

# Hood Sweeney Securities Pty Ltd ABN (40 081 455 165), AFSL (220897) (we, us, our)

## TERMS OF BUSINESS

The following terms of business (**Terms**) apply to all Services provided by us to you and any of your related entities. By accepting our Service Agreement, you agree to be bound both individually and through your entities by these Terms, as amended from time to time.

You can find the meaning of capitalised words used in these Terms in Schedule 1.

Our Service Agreement sets out the services we have agreed to provide to you (**Services**). You appoint us to provide the Services pursuant to these Terms. The provision of the Services is subject to Applicable Laws.

### 1. Financial advice

- 1.1 If we provide you with General Advice, you agree that:
  - (a) that General Advice has been prepared without taking account your objectives, financial situation or needs;
  - (b) you should, before acting on the advice, consider the appropriateness of the advice, having regard to your objectives, financial situation and needs; and
  - (c) you should obtain and read, and make sure you understand, the relevant information available in respect of the Investments the subject of the advice (including, if you are a Retail Client, a Product Disclosure Statement), in full before making any decision about whether to acquire a financial product that may be the subject of the General Advice.
- 1.2 You acknowledge and agree that, if we provide you with Personal Advice:
  - (a) you have accurately and completely disclosed your investment objectives, financial situation and particular needs (your **relevant personal circumstances**) to us, in order to assist us to provide you with the Personal Advice;
  - (b) you will promptly notify us of any change in your relevant personal circumstances;
  - (c) if you do not give us all requested information in relation to your relevant personal circumstances, or fail to promptly notify us of changes in relation to your relevant personal circumstances then our advice could be based on incomplete and inaccurate information which could result in the Personal Advice not being appropriate for you.
- 1.3 You consent to us providing you with disclosure documents electronically including via hyperlink.

### 2. Providing information

- 2.1 In order for us to provide the Services to you, you will need to complete and sign documents in the form provided by us from time to time in connection with us providing such Services and provide the information we require. These documents may be accepted in electronic format.
- 2.2 So that we can comply with our legal requirements when providing Services, when requested by us, you will need to provide us with the following information:
  - (a) all information, data, or any other document required by us to verify your identity as required by AML/CTF Laws, including original or certified copies of documentary evidence;
  - (b) if you are an individual, your Tax File Number, and you authorise us to use and disclose that information to third parties in connection with us providing the

Services to you under these Terms;

- (c) if you are acting as a trustee, the relevant trust deed or any constituent documents of the trust, including any documents which amend those documents; and
- (d) any other information we may reasonably request.

- 2.3 In order to provide our Services, we require up to date information. Please notify us promptly if any information you have provided to us is, or becomes, untrue, incomplete or inaccurate.
- 2.4 Any delay in providing such information to us may result in us not being able to provide Services to you or to arrange for others to provide Services to you, or in a timely manner.
- 2.5 We will never ask you to provide us with your Tax File Number by e-mail. You should only provide us with your Tax File Number in person, or through a secure messaging platform.

### **3. Effect of death or incapacity**

If you die or become incapacitated whilst you are our client, then you authorise your legal personal representative to ratify and confirm any actions we take between the date of your death or incapacitation and the date we receive evidence to our satisfaction of your death or incapacitation.

### **4. Fees**

- 4.1 You agree to pay us the fees and charges as agreed between us from time to time in the Service Agreement (**Fees**) and as stated in any advice document we provide to you.
- 4.2 You agree to grant us a direct debit authority in relation to one of your Australian bank accounts to debit our Fees. The details of our direct debit agreement will be set out in your Service Agreement.
- 4.3 Unless expressly stated otherwise, all Fees are expressed on a GST- inclusive basis. Where a Fee is expressly stated to be exclusive of GST, you agree to pay us the GST amount.

### **5. Set off**

- 5.1 If you fail to meet any settlement obligations which you have instructed us to incur, for which we have incurred liability on your behalf, you agree that we may sell on your behalf any of your Investments and apply the proceeds to reduce your liability to us or to a third party to whom you own an obligation in connection with the Services provided we first give you five Business Days written notice of our intention to do so.
- 5.2 We may:
  - (a) set off any amount payable to us, or any of our agents, by you against any amount payable by us or any of our agents to you; and
  - (b) withhold any amount payable by us, or any of our agents, to you in satisfaction of any amount payable to us, or any of our agents, by you.

