

## **Terms of Use for the Purchase and Sale of OTC Instruments**

### **1. About Us**

- 1.1. These General Terms and Conditions ("Terms of Use") apply between you ("User", "you") and CM-Equity AG, Kaufingerstraße 20, 80331 Munich, Germany ("CME", "we" or "us"). By using our services, you accept these terms of use.
- 1.2. We are a financial services institution licensed in Germany (license according to § 15 WpIG (Wertpapierinstitutsgesetz) for investment brokerage, investment advice, placement business, acquisition brokerage, financial portfolio management, proprietary trading and proprietary business) and we are subject to supervision by the Federal Financial Supervisory Authority (BaFin), Graurheindorfer Straße 108, 53117 Bonn.
- 1.3. These terms of use apply to trading with CME via the App operated by Vivid Invest GmbH ("App" or "Platform"). This App mediates the purchase and sale of Financial Instruments in the meaning of §2 sec. 2 no. 3 WpIG from and to us. Vivid Invest GmbH is a so-called Tied Agent in the meaning of § 3 sec. 2 WpIG. This means that Vivid Invest GmbH is offering investment brokerage services exclusively on behalf of us and under our liability.
- 1.4. In addition, the following conditions ("Supplementary Conditions") apply to the use of our services:
  - 1.4.1. Key Information Document (KID) and Risk Disclosure
  - 1.4.2. Fee Schedule
- 1.5. In case of any discrepancy, these Terms of Use shall prevail over the Supplementary Terms.

### **2. General Terms of Use of the Platform**

- 2.1. Via the App you can access a platform which enables trading of fractional stocks and other financial products from or to us in exchange for money. Only the listed items are accessible and permitted on the Platform.
- 2.2. Vivid Invest offers the brokerage of transactions for the acquisition and sale of financial instruments in accordance with § 2 section 2 no. 3 of the WpIG (Wertpapierinstitutsgesetz) and in this respect acts exclusively on behalf of and under the liability of us.
- 2.3. We continuously make offers for the purchase and the sale of financial instruments at self-set prices (so called proprietary trading) via the App. Vivid Invest only acts as a tied agent to us and provides a technical infrastructure for our Customers to access our services.

### **3. Trading with CME**

- 3.1. We will provide so-called quotes via the App. A quote is an indicative offer for the purchase or sale of financial instruments from us. A quote is not an offer for the purchase or sale of financial instruments by us.
- 3.2. The order type available is a non limited market order. The financial instruments are bought or sold at current prices until the order is filled. Prices may vary considerably between the time the order is placed and its execution.



- 3.3. Orders must be given via the App and cannot be placed by email or other means of communication.
- 3.4. Quotes change permanently. The price may change between the time you submit an offer by placing an order and the acceptance of the offer by us through execution of the order. The price on the basis of which your order was executed will be displayed to you via the App after the order has been executed. You must check its correctness immediately after the order has been executed. The price at which orders will be executed is not guaranteed.
- 3.5. We set the prices for the purchase and sale of our products. This means that the offered price can differ from the price the respective underlying is traded for on other trading venues. We are not obliged to assume prices from third parties. Financial products acquired from us can only be sold back to us.
- 3.6. As long as and to the extent that an order has not yet been executed, it can be cancelled via the platform. Once an order has been placed, subsequent modification is not possible. The order must be cancelled insofar it has not yet been executed.
- 3.7. We reserve the right to accept and execute orders at our sole discretion. We are not obliged to execute every order. Whether and to what extent an order has been executed can be viewed in the App.
- 3.8. We reserve the right to cancel or rewind (i) transactions which took place at prices that are not in line with general market conditions or differ substantially from reference prices of established third party vendors and (ii) transactions in relation to which we have not been able to buy or sell the respective underlying due to reasons that are reasonably considered to be outside our control. If we cancel or rewind a transaction you will be notified in the App as soon as reasonably practicable after our decision to cancel or rewind such transaction, subject to any legal or regulatory constraints on disclosure that may apply to us. We shall have no liability for any loss arising from or as a consequence of any decision to cancel or rewind a transaction in the circumstances described above.
- 3.9. Using the platform may be restricted to trading hours. Trading hours may vary with respect to the individual product.

#### **4. Fairness Policy**

Before we take the decision to accept your offer, we are required by law to check the fairness of the price proposed to you by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

#### **5. Our Products**

5.1. We offer derivatives of actual stocks, exchange traded products, precious metals and crypto assets as underlying (“**Our Product**”). This means that the performance of Our Products is bound to the performance of the underlying financial instrument. The value of Our Products reflects the actual appreciation or depreciation of the underlying. Our Products mirror the economic value of the underlying. However, Our Products do not pass along any shareholder rights such as voting rights that may be attached to the underlying. This also includes dividend payments.



