

# ASX Cleared OTC Derivatives Supplement

## Introduction

*The Supplement is a sample which Clearing Participants and Clients might find useful in documenting the relationship between them with respect to clearing over-the-counter derivatives on the clearing and settlement facility operated by ASX Clear (Futures) Pty Limited. However, neither the ASX group nor anyone advising it or acting on its behalf requires, makes any recommendation with respect to, or gives any advice in connection with, any particular form of documentation between a Clearing Participant and its Client (without limiting the requirements in the operating rules). It is necessary for any person considering the Supplement to determine in each case its suitability or otherwise for their circumstances, including their particular documents and clearing arrangements. In this regard, it is strongly recommended that intending users seek their own professional advice in respect of the legal, taxation, stamp duty, regulatory (including in relation to licensing, conduct and disclosure obligations) and other implications arising from the use of the Supplement.*

The Supplement is not a separate agreement in itself. It is intended to be attached to either a futures trading document or a 2002 ISDA master agreement which has been entered into between the Clearing Participant and its Client (referred to as the **Client Agreement**). The Supplement prevails over the Client Agreement if it is inconsistent with it.

The Supplement is comprised of the **Terms**, which are the initial standard provisions of the Supplement, and the **Details** which are the provisions to be completed by the parties at the end of the Supplement. It is intended that the Details will contain the elections set out in the Terms and any variations to the Terms, as agreed between the parties. This Introduction does not form part of the Supplement and should not be attached to the Client Agreement.

The relationship between the Clearing Participant and the Client described in the Supplement is intended to be consistent with the "Client Protection Model" provisions of the operating rules (**Clearing House Rules**) of ASX Clear (Futures) (**Clearing House**). The Clearing House Rules prevail over the Supplement and the Client Agreement to the extent of any inconsistency as described in clause 4.2.

The Supplement relates to positions in over-the-counter derivative transactions which are held for the Client by the Clearing Participant in its Client Clearing Account with the Clearing House. These are referred to in the Supplement as **Cleared OTC Transactions**. Accordingly, the Supplement does not address transactions:

- before registration with the Clearing House, including if they have not been accepted for registration by the Clearing House. It is expected that the execution arrangements agreed between the Client and the Clearing Participant (and any other parties) will deal with these matters.
- after transferral from the Clearing Participant's Client Clearing Account in accordance with the Clearing House Rules (such as where they have been 'ported' following the default of the Clearing Participant) or after termination in accordance with the Clearing House Rules (for example, after default of the Clearing Participant). This is governed by the Clearing House Rules, as is Clearing Participant default generally. However, the Supplement does deal with obligations between Client and Clearing Participant in connection with transactions which are transferred to the Clearing Participant's House Clearing Account following default of the Client, as discussed below.

The obligations of the Client and the Clearing Participant as *between each other* in relation to Cleared OTC Transactions are described in the Supplement and are incorporated into the relevant Client Agreement. In the case of a Client Agreement

which is a futures trading document, this is by including Cleared OTC Transactions as a "Contract", "Futures Contract" or "Future". Parties should ensure that the terms used to describe these obligations are consistent with their Client Agreement. In the case of a Client Agreement which is an ISDA master agreement, these obligations form a single transaction between the Client and the Clearing Participant. The Supplement does not deal with the rights and obligations of the parties to the Clearing House in relation to Cleared OTC Transactions as these are governed by the Clearing House Rules.

The rights of a Clearing Participant against its Client if the Client defaults contained in the Supplement are intended to supplement those already contained in the parties' Client Agreement. These rights include rights to terminate the obligations between the Client and Clearing Participant with respect to the Cleared OTC Transactions, as well as the manner of calculating a net termination value with respect to those terminated obligations, and the incorporation of that net termination value into the Client Agreement (where it may be netted or set-off against other obligations owing between the Client and Clearing Participant). This Supplement does not terminate obligations owing to, or by, the Clearing House with respect to the Cleared OTC Transactions, as that is governed by the Clearing House Rules (which permit those Cleared OTC Transactions to be transferred to the House Account of the Clearing Participant). For this reason the provisions of the Supplement are not intended to comprehensively deal with the consequences of a Clearing Participant default.

