

**CARL KLIEM S.A.**  
**TERMS OF BUSINESS**

**1 About Us**

Carl Kliem S.A. (“**we**”, “**us**”, “**our**”), are authorised and regulated by Commission de Surveillance du Secteur Financier (“**CSSF**”). Our principal place of business is 251, route d'Arlon L-1150 Luxembourg. The CSSF's registered office is 283 Route d'Arlon, 1150 Luxembourg.

**2 Commencement**

These Terms of Business (the “**Terms**”), together with our Execution Policy, as amended from time to time, set out the trading relationship between you and us and shall commence upon the earlier of you signing the Terms or giving dealing instructions to us. You will be deemed to accept these Terms at the time of giving us an order or asking us to arrange any transaction for you (each, a “**Transaction**”).

**3 The Services**

- 3.1 We will provide dealing services to you (the “**Services**”), on a named give-up basis (i.e. as an introducing/arranging broker) in relation to over-the-counter derivatives, or on a matched principal basis in respect of bonds. You consent to us acting on a matched principal basis.
- 3.2 Information on certain financial instruments and proposed investment strategies in respect to which we provide the Services, including appropriate guidance on, and warnings of, the risks associated with investing in those financial instruments or in respect of particular investment strategies, is set out on the website at the following link: [www.carlkliem.lu/en/downloads.htm](http://www.carlkliem.lu/en/downloads.htm).

**4 Client Categorisation**

- 4.1 We will treat you, but not any person on whose behalf you may be acting, as our client for the purposes of MiFID.
- 4.2 For the purposes of these Terms, we have categorised you as either a Professional Client or an Eligible Counterparty. We will notify you of which categorisation we have attributed to you by a separate cover letter together with these Terms.
- 4.3 If you are categorised as an Eligible Counterparty you will not have certain protections afforded by MiFID, including, but not limited to: rules preventing us from receiving inducements; rules specifying the content of our agreements with you; the requirement to obtain the best possible result when executing your orders; and rules which provide for the prompt, fair and expeditious execution of your orders.
- 4.4 If you are categorised as a Professional Client, this is because we believe you satisfy the criteria to be considered a Per Se Professional Client. If we do not believe that you satisfy those criteria, then we have written to you separately to seek your consent to treat you as an Elective Professional Client.
- 4.5 You are entitled to request a different categorisation. Where you request either generally or in respect of one or more types of Transactions or products, you must confirm such request in writing and that you are aware of the consequences of the protection you may lose (if any) as a result of that request. We will describe these protections further to you where relevant. We accept only

Professional Clients or Eligible Counterparties for the Services described in these Terms. We do not provide the Services to Retail Clients.

## **5 Communication**

- 5.1 You may communicate with us in writing (including fax), by email or instant message, or orally (including by telephone).
- 5.2 The language of communication shall be English, French or German, and you will receive documents and other information from us in either of these languages.
- 5.3 You agree that it is appropriate for us to provide information about us and our Services on our website at [www.carkliem.lu](http://www.carkliem.lu) and that you have regular access to the internet, and you specifically consent to us doing so.
- 5.4 Subject to Applicable Regulations, any communication between you and us using electronic signatures shall be binding as if it were in writing.

## **6 Our Fees and Charges**

Information regarding our fees and charges is set out in the Execution Policy. In addition to the information provided in the Execution Policy, we will provide you with an indicative fees and charges schedule separately.

## **7 Instructions**

- 7.1 You may provide instructions to enter into or arrange Transactions to us orally or electronically. Telephone, email, or any other form of communication acceptable to us with one of our persons authorised to accept instructions may be used to give such instructions to us.
- 7.2 Orders or instructions given by you via email or other electronic means will constitute evidence of the orders or instructions given.
- 7.3 We shall act on your instructions only during the hours in which the product that is subject to your instructions is tradable.
- 7.4 We shall be entitled to treat as binding any instruction which we believe to be from you and which we have accepted in good faith.
- 7.5 You agree that our obligation to withdraw or amend an instruction is subject to us receiving a further instruction to withdraw or amend the prior instruction in time for the appropriate action to be taken.
- 7.6 You agree that we may in our discretion refuse to accept an instruction from you without giving any reasons.
- 7.7 We will not be under any obligation to arrange any particular Transaction, or to act in accordance with any instruction if we believe, in our discretion, that to do so may be impracticable or if, in our opinion, to do so would infringe Applicable Regulations or the rules or customs of any exchange or market on which such Transactions are effected.
- 7.8 You shall promptly (and within any time limit imposed by us) give any instructions we may reasonably request from you in respect of the Services. If you do not do so, we may in our sole discretion take any steps at your cost which we consider appropriate for our or for your protection.

## **8 No Advice**

- 8.1 Unless we agree with you in writing, we do not advise on the merits of particular orders or Transactions in respect of which we provide services, or their taxation consequences. From time to time, we may provide information which is incidental to your dealing relationship with us. Such information is provided solely to enable you to make your own investment decisions and does not amount to advice.
- 8.2 In asking us to execute or transmit any order or enter into any Transaction, you represent that you have been solely responsible for making your own independent appraisal and investigations into the risks of the order or Transaction. You represent that you have sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks. We give no warranty as to the suitability of the products executed, transmitted or cleared under these Terms and assume no fiduciary duty to you.
- 8.3 If you ask us to enter into a Transaction in respect of certain financial instruments, as defined in MiFID, we may be required to assess the appropriateness of such investment for you. If this is the case, we are entitled, and will, assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to the relevant investments and related Services.

## **9 Conflicts of Interest**

- 9.1 We maintain a conflicts of interest policy and have implemented procedures to identify, prevent, and manage any actual or potential conflicts of interest that may arise between us, our managers, employees, Affiliates and our clients, or between one client and another (each, a “**Conflict**”). Where a Conflict is identified, we will take all appropriate steps to prevent or manage such Conflict so that it does not adversely affect the interests of our clients.
- 9.2 Where the arrangements described in section 9.1 are not sufficient to ensure, with reasonable confidence, that the risk of damage to your interests will not be prevented, we shall clearly and promptly disclose the general nature and/or sources of the Conflict to you and the steps taken to mitigate those risks before undertaking business on your behalf. However, disclosure of a Conflict shall be a measure of last resort.
- 9.3 Our conflicts of interest policy sets out the types of Conflicts which affect our business and provides details of how these are identified and prevented or managed. A summary of our conflicts of interest policy is available in the Execution Policy and further details are available upon request.

## **10 No Client Money**

We do not hold client money or securities and therefore Applicable Regulations prescribing how client assets are held and distributed in the event that we fail shall not apply to our relationship with you.

## **11 Execution Policy**

- 11.1 We enclose a copy of our current Execution Policy together with these Terms. The Execution Policy sets out the methodology we follow in order to take all sufficient steps to obtain the best possible result for you in relation to your orders. You agree that we may update this policy from time to time and publish that policy or a summary on our website and that such publication shall constitute notification to you of our updated Execution Policy.
- 11.2 You consent to our Execution policy and expressly consent to your orders and Transactions being executed outside of regulated markets, multilateral trading facilities, and organised trading facilities, each as defined by MiFID, where to do so is: (a) consistent with the Services we have agreed in these Terms to provide; and (b) in accordance with our Execution Policy.

- 11.3 We may combine the your order with our own orders and orders of other clients. We must reasonably believe that this is in the overall best interests of you and our other clients prior to combining your orders. However, aggregation may result in you obtaining a less favourable price in relation to a particular order. Please refer to the our Execution Policy for more information.

## 12 Trade and Transaction Reporting

- 12.1 Where you give us an order for a transaction which is subject to publication in accordance with MiFIR (“**Trade Reporting**”), you agree and acknowledge that we shall only arrange to make public the information regarding that transaction in accordance with MiFIR where it is our legal obligation to do so, unless otherwise agreed in writing. You acknowledge that you are responsible for any Trade Reporting which is your obligation under MiFID.
- 12.2 In addition, where any transaction in an investment is subject to the requirements under MiFIR to make a report to a relevant Regulatory Authority (“**Transaction Report**”), you agree and acknowledge that we shall only complete and file any such Transaction Report where it is our legal obligation to do so, unless otherwise agreed in writing. We shall not be responsible for any Transaction Report, including any relevant fields included in such Transaction Report, which are your obligation under MiFIR.

## 13 Confirmations and Periodic Statements

- 13.1 Unless we have categorised you as an Eligible Counterparty and agreed separate arrangements with you, we will provide confirmations to you at the end of the trading day following execution to the email address you have provided to us. It is your responsibility to inform us whether any confirmations are incorrect before settlement. Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within 24 hours of receipt of our written trade confirmation or we notify you of an error in the confirmation within the same period.
- 13.2 We shall provide you with periodic reports setting out a review of the Services provided to you during the relevant reporting period.

## 14 Representations, Warranties and Covenants

- 14.1 You represent and warrant to us on the date these Terms come into effect and as of the date of each Transaction that:
- (i) you are duly organised and validly existing under the law of your jurisdiction of organisation or incorporation;
  - (ii) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to be able to lawfully enter into and perform these Terms and each Transaction;
  - (iii) the persons entering into these Terms, and each Transaction, on your behalf have been duly authorised to do so;
  - (iv) these Terms, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
  - (v) unless otherwise agreed, you act as principal and sole beneficial owner (but not as trustee) in relation to each Transaction;
  - (vi) any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;

- (vii) the choice of Luxembourg law as the governing law of these Terms will be recognised and enforced in your jurisdiction of organisation or incorporation;
- (viii) any judgment obtained in Luxembourg in relation to these Terms will be recognised and enforced in your jurisdiction of organisation or incorporation;
- (ix) you are willing and financially able to sustain a total loss of funds resulting from orders which are executed or transmitted by us and entering into Transactions, and placing such orders and entering into and trading in Transactions is a suitable investment strategy for you;
- (x) you are not required to make a deduction or withholding on account of tax from a payment under these Terms;
- (xi) under the law of your jurisdiction of organisation or incorporation, it is not necessary that these Terms be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to these Terms or the Services or Transactions contemplated by these Terms.

#### 14.2 You covenant to us that:

- (i) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this section 14;
- (ii) you will, upon request, promptly provide us with information and/or documentation in respect of your financial position, domicile or other matters;
- (iii) you will promptly notify us of the occurrence of any Event of Default or of any event that may become an Event of Default with respect to you;
- (iv) you will (i) comply with all Applicable Regulations, including MiFID and MiFIR, in relation to these Terms and any order or Transaction, so far as they are applicable to it; and (ii) use all reasonable steps to comply with all Applicable Regulations in relation to these Terms and each order or Transaction, where such Applicable Regulations do not apply to you but your cooperation is needed to help us comply with our obligations;
- (v) you will not place orders or otherwise take any action that could create a false impression of the demand or value for a financial instrument, or place orders which you have reason to believe are in breach of Applicable Regulations; and
- (vi) upon demand, you will promptly provide us with such information and or documentation as we may reasonably require to evidence the matters referred to in this section 14, to comply with any Applicable Regulations or to respond to requests from any trading venue or counterparty or Regulatory Authority in relation to you orders or Transactions.

## 15 Termination by Notice

15.1 Unless required by Applicable Regulations, we or you may terminate these Terms (and our relationship) by giving ten days written notice of termination to the other party. Upon termination of these Terms, all amounts payable by you to us will become immediately due and payable including:

- (a) all outstanding fees, charges and commissions;
- (b) any dealing expenses incurred by terminating these Terms; and

- (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.

15.2 Termination of these Terms will not affect any outstanding orders or Transactions or any legal rights or obligations which may already have arisen prior to the termination.

## **16 Exclusion and Limitation of Liability**

16.1 Neither we nor our directors, officers, employees, or agents will be liable for any losses, damages, costs or expenses, whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under these Terms (including any Transaction or the Services or where we have declined to enter into a proposed Transaction or perform the Services) unless such loss is a reasonably foreseeable consequence and arises directly from our gross negligence, wilful default or fraud.

16.2 In no circumstance, will we have liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with these Terms, whether arising out of negligence, breach of contract, misrepresentation or otherwise.

16.3 Nothing in these Terms will be construed to limit our liability to the extent it cannot do so under Applicable Regulations.