- 5.2. Our Products are settled in cash. If you buy Our Products, you exchange cash for Our Product at the price provided by us. If you sell Our Products to us, you exchange Our Product for cash at the price provided by us.
- 5.3. You may not claim delivery of the underlying.
- 5.4. Our Products are only tradable over the counter with us. You may not transfer Our Products on a peer-to-peer level or assign rights bound to Our Products to other persons than us.
- 5.5. We reserve the right to impose a reasonable and fair spread in between prices for the purchase and sale of Our Products. Fees may apply as disclosed in the List of Prices and Services, available on [www.vivid.money](http://www.vivid.money) and in the App. Please note that we are bound by law to offer fair prices at all times. Our price feed for stocks and ETFs is derived from fully licensed European market venues that are bound to the principles of best execution. If possible and appropriate, we compare such prices with prices of similar or comparable products.
- 5.6. If crypto assets serve as the underlying, the price of Our Product is based on the performance of the crypto asset itself regardless of any hard fork of the network or airdrops that holders of the underlying may benefit from. In case of a hard fork, we may decide at our sole discretion which fork (i.e. which native crypto asset) Our Product will use as underlying.

## **6. Transfer of Consideration**

- 6.1. Our Products can be purchased with funds that have been previously deposited in the current account with Solarisbank AG. We may, at our own discretion, also provide for payment by credit card or other payment methods. In this case, the payment will be processed by third party service providers. Special conditions are applicable.
- 6.2. If consideration, fees or costs become due and payable, the user authorizes us to deduct them from the funds of the respective account. The amount of the fees and charges can be found in the schedule of prices and services.
- 6.3. Withdrawals or payouts shall be made exclusively to current accounts with Solarisbank AG in the name of the customer.

## **7. Conditions of Participation**

- 7.1. The use of our services requires onboarding according to the following regulations. The specific requirements may vary. We reserve the right to adapt and change these conditions even after onboarding. This may result in a situation in which you will not be able to partially or fully use the App later on.
- 7.2. You must create an Account to use our services. For this purpose, your name, e-mail address and a password are required. We communicate with you exclusively by e-mail. Please make sure that you check and read your e-mails regularly and that nobody else has access to your e-mail account. You are obliged to provide correct information. In the event that false information is provided, you release us from any liability and agree to compensate us for our services and in order to place purchase and sales offers, proper identification is required in addition to the account. We collect the following information: First name and surname, place of birth, date of birth, nationality and residential address. As far as this information has already been collected by the platform, the user authorizes Vivid Invest, Vivid Money GmbH or Solarisbank AG to share this information with us for identification purposes. If we collect



the information, you agree to share such information with Vivid Invest, Vivid Money GmbH, Solarisbank AG or affiliated companies that belong to the same group.

- 7.3. Admission to the platform can be denied by us at any time and without giving reasons in whole or in part. As far as permitted by law, remaining assets are to be redeemed to you less any costs. The refusal of the admission can be necessary in particular due to action of an authority or due to law (in particular anti money laundering law). We will inform you by e-mail about the refusal of the admission. We may be required by law not to redeem remaining assets to you.

## **8. Conclusion of Contract**

- 8.1. Any Quote is to be construed as an invitation to make an offer by you. Your offer is defined by the amount, the price and the individual product and may be dependent on specified market developments. By confirming an order via the App, your offer is binding.
- 8.2. Orders may only be cancelled insofar as they have not been filled. Any cancellation is to be construed as a revocation of the offer.
- 8.3. We are not obliged to accept your offer. We declare the acceptance of your offer insofar as the order is filled accordingly.

