

Sommerville Advisory Markets is an authorised branch office and registered trading name of Agincourt Financial Limited. Agincourt Financial Limited is authorised and regulated by the Financial Services Authority. Firm identification Number 197236. The services provided to you by Somerville Advisory Markets are subject to the Terms in this document unless otherwise agreed between us in writing. By entering into any agreement with Somerville Advisory Markets you are entering into that agreement with Agincourt Financial Limited.

## Terms

### Index

<b>Heading</b>	<b>Clause Number</b>
Introduction	1
Information Disclosure	2
Warnings	3
Classification	4
Advice and Suitability	5
Tax	6
Your Account	7
Your Third Party Account	8
Agency	9
Services - General	10
Trading Hours & Communication	11
Discretionary Services	12
Charges	13
Order Execution	14
Your Responsibilities	15
Conflicts of Interest or Material Interests	16
Sommerville Advisory Markets Rights	17
-General	17.1
-Compliance with law	17.2
-Products and Services	17.3 –17.4
-Suspension of Accounts	17.5 –17.7
-Closure of Open Trades	17.8 - 17.10
-Closure of Accounts	17.11 - 17.13

-Interest and Costs	17.14 – 17.16	
Your Instructions	18	
- Authority	18.1	
- Cancellation/withdrawal of instructions	18.2	
- Right not to accept orders	18.3	
- Control of orders prior to execution	18.4	
Sommerville Advisory Markets' Protection		19
- General	19.1	
- Errors	19.2 –19.3	
-Events Outside our Control and Market Distribution Events	19.4 -19.5	
Regulatory Provisions	20	
-Money	20.1	
-Interest	20.2	
-Complaints and Disputes	20.3 –20.5	
-Compensation	20.6	
-Payments to Sommerville Advisory Markets		20.7
Representations and Warranties	21	
Data Protection	22	
Market Abuse	23	
Intellectual Property	24	
Alteration of Terms	25	
Notices	26	
Cancellation and Termination	27	
Limitation of Liability	28	
Waiver, Remedies and Enforceability	29	
Rights of Third Parties	30	
Assignment	31	
Entire Agreement	32	
Definitions	33	
Law and Jurisdiction	34	

## 1. Introduction

1.1 **These terms.** This client agreement, together with any Schedule(s), and accompanying documents (including the cover letter) as amended from time to time (the “Terms”) sets out the terms of the contract between you and us. These Terms set out the basis on which we will provide services to you. These Terms govern each Trade entered into or outstanding between us on or after 1 November 2007. These Terms supersede any previous agreement between you and us on the same subject matter. You will signify acceptance and be bound by the Terms upon using our Services. Please note: -

- You should read the Terms carefully, to make sure they contain everything you wish to form part of the Terms and do not contain anything you do not agree to. So, for example, if you have relied on anything we or our agents or other representatives have said, you need to tell us.
- You should read our Risk Warning Notice and Order Placing Policy. By opening an Account with us, you confirm that you consent to these.
- If you are an elective Professional Client you should read the notice we have given to you warning you of the protections and investor compensation rights you may lose as a consequence of your classification as an elective Professional Client.
- Words with capital letters have particular meanings. See clause 33. If anything is unclear, please call Support Services and ask for an explanation.
- If there is anything you do not understand, or if you require clarification on any matter, please contact Support Services. Please also bear in mind your right to cancel or terminate the Terms; see clause 27.

In view of the above, if you think something is missing or wrong or should be part of the Terms (but is not included) you need to tell us. However, nothing else will be part of the contract between us unless we have expressly agreed in writing that it forms part of the Terms.

1.2 **Information about us.** We Sommerville Advisory Markets (“Sommerville Advisory Markets” or “**The Firm**”) including any previous or current names or trading names including but not limited to Agincourt Portfolios and Agincourt Financial Limited are authorised and regulated by the Financial Services Authority (“**FSA**”). The FSA’s registered office is 25 The North Colonnade London E14 5HS.

1.3 **Communication with us.** You may communicate with us in writing (including fax), by email, or orally (including by telephone). See clause 11 for further details. The language of communication shall be English, and you will receive documents and other information from us in English. Our website at [www.agincourtfinancial.com](http://www.agincourtfinancial.com) contains further details about us and our services, and other information relevant to these Terms. In the event of any conflict between these terms and those terms on our website, our website will prevail.

1.4 **Applicable Regulations:** These Terms and all Trades are subject to Applicable Regulations so that:

- if there is any conflict between these Terms and any Applicable Regulations, the latter will prevail;
- nothing in these Terms shall exclude or restrict any obligations which we have to you under Applicable Regulations;
- we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations;

- all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you; and
- such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable.

1.5 **Third Party Account.** These Terms relate to the provision of the Services to you by us. However, please note that if you want to Trade and/or you want us to Trade in the course of the Services then you will need to have a Third Party Account.

## 2. Information Disclosure

2.1 Your attention is drawn to the following:

- the Risk Warning Notice;
- the Order Placing Policy.
- the Summary of the Conflicts of Interest Policy;
- the Trading Methodology;
- the Managed Account Strategies. These only apply to Discretionary Services.

## 3. Warnings

3.1 Dealing in the Products is high risk. Note in particular that: -

- in certain circumstances your losses may be unlimited;
- you can lose more than your initial deposit;
- you may be required to make payments at short notice to maintain your open positions;
- most of the Products are leveraged, volatile and of a contingent liability nature. You may become liable to make future payments (in addition to charges or margin) when any Trade fails to be completed or on the earlier closing out of your positions;
- whether you make a profit or a loss will depend on fluctuations in markets outside Sommerville Advisory Markets' control;
- debts (in relation to the Products) are legally enforceable;
- exchange rates may affect your profits or losses.

3.2 You should not Trade (or ask us to Trade in the course of the Services) unless you know and understand the features and risks of the Products concerned. In particular, it is your responsibility to make sure you understand the following, as relevant to the types of Products concerned: -

- all the risks, including how potential losses can accrue;
- all terminology;
- how to open and close a position;

- when you have to make payments to Sommerville Advisory Markets and/or relevant third parties;
- how profits and losses are calculated;
- how margin is calculated.

You specifically acknowledge that the Products are speculative instruments and that dealing in them may result in profits or losses. No guarantee representation or warranty is made that you will make a profit.

- 3.3 Please note that foreign currency based Trades are subject to fluctuations in exchange rates, which may have an adverse effect on the value of your Trades.
- 3.4 If you are in any doubt about the Services (including whether to open or close a position) you should take legal or other financial advice from an appropriately qualified person.
- 3.5 There are some parts of the Terms which contain particular rights of Sommerville Advisory Markets or limitations on our liability to you and which we particularly wish to draw to your attention, as follows: -
- our right to change your client categorisation; clause 4;
  - our right to be paid any monies you owe us out of any monies held in any Third Party Account upon which we are permitted to Trade; clause 13;
  - our right to suspend your Account; and our rights following suspension clause 17;
  - our right to close your Account; clauses 17 and 27;
  - our right to close or void your open Trades; clauses 18 and 19;
  - our right to change or add to the range of Products and Services; clauses 17.3 and 17.4;
  - our right to refuse to act on any instruction and/or to provide the Services; clause 18.3;
  - our right to charge interest on overdue amounts; clause 17.14- 6;
  - our rights in the case of Manifest Error; clause 19.3;
  - our rights in the case of Events Outside our Control and Market Disruption Events; clause 19.4;
  - our right to alter the Terms; clause 25.1.

#### **4. Classification**

- 4.1 Sommerville Advisory Markets and the Executing Broker where you hold your Third Party Account will classify you as a Retail Client, Professional Client or Eligible Counterparty. The greatest degree of protection is afforded to Retail Clients.
- 4.2 When your Account is opened we will notify you of your categorisation.
- 4.3 We can re-classify you and you may request a re-classification. However, in either case we will either need your written consent or we will need to enter into a written agreement with you.

If you are reclassified you may lose protections afforded by certain FSA rules. This may include, but not be limited to:

- the requirement for us to act in accordance with your best interests;
- our obligation to provide appropriate information to you before providing the services;
- the restriction on the payment or receipt by us of any inducements;
- our obligation to achieve best execution in respect of your orders;
- the requirement to implement procedures and arrangements which provide for the prompt, fair and expeditious execution of your orders;
- our obligation to ensure that all information we provide to you is fair, clear and not misleading; and
- the requirement that you receive from us adequate reports on the service provided to you.

4.4 If you have been categorised as a Professional Client or an Eligible Counterparty you are entitled to request us to re-categorise you as a client that benefits from a higher degree of protection. However, it is your responsibility to ask for this.

4.5 When considering your application, classifying and dealing with you, we rely on information you provide. If there is any material change in that information you must immediately tell us in writing (for example, change of employment, residence, address, contact details, material changes to financial status or bank/credit card details). In particular, if you are a Professional Client you are responsible for keeping Sommerville Advisory Markets informed about any change that could affect your current categorisation.

## **5. Advice and Suitability**

### **Discretionary Management Services**

5.1 To the extent that we are to provide you with Discretionary Services we will take reasonable steps to ensure that a decision to trade (in the course of Discretionary Services) is suitable for you.

### **No advice**

5.2 We deal on an execution-only basis and do not provide you with Investment Advice on the merits of particular Trades, or their taxation consequences.

