



**TERMS & CONDITIONS**

**COVERING**

**ADVISORY SERVICES**

**DELIVERABLE FOREIGN EXCHANGE CONTRACTS**

**JUNE 2015**

## TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	COMPLIANCE	3
3.0	ADVISORY SERVICES	3
4.0	TRANSACTIONAL SERVICES- AML/CFT	4
5.0	DELIVERABLE FX CONTRACTS	6
6.0	EVENTS OF DEFAULT	10
7.0	REMEDIES	11
8.0	DISPUTES	11
9.0	SET OFF	12
10.0	PAYMENT INTEREST & INDEMNITY	12
11.0	LIMITATION OF LIABILITY	13
12.0	LEGAL COSTS	13
13.0	WAIVER	13
14.0	NOTIFICATION	13
15.0	ASSIGNMENT	14
16.0	LEGAL JURISDICTION	14
17.0	ACCESS THROUGH THE INTERNET	14
18.0	PRIVACY POLICY	14
19.0	TERMINATION OF AGREEMENT	16
20.0	AMENDMENTS	16
21.0	ACCOUNT OPENING FORMS	17

## TERMS AND CONDITIONS FOR FOREX LTD

### 1.0 Introduction

The following terms and conditions, subject to any amendments made by Forex under clause 20.0 (“**these Terms and Conditions**”), cover the various products and services provided by Forex Limited (‘Forex’) to you, the Client (‘You’). It is important that you read and understand these Terms and Conditions, before you commence doing business with Forex. By doing business with us you are irrevocably and unconditionally agreeing to be bound by these Terms and Conditions. If you do not accept these Terms and Conditions you must not do business with us.

### 2.0 Compliance

Forex is a registered Financial Service Provider under the Financial Service Providers Act 2008. Details of our registration can be viewed at [www.fspr.govt.nz](http://www.fspr.govt.nz). We are also subject to legislation contained in the Financial Advisers Act 2008 and the Financial Markets Conduct Act 2013 (FMCA). We are Registered Financial Advisers, which means we can only do business with an entity or an individual who we classify as a Wholesale client as defined in the FMCA. Before we can do business with you we will need to determine that you are a Wholesale client. Forex is under no obligation to do business with you if we cannot determine you are Wholesale or we determine that you are a Retail classification. Forex also reserves the right to stop doing business with you if your classification changes from Wholesale to Retail due to a change in business or financial activity. You agree that no legal redress is possible if Forex stops doing business with you to remain compliant with the FMCA. Forex is a member of an approved disputes resolution service Financial Services Complaints Ltd. [www.fscl.org.nz](http://www.fscl.org.nz)

### 3.0 Advisory Services

3.1 Forex provides a range of advisory services. The scope of services, and the fees Forex charges for these services, will be agreed in writing between us and are determined by a number of factors such as:

- (a) the level of the risk being managed;
- (b) the degree of attention required; and
- (c) any specific requests by you.

Forex will charge for disbursements where we incur these as part of the work we undertake for you. You agree to reimburse Forex for all costs and disbursements incurred by Forex, when charged. For subscribers to the regular advisory services and reports, Forex will render an account for its services and any disbursements at the beginning of each month or each quarter, which must be paid by the 20<sup>th</sup> of that month. For project work, Forex will bill you at the completion of the project, with payment due by the 20<sup>th</sup> day of the month following date of invoice or such other billing period and payment date as may be agreed in writing between Forex and you.

3.2 All Forex publications and information provided to you are subject to copyright and any unauthorised use, copying or mirroring is prohibited. You may only use the information provided by Forex for your internal business purposes and not for the purposes of commercial gain by providing commercial treasury risk or foreign exchange-related products or services.



3.3 Forex will retain any papers or files pertaining to your organisation, for its own compliance purposes, for a minimum period of seven years. Forex will destroy any such files seven years after you cease to do business with us.

#### 4.0 Transactional Services – AML/CFT

Forex provides facilities for the purchase or sale of currencies for currency hedging purposes in connection with business or other commercial purposes where, through the course of the activity, there is a need to either buy or sell a foreign currency against NZ Dollars ('NZD') or another foreign currency. Forex's contracts with you are for the actual delivery of currency. Non-deliverable Foreign Exchange contracts are not covered by these Terms and Conditions. When you transact with Forex you acknowledge that Forex is acting as the sole counterparty in the transaction, and not as your trustee or agent. If you instruct Forex to enter into a transaction so that it can provide you with a currency, you agree to pay Forex for the currency by the time notified by Forex, and acknowledge and agree that, although your arrangement with Forex is separate from Forex's arrangements in relation to its dealing line, your compliance with your obligations to Forex is necessary to enable Forex in turn to comply with its obligations under its dealing line.