### **6. People you authorise**

- 6.1 If more than one person constitutes our client (each a joint holder), you authorise us to accept instructions and directions from any one individual without seeking authority or confirmation from the other individual(s).
- 6.2 You may appoint one or more people as Authorised Persons to represent or act for you, to receive information in relation to your financial affairs, or give instructions on your behalf. Such an appointment is subject to that person being reasonably acceptable to us, providing AML documents, and your written instruction. You need

to ensure that your Authorised Person reads and understands these Terms prior to their appointment and knows the rights and remedies we may have against the Authorised Person pursuant to clause 6.4.

6.3 You agree and understand that:

- (a) we may act upon the instructions of any Authorised Person you have appointed;
- (b) an Authorised Person may be restricted from providing instructions in relation to particular Services; and
- (c) we may provide information relating to your Investments in response to a request from an Authorised Person;

without checking the authority of that Authorised Person to give such instructions or to request such information.

6.4 You agree that if any of your Authorised Persons breach these Terms, the breach will be attributed to you as principal, and we have the same rights and remedies as we would if you had personally committed the breach. Where we can take action against the Authorised Person, we do not need to do so before exercising the rights granted in this clause against you.

6.5 We will assume an Authorised Person remains authorised by you unless and until we receive a written revocation of their authority from you.

## **7. Representations and warranties**

You represent and warrant that:

- 7.1 all information you have provided to us is true, complete and accurate, and we may rely on that information in providing our Services;
- 7.2 you have the power and authority to enter into the Terms and to perform your obligations under these Terms, and these Terms constitute valid and binding obligations on you;
- 7.3 if you are an individual, you are over the age of 18;
- 7.4 if one of your entities is a body corporate, it has been, and remains, validly registered and existing under the relevant laws of incorporation;
- 7.5 if you are acting as a trustee:
  - (a) you have been properly appointed as the sole trustee of the relevant trust (**Trust**) and you are not in breach of trust;
  - (b) these Terms will bind you in your personal capacity and also in your capacity as a trustee;
  - (c) the Trust is duly constituted and is validly existing in compliance with all Applicable Laws, and the constitutional documents of the Trust have been duly stamped where required, in accordance with the laws of each State and Territory of Australia;
  - (d) you have the right to be fully indemnified out of the Trust's assets for any obligation incurred under these Terms before any Trust beneficiary's claim and this right has not been limited or reduced in any way;
  - (e) you are authorised to, and have full power and authority, under the trust deed for the Trust to enter these Terms and acquire our Services, to perform your obligations under these Terms and any transaction that may arise under them;
  - (f) in the case of a superannuation fund, the entry into of these Terms and the undertaking contemplated under these Terms:
    - (i) complies with all Applicable Laws, prudential standards and

regulator issued guidelines applicable to the operation of superannuation funds, including the SIS Act, the SIS Regulations and the APRA superannuation prudential standards, prudential practice guides and other guidelines;

(ii) is in accordance with the fund's risk management strategy (including any applicable derivatives risk statement) and investment strategy prepared in accordance with the SIS Act and SIS Regulations; and

(iii) is on an arm's length basis, for value and on commercial terms;

- 7.6 if more than one person constitutes our client (each a joint holder), each joint holder is jointly and severally responsible for performing all of the obligations and liabilities under these Terms, and each representation, warranty and undertaking under these Terms is taken to have been made by each joint holder;
- 7.7 you have read and understood all documentation provided to you in connection with our Services, including without limitation, if you are a Retail Client, our Financial Services Guide;
- 7.8 you authorise us to provide any relevant information about you to Service Providers in connection with the provision of the Services;
- 7.9 you understand and acknowledge that your Investments are subject to risks of loss because of market, currency, economic, political, business and other events. We do not promise, represent, or guarantee that our advice to you, or the provision of the Services by us or a Service Provider, will achieve a particular rate of return for your Investments; If we do provide an indicative estimate of the rate of return for a given investment, you acknowledge that it is an estimate only, and is not a guarantee of any kind that the return will meet that estimate.
- 7.10 you will ratify and confirm any proper actions we or any Service Provider carry out based on your instructions, or the instructions of an Authorised Person;
- 7.11 as soon as you become aware of an error or omission, you are responsible for taking necessary action to mitigate further loss;
- 7.12 except where you have authorised us, and we have agreed, to manage your Investments on a discretionary basis, we are not responsible for your investment decisions;
- 7.13 you must pay all associated duties and taxes (including any GST) in relation to your Investments; and
- 7.14 we reserve the right to provide you with any Service in our sole discretion.

