

# GENERAL TERMS & CONDITIONS

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Effective from 22.04.2018 until Further Notice

## CUSTOMER AGREEMENT

This is a legal contract between Ava Capital Markets Pty Ltd, herein after known as ("AvaTrade", "us" or "we") its successors and assigns, and the party/parties (the "Customer", "client" or "you") executing this document. This document, together with our, [Product Disclosure Statement](#), [Risk Disclosure Statement](#), [Trading Conditions and Charges](#) and [Privacy Statement](#), represents the terms with which AvaTrade will do business with Customer. This document sets out the respective rights and obligations of both parties in connection with this service and both parties will accept and be bound by these terms on acceptance of the terms contained herein and on completion of the application form by Customer.

In connection with opening an account with AvaTrade to speculate in, and/or purchase, and/or sell, Forex, Contracts for Differences (hereinafter referred to as "CFDs"), Options (hereinafter referred to as "Options") and Spread Betting, in commodities, metals, currencies and indices, and the receipt of such other services and products as AvaTrade may, in its sole discretion, determine to offer from time to time in the future, Customer acknowledges that it has been advised and understands the following factors concerning trading in the over the counter market ("OTC") and/or Spread Betting market, in addition to those contained in the Risk Disclosure Statement which has been provided to Customer. We trade contracts for differences ("CFD") transactions in OTC.

In consideration of AvaTrade agreeing to provide services to "Customer", "client" or "you" in connection with the purchase of Forex, CFDs, Options and Spread Betting in commodities, currencies, metals and indices and the receipt of such other services and products as AvaTrade may, in its sole discretion, determine to offer from time to time in the future and which may be purchased or sold by or through AvaTrade for Customer's accounts(s), Customer agrees that the following rights and obligations will govern the relationship between AvaTrade and Customer.

## IMPORTANT NOTICES

OTC trading means that trading does not take place on a regulated exchange. There are no guarantees as to the credit worthiness of the counter party of your Forex, CFDs, Options and Spread Betting position. Also, there may be certain cases in which trading liquidity decreases, causing Forex, CFDs, Options and Spread Betting in commodities, currencies, metals and indices to cease, thereby preventing the liquidation of an adverse position which may result in a substantial financial loss.

AvaTrade does not provide investment advice. The market recommendations, signals, information provided by and/or distributed by AvaTrade are general in nature and based solely on the judgment of AvaTrade's personnel or from third party information providers. These market recommendations may or may not be consistent with the market position or intentions of AvaTrade, its affiliates, and/or employees. The market recommendations and information provided by AvaTrade are based upon information

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believed to be reliable, but AvaTrade cannot and does not guarantee the accuracy or completeness thereof or represent that following such recommendations will eliminate the risk inherent in trading Forex, CFDs, Options and Spread Betting. Any market recommendations of, or information provided by, AvaTrade does not constitute an offer to buy or sell, or the solicitation of an offer to buy or sell, any OTC transaction. Customer understands and hereby agrees that Customer is capable of, and solely responsible for, assessing the merits and risks of any trade it may enter into with AvaTrade.

Customer understands that AvaTrade does not permit its Customer representatives to either exercise discretion or manage an OTC account. If Customer's account is not being traded with Customer's authorisation, Customer must notify AvaTrade immediately.

AvaTrade's margin policies and/or the policies of those banks/clearing houses through which trades are executed may require that additional funds be provided to properly margin Customer's account and Customer is obligated to immediately meet such margin requirements. Failure to meet margin calls may result in the liquidation of any open positions with a resultant loss. AvaTrade reserves the right to refuse to accept any order.

Customer understands that it must carefully review the reports relating to Customer's trading posted online by AvaTrade. All reports of execution and statements of accounts will be deemed final unless customer objects within two business days of being posted. Objections may be made initially by email or by telephone, but must be confirmed thereafter in writing.

Customer understands that AvaTrade may establish rules and provisions for client accounts, including but not limited to minimum account size, investment time period, commissions and fees, leverage size per instrument, mark ups, rules relating to stop losses and limits, rules relating to rollovers, rules relating to margin calls, or any other financial arrangement, and that such rules and provisions may be changed by AvaTrade from time to time.

Customer has read and understands the Customer's obligations and rights under this Customer Agreement and agrees and acknowledges that this Customer Agreement, the Risk Disclosure Statement and the Privacy Statement will comprise the terms of the Customer's relationship with AvaTrade. The Customer agrees that Customer is fully responsible for making all decisions as to transactions effected for Customer's account. Customer has considered the foregoing factors and in view of Customer's present and anticipated financial resources, Customer is willing and able to assume the substantial financial risks of OTC trading.

**IT IS THE CUSTOMER'S RESPONSIBILITY TO FIND OUT ALL NECESSARY INFORMATION ABOUT TRADING IN FOREX, CFDs, OPTIONS AND SPREAD BETTING AND AVATRADE TERMS AND CONDITIONS AND MAKE SURE THAT ALL RISKS AND ARRANGEMENTS ARE DISCUSSED AND CLEARLY UNDERSTOOD PRIOR TO ANY TRADING ACTIVITY.**

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## 1. TERMS AND HEADINGS

- 1.1 "AvaTrade" shall, where the context so permits or requires, be deemed to mean AvaTrade Capital Markets Pty Ltd its subsidiaries and affiliates and their successors and assigns;
- 1.2 "Customer" shall mean the party (or parties) who have agreed to be bound by the terms of this Agreement;
- 1.3 "Agreement" shall include this agreement and all other agreements and authorizations executed by Customer in connection with the maintenance of Customer's account with AvaTrade.

The paragraph headings in this Agreement are inserted for convenience of reference only and are not deemed to limit the applicability or affect the meaning of any of its provisions.

## 2. INFORMATION ABOUT AVATRADE

- 2.1 AvaTrade, trading as "AvaTrade", is a member of the Ava Group.

The Ava Group consists of:

- Ava Trade Ltd.
- AVA Trade EU Limited.
- Ava Capital Markets Australia Pty Ltd
- Ava Trade Japan K.K
- Ava Capital Markets Pty

Ava Capital Markets Australia Pty Ltd is licensed in Australia by the Australian Securities & Investments Commission (License No.: 406684). The ASIC is Australia's corporate, markets and financial services regulator and is responsible for ensuring its financial markets are fair and transparent.

## 3. CATEGORISATION

- 3.1 It is our policy to treat all of our clients as retail clients irrespective of the existence of any categorisations in the client's country of residence. We nevertheless reserve the right to reclassify you as a wholesale client from time to time. We are under no obligation to notify you of this change but may in our discretion, notify you out of courtesy.

## 4. COMMUNICATION

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- 4.1 The principal method of communication between AvaTrade and Customer will be electronically via AvaTrade's website and on-line trading platforms.
- 4.2 Information regarding orders placed and executed will be addressed personally to Customer through a customer specific account.
- 4.3 However, certain information will be provided generally on our website, such as general market recommendations and Customer hereby consents to receiving information not addressed personally to customer in that form.
- 4.4 Customer may also place orders via the phone with our dealing room. In the course of our dealings with you, you may place orders with us via our on-line trading platform in the languages which are posted on our website, which is updated with additional languages from time to time.
- 4.5 Where orders are placed by phone via the dealing room you may communicate with us in any one of the languages which are listed on the website.
- 4.6 All written communications from us to you will be in the language used to register your account via our website.

## 5. AUTHORISATION TO TRADE

- 5.1 AvaTrade is authorised to enter into Forex, CFDs, Options and Spread Betting contracts on an over-the-counter basis with Customer in accordance with Customer's oral or written or computer instructions, subject to the terms of this Agreement and all annexes hereto.
- 5.2 On completion of the application form by Customer, AvaTrade will issue Customer with a secure password which is to be used with the chosen user-name of the Customer.
- 5.3 AvaTrade's security systems are designed to ensure that any information provided to and from Customer is securely transmitted. Customer is obligated to keep passwords secret and is solely responsible for ensuring that third parties do not obtain access to the password or AvaTrade's trading facilities.
- 5.4 Customer agrees to be exclusively responsible for any instruction received electronically that is identified with Customer's password and account number and for any electronic, oral and written instruction to AvaTrade from persons AvaTrade in its sole judgment, believes are apparently authorized by Customer.
- 5.5 If Customer's account is titled as a joint account, AvaTrade is authorised to act on the instructions of any one owner, without further inquiry, with regard to trading on the account and the disposition of any and all assets in the account.

