



## ***Southern Cross Equities***

# Derivatives Client Agreement between Client and Southern Cross Equities

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**DERIVATIVES CLIENT AGREEMENT**  
**BETWEEN CLIENT AND BROKER**

This Agreement is made on \_\_\_\_\_ 200 between:

1. \_\_\_\_\_  
(insert name and ABN or ACN (if any))  
of \_\_\_\_\_ (Client) and  
(insert address)
2. **Southern Cross Equities Limited**, ABN 87 071 935 441 of 88 Phillip Street, Sydney NSW 2000 (**Southern Cross Equities**).

The Client and Southern Cross Equities agree and acknowledge as follows:

1. **Instructions**

- 1.1 The Client may from time to time instruct Southern Cross Equities to deal in the following kinds of derivatives which are traded on ASX:
  - (a) Options (sometimes referred to as Exchange Traded Options); and
  - (b) Other kinds of derivatives traded on ASX (*delete if Southern Cross Equities is only to be authorised to deal in Options*),

but not including Futures (**ASX Derivative Products**).

If the Client gives instructions to Southern Cross Equities to deal in an ASX Derivative Product in which Southern Cross Equities is not authorised to deal under this clause, those instructions are taken to vary this Agreement to authorise Southern Cross Equities to deal in that ASX Derivative Product under this clause.

2. **Clearing arrangements between Southern Cross Equities and Berndale**

Southern Cross Equities is a party to a Clearing Agreement with Berndale Securities Limited ABN 63 006 687 467 (**Berndale**), an admitted General Participant of ACH.

3. **Client Agreement with Berndale**

Prior to placing an order with Southern Cross Equities to deal in ASX Derivative Products, the Client must have signed a Client Agreement with Berndale.

4. **Nature of Southern Cross Equities' obligations [ASX Minimum Term 4]**

Notwithstanding that Southern Cross Equities may act in accordance with the instructions of, or for the benefit of, the Client, the Client acknowledges that any contract arising from

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any order submitted to the Market (as defined in the ASX Market Rules), is entered into by Southern Cross Equities as principal.

5. **Obligations of Client owed to Berndale**

The Client acknowledges that, subject to clause 20 below, immediately upon execution of a transaction in ASX Derivative Products by Southern Cross Equities on behalf of the Client, Berndale (and not Southern Cross Equities) is obliged as principal and has the Clearing Obligations (as defined in the ASX Market Rules) for that transaction (including upon registration, obligations to the ACH as principal) even though the transaction has been entered into by Southern Cross Equities on the Client's behalf.

Where the Client owes an obligation to deliver funds, security or information to Berndale that obligation will not be satisfied by delivery to Southern Cross Equities.

6. **Application of ASX Market Rules and ACH Clearing Rules [ASX Minimum Term 1 and 14]**

The Client and Southern Cross Equities are bound by the ASX Market Rules, the Corporations Act and the Procedures, customs, usages and practices of ASX and its related entities as amended from time to time in so far as they apply to ASX Derivative Products traded on ASX for the Client.

The Client acknowledges that each ASX Derivative Product registered with ACH is subject to the ACH Clearing Rules and the practices, directions, decisions and requirements of ACH.

7. **Authority [ASX Minimum Term 3]**

The Client acknowledges that the Client is either:

- (a) acting as principal; or
- (b) acting as an intermediary on another's behalf and is specifically authorised to transact the ASX Derivative Products, by the terms of:-
  - (i) an Australian financial services licence under the Corporations Act held by the Client;
  - (ii) a trust deed (if the Client is a trustee); or
  - (iii) an agency contract.

8. **Tape recording of conversations [ASX Minimum Term 7]**

The Client acknowledges that Southern Cross Equities may record telephone conversations between the Client and Southern Cross Equities. If there is a dispute between the Client and Southern Cross Equities, the Client has the right to listen to any recording of those conversations. *[Nothing in this Agreement obliges Southern Cross Equities to keep a recording longer than 90 days.]*

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9. **Commissions and fees [ASX Minimum Term 6]**

The Client must pay to Berndale (as agent for Southern Cross Equities) commissions, fees, taxes and charges, charged by Southern Cross Equities in connection with dealings for the Client in ASX Derivative Products at the rates determined by Southern Cross Equities from time to time and notified to the Client in writing.

Commission charged by Southern Cross Equities to the Client is collected by Berndale on behalf of Southern Cross Equities. Berndale will account to Southern Cross Equities for such commission after deducting fees which Berndale charges to Southern Cross Equities.

Commission is also payable to Berndale, where Berndale has been requested (in accordance with the Clearing Agreement), to act on behalf of Southern Cross Equities on a contract for the transfer of Underlying Financial Products following the exercise of a Derivatives Contract. Berndale will pass on part of that commission to Southern Cross Equities.