The general provisions in the Supplement include an agreement that the Supplement is governed by the same law which governs the Client Agreement to which it is attached. Optional provisions are included which may be activated by an appropriate election made in the Details. One of these is a collateral provision, which provides for the absolute transfer of collateral to the Clearing Participant in excess of the current margin requirements of the Clearing House. The provision provides a mechanism for including the amount of this collateral in the close-out and valuation process which takes place in the case of a Client default. The other optional provisions are provisions limiting the Clearing Participant's liability and a Client's indemnity. Further additional provisions may be added to the Details where indicated. Some suggestions with explanatory footnotes have been included. Inclusion of these, or any other additional provisions, is a matter for the parties to determine.

The Supplement is not intended to address all issues which need to be agreed between a Client and Clearing Participant. Other matters would need to be agreed, such as the Client Sub-Accounts to be maintained and the basis on which collateral will be called for. It is expected that these would form part of the other contractual arrangements between the parties.

# ASX Cleared OTC Derivatives Supplement

## Terms

---

### 1 Introduction

#### 1.1 Form and parties

This ASX Cleared OTC Derivatives Supplement (“**Supplement**”), which consists of these terms (“**Terms**”) and the section entitled “Details” (“**Details**”), is entered into between the clearing participant (“**Clearing Participant**”) and the client (“**Client**”), each as identified in the Details.

#### 1.2 Clearing

This Supplement applies with respect to over-the-counter derivative transactions which are cleared on behalf of the Client by the Clearing Participant on the clearing and settlement facility operated by ASX Clear (Futures) Pty Limited (ABN 91 050 615 864) (“**Clearing House**”) and held as OTC Open Positions in the Client Clearing Account of the Clearing Participant with the Clearing House (“**Cleared OTC Transactions**”). This Supplement is subject to the operating rules and procedures of the Clearing House (“**Clearing House Rules**”).

However, nothing in this Supplement imposes any obligation on the Clearing Participant to consent to the clearing of any transactions and if the Clearing House does not accept a transaction for clearing then neither the Clearing Participant nor the Client has any rights or obligations under this Supplement with respect to that transaction.

#### 1.3 Client Agreement

This Supplement supplements the client agreement (“**Client Agreement**”) between the Clearing Participant and the Client identified in the Details.

This Supplement, the obligations between the Client and the Clearing Participant under the Cleared OTC Transactions and the Client Agreement form part of a single agreement between the Clearing Participant and the Client.

This Supplement replaces any other prior supplement, annex, addendum or appendix

between the Clearing Participant and the Client with respect to Cleared OTC Transactions.

This Supplement prevails over the Client Agreement to the extent of any inconsistency between them with respect to the subject matter of this Supplement.

#### 1.4 Defined terms

Capitalised terms not defined in this Supplement have the meaning given to them in the Client Agreement or, if not defined there, in the Clearing House Rules.

---

## 2 Client Agreement

### 2.1 Type of Client Agreement

The parties may specify in the Details whether the Client Agreement is a “**Futures Client Agreement**” or an “**OTC Client Agreement**”. If no specification is made then the Client Agreement is taken to be a Futures Client Agreement.

### 2.2 Futures Client Agreement

If the Client Agreement is a Futures Client Agreement then, except as expressly set out in the Details or as otherwise agreed between the parties, for the purpose of the Client Agreement each Cleared OTC Transaction is taken to be a “Contract”, “Futures Contract”, “Future” or such other defined term used in the Client Agreement as is relevantly set out in the Details.

### 2.3 OTC Client Agreement

If the Client Agreement is an OTC Client Agreement then the payment and delivery obligations between the parties in respect of Cleared OTC Transactions as described in clause 5 (Cleared OTC Transactions) constitute a single Transaction (“**Clearing Supplement Transaction**”) under the Client Agreement (for which this Supplement constitutes the Confirmation).

