



## **FOREIGN EXCHANGE TERMS & CONDITIONS**

December 2018

---

## FOREIGN EXCHANGE TERMS AND CONDITIONS

Moneytech Limited ABN 77 106 249 852 (AFSL No: 421414) will provide Foreign Exchange services to you ("Client") either directly or through its Authorised Representatives, on the terms and conditions of:

- a) These Foreign Exchange Terms and Conditions as amended from time to time ("Terms");
  - b) The current Product Disclosure Statement applicable to the product ("PDS");
  - c) The current Financial Services Guide ("FSG");
  - d) The written confirmation of the transaction entered into by the Client (the "Transaction Confirmation Advice");
- and

Where the Client has a Moneytech Account:

- a) The Moneytech Buyer Terms and Conditions; and/or
- b) The Moneytech Seller Terms and Conditions; and/or
- c) The Moneytech Confirmed Capital Agreement.

---

## RISK NOTICE

- The types of Transactions proposed herein involve the risk of movements in currency rates and other risks. Those risks can result in losses. If you enter a Transaction, you must accept those risks. If you do not understand the risks or are not willing to accept the risks or make losses, you should not enter the Transaction.
- You must decide for yourself whether you enter any Transactions at all or a particular Transaction.
- Our role is not to give advice, recommendations or warnings to you. We do not monitor your Transactions for you. You must do this.
- If Moneytech (or any of our officers, employees, agents or Authorised Representatives) say something to you, it is opinion only. You must not rely on it. We are not liable for it if it is wrong. Similarly, we are not liable if we fail to give you advice, recommendations or warnings.
- When you enter into a Transaction, you acknowledge that you enter into each Transaction to manage your foreign exchange or other commercial requirements (and not for speculation) and that you do not enter into any Transaction wholly or predominantly for private or domestic purposes. Each time you enter into a Transaction with Moneytech, you are taken to repeat this acknowledgement.
- Derivative transactions involve the risk of loss because of movements in exchange or other rates. The Client should not enter into these Transactions if you do not understand the risks. It is your responsibility to monitor these types of transactions. We will not be liable to you for losses in any circumstances.

---

## INTERPRETATION

1.1 If there is any conflict between the terms and conditions of these Terms and any Applicable Law, the Applicable Law shall prevail.

1.2 In these Terms, any reference to a person includes bodies, corporate, unincorporated associations, partnerships and individuals.

1.3 In these Terms, all references to times of the day are to the time in Sydney, NSW, Australia unless otherwise advised.

1.4 Headings, notes and examples in the terms are for reference only and do not affect the construction of the Terms.

1.5 In the Terms any reference to any enactment includes references to any statutory modifications, enactments or re-enactment of such enactments or to any regulation or order made under such enactment (or under such a modification or re-enactment).

---

## 1.0 DEFINITIONS

**Acceptance** is when Moneytech has agreed to the terms of the Transaction placed by the Client. Except with the consent of Moneytech, Transactions cannot be cancelled once accepted by Moneytech.

**Applicable Law** means any statute, regulation, rule, subordinate legislation or other document enforceable under any statute, regulation rule or subordinate legislation.

**Application Form** means jointly and severally, the Trading Account application form and the Moneytech Account application form which Client completed and submitted to Moneytech for the purposes of using the Services.

**Authorised Representative** means Moneytech FX Pty Ltd ACN: 151 337 852 and/or AES Development Holding Pty Limited ACN 622 783 0555, or such party appointed an authorised representative of Moneytech from time to time.

**Authorised User** means person/s authorised to transact on behalf of the Client and nominated on the Application Form (as amended from time to time).

**Beneficiary Account** means the account to which Client is sending Client funds.

**Business Day** means a day on which commercial banks are open for business (including dealings in foreign exchange) in the place specified by Moneytech for that purpose and excludes Saturday, Sunday or public holidays.

**Client** means the person, body corporate, firm, partnership, joint venture, sole trade or other business entity requesting the Services and defined in the Application Form together with its subsidiaries, affiliates, successors and/or assigns, as well as its officers, directors, employees and agents;

**Close Out** means reversing a Transaction in the circumstances set out in clause 16 or otherwise pursuant to these Terms.

**Draw Down** means the (pre) delivery and settlement of a Forward Contract any time before the Settlement Date.

**Foreign Exchange Contract** is a legally binding agreement between Client and Moneytech to effect a foreign exchange transaction which includes, but is not limited to: a Spot Contract, a Forward Contract or an Options Contract, in accordance with Client's instructions.

**Forward Contract** means a legally binding agreement in which Moneytech agrees to exchange money at an agreed exchange rate and at an agreed time which is between 48 hours and twelve (12) months from time the Forward Contract is entered into.

