

# Tradeclear Terms & Conditions

These Tradeclear General Terms and Conditions (“GTC”) govern the relationship between Tradeclear B.V (“Tradeclear”) and the parties (each a “Participant”) using the Tradeclear platform and the related services (together “Services”).

## 1. Terms

Each Contract shall be deemed to have commenced on the Commencement Date and, subject to the provisions for early termination set out in these GTCs, shall continue thereafter unless terminated by either party serving on the other not less than 1 month written notice.

## 2. Use of the Services

- 2.1. Tradeclear shall make the Services available to the Participant and use reasonable care and skill in the performance of the Services.
- 2.2. Tradeclear grants the Participant a non-exclusive, worldwide, non-transferable right for its Users to use the Services for the duration of the Contract in accordance with its terms. The Participant may allow its Users to use the Services, and the Participant is responsible for their compliance with the terms of this Contract.
- 2.3. The Participant grants Tradeclear the right to host, use, process, display and transmit the Content to provide the Services pursuant to and in accordance with this Contract. The Participant has sole responsibility for the accuracy, quality, integrity, legality of the Content and for obtaining all rights related to the Content required by Tradeclear to perform the Services.
- 2.4. Tradeclear may:
  - 2.4.1. compile statistical and other information related to the operation, performance and use of the Services; and
  - 2.4.2. use data from the Services for security, support, troubleshooting and operations management, to create statistical analyses and for research and development purposes (collectively referred to as “**Service Analyses**”).
- 2.5. Tradeclear may make Service Analyses available to:
  - 2.5.1. regulatory and supervisory authorities;
  - 2.5.2. any other public or governmental entities with control over regulation or monetary policy worldwide; and
  - 2.5.3. other third parties, including Tradeclear affiliates, partners and service providers.
- 2.6. Service Analyses will not incorporate Content or Confidential Information in a form that could serve to directly or indirectly identify the Participant or any Users. Tradeclear retains all Intellectual Property Rights in the Service Analyses.
- 2.7. Tradeclear does not guarantee that the Services will function without any interruption or disruption. Tradeclear regularly carries out maintenance or improvements to the Services and its infrastructure. The Participant acknowledges that this may result in temporary delays and interruption from time to time. Where reasonably possible Tradeclear will inform the Participant about potential interruptions in advance.

- 2.8. The Participant acknowledges and agrees that:
- 2.8.1. it is solely responsible for the transactions processed via the Services and the use of the Services by its Users. Tradeclear is a technology services provider, and trades are settled bilaterally outside of the Services. Tradeclear has no influence on the conclusion, content or execution of transactions;
  - 2.8.2. the Users must choose a secure password in accordance with Tradeclear's specifications, and the password must not be made accessible by the Users to any unauthorised third party;
  - 2.8.3. it has the ability to monitor its Standard Users' use of the Services by nominating a Compliance User(s);
  - 2.8.4. it shall manage its Users' access and inform Tradeclear if any Users' access should be disabled;
  - 2.8.5. it shall ensure that it has a suitable internet service and that it has the hardware, telecommunications services and software necessary to access the Services over the internet, as recommended by Tradeclear from time to time; and
  - 2.8.6. notwithstanding section 9.4, it is responsible for the backup of Content.
- 2.9. The Participant agrees that it will not, and will not cause or permit others to:
- 2.9.1. copy data published in the Services by Tradeclear or by third parties or parts thereof;
  - 2.9.2. distribute, store, edit, modify or make any data from the Services available to third parties, whether or not for payment;
  - 2.9.3. create derivative works or analytics from the Services or any data, or reverse assemble, reverse engineer or otherwise attempt to discover any source code in any part of the Services;
  - 2.9.4. use or access any part of the Services in order to build software, products or services which are the same as or similar to any part of the Services; and
  - 2.9.5. provide insulting or defamatory, illegal, abusive, or otherwise offensive Content, distribute malware or viruses, distribute confidential information which may constitute a breach of the Laws or contractual obligations.
- 2.10. Tradeclear may suspend the Participant's access to the Services, in whole or in part, without liability, if Tradeclear reasonably believes that the Participant is in breach of the Laws or of this Contract.
- 2.11. The Participant agrees that where the Participant, or any of its Users, utilise the chat functionality in the Services:
- 2.11.1. Tradeclear has no obligation to the Participant, and undertakes no responsibility, to review or monitor the Content to determine whether any Content may result in any liability to any third party; and
  - 2.11.2. the Participant shall be fully responsible for the use of the chat functionality in accordance with these GTC and the chat terms; without limitation it may do so by monitoring the use of the Services via the Compliance Users or by asking Tradeclear for a copy of any of their Content via the Services via written request during the term of this Contract.