However, for the purposes of the OTC Client Agreement, unless otherwise agreed between the Clearing Participant and the Client:

- (a) the Client is not entitled to terminate the Clearing Supplement Transaction because of the occurrence of an Event of Default or Termination Event (and the Clearing Supplement Transaction is not included as a Terminated Transaction in respect of any termination of Transactions effected by the Client); and
- (b) any condition precedent to the obligations of the Client under the OTC Client Agreement with respect to the Clearing Supplement Transaction does not apply; and
- (c) the representations given in clauses 3.1 (By the Clearing Participant) and 3.2 (By the Client) are taken to be Additional Representations provided by the relevant party (including when they are repeated in accordance with clause 3.3 (Repetition of representations)); and
- (d) any representation that the Clearing Participant does not act as agent of the Client does not apply with respect to the Clearing Supplement Transaction; and
- (e) the Clearing Supplement Transaction is not to be included in any calculation of Exposure for the purpose of any Credit Support Annex forming part of the OTC Client Agreement.

## 2.4 Disapplied provisions

Any provisions of the Client Agreement which are specified in the Details as not applying do not apply to OTC Cleared Transactions or the Clearing Supplement Transaction.

## 2.5 Incorporated provisions

The minimum terms required by the Clearing House Rules to be contained in an agreement between the Client and Clearing Participant which are specified in the Details are taken to be included in this Supplement, as if they were set out in full.

---

## 3 Representations

### 3.1 By the Clearing Participant

The Clearing Participant represents to the Client that:

- (a) it has the power to enter into and perform obligations under this Supplement and each Cleared OTC Transaction; and
- (b) it has each authorisation necessary for it to carry on clearing and settlement activities as a participant of the Clearing House; and
- (c) it will comply with the Clearing House Rules and applicable law in connection with the Cleared OTC Transactions, including with respect to any collateral in relation to them.

### 3.2 By the Client

The Client represents to the Clearing Participant that:

- (a) it has the power to enter into and perform obligations under this Supplement and each Cleared OTC Transaction; and
- (b) it has each authorisation necessary for it to enter into this Supplement and the Cleared OTC Transactions, to comply with its obligations and exercise its rights under them and to allow them to be enforced; and
- (c) it has authorised the Clearing Participant to clear Cleared OTC Transactions with the Clearing House on behalf of the Client and to otherwise take the actions on its behalf as contemplated by the Clearing House Rules; and
- (d) it is a “wholesale client” for the purposes of the *Corporations Act 2001* (Cth); and
- (e) its obligations under this Supplement and the Cleared OTC Transactions are valid and binding and are enforceable against it in accordance with their terms subject to any applicable equitable principles and laws generally affecting creditors’ rights; and
- (f) it will comply with the Clearing House Rules and applicable law in

connection with the Cleared OTC Transactions; and

- (g) it enters into this Supplement and each Cleared OTC Transaction as a principal and not as a trustee, unless the contrary is disclosed in writing to, and accepted by, the Clearing Participant before a Cleared OTC Transaction is entered into; and
- (h) it has made its own independent decisions to enter into this Supplement and each Cleared OTC Transaction and as to whether that Cleared OTC Transaction is appropriate or proper for it based on its own judgement and on advice from such advisers that it has considered necessary. Except to the extent expressly agreed to by the Clearing Participant to the contrary, it is not relying on any communication from the Clearing Participant as advice or a recommendation or guarantee of result in respect of any transaction and the Clearing Participant is not acting as a fiduciary (except to the extent that the Clearing Participant acts on behalf of the Client in accordance with the Clearing House Rules) or advisor to it in respect of this Supplement or any Cleared OTC Transaction.

### **3.3 Repetition of representations**

The representations in this clause 3 (Representations) are taken to be also made (by reference to the then current circumstances) on each date that a transaction which is intended to become a Cleared OTC Transaction is submitted for registration at the Clearing House.

### **3.4 Reliance**

Each of the Client and the Clearing Participant acknowledges that the other party has entered into this Supplement and each Cleared OTC Transaction in reliance on the representations given by it in this clause 3 (Representations).

---

## **4 Relationship**

### **4.1 Relationship**

Cleared OTC Transactions are entered into, and held, by the Clearing Participant on behalf of the Client in accordance with the Clearing House Rules.

The Client acknowledges that, in accordance with the Clearing House Rules:

- (a) the Clearing Participant incurs obligations and liabilities to the Clearing House in connection with the Cleared OTC Transactions; and
- (b) the Clearing House is entitled to make payments and deliveries to, receive payments and deliveries from, and communicate with, the Clearing Participant and not the Client in connection with the Cleared OTC Transactions.