**Insolvency Event** means present or future, or actual, prospective or contingent, indebtedness of the person in respect of any financial accommodation including, but not limited to, moneys payable under a guarantee:

1. is or becomes due and payable or is or becomes capable of being declared due and payable before the due date for payment; or
2. is not paid when due or upon the expiration of any period of grace which may apply;
  - a) any encumbrance is or becomes enforceable against any asset or the undertaking of the person;
  - b) any guarantee is or becomes enforceable against the person;
  - c) a judgment in an amount exceeding \$3,000 is obtained against the person and is not set aside or satisfied within 7 days;

- d) any distress, attachment, execution or other process of a Governmental Agency in an amount exceeding \$3,000 is issued against, levied or enforced upon any of the assets of the person and is not set aside or satisfied within 7 days;
- e) a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar official is appointed, or steps are taken for such appointment, over any of the assets or undertaking of the person;
- f) the person suspends payment of its debts generally;
- g) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act;
- h) the person enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- i) the person ceases or threatens to cease to carry on business;
- j) any person is appointed under any legislation in respect of companies to investigate the affairs of the person;
- k) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator to the person;
- l) an application or order is made for the winding-up or dissolution of the person or a resolution is passed or any steps are taken to pass a resolution for the winding-up or dissolution of the person;
- m) a demand under section 459E of the Corporations Act is served on the person or any subsidiary of the person;

**Moneytech Account** means the inventory or trade finance account that is provided by Moneytech to the Client, against which charges are made in accordance with the Moneytech Buyer Terms and Conditions and/or Moneytech Seller Terms or Conditions and/or Confirmed Capital Agreement. If Client holds a Moneytech Account they may book a Transaction subject to these Terms.

**Options Contract** means a legally binding agreement in which Client is given the right, but not the obligation, to buy or sell a specified amount of

foreign exchange at a set price within a specified time.

**Partial Payment** means a partial prepayment to Moneytech in an amount which is determined by Moneytech in its sole discretion and deposited with Moneytech in connection with a Foreign Exchange Contract.

**Premium** means the amount payable by the Client to Moneytech for an Option Contract. The Premium is determined by Moneytech in its sole discretion and in some cases may be nil.

**Services** means the provision of Foreign Exchange Contracts, the making of payment by transfer, direct debit or credit, entering into Foreign Exchange Contract and other payment solutions provided in accordance with the Client's instructions.

**Settlement** means the total amount, including the cost of currency acquisition as well as any fees and charges Client owes to Moneytech, less a Partial Prepayment and or Additional Payment made. If Settlement is paid to Moneytech electronically, Client agrees that Settlement shall not be recallable by Client without Moneytech's prior written consent.

**Settlement Date** means the date specified as such in the Transaction Confirmation Advice.

**Spot Contract** means a foreign exchange contract whose rate is agreed on today for the exchange of two currencies two (2) banking days from the date it is entered.

**Tax/Taxes** means taxes, imposts, duties, levies, charges, fees, withholdings and deductions imposed by statute or any government or governmental authority (including, but not limited to, land tax, stamp duty, goods and services tax, transaction duties, fines and penalties, except if imposed on income.

**Trading Account** means the account that is provided by Moneytech to the Client against which charges are made for the Services in accordance with these Terms and includes a Moneytech Account.

**Transaction(s)** includes, but is not limited to any of the following transactions of a type negotiated by Moneytech:

a) a spot transaction, currency swap transaction, forward date transaction, foreign currency structured option transaction; and/or

b) any combination of these transactions

entered into between Moneytech and the Client before or after the date of these Terms.

**Transaction Confirmation Advice** means a document issued by Moneytech confirming the terms of the Transaction.

## 2.0 SERVICES

2.1 *Transactions.* Subject to the Client fulfilling its obligations under these Terms, Moneytech (or its Authorised Representative) may, but is under no obligation to, enter into Transactions with the Client for the sale, purchase and delivery of currency transactions.

Transactions may be:

a) Spot transactions under which currency is bought or sold for delivery immediately against receipt of payment within two (2) Business Days of the date of the Transaction; and

b) Forward transactions under which currency is bought or sold for delivery at a fixed future time at a premium or discount to the spot rate;

c) Options transactions under which Moneytech grants the Client the right, but not the obligation, to exchange a specified quantity of currency for a specified quantity of another currency at a specified price (the strike rate) on a specified future date. Moneytech charges a Premium for this transaction.

2.2 *Principal.* Moneytech will transact as principal with the Client by or through its Authorised Representative and deal with the Client on an execution only basis. In entering a Transaction, the Client must not treat any information or comments by Moneytech as advice and must rely on its own judgment, or the judgment of its third party advisor's.

2.3 *Delivery.* The Client must take physical delivery of and pay for the currency in question prior to the Settlement Date, and, if the Partial Payment is called for by Moneytech in the Transaction Confirmation Advice or otherwise, the Client shall be required to make such payment within twenty four(24) hours. Client must deliver to us the full amount of the funds being transferred on or before the Settlement Date.

2.4 *No speculation.* Moneytech does not offer any form of speculative trading facilities.

2.5 *No financial advice.* Moneytech will not take into account Client's specific financial circumstances or personal needs when we enter into a Transaction with Client. To the extent that we provide Client with any advice, it will relate only to the mechanics of the transaction the Client is proposing to enter into or to publicly available information. Client must obtain their own financial advice and make their own assessment as to whether Moneytech's Services are appropriate for their requirements.

### **3.0 INSTRUCTIONS**

**3.1 Identification and Verification.** The Client may be requested to provide their Date of Birth for identification verification purposes when requesting the Services from Moneytech via Telephone. For the avoidance of doubt, Moneytech will rely on any instructions received from Client without checking the identity of the user and Client will at all times be bound by those instructions.

**3.2 Form.** The Client may give Moneytech verbal or written (including, but not limited to: email or fax) instructions relating to a Transaction for the purchase or sale and delivery of currency. Moneytech is authorised to rely and act upon such instructions.

**3.3 Telephone instruction.** If Client books a Transaction over the telephone, the Transaction will be legally binding at the conclusion of the telephone call. Moneytech will send you a Transaction Confirmation Advice. The Transaction Confirmation Advice constitutes an error correction mechanism only. If there is any discrepancy between the Transaction Confirmation Advice and the details of the Transaction agreed during the telephone conversation, you must contact us within one (1) hour of receipt of the Transaction Confirmation Advice, failing which, the Transaction details in the Transaction Confirmation Advice will be deemed correct.

**3.4 Email/Fax.** If Client books a Transaction by email or fax, the Transaction will be binding on Client when we process the email or fax. Client acknowledges that, if Client chooses to book a Transaction via email, it may not be processed immediately. When Moneytech processes Client's instructions, Moneytech will send Client a Transaction Confirmation Advice.

**3.5 Authorised Users.** Client must notify Moneytech in writing immediately if there is any change to the Authorised User list.

**3.6 Further information.** Moneytech may require further confirmation or information from the Client. Moneytech is not liable to the Client for any delay or non completion of the Transaction resulting from such request for further information.

**3.7 Contract Formation.** The receipt of an instruction from the Client and the acceptance of the Transaction by Moneytech will result in the

formation of a contract between Moneytech and the Client in relation to the Transaction. On the execution of the instructions and the Transaction, Moneytech will fax or transmit electronically to the Client written confirmation which will for the details of the Transaction ("Transaction Confirmation Advice"). The Transaction Confirmation Advice constitutes an error correction mechanism only.

**3.8 Transaction Confirmation Advice.** Within one hour of transmission of the Transaction Confirmation Advice, the Client must check the Transaction Confirmation Advice carefully and immediately bring any errors or omissions to the attention of Moneytech. Where any errors or omissions are caused by the fault of Moneytech, those errors or omissions will be rectified in the contract that has been formed between Moneytech and the Client in relation to the Transaction.

**3.9 Cancellation.** Once a Transaction has become legally binding, Client cannot cancel the Transaction in any circumstances. Client may only take action to correct any of the Transaction details set out in the Transaction Confirmation Advice if it does not reflect the already agreed Transaction details.

**3.10 Refusal of Instruction.** Moneytech may in its absolute discretion refuse any instructions or Transaction requests given by the Client without reason and shall not be liable to Client in this regard.

**3.11 Recording.** The Client agrees to the electronic recording of telephone conversations between the parties with or without an automatic tone warning device, and the use of such recordings as evidence in any dispute or anticipated dispute between the parties or relating to dealing between the parties.

### **4.0 PAYMENT TO MONEYTECH**

**4.1 Funds.** The Client must pay Moneytech in full in cleared and transferable funds the amount of any Transaction, and any Moneytech applicable service fees before Moneytech will pay, transmit or exchange any funds for the Client (unless Moneytech otherwise agrees in its sole discretion).

**4.2 Spot Contract Payments.** The Client must initiate payment into Moneytech's account of the full amount required to settle a Spot Contract on the Business Day the Transaction becomes legally binding (refer clause 3). If Moneytech does not receive the Settlement within two (2) Business Days, Moneytech

reserves the right to Close Out the Transaction (refer clause 16 below).

**4.3 Forward Contract Payments.** The Client must ensure that it pays into Moneytech's account the full amount required to settle all Forward Contracts on or before the Settlement Date (or any agreed change to the settlement date) or as otherwise notified in the Transaction Confirmation Advice. Moneytech reserves the right to Close Out the Transaction if the Settlement is not received on or before the Settlement date.

**4.2 Mode of Payment.** The Client must pay by electronic transmission (or by such other means as agreed with Moneytech in any particular case) into a bank account nominated by Moneytech, as follows:

- a) the full amount owing in the case of any Transaction which is a Spot Contract;
- b) the Partial Payment (refer clause 5.0) in the case of a Transaction which is a Forward Contract, such Partial Payment being specified in the Transaction Confirmation Advice; or
- c) Such instalment payment of which Moneytech may subsequently notify the Client.

A copy of Moneytech's settlement account details are available online at [www.moneytech.com.au](http://www.moneytech.com.au). Soft copies are also available on request.

**4.3 Payment Cut Off.** The Client must make all payments:

- a) owing to Moneytech in Australian dollars (unless otherwise agreed by Moneytech) by 3.30pm (Sydney Time) on the due date;
- b) owing to Moneytech in other currencies, by the date and cut off time specified in the Transaction Confirmation Advice.

**4.4 Beneficiary Account.** The Client must provide Moneytech with full details of its Beneficiary Account, including the full name and address of the account holder and the full name and address of the beneficiary bank, on or before the date nominated by Moneytech. Moneytech relies solely on the account number and that you provide for the Beneficiary Account and will not verify to ensure that the account name and number correspond.

**4.5 Cleared Funds.** The Client must ensure cleared funds are received by Moneytech for the full amount and applicable transfer charges on or before the

Settlement Date in relation to the Foreign Exchange Contract. The Client is liable to Moneytech for all of the costs, taxes, interest, expenses and losses incurred by Moneytech arising out of the Client's failure to settle a Transaction and Moneytech exercising its rights hereunder.

