

## Commercial Foreign Exchange For Physical Delivery: Terms of Business

### 1 Interpretation

1.1 In these terms and conditions, unless the context otherwise requires: 'Agreement' means the agreement to which these terms and conditions are annexed

'Force Majeure' means, in relation to AX MARKETS, any circumstances beyond its reasonable control (including, without limitation, any failure of computer equipment, communications systems or any form of industrial action)

'Service' means the purchase and sale of foreign currency for commercial physical delivery purposes.

'Value date' means the date on which the currency transaction reaches value with the counter-party specified by AX MARKETS.

'Spot' specifies a transaction where the Value date is two working days after the instruction.

'Forward' specifies a transaction where the Value date is later than two working days after the instruction.

'Commercial Purposes' means commercial and not investment as defined by the Financial Services Act 1986 and amendments.

1.2 The headings in the Agreement are for convenience only and shall not affect its interpretation.

### 2 The Service

2.1 AX MARKETS agrees to provide facilities for the client to buy and sell foreign currencies for Commercial Purposes only.

2.2 The client hereby agrees that all orders are placed in pursuance of the clients usual trade or business and that the client is not acting for any third party and that the client will take physical delivery of the purchased currency upon payment of the full amount of the sold currency as dictated by AX MARKETS on the occasion of each individual contract.

2.3 AX MARKETS will accept orders from the client to buy and sell currencies for Spot or Forward delivery where the client agrees to take physical delivery of the purchased currency on the specified delivery date (Value date).

2.4 AX MARKETS will, at its absolute discretion, accept orders to transact for the client, verbally or in writing by post or electronic transmission from any member of the client's staff duly authorised to place orders.

2.5 When entering into any contract the client shall rely purely on its own judgement. AX MARKETS may from time to time provide the client with information concerning the foreign exchange markets but AX MARKETS will not offer any official advice to the client on the merits or otherwise of any currency transaction or provide advice on taxation or any investment products or markets to the client.

2.6 Once an order is accepted by AX MARKETS it cannot be altered, cancelled or rescinded without the prior written consent of a director of AX MARKETS.

2.7 AX MARKETS may at its absolute discretion refuse any dealing order from a client without giving any reason and without liability for any resultant loss or damages incurred by the client or any other party.

2.8 AX MARKETS reserves the right to request written confirmation of any client instruction where AX MARKETS considers this to be a desirable course of action or where the verbal instruction is at all ambiguous or where the instruction is confirmation of onward payment instructions.

### 3 Documents

3.1 AX MARKETS will issue a contract note in respect of each contract executed for the client. The contract note will be sent to the client by electronic mail, facsimile or post and will not prejudice in any way the rights of either party

3.2 Unless the client notifies AX MARKETS of any error or omission within 24hours of receipt of any contract note, settlement notice or other document issued by AX MARKETS, the client shall be deemed to have

agreed and accepted the contents of the document and it shall be accepted that it is an accurate representation of the facts of its nature and content and will be legally binding on the client.

#### 4 Limitation of Liability

4.1 The following provisions set out AX MARKETS's entire liability to the Customer in respect of any breach of its contractual obligations arising under the Agreement (an 'Event of Default')

4.2 Nothing in this clause 4 shall be deemed to be an attempt by AX MARKETS to limit its liability to the Customer for death or personal injury resulting from AX MARKETS's own or that of its employees' agents' or sub-contractors' negligence.

4.3 Subject to the provisions of sub-clause 4.2 above AX MARKETS's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the direct loss incurred in connection with such contract.

4.4 AX MARKETS shall not be liable to the client in respect of any event of default for loss of profits goodwill anticipated savings or any type of special indirect or consequential loss (including loss or damage suffered by the Licensee as a result of an action brought by a third party) even if such loss was reasonably foreseeable.

4.5 The client shall, on demand by AX MARKETS, indemnify AX MARKETS and keep it indemnified against all losses, damages and costs of any nature suffered by AX MARKETS including any costs suffered by AX MARKETS in covering, reducing or eliminating its risk, through the non performance of the client or where the client fails to honour any of the terms and conditions herein in respect of any contract with AX MARKETS.

#### 5 Financial provisions

5.1 In the event of a Spot transaction, the client shall pay the full transaction consideration into a bank account specified by AX MARKETS on such date or dates as AX MARKETS might direct, in advance of the transaction.

5.2 In the event of a Forward transaction, the client shall, prior to the transaction, pay into an account specified by AX MARKETS an initial amount in cleared funds of 20% of the full amount of the sold currency or such other percentage as AX MARKETS shall specify, and shall, subject to sub-clause 5.6 pay any outstanding balance of the sold currency into such account as is specified by AX MARKETS not later than three working days before the Value date of the contract, or at any time as specified by AX MARKETS.

5.3 All payments due from the client to AX MARKETS under this contract shall be made without set-off, counterclaim or deduction whatsoever.

5.4 AX MARKETS will make any payments to the client under this agreement in full unless required by law to deduct sums in respect of any taxation liabilities.

5.5 Banks have specified times of cut off for the receipt and dispatch of electronic payments. AX MARKETS accepts no responsibility for any delay in onward payment attributable to the late arrival of funds or instruction of payment relative to the cut off times of the designated bank.

5.6 In the event of any significant exchange rate fluctuations occurring between the date of contract and the Value date AX MARKETS may require the client to provide additional funds to maintain the value and level of the deposit at the stipulated percentage rate on the original contract note. Such funds shall be paid by the client immediately and in full. AX MARKETS reserves the right to close out or cover positions in the event of un-met margin calls or in the pursuit of it's own risk management procedures.

5.7 The client undertakes that all funds to be provided as security for the client's obligations hereunder will be beneficially owned by the client and will not be subject to any charge, lien or other encumbrance and the client will not create any charge, lien or other encumbrance over any funds so provided.

5.8 All funds provided by the client under this agreement (whether as security or otherwise) may be used by AX MARKETS in the performance of its own obligations or for the obligations of other trading accounts for the client.

#### 6 Force Majeure

6.1 If AX MARKETS is affected by Force Majeure it shall notify the Customer of that fact as soon as is reasonably practicable.

6.2 AX MARKETS shall not be deemed to be in breach of this Agreement, or otherwise be liable to the client, by reason of any delay in performance, or non-performance, of any of its obligations hereunder, to the extent

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that such delay or non-performance is due to any Force Majeure, whether or not this is notified to the client at the time of its occurrence.

## 7 Default

7.1 AX MARKETS shall have the right to close any contract by entering an equal but opposite contract or, at its absolute discretion, by any other actions deemed correct without any further liability for any loss or otherwise in the event of any of the following:-

- a) any default of payment by the client
- b) any other breach by the client under this agreement

c) The client goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement) or

- commits any act of insolvency as defined by the Companies Act 1985 as amended.

d) it becomes unlawful for AX MARKETS to give effect to any or all of its obligations to the client under this agreement or where AX MARKETS or the client is ordered to close out a contract by any regulatory body.

e) AX MARKETS considers it desirable to do so for its own protection.

Where a contract is closed out for any of the reasons herein a contract note will be issued and dispatched to the client detailing the specifics of the closure and any loss for which the client may be liable

## 8 Duration, termination

8.1 Either party shall be entitled to terminate this Agreement forthwith by written notice to the other if:-

8.1.1 that other party commits any breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

8.1.2 either party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement) or commits any act of insolvency as defined by the Companies Act 1985 as amended.

8.2 For the purposes of clause 8.1.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

8.3 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

8.4 The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

8.5 Upon the termination of this Agreement for any reason and following the conclusion of any foreign currency transaction enacted under this Agreement and subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

## 9 Nature of agreement

9.1 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties.

9.2 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing

signed by a duly authorised director of AX MARKETS and a duly authorised representative of the client.

9.3 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

9.4 It is intended that these terms and conditions shall be reasonable as between AX MARKETS and the client having regard to the nature of the

Agreement, but if at any time any of these terms and conditions is either unenforceable or void at law or pursuant to any ruling of any governmental authority, Court or tribunal, it shall not adversely affect or prejudice the remainder of them or the Agreement and it shall be deemed to be excluded from these terms and conditions and (where possible) to be replaced by such other enforceable and valid term or condition as shall be as near as may be to the original in both form and effect.

9.5 This Agreement shall be governed by and construed in all respects in accordance with the Laws of England, and each party hereby submits to the exclusive jurisdiction of the English Courts.

## 10 Notices and service

10.1 Any notice, document or other information to be given by either party to the other under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by first class prepaid recorded delivery post or facsimile transmission or other electronic media to the recipient at the address as set out in this Agreement, or using the relevant telecommunications number of the recipient as at the date thereof, or to such other address or telecommunications number as the recipient may from time to time designate in writing for such purpose.

10.2 Any notice, document or other information shall be deemed to have been received by the recipient two working days after the date of dispatch of the same by post, or where the notice, document or information is sent by hand or is given by facsimile or other electronic media simultaneously with the delivery or transmission (as appropriate). To prove the giving of notice it shall be sufficient to show that it was dispatched or delivered.

Date:

Parties:

1. AX Markets Limited, AX Markets House, 337 City Road, London EC1V 1LJ
2. 'The Customer'

Customer Name:

Customer address:

Postcode:

Contact telephone:

Email:

Operative Provisions:

The terms and conditions annexed hereto ("the Terms and Conditions") shall form part of this Agreement. This Agreement shall come into force on the date set out above and, subject as set out below, shall continue in force until terminated by either party giving to the other written notice sufficient to conclude any foreign currency contracts enacted under this Agreement. The Customer hereby acknowledges that AX MARKETS provides facilities for physical delivery of foreign currencies for Commercial Purposes only and that no official advice, guidance or the like will be provided by AX MARKETS as part of the service.

Client signature:

Print name:

AX MARKETS signature:

Position:

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Anti-Money Laundering Documentation that we would require to open the account, we reserve the right to use Credit and other agencies for this purpose:

- For Individuals:
- Copy of certified Passport photo page
  - Original or certified copy of a Utility bill showing the customer's residential address
  - Original or certified copy of a recent bank statement
- For Corporates:
- Certified copies of passport photo pages for at least 2 directors (unless sole director firm)
  - Certified Copy of Memorandum & Articles of Incorporation
  - Certified Copy of Certificate of Incorporation
  - Certified Signature List of Authorised Personnel who may instruct on behalf of the company
  - Statement of Banking details
  - Copies of previous 2 years of audited Reports & Accounts

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