## **4.2 Clearing House Rules**

The Client and the Clearing Participant agree and acknowledge that, in connection with each Cleared OTC Transaction, each of them is bound by the Clearing House Rules and that, in connection with each Cleared OTC Transaction, the Clearing House Rules prevail over this Supplement and any other agreement between the Client and Clearing Participant to the extent of any inconsistency.

---

## **5 Cleared OTC Transactions**

### **5.1 Payments and deliveries**

The Client agrees to make such payments and deliveries to the Clearing Participant which the Clearing Participant determines are the same as those required to be made by the Clearing Participant to the Clearing House with respect to the Cleared OTC Transactions (including obligations to pay or deliver initial margin and variation margin as determined by the Clearing House with respect to those Cleared OTC Transactions). However, for this purpose, payments or deliveries which the Clearing Participant would have been required to make but for netting or set-off conducted in accordance with the Clearing House Rules are taken to be payments or deliveries which the Clearing Participant is required to make.

The Clearing Participant agrees to make such payments and deliveries which the Clearing Participant determines are the same as those received by the Clearing Participant from the Clearing House with respect to the Cleared OTC Transactions to the Client as are agreed between the Clearing Participant and the Client from time to time. The Client agrees that the payment and delivery obligations of the Clearing Participant to the Client with respect to the Cleared OTC Transactions are limited by, and are contingent on, the actual performance or payment by the Clearing

House in relation to the Cleared OTC Transactions. However, for this purpose, amounts which would have been paid or delivered to the Clearing Participant but for netting or set-off conducted in accordance with the Clearing House Rules, or which are paid or delivered directly by the Clearing House to the Client, are taken to have been paid or delivered.

The timing, form and amount of these payments and deliveries may be agreed between the Clearing Participant and the Client from time to time.

## 5.2 Collateral

*This clause 5.2 only applies if the Details specify that the "Collateral" provision is applicable.*

The Client agrees that the Clearing Participant may, at any time, call (orally or in writing) the Client for payment or delivery of collateral (which may be in such form as is agreed between the parties from time to time) of such amount or value as the Clearing Participant in its sole discretion considers necessary to protect itself from its obligations and liabilities to the Clearing House which have been incurred, or which may or will be incurred, by entering into, holding and dealing with Cleared OTC Transactions on behalf of the Client. Without limitation, the amount of collateral so called for may be more than the amount of initial margin and variation margin then currently required by the Clearing House with respect to the Cleared OTC Transactions.

Unless otherwise agreed between the parties, all collateral provided by the Client in accordance with this clause is absolutely transferred to the Clearing Participant, free and clear of any encumbrances or interests of the Client or any other person.

The Clearing Participant agrees to record the amount of collateral which has been provided to it by the Client in accordance with this clause. The Clearing Participant may reduce the amount of collateral so recorded by any amount which the Clearing Participant pays or delivers to the Clearing House in respect of Cleared OTC Transactions (except to the extent of any separate payment or delivery received by the Clearing Participant from the Client with respect to such payment or delivery) or in discharge of any obligation which the Client owes to the Clearing Participant with respect to the Cleared OTC Transactions (except to the extent of any separate payment or delivery received by the Clearing Participant from Client with respect to such payment or delivery). However, the

Clearing Participant has no obligation to use the actual collateral provided by the Client to satisfy the Clearing Participant's obligations to the Clearing House with respect to the Cleared OTC Transactions.

If the Clearing Participant determines that the amount of collateral recorded for the Client by the Clearing Participant is more than the Clearing Participant requires then the Clearing Participant agrees to notify the Client and the Client may request to be paid or delivered the excess amount in collateral which is equivalent to that which it provided to the Clearing Participant. The amount of collateral recorded by the Clearing Participant for the Client is to be reduced by the amount of equivalent collateral returned to the Client.

Without limiting any rights of the Clearing Participant under the Client Agreement, other agreements or applicable law, if a Close-out Date has been designated in accordance with this Supplement then the Clearing Participant is to include in the calculation of the Valuation Amount the Clearing Participant's determination of the value (as a negative number) of the remaining amount of collateral which has been recorded by the Clearing Participant for the Client (without duplicating any part of such value which has already been included in the calculation of the Valuation Amount).

