

Terms and Conditions

1 Application and acceptance of Terms and Conditions

1.1 Application of Terms and Conditions

These Terms and Conditions govern your use of Kohler & Company Pty Ltd's Information Services and form a binding contractual agreement between you and Kohler & Company Pty Ltd ACN 610 863 128 of Suite 105, 672 Glenferrie Road, Hawthorn, Victoria 3122) (**Kohler & Co**).

1.2 Acceptance of Terms and Conditions

- (a) You acknowledge that your use of the Information Services indicates your acceptance of these Terms and Conditions, as well as our privacy policy. By accessing the Information Services, you acknowledge that you have read, understood and agree to be legally bound by these Terms and Conditions and to the collection and use of your Personal Information as set forth in the Privacy section below.
- (b) If you do not agree to the Terms and Conditions, as amended from time to time, you are not permitted to use the Information Services.

1.3 Subscription Service

If you offer to receive, and Kohler & Co agrees to provide you with, the Subscription Service, these Terms and Conditions also specify the terms which apply to the Subscription Service.

2 Warning

- (a) The Information Service is provided for general information purposes only and should not be considered personal advice. Anyone seeking to rely on content should seek their own legal, financial and taxation advice.
- (b) Any financial product advice given by the Kohler & Co through the Information Service is general advice only and does not take into account your objectives, financial situation or needs. You should consider the appropriateness of the advice having regard to your own personal objectives, financial situation and needs and, if applicable, read any product disclosure statement, prospectus or other offer document, before acting upon any advice. You should seek advice from a financial adviser or other professional (including taxation and legal advice) as necessary before acting on any advice.
- (c) The Information Services may include information or data on the past performance of an investment or other matter. Past performance is not indicative of future performance.
- (d) The data and information contained in the Information Services may present Kohler & Co's views and is, to Kohler & Co's best knowledge and belief, accurate. However, Kohler & Co's views may change without notice. We strongly suggest that you seek advice before acting upon any recommendation and make your own enquiries before any investment or divestment.
- (e) Employees, officers and/ or associates of Kohler & Co may hold one or more investments or financial products referred to on the Information Services. These

holdings should not be seen as a recommendation. Staff must adhere to our Staff Trading Policy as stated in term 14.

3 Financial services provided by TCI

- (a) From the date Kohler & Co provides the Information Services, it will be an authorised representative (authorised representative no. 1244896) of MSC Advisory Pty Ltd (ACN 607 459 441; Australian financial services (**AFS**) licence number 480649) (**MSC**). Any financial product advice or other financial services is provided by Kohler & Co as a representative of MSC.
- (b) Kohler & Co is required to give you a Financial Services Guide (**FSG**) prior to providing you with any financial services. The FSG contains important information about the financial services provided by Kohler & Co and the FSGs for The Constant Investor and Market *Timing* are available on the Website ([insert hyperlink for both]). You agree to having the Constant Investor and Market *Timing* FSG being made available to you through Kohler & Co's website and agree to read the relevant FSG and consider it in light of your own circumstances before accessing the relevant Information Services.

4 Limitation of liability

- (a) To the maximum extent permitted by law, in no event will Kohler & Co be liable to you or your agents for any liability, claim, direct loss or outgoing suffered or incurred by you as a result of, or in connection with:
 - (i) your use, or reliance upon, the information or data contained in the Information Services;
 - (ii) your use, or reliance upon, the information or data contained in any external website, including a website which is referred to by a hyperlink in any Information Service;
 - (iii) you acquiring, disposing or holding on to any financial or other product;
 - (iv) the failure or poor performance of any financial or other product referred to by Kohler & Co or the failure of that product to meet your expectations;
 - (v) any variance from any projections, or statements of future events, made by Kohler & Co in relation to any financial or other product;
 - (vi) any defects, misrepresentations made by third-parties or any other shortcomings in relation to any financial or other product you purchase which was recommended by Kohler & Co;
 - (vii) any failure of Kohler & Co's systems, including information technology and business systems;
 - (viii) any advice, recommendations, representations or statements made by Kohler & Co which you have relied upon; and
 - (ix) any services provided by, or representations or statements of opinions made by, a third-party, whether or not the third-party was recommended or engaged by Kohler & Co.
- (b) You acknowledge and agree that term 4(a) is an essential element of these Terms and Conditions and a reasonable allocation of risk between the parties,

and that in the absence of such limitations the other provisions in these Terms would be substantially different.

5 Warrantees and acknowledgements

- (a) You acknowledge and agree that:
- (i) the Information Services will not operate on a continuous basis, and may be unavailable from time to time including for maintenance purposes;
 - (ii) Kohler & Co reserves the right to alter, amend or cease the operation of the Information Services at its discretion without any notice;
 - (iii) information and materials in the Information Services may contain inaccuracies and errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law;
 - (iv) the Information Services are designed to be educational – Kohler & Co does not intend for the Information Services, with the exception of the *Market Timing* Information Services, to influence your decision about any financial or other product and no such intention should be inferred;
 - (v) if Kohler & Co provides you with general financial product advice:
 - (A) this advice has been prepared without taking into account your objectives, financial situation or needs;
 - (B) you should consider the appropriateness of the advice having regard to your own personal objectives, financial situation and needs and obtain a product disclosure statement before acting upon this advice;
 - (vi) in the event that you provide Kohler & Co with information about your objectives, financial situation or needs, Kohler & Co will not take them into account in the preparation or giving of any financial product advice and so the advice will remain general financial product advice;
 - (vii) you should seek advice from a suitably qualified adviser before acting upon any financial product advice provided to you by Kohler & Co;
 - (viii) Kohler & Co will not, at any time, assess whether a financial or other product is appropriate or not appropriate to you, your financial needs or your personal circumstances;
 - (ix) Kohler & Co makes no promises or provides any guarantees regarding the investment performance or repayment of capital for any financial product referred to or named in the Information Services;
 - (x) most financial products will come with some measure of volatility and investment risk including loss of income or capital invested as well as potential delays in transactions being processed or switched;
 - (xi) Kohler & Co is not qualified to provide, and will not provide you with, credit assistance and any advice provided by Kohler & Co is not intended to and does not constitute credit assistance of any kind;
 - (xii) you must independently assess the quality and adequacy of any third-party to which Kohler & Co refers you;

- (xiii) all referrals to third-parties in the Information Services is a mere referral meaning that Kohler & Co does not make any representations as to the quality of that third-party and does not endorse those services; and
 - (xiv) the content on the Information Services is for use by Australian residents.
- (b) You represent and warrant to us that you:
- (i) will be solely responsible for all your activities by accessing and using the Information Services;
 - (ii) are over the age of 18 years or older and have the legal capacity to enter these Terms and Conditions;
 - (iii) will keep all passwords, account names, and log in identifiers required to access the Information Services secure and confidential and if you become aware that unauthorised use of your password has or may have taken place you will change your password immediately and report it to Kohler & Co;
 - (iv) will not use the Information Services in any way that causes, or is likely to cause, the Information Services or access to them to be interrupted, damaged or impaired in any way;
 - (v) will not use any part of the Information Services which you are not authorised to use or devise ways to circumvent security in order to access part of the Information Services of which you are not authorised to access;
 - (vi) will not use or attempt to use the Information Services for any unlawful, criminal or negligent purposes – this includes, but is not limited to, password cracking, social engineering, denial-of-service attacks, harmful and malicious destruction of data, infringing the intellectual property rights of any person, and injection of computer viruses and intentional invasion of privacy.

6 Indemnity

You indemnify and keep Kohler & Co indemnified against any loss, damage, liability or cost incurred by you in connection with any breach of these Terms and Conditions or any other legal obligation by you or your use of or conduct on the Information Services.

7 Forums

- (a) In addition to the terms of these Terms and Conditions, this term 7 applies to the use of any Forum as part of the Information Service.
- (b) You acknowledge and agree that:
 - (i) Kohler & Co does not endorse the accuracy or authenticity of any posts made by other people on the Forum;
 - (ii) posts are not made by Kohler & Co unless otherwise indicated;
 - (iii) Kohler & Co moderates the Forums and in its sole discretion may require posts to be approved before publication, and/or publish, not publish, modify and/or delete any posts, without notice;

- (iv) Kohler & Co, in its sole discretion, can withdraw any person's access to a Forum without notice;
 - (v) you cannot offer for sale or issue any financial or other product in posts on a Forum;
 - (vi) posts in a Forum can be made by anybody and may be false and/or inaccurate; and
 - (vii) information about a post may be made available to other parties (including government regulators) at Kohler & Co's sole discretion and that other party may take action against the author of the post.
- (c) You represent and warrant to us that you:
- (i) are responsible for any post which you make on a Forum;
 - (ii) will not make misleading or deceptive representations on a Forum;
 - (iii) you will not make a post on a Forum which breaches the law or these Terms and Conditions;
 - (iv) will disclose your interest in any financial product which you refer to in a post and must not make any posts with regard to financial product about which you have inside information; and
 - (v) will not insert hyperlinks to financial product advice provided by AFS licensees or representatives other than Kohler & Co and its representatives.

8 Subscription Service

8.1 Fees for the Subscription Service

If you offer to receive the Subscription Service from Kohler & Co, and Kohler & Co agrees to provide the Subscription Service to you, you agree to pay fees to Kohler & Co for the Subscription Service in accordance with term 8.4.

8.2 30-day free trial

You are entitled to a 30-day free trial if you have not previously received the Subscription Service. Kohler & Co has the absolute discretion to vary the length of the free trial period by providing you with written notice. To receive a free trial, you must provide Kohler & Co with your name, contact details, payment details and any other information required by Kohler & Co. Unless you terminate the Subscription Service (pursuant to term 10.2) before the conclusion of your free trial, Kohler & Co will automatically begin charging you fees in accordance with term 8.1.

8.3 7-day money back guarantee

If you provide written notice of termination (pursuant to term 10.2) within 5 Business Days after the conclusion of the applicable free trial period (provided by term 8.2) or the Execution Date, no fees will be payable by you under term 8.1 and any money paid by you to Kohler & Co will be refunded.

8.4 Monthly Subscription Service fee

- (a) A monthly fee of \$25 (inclusive of GST) will be payable by you to Kohler & Co in advance.

- (b) The monthly fee will be payable each month until you terminate the Subscription Service in accordance with term 10.2.
- (c) Each monthly payment is due and payable on the same day of each month or on the last day of the month if payment is due on the 29th, 30th or 31st day and that day does not exist in the relevant month.
- (d) The first monthly payment will be immediately due and payable on the Execution Date or, if a free trial period applies pursuant to term 8.2, the conclusion of the free trial period.

8.5 Fee increase

Kohler & Co reserves the right to increase the fees stated in clause 8.4 or charge new fees upon reasonable notice.

8.6 No fee for accessing publically available Information Services

There are no fees which apply to you for accessing Information Services which are not part of the Subscription Service.

8.7 Payment terms

- (a) If you fail to pay an amount due under these Terms and Conditions by the due date, interest will be payable and accrue on overdue amounts at the applicable interest rate per annum prescribed by the Supreme Court of Victoria's penalty interest rates.
- (b) If Kohler & Co fails to pay an amount due under these Terms and Conditions by the due date, interest will not be payable or otherwise accrue on overdue amounts, unless otherwise agreed.
- (c) If no due date is specified in these Terms and Conditions, the due date is 28 days from the date that the amount is payable.

8.8 Personal use only

The Subscription Service is only for your personal use, unless otherwise agreed in writing. You must not share access to the Subscription Service with other people or redistribute the content of the Subscription Service by any means.

8.9 Grant of licence

Kohler & Co grants you a revocable, non-exclusive, non-transferable licence to use Kohler & Co's Subscription Service. This licence grant includes all new material and amended material contained in the Subscription Service. If you do not comply with these Terms and Conditions, then you will be liable for all resulting damages suffered by you, Kohler & Co and third parties. Unless otherwise provided by these Terms and Conditions, you agree not to alter, reproduce, adapt, distribute, display, publish, reverse engineer or translate the content contained in the Subscription Service or otherwise attempt to create material that is derived from the content of the Subscription Service. Upon expiration or termination of the Subscription Service, this licence terminates and you will immediately cease all use of the Subscription Service.

8.10 Editorial break

Kohler & Co takes an annual summer editorial break at the end of each year of approximately 7 Business Days during which no new materials will be published on the Subscription Service. Kohler & Co will provide you with notice of the exact dates of the editorial break close to the end of each year.

9 Electronic payment

All payments made pursuant to term 8.1 will be made through your preferred mode of payment (credit card or PayPal). Payments will be processed automatically unless the Subscription Service is terminated in accordance with term 10. Credit card details or bank account details of all subscribers are retained by Braintree (a division of PayPal Inc) which is the payment gateway used by Kohler & Co to process payments and Chargify LLC which is the payment administrator used by Kohler & Co. Renewal payments are triggered by Kohler & Co and actioned by Braintree and Chargify LLC using these details. Kohler & Co does not have access to these banking details at any time. You can enter or change credit card details at any time through the online payment platform administered by Braintree. You will be personally responsible for the security of your personal username and password, which gives access to your personal details.