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- 5.6 AvaTrade shall have no responsibility for further inquiry into such apparent authority and no liability for the consequences of any actions taken or omitted to be taken by AvaTrade in reliance on any such instructions or on the apparent authority of any such persons.
- 5.7 AvaTrade has the authority to require joint action by the owners of the account in respect of the account. AvaTrade may send all correspondences and documents in respect of the account to any one owner of a joint account.
- 5.8 AvaTrade has possession over the security of the account whether individual or joint.
- 5.9 If a death occurs to one or more of the owners of a joint account, AvaTrade shall be notified in writing and shown proof of a death certificate. All expenses due at the date of notification shall be charged to the account.
- 5.10 Up to the time valid written notification is provided to AvaTrade, each owner of a joint account is presumed to have an equal share in the joint account.

## 6. FINANCIAL PRODUCT ADVICE

- 6.1 Although AvaTrade issues general market recommendations, these should not be construed as personal recommendations or advice to trade with AvaTrade. As such we are under no obligation to assess the suitability or otherwise of the Customer trading Forex, CFDs, Options and Spread Betting with AvaTrade. All trades entered into by Customer represent an independent decision by the Customer to trade with AvaTrade. You should consider the appropriateness of entering into a Contract having regard to your own financial situation, needs or personal objectives and obtain your own independent financial advice.

## 7. GOVERNMENTAL COUNTER PARTY INSTITUTION AND INTERBANKING SYSTEM RULES

- 7.1 All transactions under this Agreement shall be made in accordance with usage, rulings and interpretations of the counter party institution or other interbank market (and its clearing organization, if any) and with all applicable laws and regulations.
- 7.2 If any statute shall hereafter be enacted or any rule or regulation shall hereafter be adopted by any governmental authority, or a contract market or clearing organization which shall be binding upon AvaTrade and shall affect in any manner or be inconsistent with any of the provisions hereof, the affected provisions of this Agreement shall be deemed modified or superseded, as the case may be, by the applicable provisions of such statute, rule or regulation, and all other provisions of this Agreement and provisions so modified shall in all respects continue in full force and effect.

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- 7.3 Customer acknowledges that all transactions under this Agreement are subject to the aforementioned regulatory requirements and Customer shall not thereby be given any independent legal or contractual rights with respect to such requirements.

## 8. MARGINS AND DEPOSIT REQUIREMENTS

- 8.1 Customer shall provide to and maintain with AvaTrade margin in such amounts and in such forms as AvaTrade, in its sole discretion, may require.
- 8.2 Such margin requirements may be greater or less than margins required by those banks or brokers with which trades are executed.
- 8.3 AvaTrade may change margin requirements at any time.
- 8.4 Customer agrees to deposit by immediate wire transfer, or other payment method acceptable to AvaTrade, such additional margin when and as required by AvaTrade and will promptly meet all margin calls in such mode of transmission as AvaTrade in its sole discretion designates.
- 8.5 AvaTrade may at any time proceed to liquidate Customer's account and any failure by AvaTrade to enforce its rights hereunder shall not be deemed a waiver by AvaTrade to enforce its rights thereafter.
- 8.6 AvaTrade retains the right to limit the amount and/or total number of open positions which Customer may acquire or maintain at AvaTrade, and to increase margin requirements in advance of earnings or other news or events, with or without notice, either before such events or retroactively or at any other time that it deems at its sole discretion.
- 8.7 Orders must be placed allowing sufficient time to execute and to calculate margin requirements.
- 8.8 Profits deriving from a transaction shall be added to Customer's account as additional margin, as long as the transaction is open, and upon the closing of the transaction, as an addition to the available balance for withdrawal.
- 8.9 Losses deriving from a transaction shall be deducted from Customer's account.

## 9. BONUSES

- 9.1 AvaTrade may elect to grant a benefit to Customer by depositing bonus amounts in Customer's trading account, subject to certain terms and conditions as shall be determined by AvaTrade, at its sole discretion. Such bonus amounts may not be withdrawn by Customer, unless Customer complies with the applicable trading requirements posted on AvaTrade's website as may be amended from time to time or as communicated to Customer.

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- 9.2 If AvaTrade suspects or has reason to believe that Customer has attempted fraudulent activity in order to claim a bonus, or any other promotion, AvaTrade reserves the right to:
- (i) Cancel or reject the bonus promotion, and any related Trading Agent bonus, at its sole discretion
  - (ii) To terminate Customer's access to services provided by AvaTrade and/or terminate the contract between AvaTrade and the Customer for the provision of services,
  - (iii) To block Customer's Account(s) and to arrange for the transfer of any unused balance to Customer.
- 9.3 If AvaTrade suspects or has reason to believe that Customer has abused the terms and conditions of a bonus offer by hedging positions internally (using other trading accounts held with AvaTrade) or externally (using other trading accounts held with other brokers), AvaTrade reserves the right to cancel bonuses, and any trades or profits associated with Customer's account(s).
- 9.4 Bonus promotions may be restricted in certain jurisdictions.
- 9.5 AvaTrade reserves the right to cancel or reject bonus promotions at its sole discretion.

## 10. OPTIONS

- 10.1 Options are contracts that give the buyer the right, but not the obligation, to buy (in the case of a Call Option) or to sell (in the case of a Put Option) a specified FX/CFD at a specified price (the "Strike") at a specified time and date (the "Expiration"), from or to the seller of the option. These are commonly known as European style vanilla options.
- 10.2 The proceeds of the purchase or sale of an Option (the "Cost", or "Premium") will be immediately debited or credited to the cash balance of the account. At Expiration, Options that are in the money will be automatically closed out at intrinsic value, that is, in the case of Call Options, the amount by which the closing price of the specified FX/CFD exceeds the strike price, and in the case of Put Options, the amount by which the Strike exceeds the closing price of the specified FX/CFD. For long Call and short Put positions, the closing price will be the prevailing bid price of the underlying FX/CFD at Expiration; and for short Call and long Put positions, the closing price will be the prevailing ask (offer) price of the underlying FX/CFD, as determined by Ava in its sole discretion. Options that are not in the money will expire worthless.
- 10.3 The Customer acknowledges, recognizes and accepts that AvaTrade quotes variable spreads on Options. The Client is specifically made aware that variable option spreads are affected by actual market conditions, which are beyond AvaTrade's control. AvaTrade does not guarantee any maximum or minimum quotable option spreads. There may be times when Options quotes are not available in some underlying FX/CFDs.

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- 10.4 We allow you to perform various transactions, including in respect of options based on various indices that shall be defined by us from time to time (for example, index rates and stock and option rates), and to receive financial information and various other services as we shall determine in our sole discretion. Prior to effecting any transaction, we advise you to read the explanations that may be found on the website regarding each type of transaction. The rules of trade are set exclusively by AVA.
- 10.5 We will make available, by posting on [www.avatrade.com.au](http://www.avatrade.com.au), the current price applicable to a share or index, and offer you the opportunity to submit a put or call position in respect of such share. Each position shall be for a specified expiry time. We expect that the current prices will be reasonably related to the actual prices of such shares available in the market. We make no warranty, express or implied, that the quoted prices represent prevailing quoted prices.
11. CUSTOMER ASSETS
- 11.1 Interest is not payable by AvaTrade on client funds deposited by Customer.
- 11.2 All funds, securities, currencies, and other property of Customer which AvaTrade or its affiliates may at any time be carrying for Customer (either individually, jointly with others, or as a guarantor of the account of any other person,) or which may at any time be in its possession or control or carried on its books for any purpose, including safekeeping, are to be held by AvaTrade as security and subject to a general lien and right of set-off for liabilities of Customer to AvaTrade whether or not AvaTrade has made advances in connection with such securities, commodities, currencies or other property, and irrespective of the number of accounts Customer may have with AvaTrade.
- 11.3 Subject to the Australian Client Money Rules, you irrevocably and unconditionally authorise us and/or any associate of ours, to the extent permitted by law to:
- 11.3.1 Withdraw, deduct or apply any amounts payable by you to us and/or any associate of ours under this Agreement from your moneys held in any segregated trust account or invested by us, including, without limitation making a payment for, or in connection with, the margining, adjusting or settling of dealings in margin FX contracts or CFDs entered into by you or the payment of interest or charges to us, it being acknowledged and agreed by you that such amounts belong to us under this Agreement and may be used by us in our business from time to time, including for the payment of amounts to our counterparties;
- 11.3.2 b. Pay, withdraw, deduct or apply any amounts from your moneys held in any segregated trust account or invested by us as permitted by the Australian client money rules, it being acknowledged and agreed by you that any such amounts that belong to us may be used by us in our business from time to time, including for the payment of amounts to our counterparties;