---

## 6 Default Management

### 6.1 Termination

If the Client Agreement:

- (a) is a Futures Client Agreement and the Clearing Participant has closed-out or terminated some or all of the Cleared OTC Transactions (or the obligations between the Client and Clearing Participant with respect to them) due to the occurrence of a default, event of default, or similar condition or event; or
- (b) is an OTC Client Agreement and the Clearing Participant has designated an Early Termination Date in respect of the Clearing Supplement Transaction,

(the date of occurrence of which is "**Close-out Date**") in accordance with the applicable Client Agreement then neither the Client nor the Clearing Participant needs to make any further payments or deliveries to each other with respect to those Cleared OTC Transactions or the Clearing Supplement Transaction (as

applicable) under the Client Agreement or this Supplement (including in relation to margin or collateral and the obligations owing under clause 5 (Cleared OTC Transactions)). Instead, the Clearing Participant is to calculate a Valuation Amount with respect to them in accordance with clause 6.3 (Valuation Amount). However, this does not affect the obligations of either the Client or the Clearing Participant owed to any other person in connection with the Cleared OTC Transactions including the Clearing House.

## 6.2 Default Management Transactions

If a Close-out Date has occurred, the Clearing Participant is entitled to enter into such transactions (“**Default Management Transactions**”) which it considers will terminate, close-out, offset, hedge, reduce the risk of, transfer, or liquidate all or part of its exposures in connection with the Cleared OTC Transactions (including with respect to transactions which already have been entered into in order to hedge or reduce the risk in connection with Cleared OTC Transactions).

In conducting these activities, the Clearing Participant agrees to act in good faith, in a commercially reasonable manner and in compliance with the Clearing House Rules and applicable law.

Without limiting the other rights of the Clearing Participant, the Clearing Participant is entitled, and irrevocably authorised, to request that the Clearing House transfers the Cleared OTC Transactions (and any associated margin or collateral) to the House Clearing Account of the Clearing Participant. If this occurs, then references in this clause 6 (Default Management) to the Cleared OTC Transactions are taken to include the OTC Transactions which have been so transferred to the House Clearing Account of the Clearing Participant even though they are no longer held in the Clearing Participant’s Client Clearing Account.

## 6.3 Valuation Amount

The **Valuation Amount** is the net sum of:

- (a) the aggregate amount of trading losses incurred (expressed as a positive number) and trading gains realised (expressed as a negative number), by the Clearing Participant in connection with the Default Management Transactions; and
- (b) to the extent not covered by the calculation in paragraph (a), the valuations of the Cleared OTC

Transactions as of the Close-out Date taking into account their terms, including any payments or deliveries which would have been required under them after that date (including, without limitation, with respect to margin), and any option rights in relation to them. For this purpose, the Clearing Participant may consider:

- (i) relevant quotations (firm or indicative) and relevant market data supplied by one or more third parties (including, without limitation, relevant prices and other market data provided by the Clearing House); or
- (ii) such quotations and market data from internal sources (including, without limitation, pricing or other valuation models) which are, at that time, used by the Clearing Participant in the regular course of its business for the valuation of similar transactions.

However, the Clearing Participant must consider quotations and market data in accordance with (i) unless it reasonably believes in good faith that they are not readily available, or that a consideration of them would not produce a commercially reasonable result; and

- (c) to the extent not covered by the calculations in (a) or (b), with respect to each Cleared OTC Transaction, all amounts which became due and which remain unpaid by the Client to the Clearing Participant on or before the Close-out Date; and
- (d) all reasonable, documented, out-of-pocket expenses and any costs of funding that the Clearing Participant or its Related Bodies Corporate incur in connection with any Default Management Transactions.

The determination of the Valuation Amount is to be made without duplicating amounts (if any) calculated with respect to the Cleared OTC Transactions under the Client Agreement. The Clearing Participant agrees to notify the Client of its calculation of the Valuation Amount as soon as practicable after making those calculations.

## 6.4 Payment

If the Valuation Amount:

- (a) is a positive number then it is owing by the Client to the Clearing Participant; and
- (b) is a negative number then its absolute value is owing by the Clearing Participant to the Client,

and, subject to clause 6.5 (Netting under Client Agreement), this amount is payable in accordance with the Client Agreement by the party which owes it on the day on which the Clearing Participant notifies the Client of the Valuation Amount.