**4.6 Payment by Moneytech.** Moneytech may, but is not required to, make any payment under any Transaction without first having received confirmation satisfactory to it that cleared funds for all sums due and payable by the Client to Moneytech have in fact been received. Once Settlement has been received by Moneytech, Moneytech will deliver the funds in accordance with Client's instruction.

**4.7 Payment without Deduction.** The Client must make all payments to Moneytech in full without any deduction, set off, and counterclaim or withholding of any kind. Moneytech is not obliged to make a payment or facilitate a Transaction while the Client is in default.

**4.8 Funds held by Moneytech.** The Client acknowledges and agrees that Moneytech does not hold your funds on trust and will not put Client funds into a separate bank account except where the funds are Derivative Retail Client Money and Moneytech must hold it on trust in accordance with the Client Money Reporting Rules. Where Client funds are held by Moneytech in a client money account, Moneytech will retain any interest earned on the client money account.

**4.8 Deductions by Moneytech.** Moneytech may deduct from any payment to be made to the Client any amount the Client may owe to Moneytech or any fees, costs, withholding taxes, or charges incurred by Moneytech in respect of any Transaction with the Client, however, they arise. Where outstanding Transactions are terminated pursuant to clause 16 Moneytech will calculate in Australian dollars the mark to market value of each Transaction as at the termination date using prevailing market rates chosen by Moneytech in good faith. The Client irrevocably authorises Moneytech to apply any moneys held at any time by Moneytech for the Client under any account or arrangement between the Client and Moneytech to Moneytech's own account to pay any amount that the Client owes or may at any time owe to Moneytech under any other account or arrangement between the Client and Moneytech. Moneytech may use any amounts which the Client deposits with Moneytech to cover any outstanding

positions before those moneys are allocated to any request to purchase Foreign Exchange Contracts.

*4.9 Payment to third parties.* By giving Moneytech Notice, the Client may request Moneytech to pay another person an amount due to the Client. If the notice is given by fax, the Client must immediately forward the original to Moneytech. Moneytech may require verification before it agrees to a request. The Client must indemnify Moneytech in respect of any loss it incurs because it agrees to such a request.

## **5.0 PARTIAL PAYMENT**

5.1 Moneytech may require the Client to make a Partial Payment of an amount of up to 10% of the Australian Dollar equivalent value of each Transaction with Moneytech as a prepayment for the obligations of the Client under such Transaction and all other Transactions. Such amount will be payable by the Client either in advance of the Transaction or forthwith on the entering into of the Transaction as Moneytech may determine. The Partial Payment amount shall be defined in the Transaction Confirmation Advice.

5.2 Moneytech may require the Client to increase the amount of the Partial Payment from time to time ("Additional Payment"). The Client will pay the increase immediately when requested by Moneytech. The increase is to be based on the assessment by Moneytech of any increase in its exposure since the last Partial Payment or Additional Payment amount was paid.

5.3 Any Partial Payments or Additional Payments delivered by Client to Moneytech are non-refundable and will be applied to satisfy Client's total payment obligation owed to Moneytech with respect to the relevant Transaction on the Settlement Date or on the date of any final Draw Down.

## **6.0 MONEYTECH ACCOUNT**

6.1 *Moneytech Account.* Moneytech has no obligation to provide Client with a Moneytech Account. However, where Moneytech has agreed to provide Client with a Moneytech Account, a credit limit ("**Account Limit**") shall be established and will be applied to the Moneytech Account and to the Client's Transactions. The Account Limit will be at the absolute discretion of Moneytech.

6.2 Client's Moneytech Account is subject to the Moneytech Buyer and/or Seller Terms and

Conditions and/or Confirmed Capital Agreement available online at [www.moneytech.com.au](http://www.moneytech.com.au).

6.3 The Client understands that:

- a) Moneytech may advise the Client of an Account Limit applicable to some or all of the Transactions (either individually or in the aggregate);
- b) Moneytech is not obligated to provide credit to the Client;
- c) Any Account Limit set by Moneytech may be reduced, withdrawn or suspended at any time by giving Notice to the Client.

6.4 The Client acknowledges that if Moneytech acts on an instruction which would result in an Account Limit being exceeded;

- a) the Client will continue to be liable to Moneytech for all amount including those above the Account Limit; and
- b) Moneytech is not obliged to (but may) act upon any subsequent instruction where an Account Limit might be exceeded.

## **7.0 ANTI MONEY LAUNDERING LEGISLATION**

7.1 The Client acknowledges that Moneytech may require further information from it from time to time to comply with the Anti Money Laundering and Counter Terrorism Financing Act (AML/CTF). By entering into these Terms and transacting with Moneytech and/or opening a Trade Account, the Client undertakes to provide Moneytech with all additional information and assistance that Moneytech may reasonably require to comply with the AML/CTF.

7.2 The Client also warrants that:

- a) it is not aware and has no reason to suspect that:
  - (i) the monies used to fund its Transaction/s have been or will be derived from or relate to any money laundering, terrorism financing or other illegal activities, whether prohibited under Australian law, international law or convention or by agreement; or
  - (ii) the proceeds of its Transactions will be used to finance any illegal activities; and

b) Neither it nor its directors, in the case of a company, is a politically exposed person or organisation as the term is used in the Anti Money Laundering and Counter Terrorism Rules Instrument 2007.

