, tort or otherwise.
58. We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any cause beyond our reasonable control, including without limitation any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any governmental or supranational bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, sub-sub custodian, dealer, exchange, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Nothing in these Terms and Conditions will exclude or restrict any duty or

liability we may have to you under applicable laws, which may not be excluded or restricted thereunder.

59. You agree to indemnify us and our Agents against liability arising from your failure to satisfy any statutory or regulatory requirements.
60. You agree to indemnify us and our Agents against any actions, claims, demands, proceedings, costs, damages, expenses, liabilities and losses including legal and professional costs paid, suffered or incurred in connection with these Terms and Conditions except where caused by our negligence or wilful misconduct.
61. You agree we are not liable to you for the acts, omissions, fraud, negligence, insolvency or delay of our Agents, except where we have been negligent or we have engaged in wilful misconduct.
62. In the event that you appear to be a Proscribed Person, we will not be responsible for any loss, liability or costs incurred by you where we are unable to receive or act on your instructions.

### **Communication**

63. We may from time to time vary these Terms and Conditions. If we vary these Terms and Conditions the changes shall apply to all dealings between you and us on and from the day on which the variation takes effect. We will give not less than seven (7) days written notice to you by publishing the changes on our website. Should you have any query, please contact us immediately.
64. You agree that we may record any communications, electronic, by telephone, in person or otherwise, that we have with you in relation to this Agreement and that any recordings that we keep will be our sole property and you accept that they will constitute evidence of the communications between you and us. More about keeping your personal information and data secure, please refer to the Private Policy on our website.

### **Suspension and Termination**

65. You agree that we reserve the right to immediately remove, revoke or restrict your access to the facilities described in these Terms and Conditions or immediately terminate this Agreement should your usage constitute any breach of these Terms and Conditions or otherwise be considered by us in our discretion to be unreasonable, fraudulent, insider trading, money laundering or otherwise illegal. <sup>[1]</sup><sub>[SEP]</sub>
66. You agree that:
  - (a) if you or a signatory appears to be a Proscribed Person, then we may immediately refuse to process or complete any transaction or dealing in relation to your account or portfolio. Further, we may

suspend the provision of a product or service to you and refuse to allow or to facilitate any of your assets held by us to be used or dealt with. We may refuse to make any asset available to you to any other proscribed person or entity and terminate these arrangements with you. We will be under no liability to you if we decide to do any or all of the actions stipulated above. We reserve full rights under this clause and are in addition to all other rights we have;

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- (b) If we exercise our rights under sub-clause 66(a), you must pay us any damages, losses, costs or expenses that we incur in relation to any action taken under sub-clause 66(a), including without limitation, administrative costs and/or costs of sale or purchase of any transaction or deal put in place for the purposes of meeting our obligations under these Terms and Conditions.

67. Either you or we may terminate the Agreement between us governed by these Terms and Conditions by giving not less than seven (7) days' prior written notice to the other.

68. We may terminate the Agreement between us immediately if:

- (a) you breach a representation or warranty;
- (b) you fail to make any payment when due under this Agreement, we have liquidated your positions and a shortfall amount remains outstanding;
- (c) you commence a voluntary or other procedure seeking or proposing liquidation, re-organisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing, and in the case of a re-organisation, arrangement or composition, we do not consent to the proposals;
- (d) we form the belief that you have died or have become of unsound mind; or
- (e) we consider it desirable for our own protection with respect to our licence conditions and obligations under the Corporations Act 2001 (Cth).

69. In addition to all our rights under these Terms and Conditions, upon termination of the Agreement:

- (a) any previously arising rights and obligations of either of us will not be affected;

- (b) we and our Agents may enter into transactions to settle or otherwise extinguish or off-set obligations incurred by us or them in relation to the Portfolio (or your account holding) prior to termination;
- (c) we agree to take all necessary steps to vest control of the Portfolio in you (or as you otherwise direct in writing), subject to payment by you of all charges and expenses and those of our Agents incurred as a result of termination of the Agreement; and
- (d) you must within a reasonable time give us instructions regarding the transfer of your Portfolio. If you do not provide us with instructions within a reasonable time, we will sell your Portfolio on your behalf and credit the proceeds to your nominated account.

### **Withholding Tax**

70. In the event the Custodian is a foreign incorporated entity, you agree that the Custodian shall be entitled to deduct and withhold from any distribution, to which you are entitled, at such withholding rate applicable between the withholding jurisdiction and the Custodian's country of incorporation. Details of our Custodian and the applicable withholding rates are outlined in our Fees Schedule. When our Custodian is a foreign incorporated entity, the withholding rates may not be the same as the rate that would apply between the withholding jurisdiction and the jurisdiction of your residence. You acknowledge that you have read, understood and agreed to this disclosure and if in doubt, you will seek independent professional financial and tax advice.