- 4.1 Forex is subject to all government laws enacted to stop any money laundering activity within the New Zealand banking system including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. (AML/CFT Act) As such we have the right to refuse to make any bank transfer or receive any funds into our accounts that we suspect could be part of any money laundering operation. We also have the right to request additional documentation and information from you, both before and during any transaction, to verify the status of the funds you wish to transact with us, and to verify the identities and details of the parties involved in the transaction. You acknowledge and agree that you have no recourse on us if we refuse to transact with you.
- 4.2 You further acknowledge and agree that we may be obligated to release certain information to legal, banking or government authorities that may be requested of us, in relating to money laundering activities.
- 4.3 Prior to Forex undertaking any funds transfers for you for the first time, we will require you to complete documentation which will enable us to conduct client certification documentation in order to be able to deal with you under the terms of the AML/CFT Act. Forex will not be able to deal with you until this due diligence process is completed in accordance with the relevant AML/CFT statutory requirements.
- 4.4 Forex has obligations under the Act in relation to wire transfers we make for you, in particular those obligations imposed by sections 27, 28, 49, and 50 of the AML/CFT Act. Specifically:
- (a) You warrant to Forex that you are acting on your own behalf when instructing us to initiate any wire transfer. If this is not the case Forex will withdraw the service from you, without recourse.
  - (b) You acknowledge that Forex Limited is the Ordering Institution for the purposes of satisfying Section 27 of the AML/CFT Act.
  - (c) Forex is a 'Reporting Entity' as defined by the Act.
  - (d) Forex is required to undertake identity and verification requirements to comply with Sections 27 and 28 of the Act and you acknowledge that Forex is under no obligation to make any wire transfers for you until it has signed off on the Verification process as being completed and you are assessed as complying.
- 4.5 As the Originator of the wire transfer you agree to provide Forex with the following information:
- (i) Your full Name

- (ii) Your full street address (not a PO Box number)
  - (iii) The full name of the beneficiary of the wire transfer; and
  - (iv) The account number; and
  - (v) The address of the beneficiary of the wire transfer.
- 4.6 Forex is required to verify your name and address, as required by section 28 of the Act, and you agree to provide Forex with any information it requires to identify and verify you to the standards required under the Act.
- 4.7 You understand that we will keep records for a period of 7 years of the details of every transaction you do with us plus the details you provide us in the verification process.
- 4.8 Sanctions –Forex has certain obligations under the United Nations Act 1946 and the regulations made in accordance with that Act (known as the Sanctions Laws) to, amongst other things, limit wire transfer payments being made to certain individuals and entities. Forex is prohibited from making wire transfers in the following circumstances:
- 4.8.1 Where we suspect that a wire transfer or you are subject to the Sanctions Laws
  - 4.8.2 You want to make a payment to a sanctioned Country
  - 4.8.3 You have provided us with a residential address from a Sanctioned country, or
  - 4.8.4 You are on an adverse 'watch list' (including the Prime minister's List)
- 4.9 Payments to the USA – If any payment requested by you is:
- 4.9.1 In US Dollars
  - 4.9.2 To be cleared in the United States, or
  - 4.9.3 To be made using a bank in the United States,
- Then you shall be deemed to have declared and undertaken to Forex, at the time of the relevant payment request, that the beneficiary of the payment is not a person, group or entity or in or associated with any country that has been sanctioned by US laws and regulations. This includes those administered by the Office of Foreign Assets Control of the US Department of Treasury.
- 4.10 Politically Exposed Persons (PEP) – Forex is obligated by the AML/CFT Act to take reasonable steps to determine whether you are classified as a politically exposed person (PEP). Forex will assess the risk that you are a PEP in terms of the AML/CFT Act and if sufficient risk exists will then check your client certification documentation against relevant World Check lists or other 3rd party provider databases.
- 4.11 Indemnity – You agree to indemnify Forex against any reasonable loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by us (including any liability under the AML/CFT Act) as a direct or indirect result of any breach of any of your obligations, undertakings or acknowledgements contained or implied in this Terms & Conditions document.

- 4.12 Cancellation – If Forex deems that there has been a material breach by you of your obligations, we reserve the right to cancel your dealing line immediately, upon notice. In that notice we will advise you of why we consider the breach to be material. You acknowledge that, in the event of a material breach of your obligations contained in these Terms & Conditions, Forex may terminate its relationship (or part thereof) in accordance with these Terms & Conditions, but such termination will be without prejudice to the indemnity provided in section 9.11. You acknowledge that if a signed copy of these Terms & conditions is not in place, then Forex shall not offer the wire transfer service to you.
- 4.13 General – The acknowledgements you make in signing these Terms & conditions are remade at all times while these Terms & conditions remain in force.

## 5.0 Deliverable Foreign Exchange Contracts

### 5.1 Interpretation

For the purposes of these Terms and Conditions, Deliverable Foreign Exchange Contracts include:

- (a) “Spot Currency Contract” means a binding obligation to buy or sell a certain amount of currency at the current market rate, for settlement in two working days’ (for the relevant currency exchange) time.
- (b) “Forward Exchange Contract” (FEC) means a binding obligation to buy or sell a certain amount of currency at a fixed rate, for settlement on a date in the future.
- (c) “Foreign Exchange Option” means the right, but not the obligation, to buy or sell a certain amount of currency at an agreed rate, on an agreed date in the future.

### 5.2 Services

Forex will, at such time or times as it may agree, enter into contracts as specified in section 3.2. You agree to take physical delivery of, and pay for the currency in question on (or before) the date specified on the deal ticket (“the Value Date”). You must also pay to Forex, by the time notified by Forex, any other amounts payable to Forex under these Terms and Conditions in respect of each Deliverable Foreign Exchange Contract.

### 5.3 Dealing

Forex is not obligated to accept instructions from you and may at its discretion refuse any order without giving any reason and without liability for any resultant loss or damages incurred by you or any other party.

### 5.4 Documentation

Forex will issue you with a deal ticket within 24 hours of a transaction being transacted, or an existing transaction being extended to a new future Value Date, or pre-delivered to an earlier Value Date. This deal ticket will either be sent by fax or e-mail to the last known contact fax number or e-mail address. Unless you notify us of any error or omission on the deal ticket, within 24 hours of us sending it, you are deemed to have irrevocably and unconditionally accepted the deal and terms as set out on the deal ticket, and shall not be entitled to dispute the terms of the transaction, which will be conclusive evidence of the Deliverable Foreign Exchange Contract being legally binding between you and Forex.

## 5.5 Deposit

- 5.5.1 If you have requested a secured dealing line with Forex, then we require you to deposit into our nominated account an amount (a “deposit”) equal to 5% of the NZD limit of the dealing line you require. These funds are held on trust by a major New Zealand trading bank, on an unsecured basis. The client’s deposit is added to other clients’ deposits into a pooled account (“the pooled trust account”), which are also held on trust. Written notice has been provided to the bank that the funds in the pooled trust account are held on trust for investors. Your deposit will be returned to you once the dealing line is cancelled.
- 5.5.2 Forex may, at its discretion, deposit the client’s deposit into a fixed term trust account (“fixed term trust account”) with the bank, and pay you interest on this sum, at the wholesale interest rate, for the period it is fixed. In this case Forex will:
- (a) provide the bank with written notice that the funds are held on trust for investors;
  - (b) deduct Resident Withholding Tax (RWT) at the completion of the deposit period, and pay you the net amount of interest owing, to your nominated NZD account;
  - (c) send you a deposit certificate confirming the details of the deposit; and
  - (d) issue you with an annual RWT certificate after the next 31 March, covering the preceding 12 month period.
- 5.5.3 Forex will maintain records showing the amount of each client’s deposit in the trust accounts. Forex will, at least daily, reconcile its records regarding the total amount of client money in the trust accounts (“the recorded amount”) with the actual amount of money in those trust accounts (“the actual amount”). If the recorded amount is in lower than the actual amount, Forex will immediately deposit into the pooled trust account the amount of the shortfall, and the amount of the shortfall deposited by Forex will become part of the pooled trust account and will be deemed to be investor money held on trust. If Forex deposits an amount into the trust account, and this results in the actual amount being in excess of the recorded amount, Forex may withdraw the excess amount, and that excess amount will not constitute investor money.
- 5.5.4 The client acknowledges and agrees that Forex may, at its discretion, use all or any part of the deposit in the pooled trust account for hedging purposes. The client authorises Forex to transfer the client’s deposit, or any part of the deposit, which is in the pooled trust account to a hedging counterparty of Forex’s choice, and accepts and acknowledges that any funds so transferred will be used for hedging purposes and will no longer be held on trust by Forex. Forex’s hedging counterparty will be a major New Zealand registered bank, and Forex will transfer to the hedging counterparty only as much of the funds as is reasonably required to engage in the hedging activity.

## 5.6 Margin Call

- 5.6.1 In relation to a specific FEC, if Forex considers that the market rate has moved unfavourably against your position in the period between entering into the FEC and the Value Date by an amount which would, if the transaction were to be closed out at that time, result in a loss in excess of the amount of funds that you have on deposit, then Forex will require you to provide additional funds to Forex equivalent to the difference between Forex’s assessment of the then current level of the unrealised loss on the FEC and the amount of the current deposit (the “margin call amount”).
- 5.6.2 You must deposit the margin call amount requested within the timeframe notified by Forex, or in the absence of a timeframe being notified by Forex, then within 24 hours of Forex notifying you (whether by phone call or other notification).