## **8.0 INTEREST**

8.1 If the Client fails to make any payment required under these Terms which due and payable, interest will be charged on the outstanding sum at a rate of 7.5% per annum over the rate determined by the Reserve Bank of Australia (or of such monetary authority as may replace it) as the cash rate that may be charged on interbank loans. Such interest will accrue and be calculated daily from the date the payment was due until the date the Client pays in full and will be compounded monthly. Moneytech may receive and retain or apply for its own benefit any interest which arises in respect of any sum paid to, or held by it.

## **9.0 FEES**

9.1 Moneytech's fees will be set out in the Transaction Confirmation Advice. The Client acknowledges that because Moneytech deals as principal, the exchange rate it offers the Client may not be the same as the rate Moneytech obtains itself.

9.2 *Transaction Fees.* Moneytech reserves the right to charge a Transaction fee, a dishonoured cheque fee, a telegraphic transfer fee and an express delivery fee in the amounts detailed in the current PDS. These fees are in addition to any fees and charges incurred through use of your Trade Account.

9.3 *Additional Fees.* The Client may also incur additional fees and charges from banks transmitting/receiving beneficiary funds, and such fees may be deducted from the final amount transmitted. Moneytech does not receive advance notice of, nor is liable for, such fees.

9.4 Moneytech is not obliged to make or facilitate a Transaction while the Client is in default.

## **10.0 MISDIRECTED FUNDS**

10.1 *Client mistake.* If Client funds are sent to the wrong account as the result of a mistake made by Client, and Moneytech has acted in accordance with Client instructions, Moneytech will be under no obligation to recover the funds or to resend the funds to the correct Beneficiary Account.

10.2 *Moneytech mistake.* If Client funds are sent to the wrong account as the result of a mistake made by Moneytech, Moneytech will take urgent action to recover those funds, provided that Client assist us to recover such funds if the mistaken beneficiary is

known to Client or associated with Client in some way.

## **11.0 CURRENCY INDEMNITIES**

11.1 If Moneytech receives an amount (Paid Amount) in a currency other than that in which it is due (Required Currency):

- a) Moneytech may convert the Paid Amount into the Required Currency in accordance with its normal procedures at the rates Moneytech considers appropriate;
- b) Moneytech may deduct its conversion costs;
- c) Moneytech is taken to have received on the amount of the required currency to which the Paid Amount was converted, less the conversion costs.

11.2 If a judgment, order or proof of debt in connection with an amount which the Client owes Moneytech is not expressed in the required currency, the Client must pay Moneytech on demands;

- a) any difference arising from the conversion, if the exchange rate used by Moneytech is less favourable to Moneytech than the exchange rate used for the judgment, order or proof of debt; and
- b) the conversion costs.

## **12.0 WITHHOLDING TAX**

12.1 If the Client is required by law to deduct or withhold Taxes from a payment to Moneytech, the Client must:

- a) deduct or withhold the Tax (and any further tax applicable to a further payment under paragraph c);
- b) remit the Tax as required by law, and give the original receipt to Moneytech;
- c) increase the payment to Moneytech that Moneytech would have received if not deduction (and no further deduction) had been required.

## **13.0 FORWARD EXCHANGE CONTRACTS**

13.1 *Forward Contracts.* A Forward Contract can only be requested by telephone or email and will become legally binding as and from the time that the Transaction details are orally agreed between Client and Moneytech during the telephone call or otherwise agreed by Moneytech. After the telephone call or email, Moneytech will send you a Transaction Confirmation Advice. The Transaction Confirmation Advice constitutes an error correction mechanism only; if you do not contact us within one (1) hour from receipt of the Transaction Confirmation Advice, the details will be deemed to be correct. If you do not

receive the Transaction Confirmation Advice, the Transaction is still legally binding as evidenced by telephone recorded transcript or email.

13.2 *Partial Payment.* Client acknowledges that we bear the risk that Client may default on Settlement of the Forward Contract, and to mitigate this risk, we reserve the right to request that you pay one or more Partial Payments in relation to all Forward Contracts. Partial Payments are better defined in Clause 5 above.

13.3 The Client may perform its obligations at any time within the agreed Settlement Date, if the Client notifies Moneytech early enough to meet currency cut-off times.

13.2 The Client may ask Moneytech to allow it to perform its obligations early. As a condition, Moneytech may adjust the agreed contract rate. Unless otherwise agreed, the Transaction becomes payable on the agreed Settlement Date.

13.3 Transactions may be extended beyond the agreed Settlement Date but only on conditions set by Moneytech (including, but not limited to, adjustment of the agreed contract rate).

13.4 Moneytech may at its discretion allow the terms of the Forward Contract to be extended. If Moneytech agrees to such a change, the Client agrees that the existing Forward Contract will be terminated based on a rate as determined by Moneytech and a new Forward Contract will be entered into which reflects the agreed changes. The Client acknowledges that the exchange rates for the new Forward Contract and for the termination of the original Forward Contract may differ from those in the original Forward Contract. The Client agrees that all losses and costs in relation to any termination and new Forward Contract are the responsibility of the Client and must be paid within two (2) days of termination of the original Forward Contract.

13.5 *Payment of full amount on Settlement Date.* Client must transmit to Moneytech's account the full amount required to settle the Forward Contract, less any Partial Payment or Additional Payment already paid, together with any Transaction Fees that we (or any third party) have requested, on or before the Settlement Date or as otherwise notified to Client in the Transaction Confirmation Advice.

