

# Mason Stevens Distributor Registration General Terms



July 2024

## General Terms

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### 1. Distribution Services

- 1.1 The Distribution Services listed in clause 1.18 apply to Mason Stevens Products.
- 1.2 The Distributor must provide the Distribution Services in compliance with the General Terms and the laws and Government Agency policies.
- 1.3 The Distributor must ensure that its employees or representatives who are engaged in services for The the Distributor in the course of the Distribution Services have the experience, qualifications, knowledge and skills necessary for the Distributor to perform its obligations under the General Terms with at least the level of skill and care reasonably expected of a service provider with obligations of the kind set out in the General Terms.
- 1.4 The Distributor must notify Mason Stevens as soon as practicable if the Distributor becomes aware of:
  - a. a material or systematic breach by it of the General Terms, or
  - b. any matter that is reasonably likely to adversely affect the Distributor's ability to fulfil its obligations under the General Terms.
- 1.5 The Distributor must ensure that:
  - a. in performing the Distribution Services it will not knowingly cause Mason Stevens or any Issuer to breach any regulatory requirements relating to the Mason Stevens Products involved in the Distribution Services
  - b. each client who receives a Financial Product or Financial Service is given, before acquisition of the Financial Product or Financial Service the most current Disclosure Document for the Financial Product or Financial Service (without changes) unless and to the extent Mason Stevens confirms in writing that it is not necessary
  - c. it complies with the Design and Distribution Obligations (DDO) regime and will fulfil its requirements outlined in the DDO protocol which is hosted on Mason Stevens' website and may be updated from time to time.
- 1.6 The Distributor must notify Mason Stevens of the following:
  - a. the Distributor's representatives (including "Authorised Representatives" for the purposes of the Corporations Act) who are authorised by Distributor to provide instructions to

Mason Stevens in respect of client accounts and assets, and any other authorised representatives who may give notices or other instructions on behalf of the Distributor from time to time to Mason Stevens

- b. notice when authorisation of the representative has been revoked.

Mason Stevens will rely on such notifications as to authorisations and will not make any enquiries as to the actual internal authorisation by the Distributor. This reliance is regardless of whether Mason Stevens has any other actual or constructive notice which indicates there might not be the required authorisation of a particular person unless Mason Stevens has notice of anything which is reasonably likely to indicate that the authorisation had actually been revoked.

- 1.7 The Distributor undertakes that at all times during the term of this agreement:
  - a. The Distributor will have authority to collect any personal information of or about the client.
  - b. The Distributor may store and disclose the information or otherwise use it for the Distribution Services.
  - c. The client's authorisations allow the Distributor to deal and to pass on necessary information (including an extract of a statement of advice to the client in relation to the Financial Products or Financial Services) to third parties including Mason Stevens for execution of transactions in the Mason Stevens Products.
- 1.8 Mason Stevens may from time to time provide advice and information to the Distributor in respect of Financial Products or Financial Services which is expressly or manifestly not intended to be provided to clients such that Mason Stevens would be liable to them for that advice and information. In such cases the Distributor, not Mason Stevens, is responsible to the Distributor's clients to the extent the Distributor uses such advice and information.
- 1.9 The Distributor must notify Mason Stevens immediately of any change to its authorisation of its representatives which is reasonably likely to impact materially upon performance of either party under this agreement or upon the Distributor's liability to clients who have received, or who continue to receive, Mason Stevens Products.
- 1.10 If the Distributor is obliged by law to provide (including by its representatives) personal advice to its clients about a Financial Product or a Financial Service which is provided by Mason Stevens (such as managed account services), then:



- a. The Distributor must ensure that the advice must be given in accordance with the requirements of the Corporations Act for such personal advice to such clients.
  - b. Where required by law for the Mason Stevens Product, the Distributor must give (without breaching the client's confidentiality) to Mason Stevens an extract of such statement of advice (initial and subsequent) and must give that to Mason Stevens within a month after its date.
  - c. The statement of advice must contain material and otherwise conform to requirements of Mason Stevens which Mason Stevens reasonably requires in order for Mason Stevens to comply with its regulatory and risk management requirements for the relevant Mason Stevens Products.
  - d. The Distributor must immediately notify Mason Stevens if it becomes aware of any deficiency or compromised security in the e-signature process of any of its corporate authorised representative's practices who issue statements of advice to clients who in turn hold investments in Mason Stevens.
- 1.11 The Distributor acknowledges that its clients are liable for all costs, fees and charges properly incurred by Mason Stevens or the Distributor's or the client's agents in relation to Mason Stevens Products provided pursuant under this agreement. These may arise under standing arrangements or when demanded by Mason Stevens or the agent.
  - 1.12 The Distributor must ensure that it has disclosed and will disclose to clients, in accordance with its obligations as required by law, its and its representatives' fees or other benefits of any kind received or payable that may arise from the giving of advice or from clients acting upon that advice or instructions or otherwise from its relationship with its clients.
  - 1.13 The Distributor acknowledges that the dealing on behalf of the Distributor's clients by Mason Stevens is non-advisory business by Mason Stevens so that Mason Stevens takes the order for execution except only to the extent Mason Stevens has an express written agreement for any managed discretionary account services by Mason Stevens to that client.
  - 1.14 The Distributor acknowledges that it will give clients the Mason Stevens Offer Documents and that clients will pay fees to Mason Stevens as outlined in the Mason Stevens Offer Documents.
  - 1.15 Instructions (whether related to a client directed account or otherwise) to Mason Stevens can be for specific client accounts or for a class of clients, as nominated by the Distributor. Instructions from the Distributor can be for specific transactions or they can be standing instructions, allowing Mason Stevens to conduct transactions within its permitted discretion. Mason Stevens is authorised and directed to deal in the client's account's assets in accordance with the terms of any trading or portfolio strategy agreed with the client. Instructions from the Distributor prevail over instructions from a representative of the Distributor, unless given in writing by the representative and countersigned by a director of the Distributor or by the client.
- 1.16 The Distributor acknowledges that the execution of transactions, particularly the placing of orders on behalf of the Distributor's clients, may be made available through an online order pad provided by Mason Stevens. The availability of such a service will have certain rules and processes which may result in the Distributor not being able to amend or cancel certain orders once placed. Mason Stevens validates all orders prior to execution and maintains the right to reject or cancel any order placed. The placement and execution of such orders may be subject to certain restrictions or limits imposed by Mason Stevens or a third party. Mason Stevens is not liable for any errors made on the online order pad or errors occurring on a securities exchange or other execution venue.
  - 1.17 The Distributor acknowledges that market prices for Financial Products displayed on the online order pad provided by Mason Stevens are delayed. Market orders may be executed at prices that vary substantially from the bid or offer quotes publicly displayed at the time an order is placed.
  - 1.18 The Distributor will provide the following marketing and sales facilitation services to Mason Stevens with due skill and care with respect to Mason Stevens Products:
    - a. introduce clients into Mason Stevens Products
    - b. marketing and demonstrating Mason Stevens Products to potential clients and distribution networks, including by using Mason Stevens Offer Documents, Disclosure Documents, brochures, flyers, investor presentations, calculators, and web-based information
    - c. assisting in or allowing Mason Stevens and its delegates and agents to train and educate its advisors in respect of Mason Stevens Products
    - d. assisting in or allowing Mason Stevens and its delegates and agents to distribute Mason Stevens Products through its advisers
    - e. familiarising clients and its distribution networks with Mason Stevens Products.
- 2. Discretions and obligations of the parties**
    - 2.1 Nothing in this agreement affects the obligations, duties, powers and discretions of Mason Stevens in relation to Financial Products or Financial Services provided to clients, as agreed with or disclosed to those clients.
    - 2.2 Nothing in this agreement makes Mason Stevens responsible or otherwise liable in any way for the acts or omissions of the client's agents through whom the client's instructions are given.
    - 2.3 Mason Stevens will not market its services to clients of or introduced by the Distributor and will not allow access by other parties to client data held for the Distributor, in either case except:
      - a. with the prior consent of the Distributor
      - b. to the extent the person is already a client directly of Mason Stevens or receives or accesses general marketing material from Mason Stevens that was not directed specifically at the clients, or