### **3. Fees and Payment**

- 3.1. In consideration of Tradeclear providing the Services, the Participant shall pay Tradeclear a fee as stated in the Fee Schedule.
- 3.2. Tradeclear retains the right to amend the Fee Schedule from time to time. Any amendment made will apply as of five (5) days from the date of amendment.
- 3.3. Tradeclear shall submit to the Participant an invoice for any fees due on a monthly basis in arrears from the Commencement Date and shall submit subsequent invoices for any

applicable fees in arrears on a monthly basis thereafter. All invoices are payable within thirty (30) days from the invoice date. After expiry of this period, the Participant shall be in default. The Participant shall pay interest on the defaulted amount from and including the date such amount was due, to but excluding the date upon which such amount is actually paid at an interest rate equal to the overnight Federal Funds Rate per day as reported in Federal Reserve Publication H.15-519 or Refinitiv Page "FEDFUNDS 1" (USD Fed Fund Effective Rate) plus 1% per annum.

- 3.4. All payments to Tradeclear shall be made by wire transfer in immediately available funds and in US Dollars to the following account:

Account number: NL22 RABO 0301 3643 03

Account name: Frontier Clearing Corporation (USD)

Bank: Rabobank Nederland

S.W.I.F.T. – code: RABONL2U

- 3.5. All payments made hereunder by a Participant shall be made free and clear of, and without deduction or withholding for or on account of any taxes or duties of whatever nature imposed by any authority having power to tax. If any taxes or duties are required to be withheld from any amounts payable to Tradeclear hereunder, the amounts so payable shall be increased to the extent necessary to ensure Tradeclear receives an amount equal to the amount which Tradeclear would have received had no such withholding or deduction been made or required to be made.

#### **4. Intellectual Property Rights**

- 4.1. All Intellectual Property Rights in the Content will remain vested in the Participant (or its relevant licensors) and, to the extent that any rights in such materials vest in Tradeclear by operation of law, Tradeclear hereby assigns such rights to the Participant.
- 4.2. During the term of this Contract, Tradeclear is authorised by the Participant to use on a non-exclusive, royalty free and worldwide basis, the Participant's name, logo or trademarks only in connection with advertisement, promotion and distribution of the Services. Any use of such name, logo or trademarks will be in accordance with applicable law and, as applicable, with the Participant's written instructions. Tradeclear acknowledges and agrees that the rights and license granted pursuant to this Contract are of a contractual nature only, and no property or other rights in or to any of the trademarks are granted to Tradeclear by virtue of this Contract and agrees that the benefit of and goodwill associated with use of any of the trademarks by Tradeclear will ensure entirely for the benefit of the Participant.
- 4.3. All Intellectual Property Rights in the Services and the Derived Output will remain vested in Tradeclear and to the extent that any rights in such materials and data vest in the Participant by operation of law, the Participant hereby assigns such rights to Tradeclear.
- 4.4. Each party:
- 4.4.1. acknowledges and agrees that it shall not acquire or claim any title to any of the other party's Intellectual Property Rights (or those of the other party's licensors) by virtue of the rights granted to it under this Contract or through its use of such Intellectual Property Rights;
- 4.4.2. agrees that it will not, at any time, do, or omit to do, anything which is likely to

- prejudice the other party's ownership (or the other party's licensors' ownership) of such Intellectual Property Rights; and
- 4.4.3. agrees not to remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the materials of the other party and agrees to incorporate any such proprietary markings in any copies it takes of such materials.