13.6 *Failure to Pay.* Moneytech reserves the right to Close Out the Forward Contract in accordance with these Terms if the Client fails to pay the Partial Payment and Additional Payment or settlement amount as requested.

## 14.0 OPTIONS

14.1 *Options Contracts.* Options may be entered into only by telephone or via email. The Option Contract will become legally binding as and from the time that the Transaction details are orally agreed between Moneytech and Client over the telephone, or otherwise agreed by Moneytech. After the telephone call or email, Moneytech will send you a Transaction Confirmation Advice. The Transaction Confirmation Advice constitutes an error correction mechanism only; if you do not contact us within one (1) hour from receipt of the Transaction Confirmation Advice, the details will be deemed to be correct. If you do not receive the Transaction Confirmation Advice, the Transaction is still legally binding as evidenced by telephone recorded transcript or your email instruction.

14.2 *Premium.* If applicable, the Premium agreed to is specified in the Transaction Confirmation Advice. The Premium must be paid to Moneytech within two (2) Business Days of the Option Contract being entered into in accordance with Clause 14.1. The Premium is a separate non refundable fee. It does not relate to the underlying Transaction that will be entered into if the Option is exercised and will not be applied in reduction of the Settlement payable under any such Transaction.

14.3 *Non Payment of Premium.* In the event Client fails to pay the Premium in accordance with Clause 14.2, Moneytech reserves the right to terminate the Option Contract upon twenty four (24) hours oral or written notice. In the event the Option Contract is terminated, the Premium remains payable by Client as a debt.

14.4. *Windows and Trigger Rates.* Some structured options may be agreed by both Moneytech and the client with a window on the trigger event (**Trigger**). If the parties agree that a Window will apply to the Trigger, the applicable rate can only be triggered during the period of the window.

14.5 *Exercise the Option.* Should the Buyer decide to exercise the Option, the Client must notify Moneytech of their election to do so either by telephone, orally or by email in writing no later than

the expiration time on the Settlement Date. Upon exercising the Option Contract the Client will be automatically entered into a Spot Contract detailed in the Transaction Confirmation Advice and will be bound by these Terms. The Client must immediately provide Moneytech with Beneficiary Account details and deliver to us in full the Settlement Amount within 24 hours. The Seller must accept the Notice of Option Exercise accordingly.

14.6 *Notice of Option Exercise Expiry* may be given to the Client via email, or by telephone. Unless Moneytech receives contrary instructions from the Client prior to the Expiry Date, Moneytech will automatically exercise an 'in the money' Option Contract on behalf of the Client. If an option contract is not exercised in accordance with this clause the option contract will lapse at the expiration time on the expiry date.

### **15.0 HISTORICAL RATE ROLL**

15.1 The Client acknowledges that Moneytech does not usually permit Transactions to roll over at the rate(s) set out in the Transaction Confirmation Advice applicable to the relevant Transaction ("Historical Rate Roll").

15.2 Moneytech may consider a Historical Rate Roll at its sole discretion and on a case by case basis and on written application by the Client.

### **16.0 DEFAULT AND CLOSING OUT**

16.1 Moneytech may refuse to perform or may Close Out all or any part of any Transaction, without incurring any liability to the Client for losses that the Client may suffer or incur as a result, and without giving notice to the Client if:

- a) The Client does not pay an amount in accordance with these Terms or the Transaction Confirmation Advice;
- b) The Client breaches an obligation under these Terms or any other agreement between the parties;
- c) A representation by the Client in connection with these Terms is false or misleading;
- d) The Client becomes an externally administered body corporate, is insolvent or bankrupt;
- e) The Client has breached (or in Moneytech's opinion is likely to breach) the terms of its Moneytech Account;
- f) It becomes or may become unlawful for Moneytech to maintain or give effect to all or any of the obligations under these Terms, or if Moneytech

or the Client is requested not to perform or to Close Out a Transaction (or any part thereof) by any government or regulatory authority or declaration, whether or not that request is legally binding;

g) Moneytech considers it necessary to do so for its own protection (including but not limited to, complying with the terms of its Australian Financial Services Licence and/or complying with any ASIC regulation or undertaking);

16.2 If Client becomes aware of the occurrence or likely occurrence of any event referred to in Clause 16.1, it must notify Moneytech immediately.

16.3 If Moneytech terminates outstanding Transactions:

- a) this clause governs payments;
- b) Moneytech must calculate in Australian dollars the mark to market value of each terminated Transaction as at the termination date using prevailing market rates chosen by Moneytech in good faith. Moneytech must have regard to what a person would pay Moneytech to take over the Client's rights under each Transaction (expressed as a negative number), or what Moneytech would have to pay another person to take over the Client's obligations under that Transaction (Expressed as a positive number). If the total amount exceeds zero, the Client must pay Moneytech that amount. Subject to the clause 16.3 (c), if the total amount is less than zero, Moneytech must notify the Client as soon as practicable after making those calculations. A payment under this clause must be made within two (2) Business Days after Moneytech gives this notice.
- c) Moneytech may set-off money which it owes to the Client under these Terms against money which the Client owes to Moneytech (whether or not under these Terms).