5.3 In asking us to enter into any Trade, you represent that you have been solely responsible for making your own independent appraisal and investigations into the risks of the Trade. You represent that you have sufficient knowledge and experience, and market sophistication to make your own evaluation of the merits and risks of any Trade.

5.4 We give you no warrant as to the suitability of the Products traded under these Terms. We will not owe you fiduciary or similar obligations in connection to any trade or in our relations with you.

5.5 Where we do provide trading ideas, market commentary or other information:

- this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to Investment Advice;

- we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any Trade;
- such information will not be tailored to your specific investment objectives and may not be suitable for you. You are responsible for deciding whether to act on any information we give;
- the information provided to other clients may be different from information given to you; and
- information may not be consistent with our proprietary investments, or those of our Associates.

#### **Where Discretionary Services or Investment Advice is given**

- 5.6 Where we provide you with Discretionary Services or expressly agree to provide Investment Advice to you we will need to assess that a decision to trade or a personal recommendation is suitable for you. To this end, you undertake to provide to us on request all information regarding your investment objectives financial situation and, knowledge and experience, so as to enable us to provide Investment Advice that is suitable for you. This information will include, where relevant, information on the length of time for which you wish to hold the investment; your preferences regarding risk taking; your risk profile; the purposes of the investment; information on the source and extent of your regular income, assets, investments, real property and regular financial commitments; your knowledge and experience in the financial transactions to be undertaken with us. You represent and warrant that such information is and will remain complete and accurate in all material respects.
- 5.7 We are entitled to assume where you are a professional client that:
- in relation to the relevant Trades in products where Investment Advice is being provided, you have the necessary level of experience and knowledge in order to understand the risks involved in the proposed Trades; and
  - where you are not an elective professional client, also that you are able financially to bear any related investment risks consistent with your investment objectives in relation to the proposed Trades or Services.

#### **Appropriateness**

- 5.8 To the extent that we are to provide you with services other than Discretionary Services or the provision of Investment Advice (or where we have not otherwise already assessed your suitability pursuant to clause 5.6) we will consider (before we open your Account) whether the Dealing Services are appropriate for you with reference to your knowledge and experience in the relevant transactions.
- 5.9 You undertake to provide to us on request all information regarding your knowledge and experience which we require in order to assess whether our services are appropriate to you.
- 5.10 If we consider on the basis of the information received that the type of trading you wish to carry on is not appropriate for you, or if you do not provide us with any information or insufficient information, to enable us to assess appropriateness, we will warn you. If you ask us to proceed with a Trade despite being given a warning by us, we will be entitled to decline your instructions.
- 5.11 Apart from our obligations under clauses 5.6 and 5.8 we have no obligation to monitor your Trades or to assess or advise whether your Trades are appropriate or suitable for you.

## **6. Tax**

### 6.1 In relation to tax: -

- Sommerville Advisory Markets is not giving you tax advice. You are responsible for obtaining your own tax advice and for paying all tax that may be payable in respect of your Trades;
- tax treatment will depend on your individual circumstances and the tax jurisdiction that applies to you;
- tax treatment may well change in the future.

## **7. Your Account**

If we open an Account in your name, and that of someone else, you will both be responsible for that Account (jointly and severally). So, for example, if any amount is payable on your Account we can ask one of you to pay without having to ask the other. Also, we can accept any instructions (including in respect of Trades) from either of you, without having to first tell the other.

## **8. Your Third Party Account**

### 8.1 As mentioned in clause 1.5, you will need to maintain a Third Party Account to facilitate Trading. Please note: -

- you will be bound by the terms and conditions of the person with whom you open the Third Party Account;
- you will be responsible for all amounts (including losses) payable on a Third Party Account.

### 8.2 If your Third Party Account has an account number, password or other identifier used to access that Third Party Account, you will need to disclose these to us if we are to Trade on that Account. Subject to that we strongly recommend that you keep this information confidential.

## **9. Agency**

### 9.1 You act as principal and not as agent (or trustee) on behalf of someone.

### 9.2 If you want to appoint someone else to deal with us on your behalf (an Agent), you (and your proposed Agent) must complete and send to us the relevant documents which can be obtained from support services. The appointment of the Agent is subject to our consent. We can (acting reasonably) refuse consent and we will require information from the proposed Agent (e.g. evidence of identity) just as if the Agent was opening an account with us in his or her own name.

### 9.3 We do not have to monitor what your Agent does or does not do or the instructions your Agent gives. However, if you have appointed an Agent and we have reasonable concerns that he may not be acting with your authority, we can give you at least 7 days in which to confirm the appointment. If you do not confirm the appointment, we can treat the appointment as terminated and refuse to accept instructions from that Agent. We will give you notice of that.

## **10. Services - General**

### 10.1 The Services are not exclusive to you and are provided to you and other of our clients.



- 10.2 We apply the Trading Methodology, the Order Placing Policy and the Managed Account Strategies (as applicable) in the performance of the Services. We do not tailor or adapt their application to consider or take account of your personal circumstances. However, we may agree with you to follow your instructions in relation to any particular Trade; this may prevent us following the Trading Methodology, the Order Placing Policy and/or the Managed Account Strategies.
- 10.3 In providing the Services we will rely on you to provide us with the information we request and to tell us as soon as practicable if there is any material change in that information which may have an impact on the Services. This applies in particular to changes to your financial situation.
- 10.4 We will provide you with Dealing Services and/or Discretionary Services. Whether we provide Dealing Services and/or Discretionary Services will be agreed with you. You can only limit the extent of Dealing and/or Discretionary Services by agreement with us, confirmed in writing.
- 10.5 The extent to which you will be able to use the Services and/or we can supply the Services to you will depend on the Third Party Accounts you maintain.
- 10.6 We do not provide (and the Services do not include) advice and/or personal recommendations.
- 10.7 The Services will be Dealing Services save to the extent that we have agreed with you that the Services are to include or consist of Discretionary Services.
- 10.8 The following apply in relation to all Services: -
- if you request us to execute a Trade and/or to introduce you to a third party (for example a broker) for execution of a Trade we will not be responsible for and will not be taken to be providing you with any advice in relation to that Trade. We will act as your agent only and will require confirmation of your instructions. This is the case regardless of whether we provide you with Dealing or Discretionary Services. In particular we will not be liable to explain the Trade to you and our acceptance of your instruction does not constitute any approval or recommendation of the Trade;
  - the Services are provided on the basis that (subject to our obligations to you under the Terms) you are prepared to take the risk of loss arising from Trades;
  - we will only provide the Services in relation to the Products. You can only limit the range of Products in respect of which the Services are provided by written agreement with us;
  - we will not provide the Services (or any other services) in relation to or take into account any products or investments other than the Products. We will not consider or assess whether you might be able to achieve a more advantageous result by investing in securities or forms of investment other than the Products;
  - subject to any obligations to you in the course of Discretionary Services (or Dealing Services if relevant) in relation to any particular Trade, we are not responsible for monitoring your Trades;
  - subject to any obligations to you in the course of Discretionary Services, we are not responsible for opening or closing a Trade;
  - we will rely on the representations and warranties made by you, in particular in clause 21 and any made by you to us in the course of our provision of the Services;

- you accept that, whilst we will obtain reasonable information and data in order to provide the Services it is not practicable or possible for us to obtain, rely on and/or take account of all available information and data in relation to any particular matter and that the Services will be provided on the basis of the information and data we obtain and rely on, acting reasonably;
- we may, acting reasonably, rely on information, data and analysis of third parties;
- interpretations and analysis vary; you agree that we can decide the methods of interpretation and analysis to be used, provided we act reasonably, for example by adhering to professionally recognised methods. You also accept that different methodologies may lead to different or conflicting outcomes or conclusions, even when based on the same information and data;
- in the course of interpretation or analysis, or in the course of providing the Services, we may disregard or take into account such factors as we (acting reasonably) think appropriate in the circumstances, for example we may disregard any particular factor if it is not generally taken into account in the course of the interpretation or analysis then being undertaken;
- subject to the Summary of the Conflicts of Interest Policy, the Trading Methodology, the Order Placing Policy and the Managed Account Strategies, we will not generally inform you of the reasons why or processes behind our Services. If you wish to know more, please ask us and we will provide appropriate information. In this way you will better be able to assess any inherent limitations of the scope of our Services and decide how much reliance you wish to place on them.

10.9 You should not disclose to any person (other than your legal or financial advisors) any information we may provide in the course of the Services.

10.10 If we recommend, introduce or use a third party (for example a broker) to execute a Trade we will act reasonably in selecting the third party concerned but shall not be liable for any act, omission or default of any such third party (including execution of the Trade concerned and/or delivery of the relevant Product). In addition: -

- subject to our obligations to you (if any) in relation to the Trade concerned, we shall not have any liability to you in connection with that Trade and you will be responsible for ensuring the proper execution of any such Trade by such third party;
- the responsibility of sending you contract notes and statements in relation to Trades executed by any such third party will be that of the third party concerned and we will not be liable to send contract notes, statements or other reports to you. Subject to our obligations to you in the course of Discretionary Services, you are responsible for checking all such contract notes and statements.

10.11 The Services are provided to you on the basis that you are acting as principal both in relation to your dealings with us and any Trade you enter into with a third party.