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- 11.3.3 e. Use such moneys for the payment of amounts to counterparties with whom we enter into derivatives to hedge our exposure to you in connection with margin FX and/or CFDs or hedge our exposure to other clients who have entered into these financial products under the Client Agreements with us.
- 11.3.4 Retail client and sophisticated investor funds are not used for margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by itself or on behalf of people other than the client and are kept in the client trust account until we receive a withdrawal request or in the event AVA becomes entitled to the funds in accordance with the terms of this agreement or the Product Disclosure Statements.
- 11.4 AvaTrade shall at no time be required to deliver to Customer the identical property delivered to or purchased by AvaTrade for any account of Customer.
- 11.5 This authorization shall apply to all accounts carried by AvaTrade for Customer and shall remain in full force until all accounts are fully paid for by Customer or notice of revocation is sent by AvaTrade from its home office.
- 11.6 Any failure by AvaTrade to enforce its rights hereunder shall not be deemed a future waiver of such rights by AvaTrade.
- 11.7 AvaTrade is irrevocably appointed as attorney in-fact for Customer and is authorized, without notice to Customer, to execute and deliver any documents, give any notice and to take any actions on behalf of Customer, including the execution, delivery and filing of financing statements, that AvaTrade deems necessary or desirable to evidence or to protect AvaTrade's interest with respect to any collateral.
- 11.8 In the event that the collateral deemed acceptable to AvaTrade is at any time insufficient to satisfy Customer's indebtedness or other obligations to AvaTrade, including obligations to provide margin hereunder, Customer shall promptly pay upon demand the entire amount of such deficit.
- 11.9 Default of Credit Institution and Monitoring:
- 11.9.1 In the event of default of one of our appointed credit institutions, AvaTrade does not accept responsibility and is not subject to any liability arising from losses to clients arising from such a default.
- 11.9.2 However, we conduct appropriate and continuing risk assessment of our appointed credit institutions in order to ensure that our appointed credit institutions are safe repositories.
- 11.9.3 We will supply the details of our appointed credit institutions on request to retail clients, including the names of those institutions and the client account details.

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11.9.4 Where Customer does not wish AvaTrade to deposit funds with a particular credit institution we will return such funds to Customer as soon as possible.

## 12. CONFLICTS OF INTEREST

12.1 AvaTrade is required to maintain and operate effective organisational and administrative controls to take all reasonable steps to identify, manage, disclose and record conflicts of interest. In order to achieve this AvaTrade has established and implemented a Conflicts of Interest policy.

12.2 Where arrangements made by AvaTrade to manage conflicts of interest are insufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, AvaTrade shall clearly disclose to the client the general nature and the sources of the conflicts of interest before undertaking business on the client's behalf.

## 13. COMPLAINTS

13.1 In the event that you are dissatisfied with the service provided by AvaTrade, we will deal with your complaint internally and will endeavor to come to a satisfactory solution promptly.

13.2 All complaints should be directed to [cs@avatrade.com](mailto:cs@avatrade.com).

## 14. LIQUIDATION OF ACCOUNTS AND PAYMENT OF DEFICIT BALANCES

14.1 In the event of (a) the death or judicial declaration of incompetence of Customer; (b) the filing of a petition in bankruptcy, or a petition for the appointment of a receiver, or the institution of any insolvency or similar proceeding by or against Customer; (c) the filing of an attachment against any of Customer's accounts carried by AvaTrade, (d) insufficient margin, or AvaTrade's determination that any collateral deposited to protect one or more accounts of Customer is inadequate, regardless of current market quotations, to secure the account; (e) Customer's failure to provide us with any information requested pursuant to this agreement or any applicable law; or (f) any abuse of trading practices, manipulations and/or fraud by Customer or any other person authorized to use the account; or (g) any other circumstances or developments that we deem appropriate for its protection, and in AvaTrade's sole discretion, it may take one or more, or any portion of, the following actions:

- (i) Satisfy any obligation Customer may have to us, either directly or by way of guaranty of suretyship, out of any of Customer's funds or property in AvaTrade's custody or control;

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- (ii) Sell any or purchase any or all Currency contracts, securities held or carried for Customer; and
  - (iii) Cancel any or all outstanding orders or contracts, or any other commitments made on behalf of Customer.
- 14.2 Any of the above actions may be taken without demand for margin or additional margin, without prior notice of sale or purchase or other notice to Customer, Customer's personal representatives, heirs, executors, administrators, trustees, legatees or assigns and regardless of whether the ownership interest shall be solely Customer's or held jointly with others.
- 14.3 Prior demand or notice of sale or purchase shall not be considered a waiver of AvaTrade's right to sell or buy at any time in the future without demand or notice as provided above.
- 14.4 In liquidation of Customer's long or short positions, AvaTrade may, in its sole discretion, offset in the same settlement or it may initiate new long or short positions in order to establish a hedge which in AvaTrade's sole judgment may be advisable to protect or reduce existing positions in Customer's account.
- 14.5 Any sales or purchases hereunder may be made according to AvaTrade's judgment and at its discretion with any interbank or other exchange market where such business is then usually transacted or at a public auction or private sale, and AvaTrade may purchase the whole or any part thereof free from any right of redemption.
- 14.6 For Customer's protection, Equity or Net Liquidation Value of the Customer's trading account drops below the Minimum Margin Requirement, all of Customer's open transactions shall be automatically closed, whether at a loss or a profit.
- 14.6.1 For the AvaTrader and MetaTrader platforms, the Minimum Margin Requirement is equal to 50% of the Required Margin.
  - 14.6.2 For the AvaOptions platform, the Minimum Margin Requirement is equal to 50% of Required Margin.
- 14.7 If the amount in Customer's trading account is less than zero, Customer shall promptly notify AvaTrade and AvaTrade shall nullify the account.
- 14.8 Neither AvaTrade nor any of its subsidiaries, affiliates or agents shall be responsible for any loss or damage caused due to closing of positions in accordance with the above.
- 14.9 Customer shall at all times be liable for the payment of any deficit balance of Customer upon demand by AvaTrade and in all cases, Customer shall be liable for any deficiency remaining in Customer's account(s) in the event of the liquidation thereof in whole or in part by AvaTrade or by Customer.

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- 14.10 In the event the proceeds realized pursuant to this authorisation are insufficient for the payment of all liabilities of Customer due to AvaTrade, Customer shall promptly pay upon demand, the deficit and all unpaid liabilities, together with interest thereon equal to three (3) percentage points above the then prevailing prime rate at AvaTrade's principal bank or the maximum interest rate allowed by law, whichever is lower, and all costs of collection, including attorney's fees, witness fees, travel expenses and the like.
- 14.11 In the event AvaTrade incurs expenses other than for the collection of deficits, with respect to any of the account(s) of Customer, Customer agrees to pay such expenses.

## 15. FEES/CHARGES

- 15.1 Fees arising out of AvaTrade providing services are outlined in the Trading Conditions and Charges page.
- 15.2 Customer is aware that a part of AvaTrade's revenues derives from the spread on each transaction. The spread is the difference between the bid & the ask price of the price quote on a transaction. The standard spreads for all instruments are listed on Trading Conditions & Charges link - <http://www.avatrade.com.au/trading-info/trading-conditions>.
- 15.3 AvaTrade may increase or decrease spreads on any or all instruments, at its sole discretion, at any time without notification due to various mitigating factors – market sentiment, news times or announcements, trading volumes, market volatility and/or additional internal or external factors. This may be effected on an individual client basis or for all clients simultaneously.
- 15.4 Where a customer requests a specific fee structure, a commission may be payable by Customer to open and close Forex, CFDs, Options and Spread Betting positions. Such commission payable will be debited from Customer's account at the same time as AvaTrade opens or closes the relevant Forex, CFDs, Options and Spread Bets.
- 15.5 Where we increase or introduce any new charges, we will post the changes on our website at least 7 days before they take effect.
- 15.6 We may also charge for incidental banking-related fees such as wire charges for deposits/withdrawals and returned check fees.
- 15.7 In certain circumstances additional fees may include such things as statement charges, order cancellation charges, account transfer charges, telephone order charges or fees imposed by any interbank agency, bank, contract, market or other regulatory or self-regulatory organisations arising out of AvaTrade's provision of services hereunder.
- 15.8 Customer may incur additional fees for the purchase of optional, value added services we offer.
- 15.9 ROLLOVERS, OVERNIGHT INTEREST:

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- 15.9.1 A daily financing charge may apply to each Forex, CFDs, Options and Spread Betting open position at the closing of AvaTrade's trading day as regards that Forex, CFD, Options and Spread Bet.
- 15.9.2 If such financing charge is applicable, it will either be requested to be paid by Customer directly to AvaTrade or it will be paid by AvaTrade to Customer, depending on the type of Forex, CFDs, Options and Spread Betting and the nature of the position Customer holds.
- 15.9.3 The method of calculation of the financing charge varies according to the type of Forex, CFDs, Options and Spread Betting to which it applies. Moreover, the amount of the financing charge will vary as it is linked to current interest rates (such as LIBOR).
- 15.9.4 The financing charge will be credited or debited (as appropriate) to Customer's account on the next trading day following the day to which it relates.
- 15.9.5 AvaTrade reserves the right to change the method of calculating the financing charge, the financing rates and/or the types of Forex, CFDs, Options and Spread Betting to which the financing charge applies.
- 15.9.6 For certain types of Forex, CFDs, Options and Spread Betting, a commission is payable by Customer to open and close Forex, CFDs, Options and Spread Betting positions. Such commission payable will be debited from Customer's account at the same time as AvaTrade opens or closes the relevant Forex, CFDs, Options and Spread Bets.
- 15.9.7 Trades in CFDs and Spread Betting are linked to the market price of a certain base asset, including the market price of future contracts. A few days prior to the expiration date of the base asset to which the CFD and Spread Betting is linked, the base asset shall be replaced with another asset, and the quotation of the CFD and Spread Betting shall change accordingly.
- 15.9.8 CFDs and Spread Betting does not have an expiration date.
- 15.9.9 Trades in CFDs and Spread Betting are continuous and the base assets to which they are linked vary from time to time.
- 15.9.10 AvaTrade reserves the right to determine the base asset to which CFDs and Spread Betting is linked, the date of replacement of the base asset, and the replacement conditions.
- 15.9.11 Following the replacement of the base asset, the quotation of the CFDs and Spread Betting shall be adjusted, and the Customer's account shall be credited or debited, as applicable, in accordance with the difference in quotations created due to the replacement of the base asset.

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- 15.9.12 The difference in quotations between the base assets is affected by the difference in rates between selling and buying of such assets in the market, and therefore the revaluation of selling and buying transactions shall be in different values.
- 15.9.13 Customers will incur costs in relation to the Spread Cost in closing the Old contract and Opening the New Contract and a Standard Overnight Interest charge.
- 15.9.14 In most cases, the debits shall be higher than credits.
- 15.9.15 Any open transaction held by Customer at the end of the trading day as determined by AvaTrade or over the weekend, shall automatically be rolled over to the next business day so as to avoid an automatic close and physical settlement of the transaction.
- 15.9.16 Customer acknowledges that when rolling over such transactions to the next business day, overnight interest may be either added or subtracted from Customer's account with respect to such transaction.
- 15.9.17 The overnight interest amount shall be determined by AvaTrade from time to time, in AvaTrade's absolute discretion.
- 15.9.18 Customer hereby authorizes AvaTrade to add or subtract the overnight interest to or from Customer's account for any open transaction that have accrued overnight interest, in accordance with the applicable rate thereto, each day at the time of collection specified on the trading platform for each individual instrument, as applicable.
- 15.9.19 Full information related to applicable charges can be found at [Trading Conditions and Charges](#)

## 16. COMMUNICATIONS, STATEMENTS AND CONFIRMATIONS

- 16.1 Reports, statements, notices, trade confirmations, and any other communications will be posted online and may be transmitted to such address as Customer may from time to time designate in a written or electronic communication to AvaTrade.
- 16.2 Customer is responsible for alerting AvaTrade to any change in its e-mail address.
- 16.3 Communications are deemed received when made available to Customer by AvaTrade, regardless of whether Customer actually accessed the statement.
- 16.4 Customer will be able to generate daily, monthly and annual account statements detailing transaction activity, profit and loss statements, open positions, margin balances, account credits and debits.

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- 16.5 Customer understands that it must carefully review the reports relating to Customer's trading posted online by AvaTrade.
- 16.6 Reports of the confirmation of orders and statements of accounts for Customer posted online by AvaTrade shall be deemed correct and shall be conclusive and binding upon Customer if not objected to within two business days of the posting online.
- 16.7 Objections may be made initially by email or by telephone, but must be confirmed thereafter in writing.
- 16.8 If Customer becomes aware of an error with respect to any report or statement, such as amounts erroneously credited to Customer, Customer shall immediately inform AvaTrade and is responsible to return such amount to AvaTrade, and if AvaTrade becomes aware of such occurrence, AvaTrade is expressly authorized to correct such error by correcting such report or statement, and, if applicable, treating this as a Deficit Balance.
- 16.9 Customer declares that by providing its registration data to AvaTrade it hereby consents to, AvaTrade, its subsidiaries, affiliates and agents sending, and Customer receiving, by means of telephone, facsimile, SMS or e-mail, communications containing content of a commercial nature relating to Customer's use of the trading platform, including information and offers from AvaTrade or third parties that AvaTrade believes Customer may find useful or interesting, such as newsletters, marketing or promotional materials.
- 16.10 Customer acknowledges that AvaTrade does not have to separately obtain Customer's prior consent (whether written or oral) before distributing such communications to Customer, provided that AvaTrade shall cease to distribute such communications should Customer notify AvaTrade in writing that Customer no longer desires to receive such commercial communication.
- 16.11 Client statements can be generated by the client at any time on the on-line trading platform. These statements will record the time the order was executed and the balance of their account. Our internal records will state the time the order was requested from the client.
- 16.12 AvaTrade will also provide the client with a statement on an annual basis outlining the details of funds held by the firm for the client at end of the period covered by the statement. Statements will also show all charges applied during the period covered by the statement, if any.
- 16.13 Real time access to each client's account showing transactions, the time orders were filled and the balance on the client's account will also be available to customers.

## 17. DISCLAIMER OF WARRANTIES / LIMITATION OF LIABILITY

- 17.1 AvaTrade and/or any of its subsidiaries, affiliates or agents shall not be responsible for any loss or damage caused, directly or indirectly, by any events, actions or omissions beyond the control of

# GENERAL TERMS & CONDITIONS

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AvaTrade including, without limitation, loss or damage resulting, directly or indirectly, from any delays or inaccuracies in the transmission of orders and/or information due to breakdown or failure of transmission or communication facilities, or electrical power outage.

- 17.2 Neither AvaTrade nor any of its subsidiaries, affiliates or agents warrants that the trading platform or any services provided (including Third Party Licenses) will be available without interruption or will be error free and such trading platform and services are being provided "AS IS" without any representation or warranty of any kind whatsoever except as otherwise set forth herein.
- 17.3 Under no circumstances shall AvaTrade or any of its subsidiaries, affiliates or agents be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use, AvaTrade's trading platform or services (including Third Party Licenses) including but not limited to lost profits, loss of business, trading loss, loss of data or use of data, any unauthorized access to, alteration, theft or destruction of Customer's computers, computer systems, data files, programs or information, or costs of procurement of substitute goods or services.
- 17.4 Customer agrees that this section represents a reasonable allocation of risk, that this section is an essential element of this Agreement and that in its absence; the economic terms of this Agreement would be substantially different.
- 17.5 This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if AvaTrade or any of its subsidiaries, affiliates or agents has been advised of the possibility of such damage.
- 17.6 Neither AvaTrade nor any of its subsidiaries, affiliates or agents has liability or duty of indemnification related to unusable data, lost or corrupt Customer transactions or data, by whatever means, in whatever form.
- 17.7 This limitation of liability additionally eliminates any duty or liability on the part of AvaTrade or any of its subsidiaries, affiliates or agents related to unusable data, lost or corrupt Customer transactions or data, resulting in part or in whole from third-party software or networking goods or services or from internet related problems or from actions or events outside of AvaTrade's control.
- 17.8 AvaTrade and its subsidiaries, affiliates and agents disclaim any and all liability resulting from or related to any breach of internet security or disruption, distortions or delays of Customer's connections to the internet, due to any reason.
- 17.9 As OTC is not an exchange traded market, prices at which AvaTrade deals at or quotes may or may not be similar to prices at which other OTC market makers deal at or quote.



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17.10 Should a quoting or execution error occur, which may include, but are not limited to, a mistype of a quote, a quote that is not representative of fair market prices, an erroneous price quote from a dealer or erroneous price quote due to failure of hardware, software or communication lines or systems or inaccurate external data feeds provided by third-party vendors, AvaTrade will not be liable for the resulting errors in account balances. Without derogating from the above, in the event that transactions shall be closed or opened based on the Erroneous Quote, AvaTrade's trading room attempts to recognize such event and to act promptly to reset such event. Customer acknowledges that the reset process may take time, during which Customer may not be able to use its trading account, and outstanding orders may not be executed.