## **5. Confidential Information**

- 5.1. By virtue of this Contract, the parties may disclose to each other (directly or via use of the Services) information that is confidential ("**Confidential Information**"). Confidential Information includes, without limitation, the Content, any information which is marked as confidential or has otherwise been indicated as being confidential or could reasonably be deemed confidential and attributable to a party to this Contract.
- 5.2. A party's Confidential Information shall not include information that:
- 5.2.1. is or becomes a part of the public domain through no act or omission of the other party;
- 5.2.2. was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party or through the breach of this Contract;
- 5.2.3. is lawfully disclosed to the other party by a third party without restriction on the disclosure;
- 5.2.4. is independently developed by the other party; and
- 5.2.5. relates to bids and offers on the Services which are visible to any User on the Services (which will be the case unless the User changes the default visibility via the functionality on the Services).
- 5.3. Each party agrees not to directly or indirectly disclose, or make available, the other party's Confidential Information to any third party, in whole or in part, other than as set forth in section 5.4 below, for a period of five (5) years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party.
- 5.4. Notwithstanding the above, Tradeclear will protect the confidentiality of the Content for as long as such information is retained by it. Each party may disclose Confidential Information only to persons affiliated to it (including employees, agents and subcontractors) who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Contract. Each party may disclose the other party's Confidential Information in any legal proceeding or claims related to the Participant's use of the Services or to comply with a legal obligation to do so, provided that in such cases the disclosure is limited to such information that is reasonably required to comply.

## **6. Compliance and Audit**

- 6.1. Each party shall in connection with the provision or use of the Services (as appropriate) comply with the Laws. The Participant represents and warrants that it has the power and authority to enter into this Contract, and that it has obtained any regulatory authorisations or permissions as may be required to enter into transactions on the Tradeclear platform and otherwise use the Services.
- 6.2. The parties agree that, for the purpose of the Laws, with the exception of any data retained by Tradeclear for legal or tax reasons after termination of the Contract, the Participant is the data controller and Tradeclear is the data processor with respect to the

Personal Data within the Content.

- 6.3. Tradeclear shall process any Personal Data contained within the Content only in accordance with the Privacy Policy, instructions of the Participant or as required by the Laws to which Tradeclear is subject (provided that Tradeclear has informed the Participant of that requirement before processing). The Participant shall be deemed to have instructed Tradeclear to process any such Personal Data to the extent reasonably necessary for the provision of the Services including the Personal Data of the Participant's employees during the account registration process, connecting the Participant and its Users electronically with third party financial service providers and facilitating transactions through the Services. Tradeclear shall comply with its obligations under Article 28(3) of the EU GDPR to inform the Participant immediately if in the opinion of Tradeclear any instruction of the Participant infringes the EU GDPR.
- 6.4. The Participant retains control of the Personal Data in the Content and remains responsible for its compliance obligations under the applicable Laws, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to Tradeclear. The Participant shall always ensure that the processing by Tradeclear as contemplated by this Contract of any Personal Data which the Participant makes available to Tradeclear, is fair and lawful with an appropriate legal basis on which Tradeclear can rely for the purposes of its processing of such Personal Data.
- 6.5. Tradeclear will reasonably assist the Participant with meeting the Participant's compliance obligations under the Laws, taking into account the nature of Tradeclear's processing and the information available to Tradeclear, including in relation to data subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Laws.
- 6.6. The Participant and Tradeclear shall each permit the other (on reasonable notice and during normal working hours) to audit the other party's compliance with its obligations under this Contract in relation to the use of any software, data or other materials including the Services and the Content. The party carrying out the audit shall:
  - 6.6.1. observe the other party's procedures relating to the protection of Confidential Information about any customers of the other party; and
  - 6.6.2. take all reasonable steps to minimise disruption to the other party's business during such audit.
- 6.7. Tradeclear will ensure that persons authorised to process the Personal Data in the Content have committed themselves to confidentiality.
- 6.8. The sub-processors set out in Schedule A to these GTCs are those authorised at the date of execution of the Contract.
- 6.9. Tradeclear shall be entitled to appoint third parties as general suppliers of technology and services, provided that such third parties do not carry out specific Processing activities on behalf of the Participant. Tradeclear shall ensure that where Tradeclear appoints another sub-processor as contemplated by Article 28(4) of the EU GDPR, that sub-processor is subject to contract obligations as required by that Article.
- 6.10. Each party warrants that it shall take technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data of the other party in accordance with its Privacy Policy. Tradeclear will not store any Personal Data for longer than necessary to fulfil the purposes of this Contract or its legal obligations. As requested and appropriate with respect to the Services, Tradeclear shall assist the Participant in ensuring compliance with the obligations according to the Data Protection Legislation, taking into account the nature of the Processing Tradeclear carries out, and the information