## **11. Trading Hours & Communication**

11.1 The Services will be provided during Trading Hours.

11.2 We can provide Services (including confirmation of instructions) orally or by letter, telephone, fax, e-mail or other forms of communication, unless we have agreed with you that we cannot use any of those methods. If you limit the means by which we can contact you, you accept that our ability to provide the Services to you will be limited.

- 11.3 We will communicate with you at your home or e-mail address, telephone or fax number as you notify us from time to time (in writing). It is crucial that you keep us up to date and informed of these details, otherwise we will not be able to provide the Services.
- 11.4 You can contact us by any means we use to contact you.
- 11.5 Contact by telephone must generally be during Trading Hours; however, (in relation to contact by telephone) we can contact each other outside Trading Hours, if we provide the Services in relation to the Product concerned outside Trading Hours. If you do not want to be contacted by telephone outside Trading Hours you must agree that with us. If we do agree not to contact you by telephone outside Trading Hours, you accept that our ability to provide the Services to you will be restricted.

## **12. Discretionary Services (including Managed Account Strategies)**

12.1 The following apply in relation to Discretionary Services: -

- the investment approach adopted by Sommerville Advisory Markets may necessitate a high number of transactions for its Clients and resultant level of charges on your Third Party Account. See clause 13 in relation to charges;
- to the extent that we are providing Discretionary Services to you in relation to any particular Products you: -
  - appoint Agincourt Financial as your agent with full unrestricted and unconditional power and authority to Trade on your behalf and give instructions in relation to those Products. Such authority shall include power to: -
    - Trade on any Third Party Account in respect of which you have agreed we can Trade; to use funds in any such Third Party Account (including realised profits) for that purpose and to direct that funds in any such Third Party Account be used for the payment for losses, margin, fees, commission and any and all amounts payable in relation to that Third Party Account;
    - leave any Trade open as Sommerville Advisory Markets thinks fit;
    - refrain from doing anything for such period as Alecto Financial thinks fit. In particular Sommerville Advisory Markets can leave any monies un-invested for such period as it thinks fit;

Notwithstanding your appointment of Sommerville Advisory Markets as your agent, you will be treated as the client of the person with whom you have a Third Party Account for the purposes of rule 2.4.3 of the Conduct of Business Sourcebook of the FSA;

- confirm that the only limits on Sommerville Advisory Markets' authority (as referred to in the above bullet point) are those (if any) you have agreed in writing with Sommerville Advisory Markets. If we have agreed any limits in relation to losses we will use reasonable endeavours to stay within those limits but no guarantee warranty or representation is given that we will be able to restrict your losses to any agreed limits. If any limits are exceeded or in our opinion, acting reasonably, are likely to be exceeded our only obligation to you is to take reasonable steps to minimise losses above any agreed limits, for example by endeavouring to place appropriate Trades (but no guarantee warranty or representation is given that we will be able to do so within any particular timescale);

- confirm that Sommerville Advisory Markets is entitled to have access to all information relating to your Trades in relation to those Products and to be provided with copies of all related statements and contract notes. In particular you expressly authorise the release of all such information held by any third party (such as a broker or other person with whom you have a Third Party Account) to Sommerville Advisory Markets. Sommerville Advisory Markets will check all contract notes and statements received by it insofar as they relate to Trades undertaken by it in the course of Discretionary Services, but you will remain responsible for checking all other aspects of contract notes and statements;
  - confirm that Sommerville Advisory Markets is entitled to be informed of any password or other identifier used by you in relation to Trades in those Products in respect of Third Party Accounts where you have agreed with us that we can Trade on your behalf and to have access to those Third Party Accounts and all information relating to them;
  - Sommerville Advisory Markets is not obliged to notify you or obtain your consent before it does anything (or refrains from doing anything) on your behalf in the course of the Discretionary Services;
  - if you wish to limit your exposure to risk or to impose any other limitations you need to agree that in writing with us; otherwise no such restrictions will apply;
  - we provide Discretionary Services on the basis that you wish to deal in all Products and in any market, unless we have specifically agreed in writing with you that you only wish to deal in particular types of Products and/or markets and/or do not wish to deal in a particular type of Product and/or market. If we have agreed any such limits with you, then all provisions of these Terms that refer to Products and/or markets will be construed accordingly;
  - you may execute your own Trades in relation to the Products (including in relation to any Third Party Account) but you will be fully responsible for anything you do or omit to do and for any effect your Trades have on anything we have done or omitted to do. You must inform us immediately in writing of any Trades you execute in relation to the Products. If you do wish to execute your own Trades in relation to the Products we suggest that you inform us in advance so that an appropriate sub-account can be set up for Trades to be executed by you.
- 12.2 The value of any Third Party Account in respect of which we may provide the Discretionary Services will be as specified by the third party concerned.
- 12.3 You shall ratify and confirm any act or omission of Sommerville Advisory Markets properly done or omitted in the course of the Discretionary Services.
- 13. Charges**
- 13.1 You shall pay any charges as agreed with you from time to time, any taxes imposed by any competent authority on any account opened or Trade effected by or cleared for you: any fees or other charges imposed by a market or any clearing organisation; interest on any amount due to us at the rates then charged by us (and which are available on request); and any other value added or other applicable taxes of any of the foregoing, including any withholding tax. You should be aware of the possibility that other taxes or costs may exist that are not paid through or imposed by us.
- 13.2 We may receive remuneration from, or share charges with, an Associated Company or other third party in connection with Trades executed and/or arranged in the course of the Services we provide to you. If we introduce you to a person with whom you open a Third Party

Account, we may also be paid a fee if you execute Trades on that Third Party Account. See clause 13.3 as to the amount of such fees.

- 13.3 The fee we will receive (as referred to in clause 13.2) will vary depending on the third party with whom you (or we on your behalf) have executed and/or arranged a Trade. Details of such remuneration or sharing arrangements are available on our website at [www.agincourtfinancial.com](http://www.agincourtfinancial.com). Please contact Support Services who will also provide further information as to the amount and method of calculating these fees.
- 13.4 If we provide you with Managed Account Strategies or portfolios (within Discretionary Services), you must pay us a performance fee and/or a management fee in the amount we agree with you.
- 13.5 You expressly authorise all persons with whom you have a Third Party Account to pay to us out of your Third Party Account any and all amounts you may owe us under the Terms. If, despite the foregoing, we have not been paid in full, you must pay us any amount you owe us within 14 days of our written request for payment.
- 13.6 If VAT is payable in respect of any amount payable by you, you will also be liable to pay that VAT.

## **14. Order Execution**

### **Best Execution**

- 14.1 When acting on your behalf in connection with the provision of Services, we may owe you a duty of Best Execution, to act in accordance with your best interests where providing Dealing Services (where providing the service of reception and transmission of orders) or Discretionary Services.
- 14.2 The circumstances in which we will not owe you Best Execution are set out in the Somerville Advisory Markets Limited Order Placing Policy. This is available on our website at [www.agincourtfinancial.com](http://www.agincourtfinancial.com)
- 14.3 As provided for in the Order Placing Policy, we will satisfy our obligation of Best Execution to you (in respect of that part or aspect of your order to which your instructions relate), to the extent that we follow your specific instructions, where providing the service of reception and transmission of orders or Discretionary Services. For instance, Somerville Advisory Markets satisfies its obligation to take all reasonable steps to obtain the best possible result for you when it transmits an order to an executing broker nominated by you pursuant to a specific instruction. However, Somerville Advisory Markets reserves the right to not to accept specific instructions to pass orders to particular executing brokers where such arrangements are impractical.
- 14.4 You should read the Order Placing Policy carefully as we shall treat you as having consented to the Policy where we subsequently execute Trades for you in the applicable Products.
- 14.5 We will notify you of any material changes to our order execution arrangements or the Order Placing Policy, but it is your responsibility to check for any other changes to our order execution policy as published from time to time at [www.cityindexadvisory.com](http://www.cityindexadvisory.com). We will consider the continued placement of orders by you to constitute your continued consent to our order execution policy as in effect from time to time.
- 14.6 Subject to us receiving prior express consent from you, you agree that we may effect Trades in Products on your behalf outside a regulated market or multilateral trading facility (as both

terms are defined in the FSA's rules), where such Products are capable of being traded on a regulated market or multilateral trading facility.

### **Order handling**

- 14.7 We shall use our reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. If we encounter any material difficulty relevant to the proper carrying out of an order on your behalf we shall notify you promptly. We shall carry out an order on your behalf only when the relevant market is open for dealings, and we shall deal with any instructions received outside market hours as soon as possible when that relevant market is next open for business (in accordance with the rules of that market). You agree that we may execute an order on your behalf outside a market.
- 14.8 If we are unable to execute any Trade in full in one Trade, we can execute that Trade in tranches apportioning execution as we (acting reasonably) think fit. This may be the case, if, for example, we are executing Trades for more than one Client in respect of the same Product.

### **Aggregation of Orders**

- 14.9 We may aggregate your order with orders of other clients or our own or Associates' orders, and such aggregation may work on some occasions to your disadvantage and on some occasions to your advantage in relation to a particular order.
- 14.10 We will not carry out another client's order or a Trade for our own account (or an Associates' order) in aggregation with your order, unless it is, in our opinion, unlikely that the aggregation of orders and Trades will work overall to your disadvantage.

### **Trade Reporting**

- 14.11 Under Applicable Regulations, we may be obliged to make information about certain Trades public. You agree and acknowledge that any and all proprietary rights in such Trade information are owned by us and you waive any duty of confidentiality attaching to the information which we reasonably disclose.