17.11 In case AvaTrade will identify an erroneous quote or an outdated quote, it may offer the Customer an alternative quote or alternatively to continue the transaction, all at the sole discretion of AvaTrade.

17.12 Customer further acknowledges that Ava, its subsidiaries, affiliates and agents shall not be liable for any loss or damage caused due to or in connection with such reset process.

17.13 Third Party Licenses:

17.13.1 If any third party software is included within or embedded in the AvaTrade website or online trading platform, then such embedded third party software shall be provided subject to the terms of this Customer Agreement which apply to the online trading platform.

17.13.2 Customer shall fully comply with terms of any Third Party Licenses that we provide from time to time.

17.13.3 We provide no express or implied warranty, indemnity or support for the Third Party Licenses, and will have no liability related thereto.

17.13.4 "Third Party Licenses" means licenses from third parties governing third party software embedded or used in the trading platform.

## 18. FOREX, CFDs, OPTIONS AND SPREAD BETTING FLUCTUATION RISK

18.1 If Customer directs AvaTrade to enter into any Forex, CFDs, Options and Spread Betting transaction:

- (i) Any profit or loss arising as a result of a fluctuation in Forex, CFDs, Options and Spread Betting will be entirely for Customer's account and risk;

# GENERAL TERMS & CONDITIONS

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- (ii) All initial and subsequent deposits for margin purposes shall be made in U.S. Dollars, EUROs, Great British Pounds or Japanese Yen in such amounts as AvaTrade may in its sole discretion require; and
- (iii) AvaTrade is authorized to convert funds in Customer's account for margin into and from such foreign currency at a rate of exchange determined by AvaTrade in its sole discretion on the basis of the then prevailing money market rates.

## 19. INDEMNIFICATION

- 19.1 Customer agrees to indemnify and hold AvaTrade, its subsidiaries, affiliates, agents, employees, agents, successors and assigns ("Ava Indemnities") harmless from and against any and all liabilities, losses, damages, costs and expenses, including attorney's fees, incurred by any of AvaTrade indemnities arising out of Customer's failure to fully and timely perform Customer's obligations herein or under any Third Party License or should any of Customer's representations and warranties fail to be true and correct.
- 19.2 Customer also agrees to pay AvaTrade indemnities promptly all damages, costs and expenses, including attorney's fees, incurred in the enforcement of any of the provisions of this Agreement and any other agreements between AvaTrade and Customer.
- 19.3 In addition to any limitations of liability specified elsewhere in this Agreement, AvaTrade indemnities shall not be held liable and are released from all claims and losses incurred in such regard if the claim or loss was caused or contributed to by:
- (i) The actions or omission to act on the part of Customer,
  - (ii) Any act or omission by any person obtaining access to Customer's account, whether or not Customer has authorized such access or not,
  - (iii) System malfunction, equipment failure (whether Customer's equipment or AvaTrade's equipment), system interruption or system unavailability,
  - (iv) Delays, failure or errors in implementing any instruction,
  - (v) Inaccurate or incomplete instructions received by AvaTrade's from Customer, or
  - (vi) Any reliance or use by Customer or any other third party with access to Customer's account of any financial and market data, quotes, news, analyst opinions, research reports, graphs or any other data or information whatsoever available through the trading platform or any Third Party License, whether to complete a transaction on the trading platform or for any other purpose whatsoever.

# GENERAL TERMS & CONDITIONS

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19.4 AvaTrade shall be entitled to setoff Customer's liabilities under this section from Customer's account.

## 20. PROHIBITION ON ARBITRAGE AND MANIPULATION

20.1 AvaTrade does not permit the practice of arbitrage when trading and strictly forbids any form of manipulation of its prices, execution, and platform or making transactions based on errors, omissions or misquotes on the AvaTrade platform.

20.2 Price latency, connectivity delays, and price feed errors sometimes create a situation where the prices displayed do not accurately reflect market rates. The concept of arbitrage and "scalping", or taking advantage of these Internet delays, cannot exist in an OTC market where the client is buying or selling directly from the market maker.

20.3 Any transactions that rely on price latency or price feed errors may be subject to intervention which includes the right to void any transactions which AvaTrade has determined to be a result of any of these practices, revocation of profits, widening of spreads, block of trading and any other necessary corrections or adjustments on the account without prior notice.

20.4 If AvaTrade suspects or has reason to believe that Customer has abused the terms and conditions by hedging positions internally (using other trading accounts held with AvaTrade) or externally (using other trading accounts held with other brokers), AvaTrade reserves the right to cancel any trades or profits associated with Customer's account(s).

## 21. EXECUTION OF ORDERS, STOP AND LIMITS

21.1 AvaTrade will use commercially reasonable efforts to complete all orders which it may, in its sole discretion, choose to accept in accordance with the oral or written or computer instructions of Customer.

21.2 AvaTrade reserves the right to refuse to accept any order.

21.3 AvaTrade may, at its sole discretion, allow Customer to specify a closing price for a transaction at the trading platform through a "Close at Loss" and "Close at Profit" order, subject always to the terms of this Agreement and any other terms and conditions AvaTrade may implement from time to time.

21.3.1 "Close at Loss" means an offer to close a transaction at a price determined in advance by Customer which, in the case of a transaction that is opened by offering to buy a specific number of a certain instrument, is lower than the opening transaction price, and in the case of a transaction that is opened by offering to sell a specific number of a certain instrument, is higher than the opening transaction price.

# GENERAL TERMS & CONDITIONS

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- 21.3.2 "Close at Profit" means an offer to close a transaction at a price determined in advance by Customer which, in the case of a transaction that is opened by offering to buy a specific number of a certain instrument, is higher than the opening transaction price, and in the case of a transaction that is opened by offering to sell a specific number of a certain instrument, is lower than the opening transaction price.
- 21.4 Upon Customer's offer and AvaTrade's acceptance of an order, Customer hereby authorizes AvaTrade to close the transaction at the Close at Loss price or Close at Profit price, as applicable, and as agreed upon in the order, without further instruction from or notification to Customer.
- 21.5 AvaTrade may, in its sole discretion, close the transaction when the price quoted by AvaTrade on the trading platform equals the price accepted by AvaTrade for such an order.
- 21.6 Customer acknowledges and agrees that AvaTrade shall not be obligated to close a transaction which does not otherwise comply with any other limitations agreed upon with respect to such transaction.
- 21.7 Customer acknowledges and agrees that due to market volatility and factors beyond AvaTrade's control, AvaTrade cannot guarantee that a Close at Loss order will be executed at the level specified in Customer's order. In such an event, AvaTrade will close the transaction at the next best price.
- 21.8 If, before Customer's "Limit Order" offer to open or close a transaction is accepted by AvaTrade, AvaTrade's quote moves to Customer's advantage (for example, if the price goes down as Customer buys or the price goes up as Customer sells) Customer agrees that AvaTrade will execute the closing transaction at the Customer's specified price and not better. Customer agrees that AvaTrade can retain such price movement for its own account.
- 21.9 Customer is aware that a part of AvaTrade's revenues derives from the spreads on each transaction. The spread is the difference between the bid & the ask price of the price quote on a transaction. Therefore, in case the fair market price reduces AvaTrade's spread in a specific transaction, AvaTrade may, at its sole discretion, choose not to execute such transaction, in which case AvaTrade may send Customer an amended quote for his consideration. AvaTrade may complete a transaction at its sole discretion in case the fair market price does not affect AvaTrade's spread from the transaction and / or increases it.

## 22. RISK ACKNOWLEDGMENT

- 22.1 Customer acknowledges that investment in leveraged and non-leveraged transactions are speculative, involves a high degree of risk, and is appropriate only for persons who can assume risk of loss of their entire margin deposit.

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- 22.2 Customer understands that because of the low margin normally required in OTC trading, price changes in OTC may result in significant losses.
- 22.3 Customer warrants that Customer is willing and able, financially and otherwise, to assume the risk of OTC trading, and in consideration of AvaTrade's carrying his/her account(s), Customer agrees not to hold AvaTrade and any of its subsidiaries, affiliates or agents responsible for any losses incurred by Customer.
- 22.4 Customer recognizes that guarantees of profit or freedom from loss are impossible in OTC trading.
- 22.5 Customer acknowledges that Customer has received no such guarantees from AvaTrade or from any of its representatives or any introducing agent or other entity with whom Customer is conducting his/her AvaTrade account and has not entered into this agreement in consideration of or in reliance upon any such guarantees or similar representations.
- 22.6 The high degree of leverage that is obtainable in the trading of Forex, CFDs, Options and Spread Betting transactions can work against you as well as for you. Leverage can lead to large losses as well as gains.
- 22.7 During times of extreme volatility it can be difficult or impossible to execute orders.