## **9. Collateralization**

- 9.1. We are collateralizing our positions. We may at our discretion hedge with third party custodians, brokers or market venues that are licensed to provide the respective collateral. We hold the collateral in our own name and on our own behalf and have full discretion to use this collateral to the extent that such use does not negatively affect our ability to meet our obligations towards you.
- 9.2. We hereby assign you all rights vis-à-vis the third party custodian of the collateral on a pro rata basis with regard to your position with us in relation to all other positions that other users have with us in the individual instrument and the total collateral that is available with the third party custodian. You may only exercise the rights of this assignment in case we file for the opening of insolvency proceedings or are otherwise not able to pay out your claims partially or in full ("**Event of Default**"). The purpose of this assignment is to secure your position in case of an Event of Default. You may not claim any delivery of the collateral in kind or cash from third parties without an Event of Default.
- 9.3. In case of an Event of Default, we will provide a list of all assigned rights and positions as well as a list of all outstanding claims with regard to the specific collateral.
- 9.4. You authorize us to collect the collateral according to §§ 362 para. 2, 185 para. 1 German Civil Code (Einziehungsermächtigung).
- 9.5. If the proceeds are not sufficient to settle all claims secured by this assignment, the proceeds shall be set off against the secured claims. If the proceeds are higher than the claims secured by this assignment, the surplus shall be paid to us.
- 9.6. You must release your rights under this assignment and transfer them back to the assignor as soon as all claims of the assignee secured by this assignment have been satisfied, in particular insofar as your sell order has been executed and settled.

## **10. Conflict of Interest Policy**

- 10.1. We are required by law to act in your best interest when providing our services. However, there may be situations where your interests may be conflicting with our interest or with other client's interests. Such situations may occur especially in the following situations:
- 10.1.1. We manage our risk by executing hedging transactions before or immediately after we conclude a contract with you. These hedging transactions may impact the quotes you will see on the platform and the price your order is filled for. We will retain any profit from hedging transactions.
- 10.1.2. We are the counterparty of trades you enter into. However, we do not take the counterposition to your trade. This means if you purchase a long position, we hedge with the respective long position, as well. We do take the short position.
- 10.1.3. We are responsible for setting the quotes which can be traded on the platform.
- 10.2. In order to avoid or deal with situations in which a conflict of interest may arise, we have several internal policies and guidelines in place in order to manage such situations.

## **11. Documentation and Reporting**

- 11.1. You can view your order history via the App, including prices, quantity and the date of execution. Nevertheless, you should always keep track of your positions and trades.
- 11.2. We are obliged to record all communication with you and to keep it for the period of the legal retention obligations. This applies regardless of the type of means of communication.
- 11.3. Insofar as we are required by law to report to authorities or governmental bodies, you agree and instruct us to perform such reporting and you will provide us with all information which we request in order to comply with our reporting obligations. Such reporting will entail but is not limited to disclosure of transaction data, including portfolio data, the value determined for the transactions and the identity of the parties.

## **12. Data Protection, Declaration of Consent of the Customer**

- 12.1. We and Vivid Invest will collect, process and use personal data within the scope of the business relationship with you. This information is stored and can be shared with Vivid Invest. We observe the regulations of the Federal Data Protection Act (BDSG), the Telemedia Act (TMG) and all other data protection regulations.
- 12.2. Data processing or other use of data by us or transfer of data to third parties can only take place if we are entitled or obliged to do so in accordance with reporting requirements and with the German Federal Data Protection Act (BDSG) or other laws or if this is expressly regulated in these terms and conditions. Otherwise the data will not be passed on to third parties, processed by us or used in any other way without your explicit consent. You explicitly authorise us to store, process, use and forward the information mentioned above to third parties in the cases mentioned there.
- 12.3. You have the right to revoke at any time the consent given to us for data collection or data use with effect for the future by e-mail to us. The obligation of us under the Anti Money Laundering Act to retain certain data even after the end of the business relationship remains unaffected by your revocation.



### **13. Exclusion of Assignment**

- 13.1. The partial or complete assignment of rights or claims from the business relationship between you and us to third parties requires our prior written consent.
- 13.2. This does not apply to statutory subrogation.

### **14. Termination**

- 14.1. We reserve the right to limit or terminate access to the platform at any time and without giving reasons. This is especially valid if we have reason to believe that the security of your account or the platform is not guaranteed, if there is a suspicion of money laundering, in case of technical failures or maintenance work. In particular, we may suspend your account without notice if:
  - 14.1.1. We have reasonable grounds to believe that you make any material misrepresentation to us and in particular in relation to age, residency and identity.
  - 14.1.2. We have reasonable grounds to believe that you are in breach of any material provision of these terms.
  - 14.1.3. We have reason to believe that there has been or may be a breach of laws or regulations.
  - 14.1.4. We have not received within seven (7) working days of a request any material document or information we have reasonably requested in writing from you in relation to the opening and/or operation of information. In addition, we may from time to time ask you to provide reasonable up to date evidence; our right of suspension also applies if information so requested is not received within 10 days of our written request. CME may block your account from trading immediately when reasonably information is requested. CME reserves the right to block the account until requested information is received.
- 14.2. If we terminate or suspend your account, you will not be able to place any order. However, you will be able to close your positions. We will generally not close any of your open positions for you or on your behalf.
- 14.3. You may stop using the platform and delete your account at any time and without giving reasons.