## **8. Confidentiality and privacy**

- 8.1 Except as provided for in these Terms and our Privacy Policy, or as otherwise agreed in writing by you or as required by law, we will keep confidential all personal information provided by you including information concerning your financial affairs or Investments.
- 8.2 You acknowledge that your personal information may be collected, stored, used or disclosed by us in accordance with our Privacy Policy, which is available at <https://www.hoodsweeney.com.au/privacy> or you may request a copy from our Privacy Officer by sending an email to [privacy@hoodsweeney.com.au](mailto:privacy@hoodsweeney.com.au). By agreeing to these Terms, you consent to the collection, storage, use and disclosure of your personal information in accordance with our Privacy Policy, including having your identity information verified with the issuer or official record holder through a Document Verification Service.

## **9. Limited power of attorney**

- 9.1 You appoint severally us and each of our agents, officers, and authorised

representatives (each an **Attorney**) as your attorney, to do in your name everything necessary or expedient:

- (a) to prepare, execute and deliver any document, and do anything that is necessary to appoint or change a Service Provider or in connection with the acquisition, disposal, holding, management or administration of your Investments in accordance with your instructions, including, without limitation, to execute an application in accordance with your instructions or to agree to any terms and conditions of the Service Provider;
- (b) to communicate, give instructions, or prepare, execute and deliver any document, or take any other action reasonably necessary to effect the acquisition, disposal, amendment, renewal or cancellation (as the case may be) of Investments in accordance with your instructions; or
- (c) to give instructions to, enter into contracts or agreements with, another party on your behalf after receiving your instructions to do so.

9.2 Any power granted to an Attorney pursuant to this clause is only to be exercised in connection with the performance of the Services and the administration and management of your Investments in accordance with your instructions.

9.3 You agree that an Attorney may use any information you have provided to us for the purpose of exercising any power granted to an Attorney pursuant to this clause.

9.4 You are bound by, and agree to ratify, anything done by an Attorney in the exercise of an authority granted under this clause, and you acknowledge that anything done on your behalf within the authority of this clause will be treated as if you have done it personally.

9.5 The powers and authorities conferred on an Attorney under this clause remain in full force and effect until you revoke such powers and authorities given to an Attorney by giving written notice.

9.6 You agree to indemnify each Attorney against, and must pay each Attorney on demand the amount of, all losses, liabilities, costs or expenses incurred in connection with, or as a result of, the exercise of an authority by the Attorney under this clause provided the Attorney acted in accordance with your instructions. The indemnity will be reduced by the extent an Attorney acts negligently or wilfully failed to follow your instructions.

9.7 Neither us, nor any Attorney is liable for any Loss incurred by you as a direct or indirect result of any delay or omission in the exercise of an authority by an Attorney under this clause, except when the Loss is caused directly by our, or an Attorney's' fraud, negligence or dishonesty.

9.8 You acknowledge that the power granted to an Attorney under this clause is not exclusive of, and does not limit, any other rights you have conferred upon us or any third party under any other agreement to which you are a party, including without limitation your agreement with a Service Provider.

## **10. Limitation of liability and indemnity**

10.1 To the extent permitted by Applicable Laws and subject to the provisions of the Competition and Consumer Act, ASIC Act and the Corporations Act which cannot be excluded by agreement between the parties, we and each of our directors, officers, employees and Associates will not have liability for any Loss incurred by you directly or indirectly (except to the extent resulting from or caused by our negligence, fraud or dishonesty), without limitation as a result of or arising out of:

- (a) our failure to act (or refuse to act) on your instructions or the instructions of an Authorised Person, regardless of whether there were any error or omission in your instructions;

- (b) your failure to comply with these Terms;
- (c) anything lawfully done by us, in accordance with these Terms or in compliance with a direction, request, or requirements under Applicable Laws or of a regulatory authority;
- (d) any event or circumstance which we cannot reasonably control, including failure or problems involving the relevant stock exchange or market operator or failure of electronic or mechanical equipment or communication lines;
- (e) any delay, interruption, omission, failure, error or fault by us in passing on and executing your instructions;
- (f) any failure by a Service Provider;
- (g) market movements and other risks associated with the Investments;
- (h) reliance on a document or message that we had no reason to believe was not authentic or delays caused by our further investigation of the authenticity of the instructions.