## 23. MARKET RECOMMENDATIONS AND INFORMATION

- 23.1 Customer acknowledges that:
- (i) Any market recommendations, signals and information communicated by any method of communication to Customer by AvaTrade and any of its subsidiaries, affiliates, agents or by any person within AvaTrade does not constitute an offer to sell or the solicitation of an offer to buy any OTC contract, and that AvaTrade does not provide investment advice
  - (ii) Such recommendation and information, although generally based upon information obtained from sources believed by AvaTrade to be reliable, may be based solely on a broker's opinion and that such information may be incomplete and may be unverified, and
  - (iii) AvaTrade makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy or completeness of any information or market recommendation furnished to Customer and shall not be responsible for any loss or damage including without limitation any loss of margin or profits which may arise directly or indirectly from use or reliance on such recommendations or information.

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- 23.2 Customer understands that Customer is solely responsible for assessing the merits and risks of any trade it may enter into with AvaTrade whether as a result of information provided by AvaTrade or otherwise.
- 23.3 Customer acknowledges that AvaTrade and/or its officers, directors, affiliates, associates, stockholders or representatives may have a position in or may intend to buy or sell Forex, CFDs, Options and Spread Bets, which are the subject of market recommendations furnished to Customer, and that the market position of AvaTrade or any such officer, director, affiliate, associate, stockholder or representative may not be consistent with the recommendations furnished to Customer by AvaTrade.
- 23.4 Customer acknowledges that AvaTrade makes no representations concerning the tax implications or treatment of any trading activity.

## 24. CUSTOMER REPRESENTATIONS AND WARRANTIES

24.1 Customer represents and warrants that:

- (i) if Customer is a natural person, Customer is of sound mind, legal age and legal competence
- (ii) if Customer is not a natural person,
  - a. Customer is duly organized and validly existing under the applicable laws of the jurisdiction of its organization;
  - b. Execution and delivery of this Agreement and all Contracts and other transactions contemplated hereunder and performance of all obligations contemplated under this Agreement and all other transactions contemplated hereunder have been duly authorised by Customer; and
  - c. Each person executing and delivering this Agreement and all other transactions contemplated hereunder on behalf of the Customer, has been duly authorised by Customer to do so.
- (iii) No person other than Customer has or will have an interest in Customer's account(s) and Customer has not granted and will not grant a security interest in Customer's account with AvaTrade (other than the security interest granted to AvaTrade hereunder) to any person without AvaTrade's prior written consent. Customer has full beneficial ownership of all collateral and will not grant any security interest in any collateral to any person (other than the security interest granted to AvaTrade hereunder) without AvaTrade's prior written consent; and,

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- (iv) Customer hereby warrants that regardless of any subsequent determination to the contrary, Customer is suitable to trade OTC; and,
- (v) Customer is not now an employee of any exchange, any corporation in which any exchange owns a majority of the capital stock, any member of any exchange and/or firm registered on any exchange, or any bank, trust, or insurance company, and in the event that Customer becomes so employed, Customer will promptly notify us, at AvaTrade 's home office, in writing, of such employment; and,
- (vi) Customer will execute and deliver all documents, give all notices, make all filings and take such other actions as AvaTrade, in its sole discretion, deems necessary or desirable to evidence or perfect any security interest in favor of AvaTrade or to protect AvaTrade's interests with respect to any Collateral; and,
- (vii) Customer has read and understands the provisions contained in this Agreement, including, without limitation, AvaTrade's Risk Disclosure Statement and Privacy Statement; and
- (viii) Customer will review this Agreement; and
- (ix) Customer will not affect any transaction in Customer's account unless Customer understands this Agreement, and Customer agrees that in effecting any transaction it is deemed to represent that it has read and understands this Agreement as in effect at the time of such transaction; and
- (x) Customer agrees to, and shall at all times comply with all applicable laws, statutes and regulations and Customer hereby declares that the execution and delivery by Customer of this Agreement and all other transactions contemplated hereunder, and performance of all of Customer's obligations contemplated under this Agreement and any other transaction contemplated hereunder, will not violate any statute, rule, regulation, ordinance, charter, by-law or policy applicable to Customer. Customer may not use this account with AvaTrade for any illegal activity.
- (xi) if the Customer is funding their account with superannuation funds, they will notify AVA as this may impact their wholesale or retail client classification.

## 25. ISLAMIC ACCOUNTS

- 25.1 In the event that Customer, due to its observance of Islamic religious beliefs cannot receive or pay interest, Customer may elect to designate, in the manner provided by AvaTrade, its trading account to be an Islamic Account, which is not charged with, or entitled to, overnight interest and/or rollovers.

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- 25.2 In the event that Customer designates its account as an Islamic account, Customer may not keep transactions in such account open for more than 5 days and may not otherwise abuse such benefit.
- 25.3 AvaTrade reserves the right to cancel the aforesaid benefit at any time and take any action necessary in AvaTrade's absolute discretion due to abuse of this benefit.
- 25.4 Such actions may include, without limitation, the designation of the Islamic Account as a regular account and retroactively effecting required adjustments (e.g., setting off amounts from the account equal to amounts paid by AvaTrade as interest), cancellation of transactions, and adjustment of account balances.

## 26. DISCLOSURE OF FINANCIAL INFORMATION

- 26.1 The Customer represents and warrants that the financial information disclosed to us in his/its Application is an accurate representation of the Customer's current financial condition.
- 26.2 The Customer represents and warrants that the Customer has very carefully considered the portion of the Customer's assets which the Customer considers to be risk capital.
- 26.3 The Customer recognizes that risk capital is the amount of money the Customer is willing to put at risk and the loss of it would not, in any way, change the Customer's lifestyle.
- 26.4 The Customer agrees to immediately inform us if the Customer's financial condition changes in such a way to reduce the Customer's net worth, liquid assets and/or risk capital.

## 27. NO SEPARATE AGREEMENTS

- 27.1 Customer acknowledges that Customer has no separate agreement with AvaTrade or any of its employees or agents regarding the trading in Customer's AvaTrade account, including any agreement to guarantee profits or limit losses in Customer's account.
- 27.2 Customer understands that Customer must authorize every transaction prior to its execution unless Customer has delegated discretion to another party by signing AvaTrade's limited trading authorization or as otherwise agreed in writing with AvaTrade, and any disputed transactions must be brought to the attention of AvaTrade's Compliance Officer pursuant to the notice requirements of this Customer Agreement.
- 27.3 Customer agrees to indemnify and hold AvaTrade and its subsidiaries, affiliates and agents harmless from all damages or liability resulting from Customer's failure to immediately notify AvaTrade's Compliance Officer of any of the occurrences referred to herein.
- 27.4 All notices required under this section shall be sent to AvaTrade at its home office.



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## 28. AFFILIATE REFERRAL DISCLOSURE

- 28.1 AVA Group may engage with advertising affiliates/referrers/marketing partner (“Affiliates”) who are wholly separate and independent from one another and from AVA Group. Any agreement between AVA Group and Affiliate does not establish a joint venture or partnership and Affiliate is not an agent or employee of AVA Group.
- 28.1.1 AVA Group does not control, and cannot endorse or vouch for the accuracy or completeness of any information or advice Customer may have received or may receive in the future from AVA Group’s Affiliates or from any other person not employed by, or acting on behalf of AVA Group, regarding the risks involved in the trading of Forex, CFDs, Options and Spread Betting or the risks involved in such trading.
- 28.1.2 Since Affiliate is not an employee or agent of AVA Group, AVA Group does not endorse or vouch for the services provided by the Affiliate. It is the Customer’s responsibility to perform necessary due diligence on the Affiliate prior to using any of their services.
- 28.1.3 Customer understands that in order to trade with AvaTrade the Customer must open an account directly with AvaTrade. AvaTrade makes available appropriate risk disclosure information to all Customers when they open accounts. Customers should read that information carefully and should not rely on any information to the contrary from any other source.
- 28.1.4 Customer acknowledges that no representations and/or warranties have been made by AvaTrade its servants or agents or any individual associated with AvaTrade regarding future profits or losses in Customer’s account.
- 28.1.5 Customer understands that Forex, CFDs, Options and Spread Betting trading is very risky, and that many people lose money trading and that all Forex, CFDs, Options and Spread Betting trading, including trading done pursuant to a system, course, program, research or recommendations of an Affiliate, Trading Agent or any other third party involves a substantial risk of loss. In addition, Customer hereby acknowledges, agrees and understands that the use of a trading system, course, program, research or recommendations of an Affiliate, Trading Agent or any other third party will not necessarily result in profits, avoid losses or limit losses.
- 28.1.6 Because the risk factor is high in Forex, CFDs, Options and Spread Betting trading, in case Client does not have the extra capital he can afford to lose, Client should consider carefully before trading.

