

# Clarksons Platou Commodities USA LLC

## Terms of Business for Institutional Customers

August 2017

### 1. General

- 1.1 Clarkson Platou Commodities USA LLC (“CCUSA”) is a Delaware limited liability company having its place of business at 1333 West Loop South, Suite 1525, Houston, Texas, 77027, USA. References to “we”, “us” and “our” are references to CCUSA. References to “you”, “your” and “yourselves” are to the contracting entity identified by CCUSA on the attached covering letter

### 2. Application and Scope of these Terms

- 2.1 The Terms of Business (“Terms of Business”) shall govern the Services (which will be described in clause 3 below) and describe the terms and conditions upon which you enter into this relationship with us. We may vary these Terms of Business at any time by written notice to you. Such changes will become effective on the date specified in the notice which will be at least twenty four (24) Business Days after the notice is sent. They do not apply to any other Services provided by us or our Associates to you or your Associates (unless agreed in writing between us).
- 2.2 These Terms of Business shall apply to all proposed transactions contemplated by these Terms of Business, to any related service or activity performed by CCUSA and all matters relating thereto.
- 2.3 These Terms of Business are legally binding and subject to the successful completion of anti-money laundering checks, come into force immediately prior to our providing you with the Services. This agreement constitutes the entire agreement between CCUSA and yourselves and supersedes any prior agreement relating to the subject matter of this agreement, or any prior declaration or statement we may have made.
- 2.4 For the avoidance of doubt, we may take or omit to take any action we consider necessary to ensure compliance with applicable law.

### 3. Our Services

- 3.1 Subject to any applicable laws, rules and regulations, and the provisions of these terms and conditions, we may negotiate and arrange trades in any derivative products and other trade related financial instruments (“Proposed Transactions”), for confirmation by you, as may be agreed between you and us from time to time. All trades are subject to your confirmation.
- 3.2 We will act as a broker on all Proposed Transactions. We shall establish with you the terms on which you may wish to enter into a Proposed Transaction with a counterparty and, if we are aware of or locate a counterparty which may wish to enter into such a transaction with you, we may then negotiate between you and that counterparty to see if there are terms for the Proposed Transaction which may be acceptable to both you and the counterparty. The trade may be agreed and entered into orally, at the completion of the negotiations before any documentation is produced. We will subsequently draft a confirmation and further documentation as agreed, to evidence the terms negotiated and entered into between you and the counterparty.

- 3.3 You accept that the counterparty may be another client of CCUSA, a client of one of our Associates or one of our Associates. You accept that we may be acting as a broker for the counterparty at the same time and in the same capacity as we are acting as broker for you.
- 3.4 We will not be a party (either as principal or agent) to any Proposed Transaction.
- 3.5 We do not provide services in relation to any other financial instruments.
- 3.6 CCUSA may provide advice to you on specific Proposed Transactions.

4. **Your responsibilities**

- 4.1 Before concluding a Proposed Transaction with a Counterparty introduced by us in accordance with clause 3, you will be solely responsible and we accept no liability or responsibility for:
  - 4.1.1 assessment of the suitability of the counterparty (including its financial standing, credit risk, legal capacity and ability to enter into the Proposed Transaction);
  - 4.1.2 the suitability of the Proposed Transaction for you including the proposed terms and pricing of the Proposed Transaction;
  - 4.1.3 any errors in the documentation and/or other documentation and any disagreements relating to the Proposed Transaction or any of the accompanying documentation;
  - 4.1.4 assessing the risks for you in relation to the Proposed Transaction including the risk of movement in the market before the Proposed Transaction is concluded;
- 4.2 You warrant and represent that:
  - 4.2.1 you have all necessary authority, powers, consents, capacity, licenses, resources and authorisation and taken all necessary action to enable you to lawfully enter into and perform any of the Proposed Transactions. No liability shall attach to CCUSA if an instruction which it has accepted and acted upon as bona fide is subsequently discovered to have been forged, falsified or amended without your authority and has purportedly emanated from you;
  - 4.2.2 all information you have given, or shall give, to us is true and complete as of the date of this agreement and at the time of any transaction and any changes to such information will be promptly notified to us; and any Proposed Transaction that is not agreed and entered into between you (including through us) and the counterparty;
  - 4.2.3 you are, and at all times during the term of these Terms of Business will be, an “institutional customer” (as such defined in CFTC Regulation 1.3(g));and
  - 4.2.4 either that you are not, and at all times during the term of these Terms of business, you will not be, required to be a member of the National Futures Association (“NFA”) or that you are, and at all times during the term of these Terms of Business you will be, a member of the NFA.

5. **Confirmation**

- 5.1 After the terms of a Proposed Transaction are agreed between you and a counterparty, a confirmation and/or other documentation will be issued. We will issue these documents unless we indicate otherwise.
- 5.2 It is your responsibility to ensure that the terms of the confirmation and/or other documentation match the terms agreed between you and the counterparty. We shall not be liable for any errors in the confirmation and/or other documentation or any disagreements relating to these documents.

6. **Execution of Proposed Transactions**

- 6.1 For the avoidance of doubt, we will not conclude or execute any Proposed Transactions whether as principal or agent and you agree that we do not owe you a duty of best execution.
- 6.2 All Proposed Transactions will be concluded and executed directly between you and the counterparty (and not by us); the Proposed Transaction will become legally binding when you and the counterparty agree the terms of the trade and agree to be bound by it. This can be done orally and before any confirmation and/or other documentation is issued or entered into.