10.2 You agree to indemnify and keep indemnified us and each of our directors, officers, representatives, agents, employees and Associates (each an **Indemnified Party**) from and against any Loss reasonably incurred by an Indemnified Party acting under or in connection with these Terms where such Loss is caused by your wilful act, omission, unlawful conduct or provision of information to us where doing so infringes the rights of a third party. This indemnity will be reduced to the extent that Loss is caused or contributed to by the negligence, wilful misconduct or dishonesty of an Indemnified Party.

## 11. Suspension of rights and termination

11.1 These Terms and our engagement to provide Services may be terminated by either party giving notice to the other party.

11.2 Upon termination of these Terms:

- (a) all Fees accrued will become immediately due and payable by you; and
- (b) all obligations under these Terms cease upon termination (but for the avoidance of doubt, rights or obligations that arise before termination are not affected).

## 12. General

12.1 Except as otherwise expressly provided in these Terms, any notice, approval, consent or any other documents must be in writing and must be sent by facsimile, email, registered post or courier and addressed as follows:

- (a) if to you, to your last address or email address notified in writing to us; and
- (b) if to us the following details:

11 – 16 South Terrace Adelaide SA 5000

[hss@hoodsweeney.com.au](mailto:hss@hoodsweeney.com.au)

Or as otherwise notified in writing to you from time-to-time.

12.2 Subject to the rest of this clause, these Terms may only be amended by written agreement between the parties. However, we may with 7 days' prior written notice to you, amend these Terms to correct any obvious error or address unintended consequences and to reflect any change in Applicable Laws which affects the operation of these Terms provided that such a change does not materially lessen your rights under these Terms.

12.3 You may not assign, transfer or novate any of your rights or obligations under these Terms without our written consent which shall not be unreasonably withheld or

delayed. We may, with 10 Business Days' notice to you, assign, transfer or novate its rights or obligations under these Terms to any third party.

- 12.4 If any part of these Terms is invalid, void or unenforceable, these Terms are only affected to the extent of such invalidity, voidness or unenforceability and the remainder of the Terms continues in full force and effect.
- 12.5 These Terms are governed by, and must be construed in accordance with, the law of the State of South Australia. Each of you and us irrevocably submits to the non-exclusive jurisdiction of the courts of South Australia and courts competent to hear appeals from those courts.

## SCHEDULE 1 - MEANING OF WORDS

In these Terms, the following words have the meaning set out below:

**Associates** means all associates (as that term is used in the Corporations Act) of ours from time to time.

**AML/CTF Laws** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and any rules or regulations made under that legislation.

**Applicable Laws** means any common law, principles of equity, statute, regulations, rules, class orders or instruments that apply to the provision of the Services under these Terms, including but not limited to the Corporations Act, ASIC Act, AML/CTF Laws, each as amended from time to time or for the time being in force.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

**Authorised Person** means a person appointed and authorised by you under clause 6.1.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in South Australia.

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

**General Advice** has the meaning given to that term pursuant to section 766B(4) of the Corporations Act.

**Investment** means any financial product covered by our Australian financial services licence.

**Loss** means any claim, action, demand, proceeding, judgment, damage, loss, liability (whether direct or indirect, in tort or contract or breach of statutory duty or otherwise), cost, charge, expense, outgoing, payment, fine, penalty loss or damages (including without limitation consequential loss or damage of any nature whatsoever).

**Retail Client** has the meaning given to that term by section 761G of the Corporations Act.

**Personal Advice** means has the meaning given to that term pursuant to section 766B(3) of the Corporations Act.

**Service Agreement** means the agreement between you and us that sets out the specific details of services we will provide to you. This includes our Engagement Letter and our Service Agreement.

**Service Provider** means a service provider (other than us) who provides services in connection with of your Investments from time to time, whether or not we arranged such relationship with the Service Provider on your behalf.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 2004* (Cth).

**You, your** means the client specified in the Service Agreement.

## INTERPRETATION

The following rules also apply in interpreting these Terms, except where the context makes it clear that a rule is not intended to apply.

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
  - (i) legislation includes any subordinate or amending legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document,



- agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
  - (d) A word which suggests one gender includes the other genders.
  - (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (g) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
  - (h) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
  - (i) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
  - (j) The expressions **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.
  - (k) A reference to **dollars** or **\$** is to an amount in Australian currency.
  - (l) If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the next Business Day.

This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

If a provision of this document requires a person that is not a party to this document to do, or not to do, a thing, each party must use its reasonable efforts to ensure that the person does, or does not, do that thing.