## **15. Your Responsibilities**

- 15.1 You are responsible for:-
- all losses and amounts payable in respect of all Trades entered into by us in the course of the Services or by you. In particular this means that you are responsible for the payment of all sums due in relation to any Third Party Accounts for example commission, fees, margin, losses and any amounts necessary to maintain your open positions;
  - all Trades done by you;
  - monitoring your open Trades. In the case of Discretionary Services we will monitor relevant Third Party Accounts, but you should also monitor the Trades done by us on relevant Third Party Accounts;
  - the payment of all taxation, VAT and other costs and expenses in respect of Trades undertaken by you or by us in the course of the Services.



## **16. Conflicts of Interest or Material Interests**

16.1 Conflicts of interest may arise in the course of our provision of the Services. Our Associated Companies may have a material interest in any Trade. The following are examples of such conflicts of interest or material interests: -

- we may receive a fee from the person with whom you or we may execute a Trade. See clauses 13.2 and 13.3;
- the Services may relate to products provided by our Associated Companies;
- we may execute Trades with our Associated Companies;
- margin, commission or other amounts may be payable by you to our Associated Companies.

16.2 While we have put in place a policy and organisational and administrative arrangements to manage these and other conflicts of interest arising in our business in accordance with the FSA's rules, when deciding whether or not to engage us to provide the Services, you should take into account that we may have a conflict of interest or material interest (and our Associated Companies may have a conflict of interest or a material interest) in relation to the matter concerned.

16.3 Conflicts of interest and material interests will be managed in accordance with our Conflicts of Interest Policy, a summary of which has been disclosed to you. Please advise us if you require further information.

## **17. Sommerville Advisory Markets' Rights**

### **General**

17.1 References to notice (in this clause 17) means written notice. If we exercise any of our rights under the Terms without giving you notice, we will give you notice as soon as reasonably practicable after exercising the right, unless we are restricted from doing so by law or the Applicable Regulations .

### **Compliance with law and regulation**

17.2 If a market (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a market) or regulatory body takes any action which we, in our reasonable discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on you. If a market or regulatory body makes an enquiry in respect of any of your Trades, you agree to co-operate with us and to promptly supply information requested in connection with the enquiry. In particular, to the extent required by law or the Applicable Regulations we may close or suspend your Account, cease or suspend provision of the Services close any open positions and/or cancel any orders to place Trades. These actions may occur with or without notice.

### **Products and Services**

17.3 Sommerville Advisory Markets can by not less than 3 months notice in writing to you, notify you that it will no longer provide the Services in respect of such Products, markets and/or underlyings as it may specify. Sommerville Advisory Markets can also, by not less than 14 days notice in writing to you, notify you that the range of Products has been increased to include such additional products, investments and/or instruments as it may specify.

17.4 If for any reason Sommerville Advisory Markets ceases to be authorised by the FSA to provide the Services in relation to any particular Product, then to the extent that Sommerville Advisory Markets is not authorised to provide all or part of the Services in relation to that particular

Product, that particular Product shall cease to be a Product for the purposes of these Terms. We will, if practicable, give you advance notice of this; however, if that is not practicable we will inform you of the changed range of Products.

### **Suspension of Accounts**

17.5 We may suspend your Account (and the provision of Services to you) with or without notice if:-

- we have reasonable grounds to believe that any material representation or warranty made by you to us (including those in clause 21) is or becomes untrue, inaccurate or misleading in any material respect (and in particular those in relation to age and identity);
- we have reasonable grounds to believe that you are in breach of any material provision of the Terms;
- we have reasonable grounds to believe that you are unlikely to meet any payment when due to us (or a third party in respect of any Trade we may enter into in the course of the Services);
- any amount owed to us (or a third party in respect of any Trade we may enter into in the course of the Services) is not paid on time;
- we have reasonable concerns in relation to breach of laws or rules or regulations under the Applicable Regulations ;
- we have reasonable concerns that you do not have a sufficient understanding of Trading;
- we have not received (within 10 days of a written request) any material documents or information we have reasonably requested (in writing) from you in relation to the opening and/or operation of your Account. This applies in particular to the information referred to in clause 4.5. In addition we may from time to time ask you to provide reasonable up to date evidence of the matters referred to in clause 4.5; our right of suspension also applies if anything so requested is not received within 10 days of our written request.

If we have suspended your Account and/or suspended provision of the Services without prior notice, we will inform you as soon as reasonably practicable that we have done so, unless we are restricted from doing so by law or the Applicable Regulations .

17.6 If we have suspended your Account and/or suspended provision of the Services, it means that: -

- we will not be obliged to provide all or any part of the Services, though we may (depending on the reasons for the suspension) continue to provide Discretionary Services (or Dealing Services if relevant) in relation to open Trades or orders to Trade in respect of which Discretionary Services (or such Dealing Services) are provided;
- we will investigate the circumstances giving rise to the suspension and providing you co-operate with us we will use reasonable endeavours to conclude our investigation within 5 Business Days. Once we have concluded any investigation we have the rights referred to in clause 17.7.

17.7 The outcome of an investigation may result in: -



- our resumption of the Services. We will notify you of this and it will be effective immediately;
- re-classifying you, subject to applicable laws. This will be done by at least 2 Business Days notice. At the end of the notice period we will resume provision of the Services;
- our termination of the Services and closure of your Account. This will be done by at least 2 Business Days notice and Services will not be provided during that notice period, though we may (during the notice period and depending on the reasons for the suspension) continue to provide Discretionary Services (or Dealing Services if relevant) in relation to open Trades or orders to Trade in respect of which Discretionary Services (or such Dealing Services) are provided.

### **Closure of open Trades**

17.8 If any of the following events occur: -

- the Applicable Regulations, applicable law or the FSA require us to exercise the rights in this clause;
- an Insolvency Event occurs in relation to you;
- you die or become a patient under or any Court Order is made in respect of you under relevant mental health legislation or we reasonably believe the same to be true;
- if we have reasonable evidence that any material information you have provided to us is incorrect (in particular in relation to your age and/or identity).

We can close any or all of your open Trades in respect of which we are providing Discretionary Services (or Dealing Services if relevant). If we exercise the rights in this clause 17.8, we can also cancel any or all orders to Trade we may have placed on your behalf in the course of Discretionary Services (or any such Dealing Services).

If we have exercised the above rights we can also suspend your Account (and suspend provision of the Services) in accordance with clause 17.5.

We can exercise the above rights with or without notice to you, but we would in any case give you notice as soon as reasonably practicable that we had exercised these rights.

17.9 We can close any open Trade we have placed in the course of the Services if we are in dispute with you over that open Trade. In this case we can (acting reasonably) close all or part of the open Trade and whether or not that action is required to minimise the amount in dispute. If we are in dispute with you over a Trade we have placed in the course of the Services we can also request the person with whom you have the relevant Third Party Account to void that Trade.

17.10 We can exercise our rights under this clause 17 at any time after the relevant event has occurred and regardless of when the relevant underlying may close. We will notify you as soon as reasonably practicable after we have exercised this right.

### **Closure of Accounts**

17.11 Sommerville Advisory Markets can close your Account (and cease to provide Services to you) by at least 14 days notice to you (subject as mentioned below) if: -

- you persistently fail to pay (on time) any amount owed to us (or a third party in respect of any Trades we may enter into in the course of the Services) (such as margin or realised losses);
- any amount owed to us (or a third party in respect of any Trades we may enter into in the course of the Services) has not been paid within 30 days of its due date;
- any litigation is commenced between us;
- you persistently act in an abusive manner when dealing with us;
- an Insolvency Event occurs in relation to you. In this case we may close your Account immediately without prior notice (though we would inform you that we had done so);
- you die or become a patient under or any Court order is made in respect of you under relevant mental health legislation or we reasonably believe the same to be true. In this case we may close your Account immediately without prior notice (though we would inform you that we had done so);
- we believe that we are unable to manage the risks (commercial, legal, regulatory, or reputational risks) that your Trades pose to you, us, or the underlyings to which your Trades relate.

17.12 On giving notice to close your Account (pursuant to clause 17.11) we will also suspend your Account and it will remain suspended until your Account is closed. During the period of suspension the first and second bullet points of clause 17.6 will apply.

17.13 We can also close your Account under clause 27, Termination.

### **Interest and Costs**

17.14 If any amount you owe (except interest) is not paid within 7 days of its due date we can charge you interest from the due date until payment in full, (before and after judgement). The interest rate will be at 4% above Barclays Bank PLC's base rate from time to time. If you have asked us (in writing) to pay you an amount that is due and payable by us to you and we have not paid the amount due within 5 Business Days of receipt by us of that request, we will pay you interest on the unpaid amount at the base rate from time to time of Barclays Bank PLC.

17.15 You must pay to Sommerville Advisory Markets all costs and expenses it incurs because you fail to pay amounts when due or breach the Terms. These include bank charges, Court fees, legal costs and other third party costs reasonably incurred.

17.16 Interest, costs and expenses referred to above are debts payable by you to Sommerville Advisory Markets.

## **18. Your Instructions**

### **Authority**

18.1 We shall be entitled to act for you upon instructions given or purporting to be given by you or any person authorised on your behalf without further enquiry as to the genuineness, authority or identity of the person giving or purporting to give such instructions.