- c. the person is a client of another person who deals through Mason Stevens and the client has instructed Mason Stevens to provide access.
- 2.4 Mason Stevens will notify the Distributor of any change to its AFS Licence which it decides might reasonably be expected to impact materially upon its ability to perform its obligations under these General Terms.
- 2.5 Identification and verification of Clients
- The Distributor is responsible for identifying and verifying the identification of Clients, including details related to the Clients, for the purposes of:
- a. confirming the existence and identity of the Client
  - b. confirming the Client is not under any legal impediment to become a client of Mason Stevens, according to procedures which Mason Stevens reasonably specifies from time to time
  - c. complying with all anti-money laundering and counter-terrorism financing laws and regulations, including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* and the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (Cth)*(**AML Laws**), applying to it in respect of each applicant to become a Client
  - d. complying with the *Foreign Account Tax Compliance Act 2010 (Cth)* (**FATCA**) and the Common Reporting Standard (**CRS**)
  - e. confirming if the Client is a wholesale or sophisticated investor under the *Corporations Act 2001* for the purposes of the services to be provided by Mason Stevens
  - f. ensuring with respect to any Client defined as a wholesale or sophisticated investor, that a certificate issue by a qualified accountant is provided to Mason Stevens
  - g. complying with other laws or with any other identification and verification checks or procedures which Mason Stevens reasonably specifies from time to time in relation to the clients together referred to in this agreement as Know Your Client (**KYC**) procedures.
- 2.6 Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**)
- The Distributor must (on its own behalf and on behalf of its representatives):
- a. identify, collect and verify any and all information necessary to fulfil its KYC obligations
  - b. not submit an application form to Mason Stevens to establish an account for Client or submit instructions on that account unless the dealer has completed the KYC procedures to the satisfaction of Mason Stevens
  - c. retain proper and complete records of all Client identification information collected for performing its KYC obligations
  - d. provide Mason Stevens with a copy of the identification and verification documentation collected for each Client as may be reasonably requested by Mason Stevens from time to time
  - e. maintain internal AML/CTF policies and procedures that are up to date and compliant with all regulatory requirements
  - f. not knowingly do anything to put Mason Stevens in breach of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, rules and other subordinate instruments (**AML/CTL Laws**)
  - g. notify Mason Stevens without undue delay after it becomes aware of anything that would put Mason Stevens in breach of AML/CTF Laws including any breaches of its internal AML/CTF policies or procedures, or if the dealer reasonably forms the belief that a Client has engaged in money laundering or terrorism financing, or the risk of that has materially increased
  - h. if requested provide additional information and assistance and comply with all reasonable requests to facilitate Mason Stevens's compliance.
- 2.7 Collection and payment of fees
- Where Mason Stevens Products involve the making of payments such as adviser fees, Mason Stevens will collect the fees on behalf of the Distributor, and:
- a. payments will be paid to the Distributor on terms specified in the Mason Stevens Offer Documents published by Mason Stevens
  - b. such payments will be paid to the bank account nominated by the Distributor
  - c. Mason Stevens is not responsible for allocation of payments to the Distributor's representatives, and such obligation remains the responsibility of the Distributor
  - d. Mason Stevens reserves the right to offset payments earned against any other amounts owed to Mason Stevens by the Distributor, and
  - e. Mason Stevens reserves the right to cease making such payments if and where such payment is in breach of these General Terms, the Mason Stevens Offer Documents or Applicable Laws. If Mason Stevens exercises its rights under this sub-clause, it will promptly notify the Distributor.
- 2.8 Online portal User ID and Intellectual Property
- a. Upon execution of the Distributor Registration Form, Mason Stevens will grant the Distributor access to a secure online portal and issue the Distributor's appointed representatives with User IDs.
  - b. User IDs are personal to the person set out in the Distributor Registration Form and must not be shared or transferred.
  - c. If the Distributor informs Mason Stevens that a representative is no longer employed by the Distributor, Mason Stevens will ensure the User ID registered to that representative is no longer linked to information or accounts associated with the Distributor.
  - d. Anything associated with or available through the online portal belongs to Mason Stevens or other third persons and is protected by intellectual property rights.



e. The Distributor agrees (on its own behalf and on behalf of its representatives) not to access, download or otherwise use such property other than as expressly permitted by these conditions, and will be responsible, and indemnify Mason Stevens accordingly, for any unauthorised use of such property.

f. Neither party may use the other party's name or logo for marketing purposes without its express written consent.

### 3. Term and Termination

3.1 This agreement commences on the date it is accepted by Mason Stevens and ends when terminated in accordance with this clause 3.

3.2 In addition to any other right of termination arising by general law or these General Terms, if a party is in default under clause 3.3 the other party may terminate this agreement immediately by giving the defaulting party written notice of termination.

3.3 A party is in default if any of the following applies to it:

- a. it is in material breach of any term of the General Terms and if the breach is capable of being remedied, it fails to remedy the breach within ten (10) Business Days of receipt of notice of the breach
- b. it ceases to hold a licence or the authorisation required to perform its obligations under this agreement
- c. it passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction in which the resulting entity assumes all of the party's obligations under the General Terms) or if a court makes an order to that effect
- d. it ceases to carry on all or substantially all of its business
- e. it becomes or is declared to be insolvent or it convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors
- f. a liquidator, receiver, administrator, trustee, manager or similar external administrator is appointed in respect of any of its assets or if any analogous step is taken in connection with its insolvency or dissolution
- g. it materially contravenes its AFS Licence, the Corporations Act or any law and fails to correct such contravention within five (5) Business Days after being notified from any source, and that contravention is reasonably considered by the non-defaulting party to this agreement to have resulted in or is reasonably likely to cause, material adverse consequences for either or both parties to this agreement
- h. in respect of the Distributor, it does anything which Mason Stevens reasonably believes may harm the reputation of, or otherwise detrimentally affect Mason Stevens or trustee, or

i. in respect of the Distributor, it does not, in Mason Stevens' reasonable opinion, provide a professional level of service or conduct under or in relation to the General Terms.

3.4 In addition to any other right of termination arising by general law or the General Terms, either party may terminate this agreement by giving at least one (1) month's written notice to the other party.

3.5 If notice of termination of this agreement is given by either party, both parties must consult and cooperate for the purposes of arranging a transition of Mason Stevens Products provided to or held for the clients according to the instructions of the clients. It is acknowledged by the parties that this agreement is not appropriate to set out in advance any fixed, prescriptive rules and obligations to be followed for such transitions. The parties must use their best endeavours to achieve the transition having regard to the following principles:

- a. Each party continues to be bound by statutory and continual obligations imposed on it.
- b. The transition must aim to achieve the best interests of the clients, to the extent a party is or should be aware of them.
- c. A client may by law be considered to be a client of each party for their respective roles.
- d. Mason Stevens acknowledges that the Distributor has substantially invested in developing its relationships with its clients who might acquire Mason Stevens Products.

3.6 Upon termination of this agreement:

- a. all rights and obligations of the parties accrued to the time of termination will subsist
- b. each party continues to be bound by the terms of the General Terms which expressly or by implication are to be observed or performed after termination (including the obligations to maintain confidentiality of information), and
- c. Mason Stevens and its agents may enter into transactions to settle or otherwise to extinguish or to off-set obligations incurred by any or all of them in relation to trading in or for Mason Stevens Products under the General Terms prior to termination.

### 4. Representations and Warranties

4.1 Each of the Distributor and Mason Stevens represents and warrants to and for the benefit of the other that:

- a. it is a limited liability company duly incorporated, registered and validly existing under the laws of its place of incorporation
- b. it has the corporate power to own its assets and carry on its business as it is now being conducted
- c. it has power and authority to enter into and perform its obligations under the General Terms;
- d. it has taken all necessary action to authorise the execution and performance of the General Terms;
- e. this agreement constitutes legal, valid and binding obligations on it and is enforceable in accordance with its terms;



- f. the execution, delivery and performance by it of this agreement will not breach, or result in a contravention of:
  - i. any law, regulation or Authorisation
  - ii. its constitution or other constituent agreements, or
  - iii. any encumbrance or agreement which is binding on it
 and will not result in:
  - i. the creation or imposition of any encumbrance on any of its assets other than as permitted under this agreement, or
  - ii. the acceleration of the date for payment of any obligation under any agreement which is binding on it
- g. each of its representations and warranties contained in this agreement are correct and not misleading when made or repeated, and
- h. it has not withheld from the other any information reasonably likely to be material to the decision of the other to enter into this agreement.

## 5. Indemnities

- 5.1 The Distributor indemnifies Mason Stevens for all losses, costs, damages, expenses, claims, demands, actions and suits suffered or incurred by, or made, threatened or instituted against Mason Stevens as a result of, directly or indirectly:
  - a. any advice given to a client by or on behalf of the Distributor
  - b. the Distributor's client's failure in respect of settlement of transactions or collateral requirements in respect of holdings in the Financial Products or Financial Services, but only to the extent those transactions or holdings were properly made or acquired for the relevant client
  - c. the communication of instructions, or delay in communications of instructions as among a client, the Distributor (including its representatives) and Mason Stevens
  - d. execution of any transaction properly made for a client for a Financial Products or a Financial Services
  - e. any payment or reporting made by Mason Stevens in accordance with a client account application form or as subsequently varied in writing by a client, and
  - f. any other breach of the General Terms by the Distributor, except to the extent of any breach of the General Terms, negligence, fraud or dishonesty by Mason Stevens in performance of its services and other obligations under the General Terms or as required by law. The Distributor must pay Mason Stevens the required amount under this indemnity on written demand setting out reasonable particulars of the loss. If the loss can be calculated by reference to exchange or market facility rules, Mason Stevens need not wait for the actual loss by it of that amount but may immediately send a written demand for that loss.

- 5.2 Mason Stevens indemnifies Distributor for all losses, costs, damages, expenses, claims, demands, actions and suits suffered or incurred by, or made, threatened or instituted against Distributor as a result of, directly or indirectly, any breach of the General Terms by Mason Stevens except to the extent of any breach of the General Terms, negligence, fraud or dishonesty by the Distributor in performance of its services and other obligations under this agreement or as required by law. Mason Stevens must pay the Distributor the required amount under this indemnity on written demand setting out reasonable particulars of the loss. If the loss can be calculated by reference to exchange or market facility rules, the Distributor need not wait for the actual loss by it of that amount but may immediately send a written demand for that loss.

- 5.3 The indemnities in this agreement survive termination of this agreement, closure of any relevant client's account with Mason Stevens and termination of any party's relationship with the client.

## 6. GST

- 6.1 All payments to be made under the General Terms are expressed exclusive of GST unless otherwise stated.
- 6.2 If GST is or will be imposed on a supply made under or in connection with the General Terms, the supplier may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
  - a. increase the consideration otherwise provided for that supply under this agreement by the amount of that GST, or
  - b. otherwise recover from the recipient of the supply the amount of that GST.
- 6.3 The Supplier must issue a tax invoice to the recipient of the supply no later than ten (10) Business Days after payment of the GST inclusive consideration for that supply, unless other terms are agreed, such as for the provision of a recipient created tax invoice.

## 7. Licence for use of Trade Marks

- 7.1 Subject to the General Terms, Mason Stevens grants the Distributor a royalty-free, non-exclusive licence to use the Mason Stevens trade marks on the following conditions:
  - a. the Mason Stevens trade mark is used solely in the marketing and promotion of Mason Stevens Products the Distributor has no rights or interests in the trade mark
  - b. the Distributor will not engage in any activity that will diminish or tarnish the image and or reputation of the Mason Stevens trade mark
  - c. the Distributor must obtain Mason Stevens' prior written approval for any marketing and promotional material published or distributed by Distributor
  - d. in relation to any Mason Stevens Products, ensuring that those materials are compatible with Mason Stevens Offer Documents, services and procedures.



## 8. Permitted Delegation

- 8.1 Subject to clause 8.2, in providing the Distribution Services, the Distributor:
- a. may only delegate its obligations under this agreement to any agent, subsidiary or other delegate with the prior written consent of Mason Stevens, and
  - b. may only novate its obligations to any agent, subsidiary or other delegate with the prior written consent of Mason Stevens.
- 8.2 The Distributor will remain liable for all acts or omissions in respect of its obligations under the General Terms even if the agent, subsidiary or other delegate is also liable to Mason Stevens.

## 9. Limitation of Liability

- 9.1 Subject to clause 9.2, the limitations on Mason Stevens' liability under this clause 9 apply despite any other provision of the General Terms and extends to all liabilities and obligations of Mason Stevens in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to the General Terms.
- 9.2 To the extent permitted by law, Mason Stevens will not be liable for any loss or damage suffered by the Distributor or its clients, whether reasonably foreseeable or not, and whether arising under contract, tort, fiduciary duties or otherwise as a result of or in connection with:
- a. any advice given to a client by or on behalf of the Distributor
  - b. the communication of instructions, or delay in communications of instructions as among a client, the Distributor (including its representatives) and Mason Stevens
  - c. execution of any transaction properly made for a client under a Financial Products or a Financial Services, and
  - d. any payment or reporting made by Mason Stevens in accordance with a client account application form or as subsequently varied in writing by a client, except to the extent of any breach of the General Terms, negligence, fraud or dishonesty by Mason Stevens in performance of its services and other obligations under this agreement or the limitation cannot by law apply. If the liability of Mason Stevens by law cannot be excluded then, to the extent permissible, the liability of Mason Stevens is limited to performing the services as agreed or to the maximum amount of fees otherwise payable to Mason Stevens in respect of the relevant client, whichever Mason Stevens chooses.
- 9.3 Mason Stevens will not accept or bear any liability of any kind, whether reasonably foreseeable or not, in respect of the operation of a trading floor or securities exchange or any depository or clearing or settlement house, whether for any breach of a provision of any relevant legislation, negligence, economic loss, loss of reputation, breach of fiduciary or other duty or losses or damages consequential to the operation of any securities exchange except to the extent it is caused by the negligence, fraud or dishonesty of Mason Stevens.

- 9.4 Mason Stevens and agents may use price-quoting services from time to time in connection with the General Terms. To the extent permitted by law, Mason Stevens will not be liable to the Distributor or its clients for any damage or loss resulting from or caused by any inaccuracy or delay in the information or advice supplied by such services or by any other failure of a price quoting service or other agent or adviser to perform as reasonably expected.
- 9.5 Any market information provided by Mason Stevens does not constitute an offer to trade in any Financial Products or Financial Service. Mason Stevens makes no representation, warranty or assurance as to, and will not be liable for, the accuracy or completeness of any information given to the Distributor or its client nor for any financial or tax consequences of transactions entered into by or on behalf of its clients.
- 9.6 To the extent permitted by law, in no event will Mason Stevens be liable to the Distributor or its clients for special, indirect or consequential damages or lost profits or loss of business arising out of or in connection with the General Terms or any service, advice or transaction made under it.
- 9.7 Mason Stevens, its directors, other employees and any shareholder (or their associates) from time to time (Principals) and their respective agents are subject to various actual or potential conflicts of interest arising out of their relationships with the Distributor, the Distributor's clients and other persons. It is acknowledged that the Principals may engage in trading which is the same as or similar to those placed for the Distributor's clients (or other persons). It is possible that agents may unknowingly execute transactions when the agent may not be able to execute similar transactions for the Distributor's clients or may unknowingly obtain prices for transactions that are less favourable than the agent is able to obtain for the Distributor's clients or other persons.
- 9.8 The Distributor acknowledges the risks of actual or potential conflicts of interests involving the Principals and agents and agrees to release the agents, Mason Stevens and other of the Principals (for whom Mason Stevens accepts the Distributor's agreement on their behalf) from any obligation to avoid such conflicts. The Distributor agrees that the Principals and the agents may conduct trading and related services for their own account or for their respective clients without having to give the Distributor or its clients any notice of that or to account to the Distributor or its clients in any way for that.

## 10. Relationship of parties

- 10.1 Mason Stevens may from time to time approve other providers to perform services similar to the Distribution Services. Mason Stevens may agree different terms with other providers, including terms in relation to fees, charges and costs. Mason Stevens will not notify the Distributor of any other agreements (including any of the terms) with any other providers.
- 10.2 The Distributor may perform services similar to the Distribution Services for other parties. The Distributor may make such other arrangements without notice to Mason Stevens.



10.3 Nothing in this agreement constitutes or gives rise to or may be deemed to constitute or give rise to the relationships of trustee or responsible entity and beneficiary, joint venture or partnership as between Mason Stevens and the Distributor.

## 11. Variations

11.1 Mason Stevens may make changes to the General Terms from time to time by updating the General Terms on the website and including a notification on the landing page provided that those changes:

- a. are, in the reasonable opinion of Mason Stevens, neither material nor adverse to the Distributor, or
- b. the changes are required to comply with Law.

11.2 Except as otherwise stated in the General Terms, the General Terms can only be amended, supplemented, replaced or novated by a written document agreed by or on behalf of by the parties. A written document includes in electronic format. Agreement to the document may be established by execution of one or more counterparts by or on behalf of by the parties. No agreement may be inferred, implied or asserted merely by exchange of emails or oral statements.

11.3 Amendments other than those set out in clause 11 must be in writing between the parties.

11.4 Variations to the terms and conditions of Mason Stevens Products are not amendments to the General Terms.

## 12. Confidentiality

12.1 The parties must treat as confidential all information provided to it by the other party regarding the other's business and operations, other than:

- a. information that is made available to the public by the providing party, and
- b. information that the providing party has specified is not confidential.

12.2 Neither party may directly or indirectly disclose to any other person, any confidential information acquired by the party for the purposes of this agreement except:

- a. to the extent required by law
- b. to the extent necessary in connection with the performance of obligations under the General Terms
- c. with the prior written consent of the party providing the information
- d. to any professional or other adviser consulted by it in relation to any of its rights or obligations under the General Terms, or
- e. in connection with the enforcement of its rights under the General Terms.

12.3 Subject to complying with the relevant legislation which Mason Stevens understands and agrees may require it to obtain consent of the other party, Mason Stevens and its agents may record any telephone conversation between it and the Distributor, a representative of the Distributor, a client or an agent. Any such recordings may be erased by Mason Stevens or its agent at its discretion without notice to any other person.

## 13. General

13.1 The General Terms form the terms of an agreement between the Distributor and Mason Stevens.

13.2 A notice, consent or other communication under the General Terms is only effective if it is in writing, signed and either delivered (by mail, hand delivery or otherwise) to the addressee's postal address or registered office or is delivered to the addressee by email.

13.3 If a notice is sent by mail, it is taken to have been received three (3) Business Days after it is posted.

13.4 The General Terms are governed by the laws in force in New South Wales.

13.5 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

13.6 Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

13.7 Any term of the General Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that term in any other jurisdiction or of the remaining terms in that or any other jurisdiction.

13.8 Waiver of any right arising from a breach of the General Terms or of any power arising on default under the General Terms must be in writing and signed by the party granting the waiver.

13.9 A failure or delay in exercise, or partial exercise, of any right, Power or remedy under this agreement will not result in a waiver of that right, power or remedy.

13.10 A waiver or variation of any term of the General Terms must be in writing and signed by the parties.

13.11 The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of a party.

13.12 This agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this agreement by signing any counterpart.

13.13 This agreement supersedes all prior agreements and arrangements between the parties with respect to the provision of the Distribution Services.

13.14 Neither party may describe or hold itself as an agent of the other party or having authority to perform any obligation under the General Terms or make any representation or warranty or give any undertaking on behalf of other party.

## 14. Definitions and Interpretation

In these General Terms:

**AFSL** means an Australian Financial Services Licence granted by ASIC.

**Applicable Laws** means the laws which apply to the issue, distribution and operation of Mason Stevens Products by Mason Stevens and which relate to the arranging of Mason Stevens Products, including relevant ASIC policy and laws relating to privacy and to anti-money laundering and counter-terrorism financing.

**ASIC** means the Australian Securities and Investments Commission.



**Authorisation** means any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption.

**Business Day** means any day other than a Saturday or Sunday on which banks are open for business in Sydney.

**Client** means a person who holds or is likely to hold a Mason Stevens Product and is or will be recorded as a Client of the Distributor as a result of the application or a subsequent instruction to that effect by the Client.

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

**Determination** means any of the following:

- » A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No.23) 2000, and
- » Any other determination made under the GST Law as agreed from time to time.

**Disclosure Document** means a product disclosure statement, prospectus, information statement, offering circular or guide, whether or not regulated by law, relating to a Financial Product or a Financial Service, including any supplementary or replacement statement or other document.

**Distribution Services** means the services described in clause 1.18.

**Financial Product** means a Financial Product, as defined in the Corporations Act from time to time, as referred to in clause 1.18 or otherwise agreed in writing from time to time, in respect of which Mason Stevens and the Distributor have agreed the Distribution Services are to be provided.

**Financial Service** means a Financial Service, as defined in the Corporations Act from time to time, as referred to in clause 1.18 or otherwise agreed in writing from time to time, in respect of which Mason Stevens and the Distributor have agreed the Distribution Services are to be provided.

**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**GST** has the meaning defined in *A New Tax System (Goods and Services Tax) Act 1999*, and:

- a. includes any other goods and services tax or any Tax applying to this agreement in a similar way, and
- b. includes any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

**GST Law** has the same meaning as in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Issuer** means an issuer of a Financial Product which is subject to this agreement, either by being nominated in clause 1.18 or as later confirmed in writing by the parties.

**Mason Stevens Offer Documents** means the disclosure documents for Mason Stevens Products, being the Mason Stevens Global Investment Service Guide and the Mason Stevens Super Product Disclosure Statement.

**Mason Stevens Products** means the Mason Stevens Managed Discretionary Account service, Mason Stevens Super, and any Financial Products or Financial Services arranged or distributed by Mason Stevens from time to time and governed by Mason Stevens Offer Documents.

**Month** means a calendar month.

**Powers** mean any right, power, authority, discretion or remedy conferred on a party by this agreement or any applicable law.

**Pricing Schedule** (if applicable) means the pricing schedule to these General Terms.

**Representative** means an authorised representative, intermediary, support staff, corporate authorised representative, administrator, stockbroker, risk specialist, mortgage broker, or any person that acts on behalf of the Distributor.

**Supplies** means the goods or services provided by the Supplier to the Recipient and which are Taxable Supplies other than those Taxable Supplies for which procedures of the Recipient require the making of claims for payment on a Tax Invoice.

14.2 In these General Terms, headings and bold type are for convenience only and do not affect the interpretation of this agreement and, unless the context requires otherwise:

- a. a reference to “this agreement” means the agreement formed between Mason Stevens and the Distributor on the General Terms
- b. words importing the singular include the plural and vice versa
- c. words importing a gender include any gender
- d. other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning
- e. an expression suggesting or referring to a natural person or an entity includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency
- f. a reference to any thing (including any right) includes a part of that thing but nothing in this clause 14.2(f) implies that performance of part of an obligation constitutes performance of the obligation
- g. a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, the General Terms and a reference to this agreement includes any annexure, exhibit and schedule





- h. a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute
- i. a reference to an agreement includes all amendments or supplements to, or replacements or novations of, that agreement
- j. a reference to liquidation includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, if applicable, changes in the constitution of any partnership or person, or death
- k. a reference to a party to any agreement includes that party's successors and permitted assignees
- l. a reference to an agreement other than this agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing
- m. a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits
- n. a reference to an agreement includes any agreement in writing, or any certificate, notice, deed, instrument or other agreement of any kind
- o. no term of this agreement may be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that term
- p. a reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
  - i. which ceases to exist, or
  - ii. whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions
- q. references to time are to Sydney time
- r. specifying anything in this agreement after the words "include" or "for example" or similar expressions does not limit what else is included unless there is express wording to the contrary
- s. if not otherwise specified in these General Terms, if the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