### **17.0 AUTHORITY**

17.1 When entering into these Terms and each Transaction, the Client represents and warrants that:

- a) The Client has power to enter into these Terms and the Transaction;
- b) These Terms and the Transaction binds and will bind the Client;
- c) Unless the Client otherwise notifies Moneytech, the Client enters into these Terms and the Transaction as principal;
- d) Unless the Client otherwise notifies Moneytech, the Client does not enter into these Terms and the Transaction as trustee;

e) If the Client does notify Moneytech that the Client enters into these Terms as trustee, the Client warrants that:

- i) The Terms and the Transaction are for the benefit of the trust;
- ii) The Client is the sole trustee of the trust;
- iii) The Client is entitled to be fully indemnified from the trust assets for obligations agreed under these Terms and the Transaction;
- iv) No action has been taken or proposed to terminate the trust;
- v) The Client has disclosed to Moneytech all the terms of the trust;
- vi) The Client has not delegate any power of trustee or exercised any power of appointment.
- f) The Client is not in default (clause 16).
- g) All information given by or for the Client to Moneytech is correct and complete and not misleading.
- h) The Client has not withheld information that might have caused Moneytech not to enter into these Terms or the Transaction.
- i) If the Client is comprised of two or more legal persons then a reference to a right or obligation of the Client under these Terms or under a Transaction confers that right or imposes that obligation, as the case may be, jointly and severally on those persons.

#### **18.0 AUTHORISED USER/S**

18.1 On request, the Client may give Moneytech a list of persons who may deal Foreign Exchange Contracts, issue settlement instructions, send acknowledgements to Moneytech and sign Transaction Confirmation Advices on the Client's behalf. These persons are Authorised Users. Alternatively, Authorised Users may be identified on Client's Application Form.

18.2 Client shall immediately notify Moneytech when any new person becomes an Authorised User or when any existing Authorised User is no longer entitled to be an Authorised User. Until the Client has provided a Notice to Moneytech to the contrary, Moneytech may continue to assume that all existing Authorised Users have authority to legally commit and bind the Client to Transactions with Moneytech.

18.3 All Transactions, communications and uses of Moneytech Services, by an Authorised User will be deemed Transaction, communications and uses authorised by the Client and shall be binding upon the Client.

18.4 The Client may inform Moneytech of an authorised limit applicable to some or all Transactions or Authorised Users ("Limit"), such Limits to be notified to Moneytech in writing. Any Limit provided by Client to Moneytech may be withdrawn by Client at any time by giving Notice to Moneytech.

#### **19.0 INTERNET FX DEALING SITE**

19.1 This section governs Client's use of Moneytech's own internet FX dealing site, (herein referred to as the "Site").

19.2 Moneytech will use reasonable efforts to provide the Client with access to the Site, but shall not guarantee the Site will be available at all times.

19.3 Moneytech (and its principal, if any) is not liable to the Client for any loss or damage caused in any way, including by its own negligence, whether directly or indirectly, by:

- a) The failure of the Site to perform or properly perform a function;
- b) The unavailability of the Site in whole or in part, because the failure of a telecommunication network or an internet service provider or equipment used in connection with inputting information by the Client of in connection with Moneytech providing the Site, or because of a situation beyond Moneytech's reasonable control;
- c) Delays or errors in the execution of a Transaction or instruction, or failure to execute a Transaction or instruction, through the Site, because of the network, any internet service provider or equipment used in connection with the provision of the Site, or because of circumstances beyond Moneytech's reasonable control.

19.4 If legislation does not allow liability for breach of a warranty to be excluded, Moneytech's liability (or that of its principal, if any), for breach of a warranty is limited to Moneytech re-supplying the service or paying the cost of having the service resupplied, as elected by Moneytech.

19.5 If Client cannot use or access the Site for any reason including by Moneytech's negligence), the Client must find other ways to effect the Transaction and obtain information.

19.6 Moneytech may terminate the Client's right to use the Site and then use reasonable efforts to notify the Client of the termination.

19.7 Moneytech may suspend or disconnect the Client's access to the Site for any reason, including local or international market conditions or technical failure, modification or maintenance. Moneytech must take commercially reasonable steps to resume the Client's access to the Site as soon as reasonable.

19.8 Moneytech does not warrant that:

- a) The Site will be uninterrupted, timely, secure or error free; or
- b) Information from the Site is accurate or complete.

19.9 The Client must protect its computers and computer network from malicious software (including, but not limited to, worms and viruses) while using the Site and at all other times. Moneytech and its principal (if any) are not responsible if the Client cannot access the Site due to such malicious software.

19.10 The Client must not modify or delete any material on or accessible from the Site or link any material to the Site or its material.

19.11 Moneytech may modify or withdraw the Site at any time without notice.

19.12 Moneytech must provide the Client with a password to access the Site. The Client must keep the password secure and protected from unauthorised use. Moneytech need not enquire whether the Client authorised an act or Transaction using the password. Client will be liable for transactions made using the password even if not made by Client.

19.13 Client must tell Moneytech if it knows or suspects that:

- a) their password has been used in an unauthorised way;
- b) the Site has been used in an unauthorised way; or
- c) their password has become known by or given to someone else.

Client must tell Moneytech immediately by contacting our customer service line on 1300 858 905.

19.14 The Client authorised Moneytech:

- a) To act on all Site Transactions where the password is used; and
- b) To treat any such Transaction as authorised by the Client without verification.