16.4 We will not be liable to you for any partial or non-performance of our obligations under these Terms by reason of any cause beyond our reasonable control, including any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any governmental or supra national bodies or authorities or the failure by a broker, agent, dealer, counterparty, trading venue, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Nothing in these Terms will exclude or restrict any duty or liability we may have to you under Applicable Regulations, which may not be excluded or restricted.

## **17 Indemnity**

You will pay to us, on a full indemnity basis, such sums as we may from time to time require in or towards satisfaction of any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which we may incur or be subjected to:

- (a) in performing the Services;
- (b) in relation to any order or Transaction; and/or
- (c) as a result of any misrepresentation by you or any violation by you of your obligations under these Terms (including any Transaction) or by the enforcement of our rights.

## **18 Confidentiality**

18.1 We will treat all information held about you or your Transactions as confidential, even when you cease to be our client.

18.2 You agree, however, that we may disclose this information:

- (a) to Affiliates and that we and our Affiliates may disclose such information to those who provide services to us or act as our agents;
- (b) to anyone to whom we transfer or propose to transfer any of our rights or duties under these Terms;

- (c) to credit reference agencies or other organisations that help us and others make credit decisions and reduce the incidence of fraud or in the course of carrying out identity, fraud prevention or credit control checks;
- (d) to a Regulatory Authority, where we are required to do so by Applicable Regulations, where there is a public duty to disclose or where our interests require disclosure;
- (e) at your request; or
- (f) with your consent.

## **19 Personal Data and Data Protection**

- 19.1 Any personal information provided to or collected by us will be processed by us in our capacity as controller, or, as the case may be, by our sub-contractors or service providers in their capacity as processors.
- 19.2 The personal data referred to in this section relates to our clients and any other persons involved in our business relationship with our clients, as the case may be, including any authorised representatives, persons holding a power of attorney, beneficial owners and/or any related persons.
- 19.3 The personal data we collect may include identification data (e.g. name, e-mail address, postal address, telephone number, country of residence, passport, identity card, tax identification number), electronic identification data (e.g. IP addresses, cookies, traffic data), banking and financial data (financial identification, financial situation, ability to bear loss, investment objectives or preferences), personal characteristics (e.g. date of birth), qualifications and occupation (e.g. academic curriculum, employer, function, title, place of work, specialisation), images and sound (e.g. copies of identification documents and recording of telephone conversations).
- 19.4 To enter into and maintain a contractual relationship with us, it may be mandatory for you to provide us with certain personal data. In other circumstances, it will be at your discretion whether you will provide us with personal data or not. However, failure to provide us with any of the personal data we may request might prevent us from providing or maintaining the Services to you or we may be unable to enter into a trading relationship with you as our client.
- 19.5 We make every effort to maintain the accuracy and completeness of the personal data that we process, and to ensure that all of the personal data is up to date. However, you must promptly contact us if there are any changes to your personal data or if you become aware that we have inaccurate personal data. To the maximum extent permitted by applicable law, and except in case of gross negligence or wilful misconduct, we shall not be responsible for any losses arising from any inaccurate, inauthentic, deficient or incomplete personal data provided to us.
- 19.6 We may collect personal data about you directly from you or from other legitimate sources. Such sources include third-party data aggregators, public sources and credit-rating agencies, such as Bloomberg or World-Check.
- 19.7 You warrant that:
- (a) personal data has been obtained and processed and is disclosed to us in compliance with applicable law;
  - (b) you will not do, or omit to do, anything affecting compliance with applicable law regarding such disclosure of personal data nor do, or omit to do, anything that would cause us to be in breach of applicable law (including data protection laws) and that
  - (c) the processing and transfer of personal data shall not cause us to be in breach of any applicable law (including data protection laws).

- 19.8 You will indemnify and hold us harmless for all financial consequences arising from any breach of the warranties set out in sub-section 19.7 above.
- 19.9 We are committed to safeguarding and protecting your personal data and maintaining appropriate security to protect any personal data provided to us from improper or accidental disclosure, use, access, loss, modification or damage. We will take all steps reasonably necessary to ensure that your personal data is treated securely and in accordance with applicable law and regulations and our internal policies and standards.
- 19.10 Our privacy policy ("Privacy Policy") provides you with a more detailed account of our practices regarding personal data and forms an integral part of these Terms. You confirm that you have carefully read and understood the Privacy Policy and accept to be bound by it.

