



# ELECTRONIC TRADING TERMS .

**VERSION DATE: 30 October 2023** (replacing version named Electronic Trading User Agreement)

**Parties.** Westpac Banking Corporation, ABN 33 007 457 141, AFSL 233714 ('**Westpac**') with registered office at 275 Kent Street, Sydney, NSW 2000, Australia; and Customer.

**Recitals.**

1. The Customer wishes to request Financial Instrument Prices or generate Orders for Financial Instrument transactions with Westpac through an ECN, API, Digital Platform or other form of electronic connection;
2. Westpac has agreed to provide the Customer with the Service;
3. Westpac and the Customer have agreed to the terms set out in this agreement ('**Agreement**') governing the provision and use of the Service.

**Operative provisions.**

In consideration of Westpac providing the Service to the Customer, the Customer and Westpac agree to the terms of this Agreement as follows. The Customer accepts the terms of this Agreement by using the Service following the receipt of this Agreement.

**1. Definitions and interpretation.**

**1.1. Definitions.**

**Affiliate** means in relation to either party any subsidiary undertaking or parent undertaking or any subsidiary undertaking of any such parent undertaking and, in relation to Westpac, any Service Provider.

**Algo** means any of the algorithmic execution facilities offered by Westpac from time to time for the handling of Orders.

**API** means application programming interface.

**Applicable Laws** means all applicable provisions of laws and regulations, codes, standards, customs or practices, including all relevant rules of government agencies, self-regulatory organisations, financial market, exchange, clearing house, clearing and settlement facility, or other organisation or market involved in the conclusion, execution or settlement of transactions, that apply to the Parties and the Financial Instrument transactions contemplated by this Agreement.

**Approved Purpose** means to price and/or initiate Orders and Trade Requests, including by Algo, for Financial Instruments transactions.

**Authorised Users** means any officers, employees, agents, related parties and associates of the Customer who are authorised by the Customer to access the Service and submit Orders, including via Algo, and Trade Requests on behalf of the Customer.

**Business Day** means a day other than Saturday or Sunday, in which commercial banks are open for business (including dealings in foreign exchange and foreign exchange deposits) in London/New York and Sydney.

**Confidential Information** means information which is or has been disclosed by a party or any of its Affiliates or external advisers ('**Disclosing Party**') to the other party or any of its Affiliates or external advisers ('**Receiving Party**') including, but not limited to, financial, business, proprietary or technical information relating to the Disclosing Party and any information of a confidential nature (whether or not expressly marked as confidential); but does not include:

- (a) information which was already in the Receiving Party's possession without restriction prior to receipt from the Disclosing Party pursuant to this Agreement;
- (b) information which is obtained by the Receiving Party from a third party who (insofar as is known to that Receiving Party) is not prohibited from transmitting the information to the Receiving Party by any contractual, legal, or fiduciary agreement;
- (c) information which is or becomes publicly available through no wrongful act of the Receiving Party; or
- (d) information which is independently developed by the Receiving Party, without the use of or reference to any Confidential Information of the Disclosing Party.

**Confirmation** means a confirmation sent, via Electronic Communication or otherwise, by Westpac to the Customer in accordance with the relevant Trading Agreement (if applicable) detailing the commercial terms of the executed transaction.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Customer** means the user of Westpac's Service.

**Digital Platform** means any electronic platform Westpac makes available for access to the Service.

**ECN** means any electronic network or platform approved by Westpac from time to time.

**ECN Provider** means the provider of any ECN approved by Westpac from time to time.

**Electronic Communication** means any notice or instruction given by telephone, facsimile transmission, electronic mail, FIX, SWIFT instruction or electronic data exchange (including over the internet or any other electronic communication approved by Westpac from time to time).

**Exchange Rates** means the indicative rates quoted by Westpac for the purchase of one currency and the simultaneous sale of another currency.

**Financial Instrument** means any over-the-counter forward, swap, debt instrument (including, without limitation, debt security, bond, deposit, note) futures contract, equity security, option on equity securities, option on indices, option on futures contracts, option on over-the-counter swaps, foreign exchange (FX) product (including, without limitation, value today or tomorrow FX, spot FX and forward FX), commodity or any other product traded in the financial markets or requested or ordered through the Service from time to time.

**Financial Instrument Price** means the indicative price or prices quoted by Westpac, whether expressed as an Exchange Rate, Streaming Rate or otherwise, for a particular Financial Instrument.

**Force Majeure** means any cause beyond a party's reasonable control including, but not limited to, acts of God, war, fire, flood or other accident, strike, lockouts, delays in transport, material shortages, power outages or any governmental restrictions or prohibitions.

**FIX** means the Financial Information eXchange Protocol messaging standard owned and maintained by FIX Protocol, Ltd.

**Limits** means any order size, position size, market value, currency, or similar trading or credit limits imposed on the Customer in Westpac's absolute discretion.

**Loss** includes, without limitation, any liability, obligation, compensation, fine, charge, payment, claims, damages, fees, taxes, duties, penalties, interest, cost, or expense (including any reasonable legal costs and expenses), judgment, consequential, punitive, special, direct or indirect loss (including loss of profits and revenue).

**Order** means an Electronic Communication of a request or an offer from the Customer, other than an Trade Request, and received by Westpac in connection with the Service to enter into a Financial Instrument transaction with Westpac in accordance with parameters specified by Customer in the Order or Algo, as the case may be.

**Related Body Corporate** has the meaning given to it by the Corporations Act 2001.

**Security Code** means any password or other security, access or identification code provided by Westpac to the Customer in connection with the Service from time to time.

**Service** means any service provided by Westpac either through the ECN, directly to the Customer or via any Digital Platform through which Westpac makes available Algos, Financial Instrument Prices, requests for quotes, and such other products or services available from time to time.

**Service Provider** means a person engaged by Westpac to do something on Westpac's behalf (for example, a mailing house, data processor or settlement agent).

**Streaming Rates** means Financial Instrument Prices quoted by Westpac through the ECN, Digital Platform from time to time or other form of electronic connection.

**Trading Agreement** means any give up agreement, terms of business, prime brokerage agreement, 1992 or 2002 ISDA Master Agreement, AFMA Master Agreement for Foreign Currency Transactions, International Foreign Exchange Master Agreement (IFEMA), a Westpac Master Agreement for Foreign Currency and Derivative Transactions or any other master agreement, or any other similar agreement, with Westpac (and any confirmations related to any of the aforementioned agreements) which governs Financial Instrument transactions between the Parties.

**Trade Request** means an Electronic Communication of a request or offer from the Customer, other than an Order, and received by Westpac in connection with the Service to enter into a Financial Instrument transaction with Westpac in response to a Streaming Rate or request for Financial Instrument Price provided via the Service to the Customer.

**Westpac's website** means [www.westpac.com.au](http://www.westpac.com.au).



## 1.2. Interpretation.

Headings are for convenience only and do not affect interpretation.

In this Agreement, the following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of the foregoing;
- (d) a reference to a clause or schedule is to a clause or schedule of this Agreement;
- (e) a reference to a party to this Agreement includes the party's successors, permitted substitutes and permitted assigns of that party;
- (f) a reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) a reference to an agreement is to the Agreement as amended, novated, supplemented or replaced from time to time;
- (h) if any example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (i) an expression defined anywhere in this Agreement has the same meaning throughout the Agreement;
- (j) if any obligation of a party under this Agreement is due on a day which is not a Business Day, the due date will be the next Business Day; and
- (k) all attachments, annexures and schedules to this Agreement form a part of the Agreement.

## 2. Parties' obligations.

### 2.1. 2.1 Westpac's obligations.

Subject to the terms of this Agreement, Westpac may do one or more of the following:

- (a) subject to clauses 2.3, 3.4 and 5, provide the Customer with access to the Service;
- (b) supply Financial Instrument Prices to the Customer upon request from the Customer;
- (c) on receipt of an Order from the Customer, attempt to execute the Order submitted by the Customer or using an Algo, as

requested by the Customer, subject to clause 6.2 and 6.4-6.6.; and

- (d) if Westpac executes the Order (in whole or in part) or accepts the Trade Request, to deliver a Confirmation to the Customer. The failure by Westpac to provide a timely Confirmation to the Customer shall not prejudice or invalidate the terms of any Financial Instrument transaction.

### 2.2. Customer's obligations.

Subject to the terms of this Agreement, the Customer agrees to:

- (a) use the Service only for the Approved Purpose and in compliance with the terms of this Agreement and all Applicable Laws;
- (b) for itself and if the Customer is an agent acting on behalf of a principal in relation to the use of the Service each principal the Customer is acting on behalf, pay to Westpac all commissions, fees, charges and expenses in connection with the use of the Service (including any Algo) as may be agreed with Westpac from time to time, such payment to be made within ten (10) Business Days of notification by Westpac;
- (c) for itself and if the Customer is an agent acting on behalf of a principal in relation to the use of the Service each principal the Customer is acting on behalf, to meet all obligations in respect of any Financial Instrument transactions entered into via use of the Service;
- (d) only use the Service for the Customer's own use and benefit, unless the Customer has advised Westpac to the contrary in writing and identified each beneficial owner on whose behalf the Customer is acting, and Westpac has provided consent in writing;
- (e) employ commercially appropriate security procedures to ensure the security of its information technology systems and to prevent unauthorised access to and use of the Service;
- (f) promptly notify Westpac upon becoming aware of any breach of security relating to the Service or any unauthorised use of the Service;
- (g) comply with any applicable Limits advised to the Customer from time to time;
- (h) provide Westpac with any information and assistance Westpac reasonably considers necessary to comply with Applicable Law or any request from any applicable authority; and,
- (i) comply with other reasonable instructions notified to the Customer by Westpac relating to the use of the Service.



### 2.3. Customer infrastructure.

Notwithstanding any other provision of this Agreement, the Customer agrees that it is solely responsible for the provision, at its own expense, directly or via a third party, of the technical, logistical, telecommunications and hardware (including networks) infrastructure reasonably required to access the Service, any Digital Platform and any ECN and give effect to this Agreement.

## 3. Representations and warranties.

### 3.1. Westpac representations and Warranties.

Westpac represents that:

- (a) it shall use commercially reasonable efforts to provide the Service without introducing errors or otherwise corrupting data, subject to the circumstances provided for in Clauses 4.1(e) and (g); and
- (b) it has and will continue to hold any applicable licenses, authorisations, permits, consents or approvals required (including but not limited to regulatory approval) to operate the Service and perform its obligations in accordance with this Agreement.

### 3.2. Customer representations and warranties.

The Customer represents and warrants:

- (a) for itself, and if the Customer is an agent acting on behalf of a principal in relation to the use of the Service, each principal the Customer is acting on behalf, that it is not bankrupt or subject to any insolvency proceedings and it is able to pay its debts including meeting any obligations in respect of Financial Instruments transactions entered into via the Service, as and when they fall due;
- (b) for itself, and if the Customer is an agent acting on behalf of a principal in relation to the use of the Service, each principal the Customer is acting on behalf, that it has full legal capacity and power and has obtained any necessary authorities or authorisations to enter into and carry out the Financial Instrument transactions entered into via the Service;
- (c) it has full legal capacity and power and has obtained any necessary authorities or authorisations to enter into this Agreement and its entry into this Agreement and use of the Service (including the placing of Orders and Trade Requests and use of Algos) is in

- compliance with all Applicable Laws, agreements binding on it, and its constitutive documentation;
- (d) it will rely upon its own skill and judgment when placing any Order or Trade Request;
- (e) it will at all times meet all commitments arising from using the Service;
- (f) only Authorised Users will have access to the Service and that it will take all reasonable steps to ensure that any Authorised Users will only use the Service as permitted under this Agreement in accordance with Applicable Laws applicable to the Authorised User, the Customer and/or the transactions; and
- (g) it will not use the Service in a manner that would cause any party to be a party to any unlawful act or transaction under any Applicable Law.

3.3. Each of the Representations and Warranties made by the Parties in this clause 3 are repeated continuously throughout the term of this Agreement.

### 3.4. Disclaimer of warranties.

Westpac makes no warranty that the Service will be uninterrupted, error free or available at all times, or that the Service will be compatible with, or operate without interruption on, any equipment or software used by the Customer. Save to the extent that any statutory warranties under Applicable Law relevant to the Service cannot be excluded, Westpac disclaims and excludes all warranties, either express or implied, as to quality, performance, or otherwise (including as to currency or availability) with respect to the Service, any Digital Platform, any ECN Provider or ECN.

## 4. Customer acknowledgements.

- 4.1. The Customer acknowledges and agrees that:
- (a) Westpac provides the Service "as is, as available" and the Customer is responsible for determining for itself if it should have alternative arrangements to the Service and if it so determines, putting in place such arrangements.
  - (b) Westpac is not acting as agent, adviser, or fiduciary in relation to the provision of the Service and assumes no fiduciary obligations to the Customer.
  - (c) All price, quantity and other data sent to the Customer is sent for information purposes



- only and does not constitute an offer of any product or Financial Instrument to which such data relates and Financial Instrument Prices are indicative only and as such a binding transaction occurs in accordance with clause 6.4;
- (d) Westpac makes no representations regarding any ECN Provider, any ECN or software or infrastructure provider or their performance or suitability;
  - (e) it understands and accepts the risks of engaging in Financial Instrument and algorithmic trading, uses the Service at its own risk and has concluded that the Service is suitable for its needs;
  - (f) that Westpac publishes material relevant to, and which explains, the operation of the Service on Westpac's website and may send material relevant to the operation of the Service to the Customer via Electronic Communication, and the Customer is responsible for familiarising itself with such material and monitoring Westpac's website for updates to such material from time to time.
  - (g) information may be supplied through or in connection with the Service by persons not controlled by Westpac ('Information Provider') and Westpac does not guarantee the timeliness, sequence, accuracy or completeness of any information provided by an Information Provider;
  - (h) it will use the Service only for its own use and will not on-sell any information nor replicate, alter, commercialise, disclose or make available such information to any person without the express written consent of Westpac;
  - (i) Westpac shall be entitled to rely on and the Customer agrees to be bound by any Electronic Communication which Westpac reasonably considers to have been sent by the Customer, without any inquiry on Westpac's part as to the authority or identity of the purported sender of that Electronic Communication;
  - (j) the Customer has made its own investigations as to the merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), of the Service, ECN Provider and ECN, software or, telecommunications and hardware (including networks) infrastructure used to access the Service;
  - (k) if applicable, transactions in Financial Instruments are governed by the applicable Trading Agreement; and,
- (l) it is responsible for verifying the accuracy of the transaction details in the Confirmation. If the Customer believes the Confirmation contains an error, it must promptly advise Westpac in writing.
- 4.2.** Each of the acknowledgements made by the Customer in clause 4.1 is repeated continuously throughout the term of this Agreement.
- 5. Availability of the service.**
- 5.1.** The service is provided "as is, as available".
- 5.2.** Westpac may suspend, change or withdraw the Customer's or an Authorised Person's access to or use of the Service at any time in Westpac's sole discretion.
- 5.3.** The Customer will report any suspected failure of the Service to Westpac as soon as reasonably possible.
- 6. Orders and Trade Requests.**
- 6.1.** Orders and Trade Requests sent to Westpac through the Service constitute an irrevocable offer to transact with Westpac based on the parameters specified in the Order or Trade Request, as the case may be.
- 6.2.** Notwithstanding any other provision of this Agreement, Westpac has the right to reject any Order (including Algo) or Trade Request in its sole discretion.
- 6.3.** The Customer may:
- (a) place an Order or submit a Trade Request with Westpac by sending an Electronic Communication to Westpac, whether via ECN, Digital Platform or other means as agreed with Westpac, with details of the Order or Trade Request; or
  - (b) instruct Westpac to execute (an) Order(s) via an Algo.
- 6.4.** If:
- (a) an Order is accepted for execution by Westpac, this indicates that Westpac is prepared to attempt to execute the Order (in whole or in part unless otherwise specified) in accordance with the instructions contained in the Order and/or in accordance with the parameters of the Algo requested by the Customer, however (i) there is no guarantee that any Order will result in a binding Financial Instrument transaction (in whole or in part) and (ii) a binding Financial



Instrument transaction (in whole or in part) is not concluded unless the Order is executed (whether in part or whole) by Westpac subject to, if applicable, the rules of the relevant ECN or API regarding the formation of a Financial Instrument transaction between Westpac and the Customer. Executed Orders cannot be cancelled or rescinded by the Customer;

- (b) a Trade Request is submitted by Customer to Westpac, a binding Financial Instrument transaction is not concluded unless Westpac accepts the Trade Request subject to, if applicable, the rules of the relevant ECN or API regarding the formation of a Financial Instrument transaction between Westpac and the Customer. A Trade Request which has been accepted by Westpac cannot be cancelled or rescinded by the Customer.

**6.5.** The Customer may request Westpac to cancel or discontinue any unfilled Order or uncompleted Algo. Such requests will be handled on a best endeavours basis, but Customer acknowledges it may not be possible to cancel the remaining transactions being executed by an Algo. Any request to cancel or discontinue any Order or Algo shall not be effective until the Customer receives an acknowledgement from Westpac that the Order or Algo has been cancelled or discontinued and the Customer will be responsible for any Order executed or partially filled prior to the Customer's receipt of such acknowledgement. Where applicable, the Customer will be liable for the amount of the fees, commissions, charges and expenses payable in respect of that portion of the Order or Algo that is filled.

**6.6.** Without limiting Clause 6.2, Westpac may, acting in its sole discretion, impose Limits on the Customer or suspend or cancel an Order or Algo prior to it being filled or completed, respectively.

**6.7.** If Westpac refuses an Order or Trade Request, or if an Order cannot be completed in accordance with the Customer's instructions, Westpac will send the Customer an Electronic Communication notifying the Customer of the refusal or Order failure.