## 6.5 Netting under Client Agreement

If the Client Agreement is a Futures Client Agreement then the Clearing Participant may include the Valuation Amount in any netting or set-off which it conducts under the Futures Client Agreement or applicable law.

If the Client Agreement is an OTC Client Agreement then, in determining the Early Termination Amount with respect to the designated Early Termination Date under the OTC Client Agreement, the Valuation Amount is the Close-out Amount in respect of the Clearing Supplement Transaction.

To the extent that a Valuation Amount is validly included in the netting or set-off conducted under the Client Agreement in accordance with this clause then the payment required under clause 6.4 (Payment) is not required to be made.

---

## 7 Limitation of liability

*This clause only applies if the Details specify that the "Limitation of liability" provision is applicable.*

The Client acknowledges and agrees that the Clearing Participant and its Related Bodies Corporate (together the "**Protected Parties**") will have no liability (directly or indirectly, in tort, contract or otherwise) to the Client or any other person in respect of any loss, claim, cost, expense, damage, judgment (including interest), tax, fee (including legal fees), charge, settlement amounts or enforcement costs ("**Losses**") arising out of, or in connection with:

- (a) the Clearing House's performance or non-performance (as the case may be) or the Clearing House's

insolvency, administration, receivership or liquidation;

- (b) the failure in any respect (including malfunction, delay or breakdown) of any electronic facility, trade repository system or other platform used by the Clearing House or the Clearing Participant in connection with Cleared OTC Transactions; or
- (c) any action or inaction taken or not taken (as the case may be) by the Protected Parties in complying with the Clearing House Rules or applicable law in relation to a Cleared OTC Transaction.

However, the parties acknowledge and agree that no Protected Party will be relieved of liability by this clause 7 to the extent that the Losses were caused by the fraud, wilful misconduct, bad faith or negligence of a Protected Party.

---

## 8 Indemnity

*This clause only applies if the Details specify that the "Indemnity" provision is applicable.*

### 8.1 Indemnity

The Client agrees to indemnify and hold harmless the Clearing Participant and its Related Bodies Corporate (together the "**Protected Parties**") for any loss, claim, cost, expense, damage, judgment (including interest), tax, fee (including legal fees), charge, settlement amounts or enforcement costs ("**Losses**") incurred by the Protected Party arising out of, or in connection with, a Cleared OTC Transaction resulting from:

- (a) any breach of the Client Agreement, this Supplement, a Cleared OTC Transaction or the Clearing House Rules by the Client;
- (b) any breach of the Clearing House Rules by the Protected Party to the extent that such breach was caused by any action or inaction on the part of the Client or its Related Bodies Corporate; or
- (c) any action or inaction by the Protected Party which it took or failed to take (as the case may be) in reliance on a representation made by the Client that it believes on reasonable grounds was made by the Client or its Related Bodies Corporate

(or, if relevant, their authorised agent which, to avoid doubt, may include its professional advisors).

## 8.2 Continuing obligation

The indemnity in this clause 8 (Indemnity) is a continuing obligation independent of the Client's other obligations under the Client Agreement, this Supplement and each Cleared OTC Transaction and continues after any of those ends. A Protected Party does not need to incur expense or make payment before enforcing a right of indemnity under this clause 8 (Indemnity).

## 8.3 Other rights not prejudiced

The parties agree that:

- (a) the indemnity in this clause 8 (Indemnity) is in addition, and without prejudice, to any other rights that a Protected Party may have against the Client under this Supplement, the Client Agreement or a Cleared OTC Transaction (or any other relevant agreement between them); and
- (b) any amount calculated under clause 8.1 (Indemnity) will be calculated without duplication of any amount calculated under any other right referred to in paragraph (a).

---

## 9 General

### 9.1 Governing law

This Supplement is governed by the same law as that which governs the Client Agreement.

### 9.2 No consequential loss

If one party breaches its obligations under this Supplement, the other party cannot recover any loss or damage resulting from the breach which may not fairly and reasonably be considered to arise naturally or in the usual course of things from that breach. However, this does not affect the calculation of, or obligation to pay, amounts under clause 6 (Default Management).

### 9.3 Exercise of rights

The rights and remedies of a party under this Supplement are:

- (a) in addition to other rights and remedies given by law independently of this Supplement; and
- (b) not affected by anything which might otherwise affect them at law.

If a party does not exercise a right or remedy under this Supplement fully or at a given time, the party may still exercise it later.

A party's rights and remedies under this Supplement may be exercised even if this involves a conflict of duty or if the party has a personal interest in their exercise.

## 9.4 Variation and waiver

A provision of this Supplement, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

However, a provision of these Terms may be varied by the Details, which prevail over these Terms to the extent of any inconsistency.

## 9.5 Interpretation

Unless the contrary intention appears, in this Supplement:

- (a) headings are for convenience only and do not affect the interpretation of this agreement; and
- (b) a reference to a time of day is a reference to Sydney time; and
- (c) the singular includes the plural and vice versa; and
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions; and
- (e) a reference to the word "law" includes common law, principles of equity and legislation (including regulations); and
- (f) a reference to any thing (including an amount) is a reference to the whole and each part of it; and
- (g) a reference to a document or an agreement (including the Details) includes the document or agreement as varied, novated, supplemented, extended, replaced or restated.

# ASX Cleared Derivatives Supplement

## Details

---

<b>Clearing Participant</b>	<b>Name</b>	<i>[insert]</i>
	<b>ABN/ACN/ARBN</b>	<i>[insert]</i>

---

<b>Client</b>	<b>Name</b>	<i>[insert]</i>
	<b>ABN/ACN/ARBN</b>	<i>[insert]</i>

---

<b>Client Agreement</b>	<i>[Insert description of agreement]</i>	
Type of Client Agreement	<i>[Futures Client Agreement][OTC Client Agreement]</i>	
Defined term which includes Cleared OTC Transactions	<i>[No further specification needed][relevant term from Client Agreement to be inserted]</i>	
Provisions which do not apply	<i>[None][relevant provisions from Client Agreement to be inserted]</i>	
Incorporated minimum terms	<i>[None][The minimum terms set out in Operating Rule 4.14(j) (excluding (iii), (iv) and (v))]</i>	

---

<b>Optional provisions</b>	
Collateral	<i>[Applicable][Not applicable].</i>
Limitation of liability	<i>[Applicable][Not applicable].</i>
Indemnity	<i>[Applicable][Not applicable].</i>

---

<b>Additional provisions</b>	<i>[Not Applicable][to be inserted]</i>
	<i>[The parties agree that it is an Additional Termination Event under the OTC Client Agreement if the Clearing Participant is declared to be in Default in accordance with the Clearing House Rules. For the purpose of this Additional Termination Event, the Clearing Participant is the sole Affected Party.]<sup>1</sup></i>
	<i>[The parties agree that for the purposes of the OTC Client Agreement, any condition precedent to the obligations of the Clearing Participant under the OTC Client Agreement with respect to the Clearing Supplement Transaction does not apply.]<sup>2</sup></i>

---

<sup>1</sup> This provision may be considered by the parties if it is agreed that the Client should be able to close-out uncleared transactions under the OTC Client Agreement (but not this Supplement) if the Clearing Participant is declared to be in Default under the Clearing House Rules.

<sup>2</sup> This provision may be considered by the parties if it is agreed that provision in clause 2.3(b) of this Supplement should apply to both the Client and the Clearing Participant.

---

[The parties agree that:

- (a) the reference to “Additional Representation” in clause 2.3(c) of this Supplement is taken to be a reference to an additional representation given by the relevant party under the OTC Client Agreement; and
- (b) The second paragraph of clause 6.5 (Netting) of this Supplement is replaced with the following:

“If the Client Agreement is an OTC Client Agreement and Market Quotation is the applicable payment measure, then following the designation of an Early Termination Date in respect of the Clearing Supplement Transaction it is agreed that Market Quotation is to be taken to not produce a commercially reasonable result and, subject to the next paragraph, Loss is to be the applicable payment measure in respect of the Clearing Supplement Transaction.

If Loss is, or is taken to be, the applicable payment measure then the Valuation Amount is to be included in “Loss” in respect of the Clearing Supplement Transaction, together with any Unpaid Amounts which have not already been included in this calculation.”<sup>3</sup>

---

<sup>3</sup> This provision may be considered by the parties if the Client Agreement is a 1992 ISDA Master Agreement instead of a 2002 ISDA Master Agreement.