### **15. Scope of Liability**

- 15.1. We strive to provide continuous access to the platform. However, a continuous uninterrupted availability of the platform cannot be guaranteed. This applies in particular to cases of attacks on the network infrastructure, for example through so-called DDoS attacks, which can occur in different strengths. We do not assume liability for such external attacks on the platform.
- 15.2. The content provided on the website or in the App do not claim to be complete, correct and up-to-date. The use of the content is at your own risk.
- 15.3. CME is not liable for any damages that you may suffer by using the platform or the content published on the platform. However, this exclusion of liability does not apply in case of intentional or grossly negligent fault of us or a vicarious agent. The exclusion of liability also does not apply to damages resulting from injury to life, body or health, which are based



on a breach of duty by us or a vicarious agent. Furthermore, our liability for the violation of obligations, the fulfillment of which is essential for the proper execution of the contract and on the compliance of which you can regularly rely on, remains unaffected.

- 15.4. CME shall have no liability for any failure or delay resulting from any abnormal or unforeseeable circumstances outside our reasonable control, the consequences of which would have been unavoidable despite all efforts to the contrary, including without limitation governmental action or acts of terrorism, earthquake, fire, flood, or other acts of God, labor conditions, delays or failures caused by problems with another system or network, mechanical breakdown or data-processing failures or where we are bound by other legal obligations.

## **16. Taxation**

- 16.1. CME is generally not liable for the tax liability of its users. We recommend that you seek professional tax advice. Any amount redeemed to your account shall be generally considered to be the gross amount.
- 16.2. Insofar as we are legally obliged to withhold and pay taxes, especially capital gains tax, the corresponding tax will be withheld and transferred to the competent tax authority. The amounts paid out in this respect are to be understood as net amounts.
- 16.3. You will receive documentation about your investing activity including – to the extent required by law – tax statements. Please always check its accuracy

## **17. Territorial and Personal Restrictions**

You may not use the Services if (i) you are a resident, national or agent of Cuba, Crimea and Sevastopol, Iran, North Korea, Pakistan, Sudan, Syria or any other country to which the United States, the United Kingdom or the European Union embargoes goods or imposes similar sanctions (“Restricted Territories”); (ii) you are a member of any sanctions list or equivalent maintained by the United States government, the United Kingdom government or by the European Union or the United Nations (“Restricted Persons”); (iii) you intend to transact with any Restricted Territories or Restricted Persons; (iv) you are located or a citizen or resident of a jurisdiction where it would be illegal under applicable law for you (by reason of your nationality, domicile, citizenship, residence or otherwise) to access or use the Services; or (v) the publication or availability of the Services is prohibited or contrary to local law or regulation, or could subject Vivid Invest to any local registration or licensing requirements.

## **18. Warranties**

You represent and warrant that

- 18.1. all information that you have provided and will provide to us is true, accurate and complete in all material respects, this applies in particular to your age, residency and identity.
- 18.2. You are solely acting on your own behalf.
- 18.3. You are authorized to enter into and perform this contract in compliance with any regulation.
- 18.4. You understand that the contractual relationship between you and us is governed by German law.



- 18.5. You understand that trading financial instruments is risky and can result in a total loss of your funds.
- 18.6. You will inform us without undue delay about any change of the data and information you have provided us with.

## **19. Complaints**

- 19.1. You shall raise any complaint as soon as possible. Therefore, you should also keep track of your orders and its parameters.
- 19.2. Complaints are to be sent to customer service via the chat.
- 19.3. In case you are a consumer, you may refer the matter to the Ombudsman: VuV-Ombudsstelle, Stresemannallee 30, 60596 Frankfurt am Main, Germany. Additionally, you may be entitled to use the European Online Dispute Resolution Platform (<http://ec.europa.eu/odr>).

## **20. Miscellaneous**

- 20.1. If any provision of these Terms of Use is invalid in whole or in part, the validity of the remaining provisions shall not be affected. The same applies if this agreement should have a gap. In this case, the parties shall replace the gap or the ineffective or void provision by a provision which corresponds to the economic purpose of the agreement and which comes as close as possible to what the parties intended.
- 20.2. The contractual relationship between you and us is governed by the laws of the Federal Republic of Germany, excluding the UN Sales Convention.