**6.8.** Customer responsibility for Orders and Trade Requests:

- (a) All Orders and Trade Requests received by Westpac and instructions given to Westpac from the Customer are the

Customer's sole responsibility and the Customer takes responsibility for all acts or omissions of any persons using the Service on behalf of the Customer, whether or not such person actually is an Authorised User, or that Orders or Trade Requests may have been submitted in error, or that the Order or Trade Request data is inaccurate or incomplete when submitted;

- (b) the Customer is solely responsible for the accurate placement of Orders and Trade Requests as such Orders or Trade Requests may be accepted by Westpac without further instructions from the Customer and without any obligation on Westpac to check the information contained in an Order or Trade Request as the case may be.

**7.** Each party agrees to take all reasonable steps to mitigate any Loss suffered by them in relation to the Service or this Agreement.

**8. Confidential information.**

**8.1. Non-disclosure.**

Each party undertakes not to disclose any Confidential Information without the other party's written consent to any person other than that party's employees, agents, contractors, Affiliates, legal advisers, service suppliers, auditors or other representatives to the extent necessary for the performance of its obligations and the exercise of its rights under this Agreement.

**8.2. Disclosure required by law.**

Each party agrees that Confidential Information may be disclosed if required by Applicable Laws or in connection with any legal proceedings commenced in relation to this Agreement, provided that the Receiving Party provides prompt advance notice thereof to the Disclosing Party (unless legally prohibited) to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

**8.3. Recording.**

The Customer consents to the recording, retention and use by Westpac of all information and data that the Client communicates during its use of the Service or by way of Electronic Communication and the transmission of the same to Westpac's branches and Service Providers for execution, processing, database



maintenance, recordkeeping or any other use in accordance with customary practices and procedures in the relevant jurisdiction.

#### **8.4. Injunctive relief.**

Each party acknowledges that damages may not be a sufficient remedy for any breach of this clause 8. In addition to any other remedies available at law or in equity, the Parties are entitled to seek specific performance or injunctive relief, as appropriate, as a remedy for any breach of this Agreement by the other party.

#### **9. Variation.**

Westpac may vary the Agreement at any time. If Westpac does vary the Agreement, it will provide the Customer with (30) thirty calendar days' prior notice. By using the Service after the end of the notice period, the Customer confirms its acceptance of the Agreement as varied.

**9.1.** Westpac may make a variation of this Agreement without any prior notice where such variation is (as determined by Westpac acting reasonably) necessary to comply with Applicable Laws. Westpac will notify Customer as soon as reasonably practicable after such variation is made.

**9.2.** Subject to 9.2, no variation of this agreement is effective unless it is in writing.

#### **10. Termination.**

**10.1.** Either party may terminate this Agreement by giving not less than seven (7) Business Days' notice in writing to the other party, subject to all outstanding obligations under the Agreement and any relevant Financial Instrument transactions being discharged.

**10.2.** Termination will not affect any rights or obligations accrued prior to termination.

**10.3.** Clauses 3, 4, 7, 8, 10, 12 and 13 survive any termination or expiration of this Agreement for whatever reason.

#### **11. Force majeure.**

Other than obligations in relation to the payment of monies accruing prior to the Force Majeure event, any delay in or failure of performance by either party under this Agreement due to Force

Majeure will not be considered a breach of this Agreement and the party affected by the Force Majeure will not be liable for any such delay or failure to perform its obligations. If any such delay or failure by an affected party to perform its obligations due to Force Majeure exceeds five (5) Business Days, the non-affected party may immediately terminate the Agreement by providing written notice to the affected party.

#### **12. Assignment and novation.**

**12.1.** Subject to 12.2, a party may not assign or novate this or any part, right or remedy under this Agreement to another party without the prior written consent of the other party.

**12.2.** Westpac may assign and novate this or any part of this Agreement to a Related Body Corporate of it and the Customer consents to such assignment and novation, provided that Westpac will only do so if either (i) it determines acting in a commercially reasonable manner that such assignment or novation will not adversely impact upon the provision of the Service or (ii) it is required to comply with an Applicable Law.

#### **13. Inconsistency.**

If applicable, transactions in Financial Instruments are governed by the Trading Agreement. In the event of any inconsistency between this Agreement and any Trading Agreement, the provisions of the latter prevail.

#### **14. Third party rights.**

**14.1.** Nothing in this Agreement creates any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

#### **15. Governing law.**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any disputes which may arise out of or in connection with this Agreement, waive any claim that such dispute has been brought in an inconvenient forum, and further waive the right to object that the court does not have jurisdiction over it.