10 Default and Termination of the Subscription Service

10.1 Termination of the Subscription Service

The termination of the Subscription Service under this term 10:

- (a) does not affect any accrued rights of Kohler & Co; and
- (b) only terminates the Subscription Service and does not terminate the Terms and Conditions which apply under clause 1.1 and 1.2 for the use of the Information Services which are not part of the Subscription Service.

10.2 Cancellation of the Subscription Service

You may terminate the Subscription Service at any time by providing written notice to Kohler & Co.

10.3 Access to the Subscription Service for the remainder of the month

If you provide written notice to terminate the Subscription Service pursuant to term 10.2, the Subscription Service will terminate on the day your next monthly payment is due and payable under term 8.4.

10.4 Events of default

If you:

- (a) fail to comply with any provision of these Terms and Conditions;
 - (b) are an individual who dies or becomes of unsound mind, bankrupt or enters into any arrangement or composition with his or her creditors or proposes to do so,
- then you are in default.

10.5 Termination of the Subscription Service by Kohler & Co

If, in the opinion of Kohler & Co, you are in default by virtue of term 10.4, Kohler & Co may immediately terminate the Subscription Service by serving a written notice to that effect on you.

10.6 Rights of Kohler & Co not affected

The rights of Kohler & Co under this term 10 are in addition to any other rights or remedies Kohler & Co may have at law or otherwise.

11 Complaints

11.1 Complaints handling policy

All complaints will be handled in accordance with the complaints handling policy of Kohler & Co's authorising AFS licensee, MSC Advisory Pty Ltd ACN 607 459 441, AFS licence number 480649,, as amended from time to time. The complaints handling process is outlined within The Constant Investor's and Market *Timing's* Financial Services Guides available on the Website.

12 Copyright

No documents or editorial content on the Information Services may be reproduced, adapted or uploaded in any way or form without the specific written permission of Kohler & Co. However, you may access and use the Information Services (including any incidental copying that occurs as part of that use) in the normal manner.

13 Privacy Notice

All personal information you provide to us is maintained under the terms of our Privacy Policy as amended from time to time, which is incorporated into these Terms and Conditions by reference, and is available on our website.

14 Staff Trading Policy

To avoid conflicts of interests with you, Kohler & Co has imposed the following trading restrictions:

- (a) If any content on the Information Services recommends to buy or sell an investment, staff must not trade against this recommendation for a period of 7 days from when the recommendation was first published.
- (b) If a recommendation has been made on the Information Services and that recommendation changes, staff will not be permitted to trade for 3 days before or after the change in recommendation was first published.

15 Notices

15.1 Form of Notice

Any demand, notice, consent, approval or other communication as between the parties may be made or given by a party or the legal representative for that party provided that it is:

- (a) in legible writing, in English and addressed to the intended recipient; and
- (b) signed by the sender (if an individual) or by a representative of the sender; and
- (c) given to the addressee by:
 - (i) delivery in person; or
 - (ii) post to, or leaving at, that party's address for service; or
 - (iii) sending by fax to the party's address for service; or
 - (iv) sending by email to the party's usual email address; and
- (d) regarded as being given by the sender and received by the addressee:

- (i) if by delivery in person or by being left at the party's address for service, upon delivery;
- (ii) if by post, two (2) Business Days from and including the date of posting by ordinary prepaid post in respect of an address for service within the Commonwealth of Australia and twenty one (21) Business Days in respect of other any address; or
- (iii) if by fax, when legibly received by the addressee, with receipt being evidenced by a report generated by the sender's machine confirming uninterrupted transmission / sending;
- (iv) if by email, when the recipient's email server receives the sender's email, evidence of which will be a record of the sent email retained by the sender's email server unless evidence can be produced by the recipient's email server to demonstrate otherwise;

but if the delivery or receipt occurs on a day which is not a Business Day or at a time after 5.00 pm (both the day and time being in the place of receipt) it is regarded as having been received at 9.00am on the next following Business Day.

15.2 Address for service

- (a) For the purposes of this term 15, a party's address for service shall be:
 - (i) the party's postal address, fax number or email address (if any) provided to the other party; or
 - (ii) if that party has notified the sender of a change of postal address, changed fax number or changed email address, the address, fax number or email address last so notified.
- (b) If the party is a company, the party's address for service shall also include its registered office.