available to Frontclear, in its capacity as a Processor of Personal Data in the Content. Tradeclear shall notify the Participant without undue delay after becoming aware of a Personal Data Breach relating to the Personal Data in the Content and will provide reasonable cooperation and assistance as may be required. To ensure a level of security appropriate to the risk, the Participant and Tradeclear shall implement appropriate technical and organisational measures including but not limited to those listed in Article 32 of the EU GDPR.

- 6.11. Following receipt of a claim from a data subject to which Article 82(4) of the EU GDPR (and any equivalent provision in the Data Protection Legislation) may apply:
  - 6.11.1. the party in receipt of the claim shall promptly notify the other party of the claim;
  - 6.11.2. neither party shall make any admission of liability, settlement or payment in respect of such claim, other than a payment made pursuant to a court order, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed); and
  - 6.11.3. each party shall provide such cooperation and assistance as is reasonably required by the other party in connection with the claim.
- 6.12. In order to operate the Services, Tradeclear may transfer Personal Data to countries outside the European Economic Area (EEA) subject to appropriate and suitable safeguards to ensure that any Personal Data transferred outside of the EEA will remain adequately protected in accordance with the requirements of the Data Protection Legislation.

## **7. Liability**

- 7.1. Nothing in this Contract shall limit or exclude either party's liability for:
  - 7.1.1. personal injury or death caused by its negligence;
  - 7.1.2. its deliberate act; or
  - 7.1.3. any damage which cannot be excluded under applicable law.
- 7.2. In all other circumstances Tradeclear's total liability under or in relation to this Contract shall be limited to the greater of:
  - 7.2.1. fees paid during the twelve (12) month period immediately before the date on which the cause of action first arose; or
  - 7.2.2. ten thousand US Dollars (USD10,000.00).
- 7.3. Liability for indirect or consequential damages such as loss of profit or damages from loss of data or damages incurred in connection with completed or partially completed transactions on the Services is hereby expressly excluded in full.

## **8. Third party claims**

- 8.1. Tradeclear shall fully indemnify the Participant against:
  - 8.1.1. any amounts paid by the Participant to any third party as a result of or in connection with any claim which that third party brings against the Participant alleging that its Intellectual Property Rights are infringed by the provision by Tradeclear to the Participant of the Services or the use of the Services by the Participant as permitted by the terms of this Contract; and
  - 8.1.2. any associated legal expenses reasonably and properly incurred.
- 8.2. The Participant shall fully indemnify Tradeclear against:
  - 8.2.1. any amounts paid by Tradeclear to any third party as a result of or in connection with any claim which that third party brings against Tradeclear alleging that its Intellectual