10. **Right to refuse to deal [ASX Minimum Term 9]**

The Client acknowledges that Southern Cross Equities may at any time refuse to deal in, or may limit dealings in, the ASX Derivative Products for the Client. Southern Cross Equities is not required to act in accordance with the Client's instructions, where to do so would constitute a breach of the ASX Market Rules, ACH Clearing Rules or the Corporations Act. Southern Cross Equities will notify the Client of any refusal or limitation as soon as practicable.

11. **Termination of Agreement [ASX Minimum Term 10]**

Either the Client or Southern Cross Equities may terminate this Agreement by giving notice in writing to the other. Termination will be effective upon receipt of the notice by the other party.

12. **Effect of termination [ASX Minimum Term 11]**

Termination does not affect the existing rights and obligations of the Client or Southern Cross Equities at termination.

Upon termination of this Agreement, Berndale will close out all Derivatives Contracts entered into by Berndale and registered in the Client's Account, unless, in accordance with a direction from the Client, the registration of those contracts is transferred to another Clearing Participant in accordance with the ACH Clearing Rules.

13. **Amendment**

This Agreement may be amended by Southern Cross Equities from time to time. Southern Cross Equities will give the Client 10 days notice of any amendment, after which time, the amendment will become effective.

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14. **Revised Terms prescribed by ASX [ASX Minimum Term 12]**

If ASX prescribes amended minimum terms for a Client Agreement for the ASX Derivative Products for the purposes of the ASX Market Rules (**New Terms**), to the extent of any inconsistency between these terms and the New Terms, the New Terms will override the terms of the Client Agreement and apply as if the Client and Southern Cross Equities had entered into an agreement containing the New Terms.

15. **Southern Cross Equities to provide Client with copy of changes [ASX Minimum Term 13]**

Southern Cross Equities will provide a copy of the New Terms to the Client as soon as practicable after ASX prescribes the New Terms.

16. **Dealing as Principal [ASX Minimum Term 5]**

The Client acknowledges that Southern Cross Equities may, in certain circumstances permitted under the Corporations Act and the ASX Market Rules, take the opposite position in a transaction in the ASX Derivative Products, either acting for another client or on its own account.

17. **Explanatory Booklet (retail investors only) [ASX Minimum Term 2]**

The Client has received and read a copy of the current explanatory booklet issued by ASX in respect of each ASX Derivative Product. *[This clause 17 does not apply in relation to a Client that is a Wholesale Client as defined in the ASX Market Rules]*

18. **Investment in ASX Derivative Products**

The Client has formed the view that investment in ASX Derivative Products is appropriate to the Client's financial situation, investment objectives and particular needs.

19. **Client to Provide Information [ASX Minimum Term 8]**

19.1 The Client will take all reasonable steps to deliver information or documentation to Southern Cross Equities, or cause information or documentation to be delivered to Southern Cross Equities concerning transactions in ASX Derivative Products (including Option Transactions) which are requested by a person having a right to request such information or documentation. Southern Cross Equities is authorised to produce the information or documentation to the person making the request.

The Client agrees that Southern Cross Equities may disclose such information (or documentation), any of the Client's account details and information (or documentation) regarding transactions in financial products (including transactions relating to ASX Derivative Products or to the exercise of ASX Derivative Products) of the Client to Berndale for use for the purposes of this agreement, and for the purposes of monitoring compliance by the Client, Southern Cross Equities or Berndale with their regulatory and contractual obligations, and resolving disputes.

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20. **Allocation (give up)**

20.1 The Client acknowledges that Berndale is obliged as principal and has the Clearing Obligations in respect of all transactions in relation to ASX Derivative Products which are executed by Southern Cross Equities on behalf of the Client, unless, in relation to a specified transaction or transactions:

- (a) the Client has consented to the allocation of the Derivatives Contract to another Clearing Participant;
- (b) Berndale has consented to the allocation of the Derivatives Contract to that other Clearing Participant;
- (c) Berndale has provided that consent prior to the Derivatives Contract being registered with ACH;
- (d) that other Clearing Participant has accepted the allocation of those trades in accordance with the ACH Clearing Rules; and
- (e) that other Clearing Participant has entered into a Client Agreement with the Client which complies with the ACH Clearing Rules.

20.2 For the purposes of clause 20.1(a), the Client authorises Southern Cross Equities in respect of any Derivatives Contract arising out of a transaction in an ASX Derivative Product executed by Southern Cross Equities to:

- (a) instruct Berndale on behalf of the Client from time to time in its discretion, to allocate a Derivatives Contract to another Clearing Participant (**Second Clearing Participant**); and
- (b) consent on behalf of the Client to the allocation of that relevant Derivatives Contract to a Second Clearing Participant,

provided that, at the time the instruction and consent are given to Berndale by Southern Cross Equities, an agreement exists between the Client and the Second Clearing Participant which complies with the ACH Clearing Rules (and any other applicable rules or law) and sets out the terms of their relationship in relation to the clearing of transactions in ASX Derivative Products.