- 5.6.3 Because this margin call amount is supporting an FEC which is at the time in loss when compared to the spot rate, there is no interest payable by Forex to you on this amount unless the FEC moves back to profit compared to the spot rate, or the FEC is delivered on and you request Forex to hold on to the margin call amount for future FEC transactions.
- 5.6.4 Margin call amounts are deposited to Forex's foreign exchange trading account with its bank. Forex shall repay all margin call amounts to you as soon as practicable after there has been a sufficient movement in the then current spot rate favourable to your FEC such that the original security deposit provides sufficient security for the FEC.
- 5.6.5 If you fail to pay the margin call amount by the time specified by Forex, then Forex may exercise its right of setoff (clause 8.0) and take possession of your funds that it holds and use them to compensate it for the loss on closing out the FEC. You will remain liable to pay Forex, immediately on Forex making demand, for the shortfall in the loss on closing out the FEC, plus any legal costs, debt collection costs or any other losses, costs, claims or damages Forex sustains in seeking repayment of the loss.

## 5.7 Mark to market Revaluation

- 5.7.1 All outstanding FECs you may have are subject to the requirement of being marked to market. This ensures that you carry the underlying credit risk on outstanding FECs. This is in keeping within the rules set by the Reserve Bank of New Zealand and general financial market rules. FECs will be subject to a mark to market transaction on a daily basis when Forex notifies you that any of the following conditions apply:
- (a) the FEC rate is more than 5% away from the current spot rate; or
  - (b) the FEC is being rolled from its original settlement date to a future date more than one month ahead; or
  - (c) the FEC is more than \$20,000 in loss on the date the transaction matures and is being requested by you to be rolled.
- 5.7.2 If any of these conditions prevail then the relevant FEC will be rolled off the current spot rate and a new deal ticket issued. Any loss on the closed out transaction is liable for payment on the day of the roll. This must either be set off against an existing deposit held by Forex, or paid by you in full. The set off option cannot be used if, as a result of making the deduction, Forex is left with an inadequate security deposit backing remaining against undelivered FECs. Any gain on a closed out transaction can be redeemed by you.
- 5.7.3 If you fail to make the payment for a mark to market revaluation within 24 hours of being notified by Forex of the payment required, then Forex may close the FEC and seek redress from you for the losses, costs claims or damages on closing the FEC down plus any legal costs, debt collection costs or any other costs Forex sustains in seeking repayment of the loss. You are also liable for interest costs on the shortfall outstanding calculated using Forex's bank's base overdraft rate plus a margin of 5% pa calculated on a daily basis.

## 5.8 Settlement

Prior to or on settlement date of a transaction, Forex will send you settlement instructions advising where the foreign currency or NZD to be paid by you to our nominated account should be directed. At the same time we will advise the account details we are paying to for the payment from Forex to you. This can either be to your account or to your customer directly, correctly referenced on your behalf and in compliance with AML/CFT guidelines.. You must let us know, as soon as possible if there is any error in the payment account details we hold for you. Forex accepts no liability for the incorrect payment being made after the event because of any

error in the payment instructions. Forex will, if it is notified of an error and on a strictly without prejudice basis, use all commercially reasonable endeavours to retrieve funds sent to the wrong counterparty, or a wrong coding issue, provided that if in doing so Forex incurs any costs or expenses in correcting the error, you hereby agree to reimburse Forex, in full and without set off or deduction or withholding for all such costs or expenses in the amounts notified by Forex, within 5 working days of being notified by Forex of the amounts.

5.8.1 Requirements relating to the settlement of import contracts include the following:

(a) You agree to provide us with cleared funds on or before the date of settlement, but in any event prior to Forex's banks cut off time for sending or receiving foreign currency;

(b) All foreign currency, whether being sent to a beneficiary in New Zealand, or going overseas, will be sent by International Funds Transfer ('IFT');

(c) No foreign currency will be paid unless Forex is completely satisfied, in its absolute discretion, that the funds coming in to meet the foreign currency payment are cleared funds. You must provide suitable supporting evidence of this, satisfactory to Forex. Funds that come in to our nominated account which are not cleared may be held for up to 5 working days while Forex waits for confirmation that the funds are cleared. This means the FEC could be rolled for up to 5 working days before payment is made. If the funds are not cleared by the fifth working day from when settlement was meant to occur this will constitute a default by you. In this instance the remedies under clause 5 will apply;

(d) You agree to provide us with standard settlement instructions where it is appropriate to do so. Forex will rely on these instructions unless we are notified of alternative instructions including details of where payments are going to and any specific referencing requirements. Forex will meet your payment requirements, but will not be held liable for any errors or omissions relating to the payment instructions provided to us; and

(e) While Forex does not charge for the cost of making IFT payments based on standard IFT charges, Forex does reserve the right to recover payment from you for any charges that we may be subject to by receiving banks in other countries, or where a payment has to go through secondary banks and as such Forex incurs a number of charges that are outside of its control to manage. When this situation occurs, Forex will invoice you for reimbursement for the extra charges and provide written evidence of the charges. You agree to pay these charges in accordance with the relevant provisions of clause 9.0.