- Property Rights, data protection or other rights are infringed by the provision by the Participant to Tradeclear of the Content or the use of the Content by Tradeclear as permitted by the terms of this Contract; and
- 8.2.2. any associated legal expenses reasonably and properly incurred.
- 8.3. The indemnities in sections 8.1 and 8.2 above, are subject to the indemnified party notifying the indemnifying party promptly on becoming aware of any matter or claim to which the indemnity might relate and not making any admission, settlement or payment in respect of such matter or claim, other than a payment made pursuant to a court order, without the prior written consent of the indemnifying party (such consent not to be unreasonably withheld or delayed) and allowing the indemnifying party, where appropriate, to appoint legal advisers of its choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim and the indemnified party shall comply with the indemnifying party's reasonable requests in the conduct of any such negotiations and/or proceedings.
- 8.4. If any claims are made, or in Tradeclear's reasonable opinion are likely to be made, by any third party alleging that its Intellectual Property Rights are infringed by the Participant's use of the Services as permitted by the terms of this Contract, Tradeclear may at its sole option and expense procure for the Participant the right to continue using the Services in accordance with the terms of this Contract or modify the Services to avoid the infringement or replace the relevant materials with non-infringing materials, whilst still providing the same, or substantially similar, functionality.
- 8.5. This section 8 sets out the entire liability of both parties and the sole remedy of both parties with respect to the third-party claims relating to the indemnities given in this section 8.

## **9. Termination**

- 9.1. Either party shall be entitled to terminate this Contract immediately by serving written notice on the other party in the following circumstances:
- 9.1.1. if the other party commits a material breach of any of its obligations under this Contract which is not capable of remedy;
- 9.1.2. if the other party commits a material breach of any of its obligations under this Contract which is not remedied within ten (10) days after receipt of a notice from the party not in breach specifying the breach, requiring its remedy and making clear that failure to remedy may result in termination; or
- 9.1.3. if the other party has passed a resolution for its winding up, is subject to a petition presented to any court for its winding-up, is the subject of an application for administration or is dissolved or declared bankrupt or ceases to trade or takes or suffers any similar action.
- 9.2. Termination of this Contract shall not affect any rights, obligations or liabilities of either party which have accrued before termination, or which are intended to continue to have effect beyond termination.
- 9.3. On termination or expiry of the Contract for any reason, Tradeclear will securely delete or destroy the Content, including the Personal Data, related to this Contract in accordance with the data retention timeframes below:
- 9.3.1. Content: Except where indicated otherwise below, Tradeclear will delete the Content within sixty (60) days of termination.
- 9.3.2. Back-ups: One copy of the Content may be retained for ten (10) years following the end of the financial year during which the Contract terminated as may be required by the Laws.

- 9.3.3. Communications with Users: Communications by Users with such other users will be retained whilst one of the user accounts is still open.
- 9.4. Tradeclear shall, at the Participant's written request within thirty (30) days of termination of this Contract, make available to the Participant one backup copy of the Content. Such back-up copy will be provided free of charge and shall be provided in Tradeclear's standard formats. Where the Participant expressly requests that the back-up data is provided in a custom format or delivery method, it acknowledges that this may incur additional fees. Tradeclear shall use its reasonable endeavours to minimize any fees payable and shall not incur fees without the Participant's prior written approval.

## **10. Force Majeure**

- 10.1. Neither Tradeclear nor the Participant shall be responsible for failure or delay of performance if caused by:
- 10.1.1. an act of war, hostility, or sabotage;
  - 10.1.2. an act outside the parties' reasonable control;
  - 10.1.3. pandemic or epidemic;
  - 10.1.4. electrical, internet, or telecommunication outage that is not caused by the obligated party;
  - 10.1.5. government restrictions (including, without limitation, the denial or cancelation of any export, import or other license); or
  - 10.1.6. other event outside the reasonable control of the obligated party.
- 10.2. Both parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either party may cancel this Contract upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the Participant's obligation to pay fees payable by the Participant until the Contract termination date.