## **20 Modification of Terms**

- 20.1 We may amend these Terms, including by adding, removing and amending any annexes, by giving at least ten Business Days written notice to you. Any change will take effect on the date specified in the notice. Unless otherwise agreed, an amendment will not affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.
- 20.2 In the event of any inconsistency between an annex which we add pursuant to section 20.1 above and these Terms, the provisions of the annex shall prevail to the extent of the inconsistency.

## **21 Recording of Calls and Electronic Communications**

- 21.1 We will record telephone conversations and electronic communications with you for use in the processing of orders or for the purpose of retaining evidence of any commercial transaction or other commercial communication, monitoring services provided for your benefit and/or at your request and in compliance with regulations. We may record telephone conversations without use of a warning tone to ensure that the material terms of your orders and Transactions, and any other material information is promptly and accurately recorded. It is understood that these recordings will remain covered by the relevant banking secrecy rules in force in Luxembourg that we are bound by and that they may only be used for the aforementioned purposes.
- 21.2 Records of telephone conversations and electronic communications will be our sole property. A copy of the record will be available on request for a period of five (5) years. You understand that any phone conversations and electronic communications recordings may be retained by us in accordance with the legal statute of limitation.
- 21.3 Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with the Services.
- 21.4 You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer.
- 21.5 You will not rely on us to comply with your own record keeping obligations, although records may be made available to you on request.

## **22 Complaints and Compensation**

- 22.1 We are obliged to put in place internal procedures for handling complaints fairly and promptly. You may submit a complaint to us, for example by letter, telephone, email, or in person. We will send you a written acknowledgement of your complaint promptly following receipt, enclosing details of our complaints procedures, including when and how you may be able to refer your complaint to the CSSF. Please contact us if you would like further details regarding our complaints procedures.

22.2 We are a member of the Système d'Indemnisation des Investisseurs ("**SIIL**"), the Investor Compensation Scheme (the "**Scheme**") in Luxembourg provided for by the law of 18 December 2015 relating to the resolution, recovery and liquidation measures of credit institutions and some investment firms. The Scheme is only available to certain types of claimants and claims. Payments to eligible claimants under the Scheme will vary depending on the type of protected claim the claimant holds with respect to the relevant institution. Further details of the Scheme are available on request or at the Scheme's official website at [www.cssf.lu](http://www.cssf.lu).

## 23 Severability

The partial or total illegality or inapplicability of one or several provisions of these Terms will not affect the applicability of the other agreed provisions.

## 24 Governing Law and Jurisdiction

These Terms and any non-contractual obligations arising out of or in connection with them are governed by and shall be construed in accordance with the laws of the Grand Duchy of Luxembourg. All disputes shall be subject to the exclusive jurisdiction of the Luxembourg Courts to which we each submit.

## 25 Definitions

25.1 Capitalised terms used but not defined above shall have the following meaning:

- (a) "**Affiliate**" means an undertaking in the same group as us.
- (b) "**Applicable Regulations**" means any statute, law, regulation, rule or guidance of any Regulatory Authority, applicable to you or us, including, but not limited to, MiFID II and, to the extent applicable to you or us, similar foreign laws or regulations.
- (c) "**Business Day**" means a day which is not a Saturday or a Sunday and upon which banks are open for business in Luxembourg.
- (d) "**Eligible Counterparty**" has the meaning given in Article 30(2) of MiFID.
- (e) "**MiFID**" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU and any secondary legislation, rules, regulations and procedures made pursuant thereto.
- (f) "**MiFIR**" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 and any secondary legislation, rules, regulations and procedures made pursuant thereto.
- (g) "**Professional Client**" has the meaning given in Article 4(1)(10) of MiFID.
- (h) "**Regulatory Authority**" means any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity with authority or jurisdiction over you or us, including the CSSF.
- (i) "**Retail Client**" has the meaning given in Article 4(1)(11) of MiFID.