5.8.2 For export transactions, we require the receipt of foreign currency by IFT, into Forex's approved foreign currency accounts. Any and all incoming funds must comply with the relevant sections in the AML/CFT Act. We will settle such contracts in the following manner:

(a) Forex will pay out New Zealand dollars or the counter amount, following receipt of notification that the foreign currency has been received and has been cleared as being available to draw down on immediately;

(b) Where we have been given standard settlement instructions to convert the foreign currency, either at the spot rate or via delivering on an FEC in place, and to pay the NZD to a NZD account we will action this unless we have been notified of alternative instructions prior to the foreign currency funds reaching our account. Forex will not be held liable for the incorrect payment of NZD if we hold standard settlement instructions;

(c) Whether funds are transferred to our account by you or directly from your overseas customer to our account on your behalf, the same rules set out in clause 3.9.1(c) apply for ensuring funds are cleared, before Forex will pay away the counter amount; and compliant under the terms of the AML/CFT Act.

(d) Forex cannot be held liable for any charges incurred in the payment process to reach our account, or charges imposed by a third party or if an amount is transmitted into our account is net of such charges and we may set off such charges in accordance with clause 9.0.

(e) If we have any reason to believe that the funds are not clean, we reserve the right to hold these funds while we seek further details from you on the source and nature of the funds. We will hold these funds until such time as we are of the view that the funds are clean.

5.8.3 Where vanilla currency options have been purchased outright off us, you agree to pay us the premium within two working days of Forex sending you an option confirmation. If you fail to pay the premium by the due date Forex reserves the right, in its absolute discretion, to close the option out and if it does this you must pay Forex, within two working days of Forex notifying you of the closing out, an amount equivalent to any loss incurred by us through your default. Where no default has occurred the decision on what action you take with the option rests with you, as to whether you close the option out prior to expiry date or whether you exercise the option and close it out on expiry date or turn it into an FEC. If the option is turned into the FEC then the provisions relating to FECs in these Terms and Conditions shall apply.

5.8.4 You must pay Forex, immediately on Forex making demand, for the shortfall in the loss on closing out the FEC or option, including, without limitation, interest and recovery costs actually incurred by Forex, in accordance with the relevant provisions of clause 10.0.

## 6 Events of Default

The following situations are events of default, regardless of whether or not the event is within your control:

- (a) You do not settle any FEC or currency option or discharge any monies owing to us on the day the liability falls due;
- (b) You fail to observe any other obligation you have under these Terms and Conditions and/or any agreement that you have with Forex;
- (c) You or any representative of yours makes misleading or false statements to us which are fraudulent in nature or purpose;
- (d) You become bankrupt, insolvent, have a receiver or liquidator appointed to your business or enter into voluntary administration;
- (e) If you are an individual and you die or you become mentally incapacitated;
- (f) You have a statutory manager appointed to your business by a government authority or the Reserve Bank of New Zealand;
- (g) If any security interest binding on you or your assets becomes enforceable and the holder of the security interest takes action to enforce its security;
- (h) If we are unable to contact you within a 24 hour period to seek instructions from you on contracts that fall due, or to make a margin call. You must make alternative arrangements with us to be able to contact you by phone or email prior to settlement date on outstanding positions and contracts you have; or
- (i) You breach your obligations to us under the AML/CFT Act..

## 7.0 Remedies / Actions Following Default

- 7.1 On or at any time after a default event has occurred, we have the right (but not the obligation), at our sole discretion and without notice to you, to take any one or more of the following actions:
- (a) to terminate any agreement between you and Forex in accordance with clause 19;
  - (b) to close out any or all of your outstanding positions, regardless of whether the Value Date has occurred yet; or
  - (c) to treat all or any positions as being part of the default.
  - (d) Advise the appropriate regulatory authorities if the breach relates to the AML/CFT Act.
- 7.2 If we exercise our rights in clause 7.1, we will close the deal out at the spot rate prevailing at the time, to determine the marked to market NZD value of the transaction. We undertake to close the deal out in good faith on the basis of market quotations available to us at that time. Where a quotation is denominated in a currency other than NZD, we have the right to convert the amount of foreign currency to NZD at the prevailing cross rate.
- 7.3 Once the market value of each terminated FEC or option has been determined, we will aggregate all the profits and losses to give a final net amount. If this net amount is positive to you then we undertake to pay it to you subject to our rights under clause 9.0.
- 7.4 We will not waive any of our rights under this clause 7.0 by reason of any delay and if we do exercise any such right we may do so at any time.
- 7.5 Where we exercise our right under clause 7.1 (b) to close out an FEC or an option, the closeout will be effected on your deemed authority, at your risk and expense and in your name as if you have given notice on the date that we exercise our right.
- 7.6 Where we exercise our right under clause 7.1 (c) we may set off the amount of the realised loss in accordance with clause 9.0.

## 8.0 Disputes

- 8.1 If you have a complaint or grievance relating to Forex or any services provided to you by us, you must contact us providing all relevant details of the complaint or issue and work with us to reach settlement on any dispute by negotiation in the first instance..
- 8.2 In the case of outstanding margin call amounts or any other amount owing to Forex or any other breach of these Terms and Conditions or any contract we may have with you, we may immediately begin whatever proceedings we consider appropriate for the recovery of any outstanding amount without notifying you beforehand.

**9.0 Set Off**

9.1 We are entitled to combine your accounts and set off any amounts that you owe us (excluding any amounts being held in any trust account), and amounts that you pay us or are received by us on your behalf, or held by us and payable to you. This includes security margin, a payment to settle a transaction, a margin call amount, or funds received on your behalf that are waiting to be transacted into another currency. We reserve the right to be able to convert currency into another currency at the spot rate prevailing at the time of set off. We may determine, from time to time, the amounts which are to be set off, at our sole discretion without notifying you in advance irrespective of whether the set off amount is in dispute or not.

**10.0 Payment, Interest and Indemnity**

10.1 You must pay Forex, immediately upon demand:

- (a) any outstanding amount owed to us under these Terms and Conditions or any other agreement you may have with us;
- (b) any legal costs, debt collection costs or any other losses, costs, claims or damages Forex sustains in seeking repayment of such outstanding amount;
- (c) interest costs on the outstanding amount calculated at Forex's bank's base overdraft rate plus a margin of 5% pa. Interest will be calculated daily and charged monthly on the outstanding balance.

10.2 All payments made by you to us must be made in cleared funds without any right of set off, counter claim, condition or withholding. You must not make any deduction for withholding tax or any other tax unless the deduction is required by law. If we are required to pay an amount of tax in relation to your transactions then you agree to pay us that amount in addition to the net amount required by us to settle the transaction.

10.3 You acknowledge and agree to indemnify us for all costs, claims and expenses both before and after termination of any contract between Forex and you,

10.4 You agree to indemnify us for all losses, claims, damages, costs and any other taxes and expenses incurred by us both during the term, and after termination, of any contract between Forex and you in respect of:

- (a) the execution of your instructions in relation to settling any foreign exchange contracts or options or the provision of products and services under these Terms and Conditions;
- (b) an event of default;
- (c) Forex exercising its rights and powers following the occurrence of an event of default; or
- (d) any amount payable by you under these Terms and Conditions and any other agreement between Forex and you,

until such time as all outstanding matters are resolved and all obligations are discharged.

## 11.0 Limitation of Liability

- 11.1 You acknowledge and agree that all advisory services, opinions and any other form of verbal or written communication which could be deemed to be offering advice are given to you in good faith and that the information provided to you by Forex in its capacity as advisor as contracted by you has been researched and compiled by Forex using all commercially reasonable endeavours. Forex considers the information to be correct as at the time it was prepared, but does not guarantee its correctness, accuracy or completeness, at any time. Forex does not accept any liability or responsibility whatsoever for the loss or damage that may result from reliance on such information, views expressed, opinions or recommendations provided by us.
- 11.2 Neither any information provided to you nor any opinion expressed constitutes an inducement to purchase or sell currencies, securities or any service, from any provider, or make any investment whatsoever and Forex does not accept any liability or responsibility whatsoever for the loss or damage that may result from reliance on any of the information and opinions provided by us.
- 11.3 Any person relying on any advice, information and materials published by Forex does so at their own risk. We are under no liability for any losses, claims, damages or costs incurred by you if you choose to act upon any advice, views expressed, opinion given or recommendation, to undertake a transaction either with Forex or anyone else, regardless of whether the views are expressed by an employee of Forex of their own volition or at your request. You should not act on the basis of any matter or implication in these Terms and Conditions or anything else published by us without taking the appropriate professional advice.
- 11.4 You acknowledge and agree that we are not liable for any loss, cost, expense, damage or liability whatsoever which may be incurred by you as a result of any factors beyond our control. This may include, without limitation, any event of force majeure, exchange control restrictions, prohibition or suspension of means to effect transmission, market or banking conditions, acts or omissions by third parties, or failure or malfunction of any communications or computer systems, strikes or war.
- 11.5 We have no liability to any party for any losses, claims, damages or costs incurred as a result of a delay in transmitting funds caused by reasons that are out of our control. Furthermore we accept no liability for any loss incurred where orders left with us have not been filled, for any reason including, but not limited to, exchange controls, suspension of trading, extremely volatile trading conditions, telecommunications failure, or some form of market disruption.

## 12.0 Legal Costs and other Expenses

You acknowledge and agree that you are responsible for your own legal and any other costs associated with entering into any agreement with Forex, and for any expenses incurred by you in complying with these Terms and Conditions.

## 13.0 Waiver

A waiver by us of any of these Terms and Conditions is only valid if it has been agreed to by us in writing. A failure or delay to exercise any right we hold does not constitute any waiver of that right, and no single or partial waiver will preclude us from exercising any other right or exercise of right that we hold.

## 14.0 Notification

- 14.1 Forex may notify you verbally or in writing via telephone, cell-phone, email, fax or any other form of electronic means. You acknowledge and agree that we have notified you in the relevant time specified by any of the following means:
- (a) Immediately if we speak with you by phone;

- (b) By mail after three working days have elapsed from the date of postage;
- (c) By fax if there is a fax transmission report which confirms transmission;
- (d) Immediately if delivered to you in person;
- (e) Immediately if sent to you by email at the current email address we hold for you;

14.2 You may contact us by any means as above but we must acknowledge your communication. You agree that if we don't acknowledge your communication then no notification has occurred.

14.3 You agree that you will advise us of any change to your contact details by giving us that notice in writing and signed by an authorised person for your account.

#### **15.0 Assignment**

You cannot assign any outstanding positions you hold or any benefit under these Terms and Conditions and/or any agreement that you have with Forex to another party without obtaining consent from Forex. Forex can assign to any party and benefit, open position or balance of your account at any time provided that it has previously obtained your written consent, which shall not be unreasonably withheld.

#### **16.0 Legal Jurisdiction**

You agree that the laws of New Zealand cover this document and any agreement Forex has with you. Any reference to any Act or regulations made in these Terms & conditions includes any future amendment, restatement or replacement to that Act or regulation.

#### **17.0 Access through the Internet**

17.1 Our web site may contain links to other World Wide Web sites or resources. Forex has no control over these sites. You agree and acknowledge that Forex is not responsible for the availability of these sites and/ or material held within.

17.2 You further acknowledge that Forex is not responsible or liable, directly or indirectly, for any damage or loss caused by the connection to the World Wide Web. If you are unable to access our web site for any reason, please inform us immediately so that we may correct this situation.

#### **18.0 Privacy Policy**

18.1 Forex Limited recognises its responsibility and is committed to ensuring the privacy of your information. Forex maintains a database with an online interface that enables you to access the database to view your outstanding trades and orders. We also hold general information to be able to contact you (phone, fax, email address, mailing address) and for the sending of confirmations. We will also hold bank accounts references specific to you if you have provided these to us for the payment or receipt of foreign currency and NZD.

- 18.2 When providing our products and services to you we will collect certain personal information about you. This information is necessary to facilitate the currency transactions and other products and services that we provide to you and will be held by Forex Limited at its offices at Level 9, 86 Victoria Street, Wellington or Suite 7, 95 Hurstmere Road, Takapuna, Auckland.
- 18.3 We are required by various legislation, including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, to collect, confirm and retain certain personal information and transactional details including, without limitation, your full name, address, date of birth, purpose of any transactions and details of any company or person that may be involved in the transactions together with the personal information of any beneficial owner of such company. You authorise us to make all enquiries with third parties that we consider necessary to check the accuracy of the information you provide to us. Some of the information required is mandatory. If you do not provide the required information to us, we will not be able to provide you with the products and services that you request.
- 18.4 You may request access to the personal information that we hold about you at any time.
- 18.5 You may ask us to correct or amend any personal information we hold about you. We will, at our discretion, make the requested correction or amendment as soon as reasonably practicable. If we decide not to correct or amend the information in terms of your request we will attach a note to the information detailing your request for its correction or amendment.
- 18.6 To ensure your personal information is accurate you must notify us as soon as reasonably practicable if any of your personal information changes.
- 18.7 You may ask us to delete your personal information from the database. We are required by law to hold certain personal information for seven years after the last activity on your account occurred. We will automatically delete all of your personal information seven years after you cease to use our services or products or such other period as we are legally required to hold it for.
- 18.8 We will only use your personal information for the purposes of supplying products or services to you or notifying you of news and information on any updates or changes to the website, database or the products and services that we provide. If we use an agent or third party to provide products or services to you then the provisions of this clause will apply to that party. We will not sell, disclose or give access to your personal information to a third party not involved in the supply of products or services to you, or authorise any third party to use your email address to send you unsolicited emails.
- 18.9 We may disclose your personal information only in the following circumstances:
- (a) If we are required to, or permitted to by law;
  - (b) If we use a third party or agent to perform services or provide products to you we may disclose your personal information to them provided that they agree to treat the information as strictly confidential and to use it solely for the purposes of performing those services or providing those products;
  - (c) If you default on any obligations to us than we may disclose your personal information to a credit reference or debt recovery agency. Such agency may in turn disclose your personal information to other clients using their services; and
  - (d) If you request us to disclose your personal information, for example, for audit purposes,

and will otherwise treat your personal information as strictly confidential and will use it solely for the purposes of this Agreement.

- 18.10 You acknowledge and agree that when we receive instructions from you by telephone we may record the conversation.
- 18.11 We may use the Department of Internal Affairs for the purpose of checking your passport details are correct. We may use the NZTA for the purpose of checking your Driver License details are correct. This is for AML/CFT requirements. These details remain confidential to this office. You consent to this.

### **19.0 Termination of any agreement Forex has with you**

- 19.1 Should you wish to terminate your relationship with Forex for any reason you may do so at any time by giving 30 days notice in writing, although this will not affect our right to recover any amount that you owe us at that time. Forex may terminate its relationship with you by giving 30 days notice in writing. Neither party needs to give a reason for terminating.
- 19.2 An agreement between you and Forex may be terminated by us giving you written notice, with immediate effect in any of the events of default set out in clause 4.0.
- 19.3 Forex's rights under this document and any agreement Forex has with you are not affected or diminished in any way by the decision to terminate by either party. You are still required to honour all your obligations to us in respect of any outstanding positions or any money owing to us.
- 19.4 If any agreement that Forex has with you is terminated, you must close out all existing FEC's or options within five working days of the date of termination. If you fail to close out any position within that five working day period we may close out that position in accordance with clause 5.0 as if that failure constituted an event of default. If the deals are closed out at a loss to the market rate, then this is owed by you immediately to us. If it results in a net profit we will, subject to our rights in clause 8.0, pay this to you.
- 19.5 Subject to any payment being made by us to you, we are released from all liability and obligations to you except to the extent of wilful default on our part.

### **20.0 Amendments to these Terms and Conditions**

We reserve the right to make amendments from time to time to these Terms and Conditions. We will post the updated terms and conditions on the Forex website [www.forexlimited.co.nz](http://www.forexlimited.co.nz) and notify you of the date on which the amendment will take effect. You agree that the updated terms and conditions apply to all transactions from the date we notify you (including by email) of a change. If you do not accept any such amendment to these Terms and Conditions, as amended, you must not do any further business with us.

## 21.0 ACCOUNT OPENING FORMS

**To open an account please complete the section below and return to us with correct proof(s) of address and passport photo I.D for all signed persons. By signing this document(s) you, 'the client' agree to adhere to all Forex Limited's terms and conditions, as laid out above.**

**ACCOUNT NAME:** \_\_\_\_\_ (the client)

Telephone \_\_\_\_\_ Mobile: \_\_\_\_\_

E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

---

### AUTHORISED SIGNATURE

Name: (please print) \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

### **Other authorised persons – please supply photo ID for each additional signature**

Name: (please print) \_\_\_\_\_

Position: \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name: (please print) \_\_\_\_\_

Position: \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

: ADDITIONAL NOTES



**FOREX**  
LIMITED

#### **Forex Limited:**

Contact:

Pat Gilligan

Tel:

+64 4 472 9236

E-mail:

p.gilligan@forexlimited.co.nz

Web:

www.forexlimited.co.nz

**AML/CFT Act 2009: Compliance requirements.**

Based on our compliance requirements under The New Zealand Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act) 2009, we ask you to check / complete the following information.

Under the Identity Verification Code of Practice 2011 we require written proof of address for the business via a bank statement or official government document no older than 90 days. A bank statement is also used to meet TT ID verification requirements. We also require passport ID for all authorised staff. **Passports must be appropriately notarised unless sighted by a Forex limited employee.**

If the details are correct; the document is accurate the key signature should initial on each page. A listed Director must authorise all signatures above by signing and dating the document as per below.

All information provided to Forex Limited is strictly confidential and will not be revealed to any other business or person, unless required under court order or demanded under audit by market regulators.

CONFIRMATION


---

As a listed Director of \_\_\_\_\_ I have reviewed the above information and confirm its accuracy to the best of my knowledge as of the date supplied. Each staff member listed above is authorised to instruct Forex Limited.

\_\_\_\_\_  
NAME (Print please)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

---

Completed by: \_\_\_\_\_ of Forex Limited

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

Forex Staff signature \_\_\_\_\_

## AUTHORSATION

Director: Forex Limited: \_\_\_\_\_

**Pat Gilligan**  
**Philip Poppe**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