### **Cancellation/withdrawal of instructions**

18.2 We can only cancel your instructions if we have not acted upon those instructions. Instructions may only be withdrawn or amended by you with our consent.

### Right not to accept orders

18.3 We may, but shall not be obliged to, accept instructions to enter into a Trade. If we decline to enter into a proposed Trade, we shall not be obliged to give a reason but we shall promptly notify you accordingly. Circumstances in which we may refuse to act on any instruction and/or to provide Services include: -

- if any amount you owe us (or any third party in respect of Trades we may enter into in the course of the Services) is overdue for payment;
- if we have reasonable concerns in relation to breach of laws or rules or regulations under the Applicable Regulations ;
- in the case of execution of a Trade by us on your behalf in the course of the Services, if you have not placed sufficient funds with the third party with whom we propose to execute that Trade (for example insufficient margin is held in any relevant Third Party Account);
- to the extent that we reasonably believe we will not be able to do so.

### Control of orders prior to execution

18.4 We have the right (but no obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion.

## 19. Sommerville Advisory Markets' Protection

### General

19.1 When we exercise the rights in this clause 19 we may give you notice before, at the same time or after we have exercised the right referred to, depending on the prevailing circumstances. We will seek to provide you with reasonable prior notice, subject to prevailing circumstances. If we exercise any right before giving you notice, we will notify you as soon as practicable that we have exercised the right.

### Errors

19.2 If a contract note or other statement sent to you by us or a third party contains an error or is otherwise inaccurate, that will not affect the validity of the relevant Trade that has been effected. Please notify us (and the third party concerned) as soon as reasonably practicable if you become aware of any such error or inaccuracy.

19.3 If we have placed a Trade on your behalf and that Trade is based on a Manifest Error we are entitled acting reasonably and in good faith to request that any person with whom you have a Third Party Account: -

- voids the Trade, from the beginning, as if the Trade had never taken place;
- amends the Trade, so that the Trade is the Trade that would have been placed in the absence of Manifest Error.

We will exercise the above rights as soon as reasonably practicable after becoming aware of the Manifest Error.

### Events Outside our Control and Market Disruption Events

19.4 If an Event Outside our Control and/or a Market Disruption Event occurs, we are entitled to do any of the following: -

- cease or suspend provision of our Services (in whole or in part) and/or alter Trading Hours for all or any markets;
- take or omit to take all such other actions as we deem appropriate in the circumstances to protect ourselves and our Clients as a whole.

Any action taken by us under this clause 19.4 may be effective immediately.

19.5 If an Event Outside our Control continues for more than 10 Business Days and is materially preventing or delaying performance of the Services either of us may terminate the provision of the Services by not less than 14 days written notice to the other.

## **20. Regulatory Provisions**

### **Money**

20.1 We do not hold client money.

### **Interest**

20.2 Sommerville Advisory Markets does not pay interest on money unless it has expressly agreed to do so in writing with you.

### **Complaints and Disputes**

20.3 The sooner you raise any complaint or dispute with Sommerville Advisory Markets, the easier we will be able to deal with it.

20.4 Copies of our complaints handling procedure are available on request from Support Services.

20.5 Any complaint or dispute should in the first instance be referred to Support Services. If not resolved to your satisfaction you may refer the matter in writing to our Compliance Manager. If you are a Retail Client and you are dissatisfied with Sommerville Advisory Markets' handling of any complaint, you may refer the matter to the Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London, E14 9SR. Any customer who was not a Retail Client (at the relevant time) does not have the right to refer complaints to the Financial Ombudsman Service.

### **Compensation**

20.6 If you are an eligible claimant under the rules of the FSA, your Account will be protected by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. For most types of investment, you would receive the first £50,000.00 of any claim in full. Further information about compensation arrangements is available from the Financial Services Compensation Scheme.

### **Payments to Sommerville Advisory Markets**

20.7 Except as referred to in clauses 8, 13 and 16.1, no payment is receivable by Sommerville Advisory Markets (or to its knowledge by its associates) from third parties in connection with any Trade executed by Sommerville Advisory Markets with or for you, in addition to or in lieu of any amount payable under the Terms. If any such payment is receivable, we will inform you in advance.

## **21. Representations and Warranties**

21.1 When you enter into the Terms, and each time you give us any instruction, you represent and warrant to us that: -

- all information you have provided to us (including in your Application Form) is true accurate and complete in all material respects (this applies in particular to your age and identity);
- all information you provide to us from time to time is true accurate and complete in all material respects;
- you have completed, signed and submitted your Application Form yourself (unless you are not a natural person, in which case that has been done by someone duly authorised on your behalf);
- no insolvency event has occurred or is continuing with respect to you;
- you are authorised to enter into and perform the Terms, (and complete the Application Form) in compliance with any law regulation charter articles and memorandum of association (or similar document) relevant to you;
- neither the entry into the Terms, any Trades by you (or by us on your behalf in the proper performance of the Services) or the giving of any other instruction by you to us will violate any law applicable to you (in particular any US law);
- you understand and accept that if you are not a UK citizen, not UK domiciled and/or are non-UK resident (and/or if you undertake Trades from outside the UK) you may also be subject to laws other than English law (including other tax laws) and that these may differ from English law;
- you understand and accept that you are responsible for your own tax position and that Alecto Financial is not a tax adviser and has not provided tax advice in this or any other document;
- all instructions to us are given by you or your Agent (or if you are not a natural person, someone duly authorised on your behalf);
- you will inform us promptly if you move and you understand and accept that, for legal reasons, we may not be able to continue to provide the Services to you if you change country in which you are resident;
- the Terms are binding and enforceable upon you;
- you act as principal.

## **22. Data Protection**

22.1 Sommerville Advisory Markets is the data controller in relation to Your Information.

22.2 You agree that Sommerville Advisory Markets can: -

- rely on Your Information in assessing your application, classification and in all its dealings with you;

- and its Associated Companies can, store and process Your Information on their computers, databases and any other way.

22.3 You agree that Agincourt Financial and/or its Associated Companies can use, analyse, assess and deal with Your Information as follows: -

- to consider applications made by you;
- for financial risk assessment, credit checks, money laundering checks, compliance, regulatory reporting and fraud prevention. This includes performing credit and identity checks, obtaining bankers' references, making enquiries of credit reference and fraud prevention agencies, making enquiries of providers of the Products, undertaking
- searches of the Electoral Register and making any other enquiries reasonably thought fit. You understand that credit reference agencies, fraud prevention agencies and providers of the Products may maintain a record of any enquiry and the information given to them and may share search details and Your Information with us and other organisations for credit, fraud, crime prevention and money laundering purposes (or similar) or to recover or trace debts;
- to comply with applicable law including the Applicable Regulations ;
- to operate and administer services supplied, to manage your Account and recover amounts payable;
- for assessment and analysis (including statistical, product and marketing analysis) including to identify products and services which may interest you;
- to help us undergo and develop our businesses, services and products.

22.4 You agree that Sommerville Advisory Markets and/or its Associated Companies can disclose Your Information as follows: -

- to our Associated Companies and to any of our/their service providers (including any data processors we or they may engage), agents or sub-contractors (including in connection with legal proceedings), on the understanding that they will keep the information confidential;
- to the persons referred to in the second bullet point of clause 22.3;
- to any person with whom we may deal in the course of providing the Services (for example third parties who may execute Trades in relation to you);
- to any regulator of Sommerville Advisory Markets' business or your employer if it is authorised or exempt under FSMA 2000 (including its compliance officer and by sending contract notes and statements to that compliance officer);
- in response to enquiries made by credit reference or fraud prevention agencies or any other person we reasonably believe to be seeking a reference or credit reference in good faith (including providers of the Products);
- to anyone to whom we transfer all or any of our rights and/or obligations in relation to Your Information under the Terms;

- to any person to whom we have a duty to disclose or to the extent that the law requires or permits us to disclose (including any governmental, regulatory or other relevant authority).
- 22.5 You have rights under the Data Protection Act 1998, for example to be informed of the type of personal data held and its uses.
- 22.6 As our business and that of our Associated Companies develops, the way in which we look at, record and use Your Information may change. Generally this will be because of changes in technology and in line with your expectations. If however we believe that the change is not obvious to you, we (or our Associated Companies) will give you notice. If you are notified of a change and continue to maintain your Account for at least 60 days after you are notified, then you will have consented to that change (unless you write to us and tell us that you do not consent).
- 22.7 In order to provide services to you, it may be necessary for Your Information to be transferred to someone who provides a service to us in other countries (including countries outside the EEA). You consent to that. If we do so we will ensure that the person to whom we pass the information agrees to treat it with the same level of protection as if we were dealing with it.
- 22.8 We may use recording and monitoring procedures in connection with any communications (including email and telephone conversations) directly or indirectly relating to transactions effected with you. We shall be entitled, in responding to requests for information from any governmental, judicial or regulatory authority having jurisdiction over us or to whose jurisdiction we submit or an associate, or pursuant to any subpoena or other law process, to disclose any information known to us, or produce any document relating to you and/or your accounts and business affairs, including any recordings of telephone conversations. Such records may be used in the case of a dispute.
- 22.9 Sommerville Advisory Markets will add Your Information to its databases/store information manually for the purposes of informing you (whether by letter, telephone (including text messages), electronically by computer or otherwise) about its products and services (including those of other persons) which may be of interest to you. Sommerville Advisory Markets will also be entitled to pass Your Information to its Associated Companies, who will also be entitled to use Your Information in the same way in relation to their products/services. If you do not wish to receive this information, please contact us.