16 General terms

16.1 Survival of terms

The following terms of these terms and conditions survive the conclusion or termination of these Terms and Conditions:

- (a) Term 4: Limitation of liability;
- (b) Term 5: Warrantees and acknowledgements;
- (c) Term 6: Indemnity;
- (d) Term 12: Copyright;
- (e) Term 13: Privacy; and
- (f) Term 16: General terms.

16.2 Variation and amendment

- (a) Kohler & Co reserves the right to replace or update these Terms and Conditions at any time. We will provide notice of these changes by publishing our new Terms and Conditions on this Website upon which the replacement or update will

be effective immediately. You should ensure that you regularly review our Terms and Conditions to ensure you are familiar with them.

- (b) You acknowledge that Kohler & Co has provided you with the appropriate amount of warning regarding the potential for a variation in our Terms and Conditions.

16.3 Inconsistent terms

If a term of these Terms and Conditions is inconsistent with any terms and conditions contained in any other document, agreement, or contract between the parties, whether verbal or in writing, that relates to the same subject matter, these Terms and Conditions will prevail over any such terms to the extent of the inconsistency unless it is specifically provided in writing and agreed by Kohler & Co that those terms should override these Terms and Conditions.

16.4 Further assurances

Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of these Terms and Conditions and any services contemplated by it.

16.5 Assignment

The rights and obligations of each party under these Terms and Conditions are personal. No party may assign, encumber or otherwise deal with such rights and obligations without the prior written consent of Kohler & Co.

16.6 GST

Any consideration to be paid or provided for a supply made under or in connection with these Terms and Conditions is inclusive of GST, unless otherwise stated.

16.7 Jurisdiction

These Terms and Conditions, your use of the Website and any dispute arising out of your use of the Website is governed by and construed in accordance with all applicable laws in force in the State of Victoria, Australia from time to time and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

16.8 Attorneys

Where these Terms and Conditions are executed on behalf of a party by an attorney, that attorney by executing these Terms and Conditions declares and warrants that he or she:

- (a) has been duly appointed; and
- (b) has no notice of the power of attorney under the authority of which he or she executes these Terms and Conditions having been revoked.

17 Definitions and Interpretation

17.1 Definitions

In these Terms and Conditions, unless the context otherwise requires:

Business Day means a day other than a Saturday, Sunday, a public holiday or a bank holiday in the state of Victoria, Australia.

Execution Date means the date on which Kohler & Co agrees to provide the Subscription Service to you in response to you offering to receive the Subscription Service.

Forum means any electronic facility (such as a website or electronic message board) where users can post comments or questions to which other people can view and/or respond.

GST has the same meaning as in the A New Tax System (Goods & Services Tax) Act 1999.

Information Services means information and data contained within the Website or distributed by Kohler & Co through electronic means such as Facebook, podcasts and email. For the avoidance of doubt, this is inclusive of information and data distributed through the Subscription Service.

Personal Information has the same meaning as section 6 of the Privacy Act 1988 (Cth).

Subscriber means a person who has offered to receive, and to whom TCI has agreed to provide, the Subscription Service.

Subscription Service means the Information Services provided by Kohler & Co which are only available to Subscribers.

TCI means The Constant Investor (a trading name of Kohler & Company Pty Ltd ACN 610 863 128).

Terms and Conditions means this document entitled Terms and Conditions (including any schedule or annexure to it).

Website means the websites for The Constant Investor and Market *Timing*.

You or **Your** means a user of the Website or the Subscription Service.

17.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) headings are for reference only and do not affect interpretation;
- (b) examples and use of the word including and similar expressions do not limit what else may be included;
- (c) alternative grammatical forms of defined words or expressions have corresponding meanings;
- (d) the singular includes the plural and vice versa;
- (e) a reference to an individual or person includes a corporation and vice versa;
- (f) a reference to any gender includes all genders;
- (g) “notice” means a written communication;
- (h) a reference to “dollars” or “\$” is to Australian currency;
- (i) an accounting term is to be interpreted according to the Accounting Standards;
- (j) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) a party to any document includes that person's successors and permitted substitutes and assigns;

- (l) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (m) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (n) a reference to a term, recital, clause or schedule is to a term, recital, clause or schedule of or to these Terms and Conditions;
- (o) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (p) time is to Victoria, Australia time unless stated otherwise;
- (q) anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day; and
- (r) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.