### **The information we collect, why we collect and the purpose of its use.**

We collect information from you and about you. The information we collect from you includes (but is not limited to) your full name, registered address, date of birth, citizenship, trading history, tax residency and contact details. Information gathered about you may come from your interactions with us, access to your account and any publicly available information accessible over the Internet and other publicly available resources. This information is collected from you and about you as we are required to identify you in accordance with the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and where applicable, to comply with taxation laws such as the Tax Administration Act 1953, Income Tax Assessment Act 1936 and the new Common Reporting Standards introduced effective 1 July 2017.

Further, we collect your information to administer your account in accordance with the products and services you have acquired, offered by Monex AU. We may also use the information provided to provide you with alternate products and services that may be of interest to you. If you do not want to receive any marketing information, please contact our office as you can opt out to these notifications. By doing so, you will not be opted out of account specific information pertaining to the administration of your account.



By providing telephone, mobile or email contact details to us, you agree to receive electronic communications unless you specify otherwise.

It is your responsibility to provide us with accurate and complete information at the time of making an application in our products and services. If you change your personal details, whether it is your registered address, your name, email address or any other contact details, you acknowledge it is your responsibility to inform us immediately.

### **Information exchange with other parties**

We will exchange your personal information with Monex BOOM Securities (H.K.) Limited, a company in Hong Kong for the purpose of ensuring your account is operating effectively in accordance with our products, services and your operating instructions. Monex BOOM Securities (H.K.) Limited is our appointed international broker, clearing and settlement participant, and custodian for the safe keeping of your assets.

Further, we may from time to time exchange your information with other market operators, listed domestic and foreign companies in which you hold or have held Securities, operators of clearing and settlements facilities, share and other registries, regulatory authorities, and both domestic and foreign government authorities as required by regulation and/or to ensure your account is operating effectively.

We may also send information to Monex Group, Inc. ('Monex JP'), a listed company in Japan, where we need to complete a transaction on your behalf or where this is required by laws and regulations in Australia or in another country.

We will send your information to our servers in a data centre in Hong Kong for the purpose of managing your account.

For the Self-Managed Superannuation Fund (SMSF) Account holders, we will send your information to our appointed SMSF reporting agent in order to prepare SMSF administration to comply with applicable ATO regulations. Please refer to our Privacy Policy for further information on how we manage your personal information provided to us.

### **Identification- Electronic Verification Terms and Conditions**

Further to 'the information we collect, why we collect and the purpose for its use' section with these Terms and Conditions, Monex AU and its related entities are required in accordance with Anti-Money Laundering and Counter Terrorism Financing Act 2006 to verify your identity prior to providing you with a financial product or service. Electronic verification enables us to verify your identity electronically and via data sources external to Monex AU.

The information we collect will be forwarded to external organisations in order to electronically match your information with the information on databases they have access to. These organisations will assess and advise us whether all or some of the information can be verified. We have an agreement with Equifax Pty Ltd who will complete the electronic verification on behalf of Monex AU.

The external data sources used to verify your identity include:

1. Credit information held by Equifax Pty Ltd for the sole purpose of confirming your identity;
2. Publicly available information such as the Australian Government electoral roll and the Australian white pages;
3. Any other information held by an official record holder via third party systems such as Commonwealth and state government departments.

Any personal information provided to us will be shared with Equifax Pty Ltd for the purpose of preparing their assessments.

It is an offence under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 to provide false and misleading information pertaining to your identity.

If you do not agree with electronic verification. Please contact our office on +61 2 9103 9600 to discuss alternate arrangements and documentations required by Monex AU to verify your identity.

By agreeing to the 'electronic verification Terms and Conditions' you agree that:

1. The information you are providing is your personal information and you have authority to provide it to us, and
2. You grant us authority to use and disclose your personal information for the purposes of electronic verification as described within this section of the Terms and Conditions.

## **Our Privacy Policy**

Our Monex AU privacy policy is available on our website at [www.monexsecurities.com.au/page/privacy/](http://www.monexsecurities.com.au/page/privacy/) and should be read in conjunction with these Terms and Conditions. It contains additional information on the collection of personal information, handling processes, the reasons for collection, what access is given to your information and how to make a complaint about a breach of your privacy rights. Our privacy policy will be updated from time to time. We encourage you visit our website regularly to ensure you are up to date on policy changes.

Your privacy is important to us, please contact us if you have any privacy related enquires by contacting our Client Service team on +61 2 9103 9600 or email: [services@monexsecurities.com.au](mailto:services@monexsecurities.com.au). We aim to resolve any enquiry or complaint as your point of contact. If you have attempted to resolve your complaint and are not satisfied with the outcome, you may send a written communication to our

Complaints Officer, Monex Securities Australia Pty Ltd, Level 2, The Bond, 36  
Hickson Road, Sydney, NSW, 2000.

Please refer to our Complaint Handling Policy available on our website for  
further information at [www.monexsecurities.com.au/page/complaints/](http://www.monexsecurities.com.au/page/complaints/)

Dated: 07 September 2018 (version 2.71)