### **23. Market Abuse**

- 23.1 The function of this clause 23 is to remind you that trading behaviour which amounts to market abuse (including insider dealing or market manipulation) is illegal in the UK and in most other jurisdictions related to dealing in the Products and to enable us to take appropriate action as referred to in clause 23.3.
- 23.2 You represent and warrant to us as set out in the two bullet points below. In addition, every time you instruct us to Trade in the course of the Services you will be deemed to have repeated to us each of the two bullet points below:-
- you will not knowingly instruct us to place a Trade that contravenes any primary or secondary legislation or other law or regulatory rules in relation to insider dealing. For the purposes of this clause you agree that we may proceed on the basis that when we place a Trade in the course of the Services relating to an exchange traded instrument you may be treated as if you were dealing in securities within the meaning of Part V of the Criminal Justice Act 1993;
  - you will not instruct us to place a Trade nor otherwise (when you deal with us) behave nor will you behave in a manner that would amount to market abuse by you



(or by you acting jointly or in collusion with another person). For the purpose of assessing whether you have done so, you may (where relevant) be deemed to have dealt directly in the underlying to which your Trade relates. For your information, market abuse means as specified by s118 FSMA 2000 (as amended by SI 2005 No 381) and the Market Abuse Directive 03/06/EC. Further information can be obtained from the FSA website at [www.fsa.gov.uk](http://www.fsa.gov.uk).

- 23.3 In the event that (a) you breach of any of the representations and warranties given in clause 23.2 or (b) we have grounds for suspecting that you have done so, we reserve the right to close the relevant Trade and/or to request that it be treated as void.
- 23.4 You acknowledge that we will not transfer to you voting rights relating to any underlying to which your Trades relate or allow you to influence the exercise of voting rights held by us or on our behalf.
- 23.5 You acknowledge that the Products are speculative instruments and you agree that you will not instruct us to enter into any Trades related to the issuers of securities currently engaged in any stage of any corporate finance style activity.
- 23.6 We are required to report to any relevant regulatory authority (and are entitled to inform any person with whom you have a Third Party Account about) any Trade or other transaction undertaken by you which we suspect may constitute market abuse. You are reminded of your obligation to make appropriate disclosures to the regulatory authorities (in relation to your dealings in options, derivatives (which includes spread bets and CFDs) and underlying securities) as required by law or regulatory provisions, for example, in relation to the Takeover Code. For further information see [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).
- 23.7 The exercise by Sommerville Advisory Markets of any of its rights under this clause 23 in respect of any Trades shall not affect any other right of Sommerville Advisory Markets (under the Terms or at law).

## **24. Intellectual Property**

- 24.1 The Website and any and all information or materials contained in it or which we may supply or make available to you (including any software which forms part of those items), are and will remain our property or that of our service providers (including the providers of real time price data to us). In addition: -
- all copyrights, trademarks, design rights and other intellectual property rights in those items are and will remain our property (or those of third parties whose intellectual property we use in relation to products and services we provide for your Account);
  - we supply or make them available to you on the basis that (a) we can also supply and make them available to other persons and (b) we can cease provision of them, but we will only do that if your Account has been closed or if our service providers require us to;
  - you must not supply all or part of them to anyone else; and you must not copy all or any part of them;
  - you must not delete, obscure or tamper with copyright or other proprietary notices we may have put on any of those items;
  - you must only use those items for the operation of your Account in accordance with the Terms;



- if we have provided any materials to you in connection with your Account you must return those to us on closure of your Account.
- 24.2 We will use reasonable endeavours to ensure that the Website and your Account can normally be accessed for use in accordance with the Terms. However: -
- we do not warrant that they will always be accessible or usable;
  - we do not warrant that access will be uninterrupted or error free;
  - we are entitled to suspend (with or without notice) for any good reason including to carry out maintenance, repair, upgrades or development (though we will endeavour to give you prior notice);
  - we are not liable for any losses arising if access is prevented or interrupted due to an Event Outside our Control and/or for maintenance, repair, upgrades or development;
  - technical or communication difficulties may be encountered.
- 24.3 We warrant that we have the right to permit you to use the Website in accordance with the Terms.
- 24.4 We will use reasonable endeavours to ensure that the Website is free from any virus, but we do not warrant that this will be the case. You must use your own virus protection software.
- 24.5 You are responsible for ensuring that your information technology is compatible with ours.
- 24.6 We are required by the providers of real time price data to obtain certain confirmations from you. You confirm in relation to that data (to the extent that we make it available to you) that: -
- you will not distribute, re-publish or otherwise provide that data to any third party in any manner;
  - you either act in a personal capacity or on behalf of a corporate or other entity (in which case you are duly authorised to act on its behalf);
  - if you act in a personal capacity and you are a registered or qualified professional securities trader or investment adviser, you will use any real time price data to which you have access under the Terms only for the management of your Account.

The above confirmations will be deemed repeated each time you access the data referred to above.

## **25. Alteration of Terms**

- 25.1 Other than where we have expressly reserved the right in the Terms to make changes we may amend or replace the Terms in whole or in part by giving written notice to you of the changes. We can also amend or replace the Summary of the Conflicts of Interest Policy, the Trading Methodology, the Order Placing Policy and the Managed Account Strategies in whole or in part by giving written notice to you of the changes. We will only make changes for good reason including as a result of market conditions, changes in the way we operate our business, changes in the Services to be provided to you, changes in the cost of providing a Service to you and changes in legal or other requirements affecting us. Circumstances in which we may make changes also include:

- as a proportionate response to changes in any tax rates or any market rate or index that is relevant to the business contemplated by the Terms;
- to reflect legitimate increases or reductions in the cost of providing the Services to you; and
- to reflect changes in law, regulatory requirements or changes in accepted industry guidance and codes of practice which have as their objective, consumer protection.

Subject to clauses 25.2 and 25.3 the amendments or new Terms apply as at and after the effective date of the change.

25.2 If you object to any changes (as referred to in clause 25.1), you must tell us in writing within 14 days of the date notice is served on you. If you do not do so, you will be deemed to have accepted them. If you do give us notice that you object, then: -

- the changes will not be binding on you, but you will be required to close your Account as soon as reasonably practicable and we will only provide the Services to you in order to close your Account;
- we will, in any event, close your Account and cease to provide the Services to you on the 60<sup>th</sup> day after the date we receive your notice of objection as referred to in clause 25.2.

25.3 Clause 25 does not affect the rights we have reserved elsewhere in the Terms to make changes.

25.4 If we have said in these Terms that something is to be agreed in writing, that includes on paper, by fax or by e-mail.

## **26. Notices**

26.1 This clause 26 does not affect the means by which we will provide the Services to you nor the means by which you can communicate with us in connection with the Services. See clauses 11.2 to 11.4.

26.2 Clauses 26.4 and 26.5 set out the way we can each serve notices on each other. Please note: -

- if we are required to serve a notice on you in writing, this means that we will serve that notice by any of the following methods: -
  - on paper;
  - by fax;
  - by e-mail;
  - by publication on the Website;

provided that in the case of notices sent via e-mail and/or the Website, we will ensure that the method of sending enables you to print the notice and/or store the notice for future reference for a reasonable period of time.

26.3 The following apply in relation to the service of notices by each of us: -

- we must send notices to you to your last known home or e-mail address, place of work, fax, telephone, pager number or other contact details. In addition, we can serve notices by the other methods referred to in clauses 26.4 and 26.5;
- you must send notices to our Customer Services Team, as follows: -
  - telephone number: 0845 504 9745
  - postal address: Sommerville Advisory Markets, Riverbridge House, Guildford Road, Leatherhead, Surrey KT22 9AD United Kingdom
  - e-mail address: info@agincourtfinancial.com
  - fax number: 0845 504 9739

26.4 Subject to clause 26.2 and 26.5 we can both serve notices on each other under the Terms by any of the methods set out in the 1<sup>st</sup> column of the table below. Unless received sooner, the time at which those notices will be effective is set out in the 2<sup>nd</sup> column, opposite:-

Method	Time of Service
o verbally by telephone or face to face.	At that time.
o personal service.	On delivery.
o post (not overseas).	12 noon on the next Business Day after posting; (unless not posted on a Business Day in which case 2 <sup>nd</sup> Business Day after posting).
o airmail post (if overseas).	12 noon on the 2 <sup>nd</sup> Business Day after posting (unless not posted on a Business Day, in which case 4 <sup>th</sup> Business Day after posting).
o fax.	If sent before 4:00pm on a Business Day 1 hour after a transmission complete report is received (if not so sent, then 9:00am on the next Business Day), provided a transmission complete report is received.
o e-mail.	If sent before 4:00pm on a Business Day, 1 hour after sending, provided no "not sent" or "not received" message is received from the relevant e-mail providers (if not so sent, then 9:00 am on the next Business Day, provided no "not sent" or "not received" message is received from the relevant e-mail provider).

26.5 Sommerville Advisory Markets can also serve a notice on you by any of the methods referred to in the 1<sup>st</sup> column of the table below; the time at which that notice will be effective is set out in the 2<sup>nd</sup> column, opposite: -

Method	Time of Service
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o telephone answering machine, pager or voice mail.	1 hour after leaving the message.
o SMS text.	1 hour after sending the message (provided no "not sent" message is received).
o Published on the Website	1 hour after publication.
o Leaving a message with someone we reasonably think will pass the message to you (e.g. a spouse or work colleague).	1 hour after leaving the message.

26.6 The Terms will be supplied to you in English, we will communicate in English with you and all documents and information will be provided to you in English.

## 27. Cancellation and Termination

27.1 You may cancel your Account (and the Services in whole, not in part) by serving notice on us within 14 days of the date the Terms start to apply to you (i.e. the day we allocate an Account number to you). To cancel your Account, please write to us at SAM, Agincourt Financial, Riverbridge House, Guildford Road, Leatherhead, Surrey KT22 9AD United Kingdom  
If you cancel your Account with us during the cancellation period we will cease to provide the Services on the day we receive your notice of cancellation. However, if we are owed any amount from a third party or you as referred to in clause 13 (or elsewhere in these Terms) we are still entitled to be paid that amount. You will not incur any cancellation fee, charge or penalty.

Alternatively you may email us on [info@sam.ie](mailto:info@sam.ie). Please note that any email you may send to us will not be considered received by us until a we send you formal acknowledgement.

If on closure of your Account, you owe us any amount under the Terms then you must pay that to us.

27.2 If you do not exercise the cancellation right, the Terms will continue until either you or we terminate the Terms in accordance with this clause 27. There is no minimum duration for the Services provided under the Terms.

27.3 In addition to this initial right to cancel, you have a separate and independent right to close your Account (and terminate the Services) (in whole, not in part) by giving us written notice at any time to close your Account. Please write to us at : SAM, Agincourt Financial, Riverbridge House, Leatherhead, Surrey KT22 9AD United Kingdom

27.4 Other than the termination procedures set out under clauses 27.1 and 27.3, we can terminate the Terms and close your Account (and cease to provide the Services) at any time by not less than 3 months prior written notice given to you at any time.

27.5 If either of us give notice to cancel or terminate the Terms in accordance with clauses 27.3 or 27.4 your Account will be closed (and the Services will cease) as soon as reasonably practicable after we give or receive notice, taking into account the date on which cancellation or termination is to take effect.

27.6 If the Terms are cancelled or terminated, that will not affect any liability we have to you or you have to us (e.g. amounts we owe each other); also it will not affect any right or remedy you have against us or we have against you. This means in particular that: -

- we can both enforce our rights in relation to the Services provided prior to termination;

- all provisions of the Terms will remain in place to deal with whatever you owe us or we owe you and whatever liabilities, rights or remedies each of us may have.

## **28. Limitation of Liability**

28.1 You acknowledge that: -

- no representation, warranty or other assurance is given that the Services will result in a profit to you;
- subject to any liability we have to you, losses may arise for which you will be fully responsible.

28.2 Nothing in the Terms shall exclude or limit any liability of Sommerville Advisory Markets : -

- arising by reason of its negligence or wilful default;
- arising out of its fraud or fraudulent misrepresentation;
- for death or personal injury;
- or duty Sommerville Advisory Markets has to you under the rules of the FSA, unless expressly excluded or limited by the Terms in accordance with the rules of the FSA.

28.3 We shall not be liable to you for any losses liabilities or expenses (whether or not reasonably foreseeable) you may suffer or incur: -

- as a consequence of the Services, provided that we have complied with our obligations under the Terms, where relevant to the loss concerned. In particular provided we have complied with our obligations under the Terms where relevant to the loss concerned, we will not have any liability to you even if you would not have suffered the loss or your loss would have been reduced in any of the following circumstances: -
  - if we had used a different method of interpretation or analysis;
  - if we had used other available information or data;
  - if we had disregarded or not relied on anything we did take into account;
- as a result of the exercise of our rights under clauses 19.3 (Manifest Error) and/or 19.4 (Events Outside our Control and Market Disruption Event);
- if an Event Outside our Control prevents or delays either of us being able to perform the Terms and/or our performance of the Services (including if we are unable to execute any Trades, if you are unable to give any instructions to us and/or we are unable to contact you or execute any instructions you may have given us);
- as a result unauthorised access to your Third Party Account by a third party or the corruption of data sent to or by us, unless this has arisen by reason of our negligence (in which case we will pay to you the loss you sustain as a direct result of that negligence);
- if you are unable to communicate with us, for example temporary or permanent loss of internet or telephone connection (including you being unable to give any instruction to us);

- in relation to investments other than the Products. For example, we will have no liability to you if you use the Services to make decisions in relation to other products or investments.

28.4 Internet communications are not secure unless the data being sent is encrypted.

28.5 We do not exclude or limit our liability to you in relation to the matters in clause 28.2. Also, we will pay you amounts we owe you under the Terms. Subject to that, we are not liable to you for any of the following, even if they arise as a result of our breach of the Terms: -

- losses, liabilities and expenses which were not reasonably foreseeable;
- loss of profit or loss of opportunity (including in relation to subsequent market movements) and whether or not reasonably foreseeable.

The above exclusions apply even if we had been advised of the possibility that you might incur them and apply in particular to losses, liabilities and expenses (as above) in relation to: -

- the Services;
- your Account and any Third Party Account;
- the unavailability of the Website;
- anything done or omitted in relation to and/or arising out of the occurrence of an Event Outside our Control, Manifest Error or Market Disruption Event;
- any inaccuracy or mistake in any information given to you by us or another person;
- any Trades or other transactions you make or refrain from making with any person;
- the exercise by Sommerville Advisory Markets of any of its rights under the Terms or at law.

28.6 If the exclusions and limitations on liability in clauses 28.3 and 28.5 are not acceptable to you, you should not open an Account and should close any Account you have opened.

28.7 When agreeing to provide the Services and to trade on the Terms Sommerville Advisory Markets has done so on the basis that the limitations and exclusions on liability contained in the Terms and in particular in this clause 29 are valid and enforceable Sommerville Advisory Markets does not effect insurance in respect of the liabilities limited and/or excluded under this clause 28. If the limitations and/or exclusions on Sommerville Advisory Markets' liability in the Terms are not acceptable to you, you should not deal with Sommerville Advisory Markets.

## **29. Waiver, Remedies and Enforceability**

29.1 If you or we do not exercise a right (or delay in doing so) that will not stop either of us exercising that right.

29.2 If you or we decide in a particular instance not to take action in respect of a particular breach of the Terms or not to require compliance with any particular Term, that will not stop either of us : -

- requiring the other to stop the breach concerned; and
- requiring compliance in the future.

This means in particular in the case of Somerville Advisory Markets, that we can (with or without notice to you) not insist on your compliance with our requirements under the Terms; however, if we have not insisted on compliance in the past we can still require full compliance in the future (but we would notify you of that).

- 29.3 All rights granted to Somerville Advisory Markets are exercisable by Somerville Advisory Markets in its absolute discretion.
- 29.4 Each of us can (in whole or in part) release, or settle any particular liability of the other owed to it. That will not affect rights in respect of any other liabilities.
- 29.5 If a Court decides that any part of the Terms is not enforceable, that will not affect any other part of the Terms.

### **30. Rights of Third Parties**

- 30.1 Each company which is an Associated Company of Somerville Advisory Markets may enforce all the Terms pursuant to the Third Parties Act. A person who is a permitted successor to or assignee of the rights of Somerville Advisory Markets is deemed a party to the Terms and able to enforce them.
- 30.2 Except as provided in clause 30.1 no provision of the Terms is enforceable under the Third Parties Act by a person who is not a party. This does not affect any right or remedy of such a person which exists or is available apart from under the Third Parties Act.
- 30.3 Even if the Terms are enforceable by a person who is not a party, the Terms may be varied, amended or modified, or the Terms may be suspended, cancelled or terminated by agreement in writing between Somerville Advisory Markets and the Client or as otherwise provided in the Terms (including clause 25) or rescinded, in each case without the consent of any such third party.

### **31. Assignment**

- 31.1 You must not assign or transfer the benefit and/or burden of the Terms (in whole or in part).
- 31.2 Somerville Advisory Markets may assign or transfer the benefit and/or burden of the Terms (in whole or in part) to any third party including an Associated Company of Somerville Advisory Markets provided that Somerville Advisory Markets gives you at least 30 days written notice of such assignment or transfer and we have not received written notice from you within that 30 day period that you object to such transfer or assignment. In doing so we will comply with the rules of FSA.

### **32. Entire Agreement**

- 32.1 The Terms set out everything that has been agreed between us relating to your Account. See also clause 1.1 and note in particular that: -
- The Terms replace any previous terms between us.
  - Nothing, apart from the Terms (and anything else we have agreed in writing with you, as forming part of the contract between us) is part of the contract between us.
- 32.2 Subject to clauses 1.1 and 32.1, all other terms, conditions and warranties implied by statute or common law are excluded to the fullest extent permitted by law.

### **33. Definitions**



33.1 In addition to expressions defined elsewhere, the following expressions have the meanings set out below: -

“Account”	your account with us for the provision of the Services
“an Agent”	a person authorised to operate your Account as referred to in clause 9
“Applicable Regulations” means:	
(a)	FSA Rules or any other rules of a relevant regulatory authority;
(b)	the Rules of any relevant market; and
(c)	all other applicable laws, rules and regulations as in force from time to time;
“Application Form”	Sommerville Advisory Markets’ application form in respect of the Account in hard copy or on-line
“Associated Company ”	a company that is an associate of another within s52 Companies Act 1989
“Best Execution”	the obligation to take all reasonable steps to obtain the best possible result for a Retail or Professional Client, or to act in accordance with their best interests where providing the service of reception and transmission of orders (or Discretionary Services) in connection with MiFID Business
“Business Day”	Monday to Friday (inclusive) excluding any English public holiday
“Sommerville Advisory Markets”	Sommerville Advisory Markets, a trading name of Agincourt Financial Limited.
“Client”, “you” and “your”	a person for whom Sommerville Advisory Markets has opened an Account
“Dealing Services”	arranging (and making arrangements with a view to) deals in Products (which may entail the provision of Investment Advice where we have expressly agreed with you) and excluding in any event Discretionary Services
“Discretionary Services”	Investment management involving Discretionary Trading by us on your Third Party Accounts in accordance with these Terms
“Eligible Counterparty”	a person who has been classified by us as an eligible counterparty under the rules of the FSA
“Event Outside our Control”	any cause preventing Sommerville Advisory Markets from performing any or all of its obligations under the Terms which arises from or is attributable to acts events omissions or accidents beyond the reasonable control of Sommerville Advisory Markets including:-



- (a) an emergency or exceptional market condition;
- (b) compliance with any law governmental order or the Applicable Regulations ;
- (c) any act, event, omission or accident which prevents an orderly market being maintained in respect of the Products and/or relevant underlyings;
- (d) any strike, lock-out or other industrial dispute, riot, terrorism, war, civil commotion, nuclear, chemical or biological contamination, sonic boom, act of God, malicious damage, accident, breakdown of equipment, fire, flood, storm, interruption of power supply, failure of a utility service or breakdown of or interruption in any electronic, communication or information system;
- (e) the suspension or closure of any index/market/exchange or the abandonment or failure of any event upon which prices of the Products and/or the underlyings are based, or the imposition of limits or special or unusual terms on any such event

“FSA” the Financial Services Authority whose address is 25 The North Colonnade, Canary Wharf, London E14 5HS, Tel 020 7066 1000, and any successor to that authority

“FSMA 2000” the Financial Services and Markets Act 2000

“General Terms” these terms and conditions, as from time to time amended and/or replaced in accordance with clause 26

“Insolvency Event” in relation to you:

- (a) if a resolution is passed or an order is made for your winding up, dissolution or administration, if any bankruptcy order is made against you, the appointment of a receiver, administrator, manager, administrative receiver or similar officer over, or if any encumbrancer takes possession of or sells, all or any part of your business or assets, the making of an arrangement or composition with your creditors generally or the making of an application to court for protection from your creditors generally (including under Chapter 11 of the US Bankruptcy Code). If the Client is a partnership, the occurrence of any of the foregoing events in relation to any partner in that partnership shall be deemed an “Insolvency Event” in relation to the Client; or

- (b) if you become insolvent or are otherwise unable to pay your debts as they fall due, or any act of insolvency or analogous event (to those set out in paragraph (a) above) occurs in respect of you

“Investment Advice”

a personal recommendation which is a recommendation that is advice on Products and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person

“Managed Account Strategies”

Sommerville Advisory Markets’ documents outlining some of the principles, policies and strategies relating to managed fx, managed US strategies, managed futures, managed options, spread bets and any other strategies/funds which we may employ, forming part of Discretionary Services as from time to time amended and/or replaced in accordance with clause 26. Copies of these are available on the Website. Copies can only be obtained by contacting Support Services

“Manifest Error”

any error omission or misquote (by Sommerville Advisory Markets or any third party) which is manifest or palpable. This includes us or a third party providing the wrong information (e.g. prices) taking into account the current market and currently advertised prices. Examples include wrong price, month, expiry date or market or any error of any information, source, commentator, official, official result or pronouncement

“Market Disruption Event”

any of the following events:-

- (a) trading in respect of any Product and/or underlying is suspended or limited for any reason whatsoever, including by reason of movements in the price of that Product and/or underlying exceeding limits permitted by the relevant exchange or limits or special or unusual terms are imposed on the trading of any Product and/or underlying by the relevant exchange;
- (b) trades in relation to any Product and/or underlying or other financial instrument are cancelled by the relevant exchange;
- (c) an unusual movement in the level of, or the unusual loss of liquidity in respect of, any Product and/or underlying or our reasonable anticipation of the occurrence of the same;
- (d) the occurrence of any other event which causes a material market disruption in respect of any Product and/or underlying

“Order Placing Policy”	the Order Placing policy of Sommerville Advisory Markets, as from time to time amended and/or replaced by Sommerville Advisory Markets in accordance with clause 26. A copy of this is available on the Website. A copy can also be obtained by contacting Support Services
“Products”	subject to clauses 17.3 and 17.4, (a) products, investments and/or instruments falling within the following categories: spread bets, CFDs, exchange traded futures, options and/or warrants and rolling spot foreign exchange and (b) other products, investments and/or instruments in respect of which Sommerville Advisory Markets is from time to time authorised by the FSA to provide the Services
“Professional Client”	a person who has been classified by us as a professional client under the rules of the FSA
“Trading Methodology”	Sommerville Advisory Markets’ policy outlining some of the principles and policies upon which its services are based as from time to time amended and/or replaced in accordance with clause 26. A copy of this is available on the Website. A copy can also be obtained by contacting Support Services
“Retail Client”	a person who has been classified by us as a retail client under the rules of the FSA
“Risk Warning Notice”	the notice provided to you setting out a non-exhaustive statement of the risks involved in dealing in the Products
“Services”	Dealing Services and/or Discretionary Services as the context requires
“Summary of the Conflicts of Interest Policy”	A summary of Sommerville Advisory Markets policy relating to conflicts of interest as from time to time amended and/or replaced in accordance with clause 26. A copy of this is available on the Website. A copy can also be obtained by contacting Support Services
“Support Services”	our customer services department or dealing desk, as appropriate
“Third Party Account”	any account you open with any person to facilitate Trading
“Terms”	the contract between us which governs the operation of your Account, as referred to in clause 1.1
“Trade”	a bet, trade and/or order in respect of a Product and any other act or omission in respect of a Product, including creating or closing an open position and placing an order in respect of a Product and the execution and/or cancellation of any order in respect of a Product (and

instructing third parties to do any of the foregoing) and “Trading” shall be construed accordingly

“Third Parties Act”	the Contracts (Rights of Third Parties) Act 1999
“Trading Hours”	8.30 am to 5:00 pm Monday to Friday (inclusive) excluding English public holidays, subject to (a) variation by Sommerville Advisory Markets from time to time, (b) the trading hours of the relevant market and (c) non-English public holidays.
“the Website”	the website maintained by Sommerville Advisory Markets for access by Clients, currently under the URL: <a href="http://www.sam.ie">www.sam.ie</a>
“Your Information”	all personal and financial information about you which:- <ol style="list-style-type: none"> <li>(a) Sommerville Advisory Markets obtains from you (including on your Application Form), from your use of learning tools (including trading simulators) or from third parties (including stockbrokers) such as joint account holders, credit reference agencies, fraud prevention agencies, providers of spread, CFD and/or binary betting services or other organisations; and/or</li> <li>(b) relates to or is ascertained from your Account, the way you use and manage your Account, the transactions and payments made including information as to late payments.</li> </ol>

33.2 When you read the Terms, bear in mind the following: -

- we have included headings to clauses to help you find relevant clauses. However these headings will not affect the meaning of the Terms;
- in some places we refer to statutes or other laws. In doing so, we are also referring to any changes that might be made to those statutes or laws, e.g. by amendment or by a new statute replacing an old one;
- sometimes we have given examples to help your understanding. However, examples are not a complete list. So, if you see the words, “including”, “include”, “in particular”, “for example” or “e.g.” please bear in mind that the words that follow are just examples and are not a complete list;
- sometimes we use the words “bet”, “betting”, “dealing”, “trade” “trades” or “trading”. All of these include reference to creating or closing an open position or order and the execution of any order;
- if we refer to a person, that includes a natural person and anyone else the law recognises as having a legal personality, e.g. a company or trust. It will also include a partnership, even if that partnership does not have a recognised legal personality;
- when we refer to the singular we also refer to the plural and vice versa. Any reference to a particular gender includes the other genders;
- all times refer to UK time.

**34. Law and Jurisdiction**

- 34.1 The Terms and our relations prior to the establishment of any contract between us shall be governed by and construed in accordance with the laws of England and Wales.
- 34.2 The Courts of the United Kingdom will have exclusive jurisdiction over any claim or matter arising under or in connection with the Terms and the legal relationships established by the Terms. Nothing in this clause shall limit the right of Sommerville Advisory Markets to take proceedings against the Client in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**Sommerville Advisory Markets**

[www.sam.ie](http://www.sam.ie)

[info@sam.ie](mailto:info@sam.ie)

A trading name and branch office of Agincourt Financial Limited. Registered Number: 4140761.

Supervised by the Central Bank of Ireland

Authorised and Regulated by the Financial Services Authority. FSA Registered Number: 197236.

[www.agincourtfinancial.com](http://www.agincourtfinancial.com)