21. **Credit references**

The Client agrees that Southern Cross Equities may make such enquiries as it thinks fit of any person, including the Client's employer, bank or credit agency, relating to the creditworthiness of the Client and disclose the result of those enquires to Berndale for the purposes of Berndale's risk assessment.

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22. **Privacy**

Southern Cross Equities agrees to comply with its obligations under the Privacy Act 1988 (Cth) (as amended from time to time) to the extent relevant to this Agreement and as detailed in Southern Cross Equities' Privacy Statement.

23. **Confirmations**

The Client acknowledges that any confirmation (contract note/daily statement) dispatched electronically to the Client by or on behalf of Southern Cross Equities is subject to:

- (a) the terms and conditions of this agreement;
- (b) the ASX Market Rules, directions, decisions and requirements of ASX and where relevant the ASTC Settlement Rules;
- (c) the customs and usages of the Market (as defined in the ASX Market Rules); and
- (d) the correction of errors and omissions.

24. **Cancellation of Trades**

24.1 The Client authorises Southern Cross Equities, and agrees that Southern Cross Equities may, without the Client's consent, cancel or amend (or request or agree to the cancellation or amendment of) any transaction in ASX Derivative Products or any Derivative Contract to which a confirmation relates:

- (a) if ASX exercises its power under the ASX Market Rules to cancel or amend (or require the cancellation or amendment of) that transaction or Derivatives Contract; or
- (b) in the event of an Error (as defined in the ASX Market Rules) or otherwise in circumstances contemplated in the ASX Market Rules.

24.2 The obligations of Southern Cross Equities and the Client relating to settlement and clearing of a transaction cease to apply in respect of a cancelled transaction from the time it is cancelled.

25. **Governing law**

This Agreement is governed by the law in force in [Victoria] and the Client and Southern Cross Equities submit to the non-exclusive jurisdiction of the courts of [Victoria] and courts which may hear appeals from those courts.

26. **Interpretation**

Unless the contrary intention appears:

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**ACH** means Australia Clearing House Pty Limited ABN 48 001 314 503.

**ACH Clearing Rules** means the operating rules of ACH.

**ASTC** means ASX Settlement and Transfer Corporation Pty Limited ABN 49 008 504 532.

**ASTC Settlement Rules** means the operating rules of ASTC.

**ASX** means Australian Stock Exchange Limited ABN 98 008 624 691.

**ASX Derivative Product** has the meaning given to it in clause 1.1.

**ASX Market Rules** means the operating rules of ASX.

**Derivatives Contract** means a Derivatives Market Contract or a Derivatives CCP Contract (each as defined in the ACH Clearing Rules) or the corresponding contract between Southern Cross Equities and the Client or Southern Cross Equities and Berndale, as the context requires.

Other words and phrases defined in the ASX Market Rules, the ACH Clearing Rules and the ASTC Settlement Rules has the meaning given to it in the applicable Rules. A copy of these Rules is available on request.

Words expressed in the singular include the plural and vice versa.

A reference to a document or agreement includes any variation or replacement of it.

27. **Joint and Several Liability**

If the Client constitutes more than one person then each of those persons is jointly and severally bound by this Agreement and Southern Cross Equities is entitled to act on the instructions of any one of those persons.

28. **Complaints**

Please contact our Office Manager on (02) 9231 0880 if you are unable to resolve your dispute with your adviser or write to:

The Complaints Office  
Southern Cross Equities Limited  
P O Box R234  
Royal Exchange  
SYDNEY NSW 1225

Should you find that your complaint has not been resolved to your satisfaction, you have the right to complain to the Financial Services Complaints Resolution Scheme of which Southern Cross Equities Limited is a member.

The Financial Services Complaints Resolution Scheme

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P O Box 386,  
Collins Street West  
MELBOURNE VIC 8007

Phone (03) 9614 2944  
Fax (03) 9620 7666

Executed as an agreement.

**SIGNED** by [*name of client*] in the  
presence of:

\_\_\_\_\_  
Signature of client

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

**OR**

**EXECUTED** by [*name of client*]:

\_\_\_\_\_  
Signature of director/\*\*sole director and  
secretary  
(Cross out whichever option is not applicable)

\_\_\_\_\_  
Signature of second director or secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

*\*\*This option should only be selected if the company is an Australian proprietary company which has only one director that person is also the only secretary.*