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- 28.1.7 Customer understands and acknowledges that AVA Group may remunerate an Affiliate for referring Customer to AVA Group and that such remuneration may be on a per-trade basis or other basis. Further, the Client has a right to be informed of the precise nature of such remuneration
- 28.1.8 Customer acknowledges that an Affiliate may also, in some circumstances, be a Trading Agent. Customer understands that by using a Trading Agent, Customer may incur a mark-up, above and beyond the ordinary spread generally provided by AvaTrade.
- 28.1.9 AvaTrade shall in no way be responsible for any loss to Customer resulting from Customer's use of any information or advice given by any third party including a Trading Agent or Affiliate.

## 29. TRADING AGENTS

- 29.1 Customer acknowledges that should Customer choose to grant trading authority or control over Customer's account to a third party ("Trading Agent"), whether on a discretionary or non-discretionary basis, Customer does so at its own risk.
- 29.2 Customer acknowledges that AvaTrade its subsidiaries, affiliates or agents shall in no way be responsible for reviewing Customer's choice of such Trading Agent, or the actions taken by it, nor making any recommendations with respect thereto.
- 29.3 Customer acknowledges and understands:
- (i) That AvaTrade makes no warranties nor representations concerning any Trading Agent,
  - (ii) That AvaTrade its subsidiaries, affiliates or agents shall not be responsible for any loss to Customer occasioned by the actions of the Trading Agent, and
  - (iii) That AvaTrade does not, by implication or otherwise, endorse or approve of the operating methods of the Trading Agent.
- 29.4 If a Customer chooses to grant trading authority or control over Customer's account to a Trading Agent, Customer agrees to enter into a power of attorney agreement ('POA') with the Trading Agent to permit same, and to furnish the POA to AvaTrade.
- 29.5 Customer acknowledges that upon receipt of the POA, AvaTrade is authorised to follow the instructions of the Trading Agent in every respect until AvaTrade is notified in writing by the Customer that the POA is revoked or the POA has expired.

The Customer authorises AvaTrade to debit Customer's Account in accordance with the terms agreed between Customer and Trading Agent and which are set out in the POA.

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- 29.6 Customer acknowledges that the Trading Agent and many third party vendors of trading systems, courses, programs, research or recommendations may not be regulated by a government agency. It is the Customer's responsibility to perform necessary due diligence on the Trading Agent prior to using any of their services and to satisfy themselves of its competence and/or suitability to the Customer.
- 29.7 Customer acknowledges that it or the Trading Agent may elect to use an automated trading system. Customer acknowledges that AvaTrade does not take any responsibility for any such system. The Customer is aware of the volume of trading and resulting commissions that such systems may generate and the impact that this may have on the performance of the Account. Customer accepts the risks associated with the use of computers and data feed systems, which may include, but are not limited to, failure of hardware, software or communication lines or systems and/or inaccurate external data feeds provided by third-party vendors and the Customer further agrees to hold AvaTrade harmless from any losses in the Account associated with these risks. Customer acknowledges that neither AvaTrade nor any of its officers, directors, vendors, employees, agents, associated persons or AvaTrade personnel will be liable for any such breakdown or failure.
- 29.8 Customer understands that by using a Trading Agent, Customer may incur a mark-up, above and beyond the ordinary spread generally provided by AvaTrade. Details of any such mark up will be provided in the agreement between the Trading Agent and Customer.
- 29.9 Customer acknowledges that any decisions or actions taken by the Trading Agent on Customer's behalf shall be deemed to have been taken by the Customer and any losses or gains generated by the Trading Agent's action shall be for the Customer's account.
- 29.10 Customer agrees to indemnify and hold Ava, harmless from and against all liabilities, losses, damages, cost and expenses, including attorney's fees that arise directly or indirectly from the Trading Agent's management of the account, including, without limitation all actions, instructions or omissions by the Trading Agent.
- 29.11 The Customer acknowledges that the risk factor in trading foreign exchange, commodities, futures, Forex, CFDs, Options and Spread Betting is substantially high, and therefore the Customer further acknowledges that she/he should carefully consider trading through AvaTrade, whether through a Trading Agent or otherwise, if the Trader does not have capital she/he can afford to lose.

## 30. DISCLOSURE OF CUSTOMER INFORMATION

- 30.1 AvaTrade will not share or sell information regarding customers and/or prospective customers, except to its employees, agents, partners, and associates as required in the ordinary course of

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business, including, but not limited to, AvaTrade's banking or credit relationships, or to other persons as disclosed in AvaTrade's Privacy Statement.

30.2 AvaTrade may also disclose to federal or state regulatory agencies and law enforcement authorities' information regarding Customer and Customer's transactions in response to a request for such information or in response to a court order or subpoena.

30.3 AvaTrade will share or sell statistical information without disclosing Customer's identity.

## 31. TERMINATION

31.1 This Agreement shall continue in effect until termination, and may be terminated by Customer at any time upon three days prior written notice (which may be by e-mail) when Customer has no Forex, CFDs, Options and Spread Betting position(s) and no liabilities held by or owed to AvaTrade upon the actual receipt by AvaTrade at its home office of written notice of termination, or at any time whatsoever by AvaTrade upon the transmittal of written notice of termination to Customer; provided, that such termination shall not affect any transactions previously entered into and shall not relieve either party of any obligations set out in this agreement nor shall it relieve Customer of any obligations arising out of any deficit balance.

31.2 Sections 14, 17, 19, 24, 31, 43 shall survive termination of this Agreement for any reason.

## 32. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

32.1 All copyright, trademark, trade secret and other intellectual property rights and proprietary rights to the AvaTrade website in its totality, its contents and any related materials ("Ava IP") shall remain at all times the sole and exclusive property of the Ava Group and its licensors and in the case of third party materials available on the AvaTrade web site to such third party and Customers shall have no right or interest in the Ava Group IP except for the right to access and use the Ava Group IP as specified herein.

32.2 Customer acknowledges that the Ava Group IP is confidential and has been developed through the expenditure of substantial skill, time, effort and money.

32.3 The Customer will protect the confidentiality of the Ava Group IP and not allow website access to any third party.

32.4 Customer will not publish, distribute, or otherwise make available to third parties any information derived from or relating to the Ava Group IP.

32.5 Customer will not copy, modify, de-compile, reverse engineer, or make derivative works of the Ava Group IP or in the manner in which it operates.

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- 32.6 If Customer has comments on AvaTrade's services or ideas on how to improve them, Customer is welcome to contact AvaTrade. By doing so, Customer grants AvaTrade a perpetual, royalty-free, irrevocable, transferable license, with right of sublicense, to use and incorporate Customer's ideas or comments into the AvaTrade's services, and to otherwise exploit Customer's ideas and comments, in each case without payment of any compensation.

## 33. RECORDINGS

- 33.1 Customer agrees and acknowledges that all conversations regarding Customer's account(s) between Customer and AvaTrade personnel may be electronically recorded with or without the use of an automatic tone warning device.
- 33.2 Customer further agrees to the use by AvaTrade, its subsidiaries, affiliates and agents of such recordings and transcripts as it deems fit in connection with any dispute or legal proceeding that may arise.
- 33.3 Customer understands that AvaTrade destroys such recordings at regular intervals in accordance with AvaTrade's established business procedures and Customer hereby consents to such destruction.

## 34. LEGAL RESTRICTIONS

- 34.1 Without limiting the foregoing, Customer understands that laws regarding financial contracts vary throughout the world, and it is Customer's obligation alone to ensure that Customer fully complies with any law, regulation or directive, relevant to Customer's country of residency with regards to the use of the Web site.
- 34.2 For avoidance of doubt, the ability to access AvaTrade's Web site does not necessarily mean that AvaTrade's services, and/or Customer's activities through it, are legal under the laws, regulations or directives relevant to Customer's country of residency.
- 34.3 This Web site does not constitute, and may not be used for the purposes of, an offer or solicitation to anyone in any jurisdiction in which such offer or solicitation is not authorised, or to any person to whom it is unlawful to make such an offer or solicitation.
- 34.4 Access to this Web site, and the offering of financial contracts via this site, may be restricted in certain jurisdictions, and, accordingly, users accessing this site are required to inform themselves of, and to observe, such restrictions.

## 35. DECLARATION

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- 35.1 By acceptance of this Agreement, Customer hereby declares that the moneys invested in Customer's account with AvaTrade do not originate from drug trafficking, abduction, or any other criminal activity.