7. **Our Charges and Payment of Commission**

- 7.1 CCUSA charges commission for its services. Unless otherwise agreed the commission will be in accordance with our rates at the time the commission was incurred and as notified to you verbally or in writing prior to dealing. Any alteration to these rates will be notified to you at or before the time of the change. You shall be obliged to pay commission for each Proposed Transaction arranged by us. Commission will be payable immediately against invoice which will normally be presented at the end of the month of the contract date. We will issue you with an invoice stating what commission is due and payable to us once the Confirmation has been issued in accordance with clause 5

8. **Indemnity and limitation of liability**

- 8.1 You shall indemnify us and keep us indemnified against all losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise and including reasonable legal fees) (referred to as "Loss") which may be suffered or incurred by us as a result of or in connection with your failing to comply with your obligations under these Terms of Business unless and to the extent only that such losses, taxes, expenses, costs and liabilities are suffered or incurred as a result of our negligence, wilful default, or fraud.
- 8.2 We accept no liability to you for any type of loss except that resulting from our negligence, wilful deceit or fraud. In no circumstances shall we be liable for any of the activities set out in clause 4.
- 8.3 Nothing in these Terms of Business shall limit or exclude our liability for personal injury or death.
- 8.4 The indemnities above shall survive termination of these Terms of Business.

9. **Communication with you**

9.1 You are responsible for the verification of the content of each such communication received from us. These shall be conclusive unless you notify us in writing to the contrary within three (3) Business Days of receiving such Communication.

10. **Default, Termination and Illegality**

10.1 Following the happening of one or more defaults, we shall have the right to immediately refrain from providing any Services to you without prior notice to you. You acknowledge that we shall not be responsible for any consequences of taking this action.

10.2 Either You or We may terminate these Terms of Business by giving us fourteen (14) days written notice. We may terminate these Terms of Business immediately by giving you written notice if default occurs in accordance with clause 9.1. No penalty will be payable by either party on termination of these Terms of Business but all unpaid commissions must be paid.

10.3 If at any time any provision of these Terms of Business is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms of Business under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected.

11. **Conflicts of Interest**

11.1 Your attention is drawn to the fact that when we arrange a transaction for you, we, an associated company, or some other person connected with us may have an interest, relationship, or arrangement that is material in relation to the transactions, investments or service concerned.

11.2 CCUSA is committed to identifying any such conflicts and managing them.

11.3 CCUSA has established procedures which are designed to identify and manage such conflicts. These include organisational and administrative arrangements to safeguard the interests of clients.

11.4 Our conflicts of interest policy sets out the actual and potential conflicts of interest which affect our business and details of how these are managed.

11.5 Where a conflict of interest or potential conflict of interest exists, we shall ensure that such Proposed Transaction is effected on terms which are not materially less favourable to you than if the potential conflict had not existed.

12. **Tape recording of conversations**

12.1 You agree that we may record telephone conversations between us and use such recordings, or transcripts from such recordings, as evidence in any dispute or anticipated dispute between you and us. We may act on telephone instructions before receipt of any written confirmation and its records of telephone conversations shall be conclusive evidence of such instructions. We may act on telephone instructions before receipt of any written confirmation and our records of telephone conversations shall be conclusive

evidence of such instructions. Any recordings or transcripts made by us shall be and remain our sole property.

### 13. **Confidentiality**

13.1 Subject to clause 12, neither party shall disclose to any person (unless required to do so by any applicable law or by any regulatory or supervisory authority or by any other person entitled by law to require disclosure, or to enable it properly to perform its obligations under these Terms of Business), any information in relation to the business, investments, finances or other matters of a confidential nature of the other party of which it may in the course of its duties or otherwise become possessed, and each party shall use all reasonable endeavours to prevent any such disclosure.

13.2 By entering into these Terms of Business you authorise us to disclose such information relating to you as may be required by any law, rule or regulatory authority, including any applicable market rules, without your prior notice or consent.

### 14. **Complaints**

14.1 You should inform us immediately in writing of any dispute or complaint that you may have in relation to these Terms of Business. We will endeavour to investigate any dispute or complaint as soon as reasonably practicable and will notify you of the results of its investigation. All formal complaints should be made in writing to:

The Compliance Manager Clarkson Commodities USA LLC  
1333 West Loop South,  
Suite 1525,  
Houston,  
Texas, USA 77027

### 15. **Assignment and delegation**

15.1 You may not assign any of your rights or delegate any of your obligations under these Terms of Business to any person without our prior written consent. We may not assign any of our rights or delegate any of our obligations under these Terms of Business to any person without your prior written consent.

### 16. **Governing law and jurisdiction**

16.1 These Terms of Business shall be governed by and construed under the laws of the State of New York without regard to principles of choice of law (other than as set forth in Sections 5-1401 and 51402 of the New York General Obligations Law).

### 17. **Notices**

17.1 Any communication given or made under or in connection with the matters contemplated by these Terms of Business shall be sent to the usual business address of the party to whom the communication is addressed.

17.2 Any notice shall be deemed to have been received (i) if delivered personally or by hand, at the time of delivery (ii) if posted, within 3 clear banking days of posting (iii) if oral, whether

by telephone or face to face, when actually given (iv) if sent by facsimile, one hour after completion of its transmission on a business day.

Signed on behalf of Clarksons Platou Commodities USA LLC:

Sign:

Print:

Date:

Signed on behalf of:

Sign:

Print:

Date: