Seneca

# Terms and Conditions

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## 1.0 Service

### 1.1 Our Services

Seneca operates a financial services business which provides advice and dealing services in respect of certain financial products (**Services**).

This document sets out the general terms and conditions that you agree to comply with in relation to use of our Services (**General Terms**). These General Terms apply to you whether you are a Retail Client or Wholesale Client.

The provisions of these General Terms are additional to and, to the extent of any inconsistency, prevail over the provisions of any other agreements between the parties.

Capitalised words are defined in clause 14 of these General Terms.

### 1.2 No Additional Services

Seneca does not have any obligations under these General Terms to provide you with any services or assistance in relation to Investment Platforms that we provide access to via our Website, including consulting, customisation, implementation, training, integration or other services, except to the extent that they are provided in accordance with a separate agreement or any written agreement with you.

### 1.3 Portfolio Information

You acknowledge and agree that Seneca does not control and is not responsible for the uploading or content of the Portfolio Information. Your ability to access investment reports and the content of the investment reports will be subject to separate terms and conditions with the Investment Platform provider.

### 1.4 Procedures and requirements

You acknowledge and agree that access to and use of our Services by you will be subject to any reasonable procedures and requirements set out on our Website from time to time. You also agree to comply and ensure that your Authorised Persons comply with the procedures specified in these General Terms.

## 2.0 Your responsibilities and obligations

During the Term, you must:

a) If you have a complaint, you can contact us and discuss your complaint.

b) provide us, in a timely fashion, with any information, data and other documents that we reasonably require to provide our Services to you;

c) inform us of any changes to your circumstances which may be relevant to our delivery of our Services to you;

d) obtain all consents, permits or approvals necessary for you to access and use our Services as contemplated under these General Terms;

e) ensure that the use of our Services by you complies with all applicable laws, regulations or codes of conduct;

f) not permit any person other than your Authorised Persons to act on your behalf in relation to our Services and ensure that those Authorised Persons comply with these General Terms;

g) ensure that you maintain sufficient cleared funds in your account to satisfy any liabilities you may incur in the course of using our Services, including payment for any Authorised Investments and any fees and costs associated with such Authorised Investments; and

h) only use and copy the Documentation to the extent necessary to use our Services in accordance with these General Terms.

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## 3.0 Documentation

You must use only the most recent version of any Documentation provided by Seneca and must follow Seneca's instructions regarding the return or destruction of any superseded versions of the Documentation.

Seneca will ensure that the current version of any relevant Documentation is available for you to access online during the Term.

## 4.0 Term

These General Terms will commence on the Commencement Date and will continue until terminated in accordance with these General Terms.

## 5.0 Termination

### 5.1 Termination without cause

Subject to clauses 5.2, and 5.3, either party may terminate these General Terms on 30 days' written notice.

### 5.2 Termination by Seneca

Seneca may, by written notice to you, terminate your access to and use of our Services with immediate effect if:

a) you fail to comply with any written notice issued by Seneca requiring you to remedy a breach, non-observance or non-performance of your obligations under these General Terms within seven days of receiving that notice from Seneca;

b) you commit a breach of these General Terms which is incapable of remedy;

c) you go into liquidation, are wound up, become insolvent or have a receiver appointed over all or any substantial part of its assets; or

you enter or propose to enter into any scheme of arrangement with your creditors.

### 5.3 Termination by you

You may, by notice in writing to us, terminate these General Terms immediately if:

a) we fail to comply with any written notice issued by you requiring us to remedy a breach, non-

b) observance or non-performance of our obligations under these General Terms within seven days of receiving that notice from you;

c) we commit a breach of these General Terms which is incapable of remedy;

d) we suffer an Insolvency Event;

e) our license to provide financial services is suspended, revoked or cancelled; or

f) we are prevented from performing our obligations under these General Terms due to any circumstances or events beyond our reasonable control.

For the avoidance of doubt, you may terminate an Ongoing Fee Arrangement with us at any time by providing notice in writing. The Ongoing Fee Arrangement terminates on the day on which the notice is given by you. Termination of an Ongoing Fee Arrangement does not constitute termination of these General Terms.

 

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## 6.0 Consequences of termination

Upon termination of these General Terms taking effect:

a) You must immediately:

   i) Cease using our services;

   ii) return to Seneca any Documentation in your possession or control;

b) Seneca will:

   i) terminate your access to all Portfolio Information, unless Seneca or the Investment Platform provider agrees with you to continue to provide access to, or reopen access to the legacy Portfolio Information; and

   ii) subject to clause 6(c) and unless such information is required to be retained by law, destroy any and all copies of your Portfolio Information held by Seneca in any form;

c) Seneca will, if requested by you prior to destruction, provide to you in a format reasonably requested by you, copies of your Portfolio Information held by Seneca prior to its destruction.

Any termination will not affect our right to receive any accrued Fees, or our rights to indemnity or the confidentiality obligations under these General Terms.

## 7.0 Suspension

Seneca may, in its sole discretion and without prior notice, suspend (in whole or in part) or in any other way restrict your access to or use of our Services or any or all of your Authorised Persons access to or use of our Services if:

a) you fail to comply with your obligations under these General Terms; or

b) we reasonably believe that such suspension or restriction is necessary to protect our legitimate business interests, comply with any applicable laws or regulations, prevent or respond to hacking or other cyber security incidents, or to prevent adverse impacts on other users of our Services.

## 8.0 Confidentiality

### 8.1 Confidentiality obligations

Where you receive Confidential Information from us under these General Terms or otherwise in connection with our Services, you must:

a) keep the Confidential Information confidential;

b) subject to clause 8.2, not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of these General Terms; and

c) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

### 8.2 Permitted disclosure

Notwithstanding clause 8.1, you may use or disclose Confidential Information to the extent necessary to:

a) comply with any law, binding directive of a regulator or a court order;

b) comply with the listing rules of any stock exchange on which its securities are listed; or

c) obtain professional advice in relation to matters arising under or in connection with these General Terms.

You acknowledge and agree that we may disclose information regarding your access to or use of our Services, your compliance with these General Terms or any issues encountered or other information relating to you accessing or using our Services to your Authorised Persons.

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## 9.0 Intellectual Property

Nothing in these General Terms shall be construed as granting, assigning, transferring or otherwise conferring any Intellectual Property Rights to you in connection with our Services or Documentation. All Intellectual Property Rights in connection with or arising from our Services or the Documentation shall remain the sole property of Seneca.

## 10.0 Security of Service

Seneca will:

a) take all reasonable steps to ensure the security and safety of copies of the Portfolio Information that it holds, including by implementing and maintaining data protection and virus screening procedures and technologies;

b) not, without your written consent, use any Portfolio Information for any purpose or disclose it to any other person except as permitted under these General Terms or our Privacy Policy.

Notwithstanding anything else in this Agreement, Seneca gives no guarantee that the Investment Platform will be free from viruses or that access to the Investment Platform will be uninterrupted.

## 11.0 Warranties

You acknowledge and agree that, to the extent permitted by law, Seneca does not warrant or guarantee under these General Terms that:

a) your access or use of our Services will be uninterrupted or error free; or

b) the reports generated in relation to your Portfolio Information will be accurate, reliable or fit for any particular purpose.

## 12.0 Liability

### 12.1 Australian Consumer Law

Nothing in these General Terms should be interpreted as attempting to exclude, restrict or modify your rights to make a claim in respect of any consumer guarantees or other applicable provisions of the Australian Consumer Law.

### 12.2 Liability capped

Subject to clause 12.1 and to the extent permitted by applicable laws, our maximum aggregate liability to you for any Loss or claims, however caused or arising, suffered in connection with these General Terms or your access to or use of our Services is limited to the total amount of the Fees payable by you to us in respect of our Services in the calendar year in which the events giving rise to the Loss or claim occurred.

### 12.3 Your Indemnity

You must indemnify and keep Seneca indemnified against any Loss Seneca incurs which arises directly or indirectly out of:

a) any claims against Seneca in relation to the content, accuracy or availability of the Portfolio Information which arises as a result of you failing to comply with your obligations under these General Terms; or

b) any claims that the Portfolio Information or the use or processing of Portfolio Information by Seneca pursuant to these General Terms infringes the Intellectual Property or other similar rights of a third party or contravenes any applicable law.

Your liability under this clause 12.3 will be reduced to the extent the relevant Loss or claim arises as a result of a breach of these General Terms or negligent or unlawful act or omission of Seneca.

### 12.4 Consequential Loss

Neither party will be liable for any Consequential Loss (however caused) suffered or incurred by the other party in connection with these General Terms or your access to or use of our Services. This clause applies even if the party knew or ought to have known that the relevant Consequential Loss would be suffered.

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## 13.0 General provisions

### 13.1 Governing Law

These General Terms will be construed and interpreted in accordance with the laws of the state of Victoria, Australia and each party submits to the non-exclusive jurisdiction of courts of that jurisdiction.

### 13.2 Assignment

Other than as expressly permitted under these General Terms, the parties may not assign or otherwise deal with any of their rights or obligations under these General Terms without the prior written consent of the other party. Such consent must not be unreasonably withheld.

### 13.3 Force Majeure

Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly. If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.

### 13.4 No waiver

No failure to exercise or delay in exercising any right given by or under these General Terms to a party constitutes a waiver and the party may still exercise that right in the future.

### 13.5 Severability

If any provision of these General Terms is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these General Terms or affecting the validity or enforceability of that provision in any other jurisdiction.

### 13.6 Amendment

We may amend or vary these General Terms from time to time by providing you with 30 days' written notice of the amendment or variation. By continuing to access and use our Services following such notice being provided, you agree to and will be bound by such amendment or variation.

## 14.0 Electronic Verification Terms and Conditions

Before we can provide you with any financial products or services, Seneca and its related entities are required to collect information from you to verify (or re-verify) your identity. This is required under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act). Electronic verification allows us to verify your identity by using electronic tools and external data sources.

All signatories, authorised persons and beneficial owners of an account will need to have their identity verified (and re-verified from time to time).

### 14.1 How electronic verification works

In order to verify your identity electronically, we will ask you for your details (such as your full name, address, date of birth) and details of your identification documents (e.g. current Passport, Medicare card and Driver's license). This information will be passed on to external organisations in order to electronically match your information with information on their databases. These organisations will assess and advise us whether all or some of the information you provided matches their records.

The information you provide us will be handled in accordance with Seneca's Privacy Policy. The Seneca Privacy Policy should be read together with these General Terms. These documents are available on our Website.

To complete electronic verification, you need to:

a) be 18 years or over;

b) have an Australian residential address;

c) hold an acceptable form of identification; and

d) consent to your identity being verified in this way.

There may also be times where we will use your personal information or request further information from you in order to re-identify you. This may be in the form of electronic verification.

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### 14.2 Who your information will be shared with

The external data sources used to verify your identity include:

a) Personal information held by credit reporting bureaus (this is only to confirm your identity and is not a credit check);

b) Publicly available information such as the electoral roll and white pages; and

c) Passport and Driver's license registries (i.e. information held by the official record holder) etc.

These organisations may use your personal information and personal information of other individuals, such as names, addresses and dates of birth, for the purposes of preparing their assessments.

It is an offence under the AML/CTF Act to provide false or misleading information or documents, or forge documents for use in the verification or re-verification of your identity.

### 14.3 Your agreement

By accepting these General Terms you agree that:

d) the information you are providing is your personal information and you have authority to provide it to us, and

e) we may use and disclose your personal information for the purposes of electronic verification as described above.

### 14.4 Manual verification

If we are unable to verify your identity electronically or you advise us that you do not wish for your identity to be verified electronically, we will provide you with an alternative method to verify your identity, as required under the AML/CTF Act.

Manual verification of your identity can be conducted by Seneca after obtaining certified copies or originals of one or more of your identification documents from you, of which at least one must contain your photograph.

If we cannot verify (or re-verify) your identity by way of electronic verification or manual verification, we will not be able to provide you with any financial products or services.

### 14.5 Further Information

Further information about how we collect and handle personal information is available in our Privacy Policy.

## 15.0 Definitions and Interpretation

### 15.1 Definitions

In these General Terms:

**Australian Consumer Law** means the provisions of Part 2 Division 2 of the Australian Securities and Investments Commission Act 2001 (Cth).

**Authorised Investments** means any investments that you or your Authorised Persons instruct us to acquire on your behalf, and includes:

a) securities;

b) managed funds;

c) debentures;

d) derivatives.

**Authorised Persons** means any person or persons appointed by you in writing, in the form required by us from time to time, to act on your behalf in relation to our Services.

**Commencement Date** means the date of your agreement to these General Terms.

**Confidential Information** means any information provided by a party to the other party (whether provided before or after the Commencement Date) in connection our Services and includes:

a) the Documentation or any other information regarding our Services provided to you (which, for the avoidance of doubt, will be Confidential Information of Seneca); and

b) the Portfolio Information (which, for the avoidance of doubt, will be your Confidential Information);

but does not include information which is in or becomes part of the public domain, other than through a breach of these General Terms or of an obligation of confidence, or information which a party proves was independently acquired or developed without breaching any of the obligations set out in these General Terms.

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**Consequential Loss** means loss beyond the normal measure of damages and includes indirect loss, loss of revenue, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, loss of use, cost of capital or costs of substitute goods, facilities or services.

**Consumer** has the meaning given in section 12BC of the Australian Securities and Investments Commission Act 2001 (Cth).

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

**Documentation** means any manuals, guides, reference materials or other similar documents in any form made available by Seneca to you in connection with our Services.

**Fees** means any fees or other amounts payable to us including but not limited to any fees or other amounts set out in our Financial Services Guide, engagement letter or other correspondence.

**Financial Services Guide** means our Financial Services Guide available on our Website.

**Force Majeure Event** means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared) civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood, earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment.

**Intellectual Property Rights** means all intellectual property rights and related rights, including without limitation patents, product information, copyright, registered designs, concepts, trade secrets, know-how, trademarks, logos, business names or domain names (whether registered or not) and the right to have confidential information kept confidential and any application or right to apply for registration of any of those rights.

**Insolvency Event** means any one of the following events happening to us:

a) ceasing to carry on business;

b) becoming subject to any form of insolvency administration;

c) ceasing to be able to pay our debts as they become due;

d) any step being taken by a mortgagee to take possession or dispose of the whole or part of our assets, operations or business;

e) any step being taken to enter into any arrangement between us and our creditors; or

f) any step being taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, a controller, an administrator or other like person of the whole or part of our assets, operations or business.

**Investment Platform** means an online administrative system for holding and dealing with one or more of your investments. Platform services may include custodial, trading, transactional and reporting services.

**Loss** means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent.

**Ongoing Fee Arrangement** has the meaning given in section 962A of the Corporations Act 2001 (Cth).

**Portfolio Information** means the investment data and other information about your Authorised Investments available on the relevant Investment Platform.

**Retail Client** has the same meaning as in the Corporations Act.

**Services** means the financial advice and dealing services that Seneca is authorised to provide under its AFSL. For the avoidance of doubt, this does not include the provision of custodial or depository services, which are subject to separate terms.

**Term** means the term of these General Terms, as set out in clause 4.

**Website** means senecafs.com.au.

**Wholesale Client** has the same meaning as in the Corporations Act.

**14.2 Interpretation**

a) Clause headings are for guidance only.

b) References to clauses and Schedules are references to clauses of and Schedules to these General Terms. The Schedules and Annexures form part of these General Terms.

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c) If the Client is two or more persons then:

   i) the liabilities of the relevant parties are joint and several;

   ii) a right given to those parties is a right given severally; and

   iii) a representation, warranty or undertaking made by those parties is made by them jointly and severally.

d) The Client is also referred to as “you”, “your” and “yours”.

e) Seneca is also referred to as “we”, “us”, or “ours”.