## 36. TAX COLLECTION

- 36.1 Customer knows, understands and agrees that, in general, AvaTrade does not collect tax for any authority in any form or manner.
- 36.2 Without limiting the foregoing, it is Customer's obligation alone to calculate and pay all taxes applicable to you in Customer's country of residence, or otherwise arising as a result of Customer's trading activity from the use of the AvaTrade's services.
- 36.3 Without derogating from Customer's sole and entire responsibility to perform tax payments, Customer agrees that AvaTrade may deduct tax, as may be required by the applicable law, but is not obligated to do so, from the results of the activity with AvaTrade.
- 36.4 Customer is aware that amounts that may be withdrawn by Customer from Customer's account are "gross amounts", from which the AvaTrade may deduct such taxes, and that Customer shall have no claim towards AvaTrade with regard to such deductions.

## 37. INACTIVITY FEE

- 37.1 Customer acknowledges that the Customer's trading account may be subject to inactivity fees unless prohibited by law. After 3 consecutive months of non-use ("Inactivity Period"), and every successive Inactivity Period, an inactivity fee will be deducted from the value of the Customer's trading account. This fee is outlined below and subject to client relevant currency based account:

Inactivity Fee:

USD Account: \$50

EUR Account: €50

GBP Account: £50

Applicable fees are subject to change periodically.

## 38. ACCOUNT PROCEDURES - IDENTIFICATION

- 38.1 Customer acknowledges that applicable laws require financial institutions to obtain, verify, and record information identifying each person who opens an account.

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- 38.2 Customer further acknowledges that AvaTrade makes efforts to prevent fraud and to confirm Customer's identity.
- 38.3 Accordingly, Customer has provided AvaTrade, or shall provide AvaTrade promptly following the opening of the trading account, with certain identifying information and documents as shall be requested by AvaTrade, including a copy of Customer's ID, a copy of Customer's utility bill (e.g., phone bill, property tax bill), and copies of both sides of Customer's credit card (in the event deposit has been made through credit card).
- 38.4 Customer confirms that Customer has provided true, accurate, current and complete information during the registration process, and that Customer has not impersonated any person or entity, or misrepresented any affiliation with another person, entity or association, used false headers or otherwise concealed Customer's identity from AvaTrade for any purpose.

## 39. WITHDRAWAL AND DEPOSIT PROCEDURES

- 39.1 Customer further acknowledges and accepts AvaTrade's procedures with respect to withdrawals and deposits to accounts as set forth below:
- (i) Withdrawal orders: The provision of documentation as may be required from time to time by Anti Money Laundering regulations, credit card companies and AvaTrade, is a prerequisite, prior to the execution of a withdrawal order.
  - (ii) Customer acknowledges that withdrawals may take longer than expected for numerous reasons, some in AvaTrade's control and some not.
  - (iii) Credit card deposits may be, according to credit card companies' regulations, returned to the same credit card when a withdrawal is performed. A withdrawal to a bank account where initial deposits have been performed by credit cards will be executed back to credit card or to the bank account at AvaTrade's discretion. Withdrawals to bank account may take a longer time period, due to additional security procedures.
  - (iv) Credit Card Deposits Variance: When choosing an account base currency other than USD, Customer's credit card may be debited sums which due to exchange rates and credit card companies' fees, may slightly vary from the initial sum that has been deposited by Customer in the account base currency. Customer hereby accepts that such variations may occur and hereby affirms that Customer shall not seek to object or charge this back.
  - (v) When depositing by a Bank Transfer, as required by anti-money-laundering regulations, Customer is required to use a bank account, which is in Customer's country of residence and in Customer's name. Any withdrawal of funds, from Customer's AvaTrade account to a bank account, can only be refunded to the same bank account that the funds were originally received from.

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- (vi) Alternative payment methods (internet payment vendors; money transfer services; etc.): when depositing funds using a facility other than credit cards and/or banks, you agree to, and acknowledge being bound by, the regulations and rules of such service, including, but not limited to, fees and other restrictions. AvaTrade, at its sole discretion, may execute withdrawals to a facility other than the facility used for the original deposit, in accordance with anti-money-laundering regulations.

## 40. STATEMENTS

- 40.1 Customer hereby consents to receive account statements and trade confirmations online.
- 40.2 AvaTrade will provide customer with password-protected access to online reports.
- 40.3 Customer will be able to generate Daily, Monthly and Annual account statements detailing transaction activity, profit and loss statements, open positions, margin balances, account credits and debits, etc.
- 40.4 Hard copies of Monthly customer statements are available upon request only and may incur an additional charge.
- 40.5 Statements are deemed received when made available to customer by AVATRADE, regardless of whether the customer actually accessed the statement.
- 40.6 Customer is responsible for alerting AVATRADE to any change in their e-mail address.
- 40.7 This consent shall be effective until revoked by customer in writing and received by AVATRADE according to Section 16 of this customer agreement.

## 41. CONSENT TO ELECTRONIC SIGNATURE

- 41.1 By electronically signing AvaTrade's account agreement and related documents, Customer acknowledges receipt of the customer account letter, customer agreement and other documents contained as part of AvaTrade's electronic account package and Customer agrees to be bound by their terms and conditions.
- 41.2 In addition, by signing AvaTrade's account agreement and related documents, Customer is consenting to AvaTrade maintaining and Customer receiving electronic records of Customer's trades and accounts.

## 42. CONSENT TO EXECUTION OF ORDERS OUTSIDE A REGULATED MARKET



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- 42.1 Customer hereby acknowledges and consents to AvaTrade executing orders over the counter and outside a regulated market

## 43. WAIVER AND AMENDMENT

- 43.1 Customer understands, acknowledges and agrees that AvaTrade may amend or change this Agreement at any time.
- 43.2 AvaTrade will provide notice to Customer of any such amendment or change by posting the amendment or change on AvaTrade's website or by sending an e-mail message to Customer at least 7 days before it takes effect.
- 43.3 Customer agrees to be bound by the terms of such amendment or change on that date.
- 43.4 In the event that Customer objects to any such change or amendment, Customer agrees to liquidate Customer's open positions and instruct AvaTrade regarding the disposition of all assets in Customer's account within ten (10) business days after notice of the amendment or change has been posted on AvaTrade's website or otherwise notified Customer.
- 43.5 No waiver or amendment of this Agreement may be implied from any course of dealing between the parties or from any failure by AvaTrade or failure of AvaTrade's agents to assert its rights under this Agreement on any occasion or series of occasions.
- 43.6 No oral agreements or instructions to the contrary shall be recognized or enforceable.

## 44. ENTIRE AGREEMENT

- 44.1 This Agreement together with all references to AvaTrade's policies and procedures made in this Agreement, and together with [Product Disclosure Statement](#), [Risk Disclosure Statement](#), [Trading Conditions and Charges](#) and [Privacy Statement](#), embodies the entire agreement between AvaTrade and the Customer, superseding any and all prior written and oral agreements.

## 45. ASSIGNMENT

- 45.1 Customer may not assign or transfer any of its rights or obligations under this Agreement to a third party without the prior written consent of AvaTrade. Any attempted assignment or transfer in violation of the foregoing will be void. AvaTrade may freely assign this Agreement.

## 46. GOVERNING LAW AND JURISDICTION

- 46.1 This Agreement, the rights and obligations of the parties hereto, and any judicial or administrative action or proceeding arising directly or indirectly hereunder or in connection with the transactions

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contemplated hereby shall be governed by, construed and enforced in all respects in accordance with the laws of New South Wales and AvaTrade and the customer hereby irrevocably submit to the exclusive jurisdiction of the New South Wales Courts.

## 47. BINDING EFFECT

- 47.1 This Agreement shall be continuous and shall cover, individually and collectively, all accounts of Customer at any time opened or reopened with AvaTrade irrespective of any change or changes at any time in the personnel of AvaTrade or its successors, assigns, subsidiaries, affiliates or agents.
- 47.2 This Agreement including all authorizations, shall inure to the benefit of AvaTrade and its subsidiaries, affiliates, agents, successors and assigns, whether by merger, consolidation or otherwise, and shall be binding upon Customer and/or the estate, executor, trustees, administrators, legal representatives, successors and assigns of Customer.
- 47.3 Customer hereby ratifies all transactions with AvaTrade effected prior to the date of this Agreement, and agrees that the rights and obligations of Customer in respect thereto shall be governed by the terms of this Agreement.

**CUSTOMER ACKNOWLEDGES HAVING RECEIVED, READ AND UNDERSTOOD THE FOREGOING CUSTOMER AGREEMENT AND HEREBY AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS HEREOF.**