## **11. Other**

- 11.1. Rights or obligations arising from the Contract may only be transferred by the parties with prior written consent from the other party, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Tradeclear may assign this Contract in whole or in part to any of its group companies without the Participant's consent.
- 11.2. The Contract contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. No variation of this Contract shall be effective unless it is in writing and signed by the parties via their authorised representatives.
- 11.3. If Tradeclear changes its GTC, it shall inform the Participant of this change via the Tradeclear platform and the Participant shall have thirty (30) days to review and raise any objections or questions related to the new GTC ("**Review Period**"). During the Review Period:
- 11.3.1. Tradeclear will consult with the Participant, upon request, and act reasonably and in a way which is consistent with its treatment of its other customers; and
  - 11.3.2. the Participant has the right to terminate the Contract on written notice with effect from the date on which the revised GTC come into force.

Unless otherwise agreed in writing with TradeClear, after the Review Period, the new GTC shall be deemed accepted where the Participant continues to use the Services. The applicable version GTC is as published on [www.tradeclear.com](http://www.tradeclear.com) from time to time.

- 11.4. Should individual provisions be or become ineffective or invalid, the validity and effectiveness of the remaining provisions shall remain unaffected. In such a case, the invalid provision will be interpreted or supplemented in such a way that the intended purpose of the provision is achieved as far as possible.
- 11.5. No person shall have any right to enforce any provision of these GTC under the Contracts (rights of Third Parties) Act 1999.
- 11.6. This Contract is governed by English Law and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in England in any dispute arising out of or relating to this Contract.

## Definitions

For the purposes of this Contract the following words have the meaning set out below:

**“Commencement Date”** means any date so specified or the date of the Onboarding Form identifying these GTC;

**“Compliance Users”** means the user(s) nominated by the Participant, initially via the Onboarding Form, who will have access to information made available by TradeClear related to the Standard Users use of the Services;

**“Content”** all text, information, data, images, or other material in whatever medium or form, including any Personal Data, provided to TradeClear by the Participant including, without limitation, first name, last name, email address, telephone number, username, login details entered in the process of using the Services;

**“Contract(s)”** means each individual Onboarding Form (or other ancillary documentation), together with these GTC, the Privacy Policy and the Third-Party Terms;

**“Data Protection Legislation”** means all mandatory applicable data protection and privacy legislation in force from time to time in the respective country, including, inter alia, the GDPR;

**“Derived Output”** means information, data and materials that are derived, prepared or generated by TradeClear in connection with (and/or as a consequence of) the Services, including the Service Analyses, but excluding the Content;

**“EU GDPR”** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law;

**“Fee Schedule”** means the schedule of fees published on [www.tradeclear.com](http://www.tradeclear.com) from time to time;

**“Intellectual Property Rights”** means copyright, database right, domain names, patents, registered and unregistered design rights, registered and unregistered trademarks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same;

**“Laws”** means all legislation, regulations, all regulatory obligations and other rules having equivalent force which are applicable to that party including, without limitation, any financial services legislation, the Data Protection Legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Services, the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

**“Onboarding Form”** means any confirmation or document identifying these GTC expressing the Participant’s acceptance of the Services;

**“Personal Data”, “Personal Data Breach”, “Processing”** and **“Processor”** shall have the definition specified in the Laws;

**“Privacy Policy”** means TradeClear’s privacy policy from time to time (available from TradeClear upon written request);

**“Standard Users”** means those employees, contractors, and end users, as applicable, authorised by the Participant to use the Services;

**“Third Party Terms”** means third party license terms related to third party elements of the services (available from TradeClear upon written request); and

**“Users”** means both the Standard Users and the Compliance Users.

## Schedule A

<b>Sub-processor:</b>	Frontclear Management B.V.
<b>Jurisdiction of Incorporation of Sub-processor:</b>	The Netherlands
<b>Sub-processor DPO contact details:</b>	Erik van Dijk; <a href="mailto:evandijk@frontclear.com">evandijk@frontclear.com</a>
<b>Elements of Personal Data:</b>	<ul style="list-style-type: none"><li>• Full name</li><li>• Business Title</li><li>• Business Phone</li><li>• Business E-Mail</li><li>• Roles &amp; Permissions on Tradeclear</li></ul>