19.15 Moneytech retains the right to:

- a) specify times when Site Transactions may be entered into for specific currencies; or
- b) prevent Site Transactions outside of nominated currency trading hours;
- c) modify the terms of any Site Transaction entered into by the Client outside of specified currency trading hours.

19.16 If Moneytech quotes the Client an exchange rate that is clearly outside the current market rate, the Client must notify Moneytech and must not complete a Site Transaction at that rate. If the Client breaches this clause 19.16, Moneytech may terminate the Site Transaction.

19.17 Client is liable for any loss or damage suffered or incurred as a result of a Site Transaction, where the Site was accessed with the Client's password (even if unauthorised). The Client releases Moneytech and its principal (if any) from all liability for any loss or damage suffered by the Client that results from such a Site Transaction.

19.19 *Hyperlinks.* Hyperlinks or other links to or from websites outside of the Site are for Client's convenience only. Moneytech does not review, monitor, endorse or control any sites linked to or from its Site and is not responsible for them. Moneytech will not be liable for any damage caused in respect of or in consequence of following a link.

## **20.0 LIMITATION OF LIABILITY AND INDEMNITY**

### *20.1 Maximum Liability of Moneytech.*

To the extent permitted by law, Moneytech's liability to the Client and anyone claiming through the Client for a breach of this Agreement by Moneytech shall be limited to not more than \$10,000.

For the avoidance of doubt, Moneytech shall not be liable to the Client for lost profits or business, indirect, consequential or punitive damages, whether based in contract or tort (including negligence, strict liability or otherwise) whether or

not either party has been advised of the possibility of such damages.

**20.2 Limitation of Liability.** Moneytech is not liable to the Client for any performance delay or failure due to a cause beyond its reasonable control including, without limitation, failure of any communication systems or delays caused by a third party. It is acknowledged by the Client that Moneytech uses funds transfer services of third party licensed banks and agrees that Moneytech is not liable for any failure or error in such Services.

**20.3 Indemnity.** The Client continually, unconditionally and irrevocable indemnifies and hold Moneytech, its agents and their directors and officers, harmless from and against all liabilities, damages, losses and costs (including legal costs) duties, charges, commissions or other expenses incurred by Moneytech in the proper performance of its Services or the enforcement of its rights under these Terms and, in particular, but without limiting the general indemnity, against all amounts which Moneytech may certify to be necessary to compensate it for all liabilities, damages, losses and costs including loss of profit and losses and expenses from any action Moneytech takes to seek to cover or reduce its exposure under any Transaction as a result of (including, but not limited to):

- a) The Client breaching any of the Terms;
- b) Moneytech acting, or failing to act, on a written, verbal, telephone, fax or electronic order which appeared to Moneytech to be from the Client (including an Authorised User); or
- c) Moneytech exercising its rights under these Terms to Close Out all or any part of any Transaction before its applicable Settlement Date.

**20.4 Survival.** The indemnity in this clause 20 survives termination of the Terms and any Transaction.

## **21. DIRECT DEBIT AUTHORISATION**

The following provisions apply if a direct debit arrangement ("Direct Debit Authorisation") is entered into between the Client and Moneytech to debit the account of Client for moneys owing by it to Moneytech.

- a) The Direct Debit Authorisation applies in respect of all moneys due and payable to Moneytech under the Transaction Confirmation Advice and these Terms;
- b) The Client:

(i) Must ensure that sufficient funds are available in the nominated account to meet all drawings on their due date:

(ii) Must advise Moneytech immediately if the account nominated is transferred or closed;

(iii) Must ensure a suitable alternate payment method is arranged with Moneytech if the Client terminates the Direct Debit Authorisation;

(iv) Is liable for all fees incurred by Moneytech in relation to failed drawings.

The Direct Debit Authorisation is subject to the terms and conditions of the Direct Debit Agreement annexed to the Direct Debit Authorisation. In the event of an inconsistency between these Terms and the Direct Debit Authorisation Agreement, the Direct Debit Agreement shall prevail.

## **22. PRIVACY**

Moneytech is committed to compliance with the Privacy Act 1988 (Cth) and the Australian Privacy Principles. Our Privacy Policy and Credit Reporting Policy sets out how we look after your personal information generally as well as containing specific details as to how we look after your credit related personal information. It is available for viewing online at [www.moneytech.com.au](http://www.moneytech.com.au)

## **23. VARIATION TO THESE TERMS**

Moneytech may amend these Terms and any Transactions under it, at any time (including to introduce or change a Fee) by giving you notice of the variation whether in writing or by posting a notice online at [www.moneytech.com.au](http://www.moneytech.com.au). Such notice may be given to you as the Client or generally as a group (and not to you specifically). The variation takes effect on the day specified in Moneytech's notice. You are bound by the amendments at the earlier of:

(a) Five (5) days after Moneytech has posted notice of the amendment on its website at [www.moneytech.com.au](http://www.moneytech.com.au); or

(b) On the date you enter into a Transaction after the amendment is notified.

## **24. ASSIGNMENT**

**24.1** The Client may not assign, mortgage, charge, declare a trust of rights or obligations under these Terms without the written consent of Moneytech.

**24.2** Moneytech may assign its rights or delegate any of its obligations under these Terms at any time.

24.3 Despite anything to the contrary contained in these terms, Moneytech may disclose to any actual or potential delegate or assignee as referred to in clause 24.2, such information relating to the Client and its relationship with Moneytech, as Moneytech sees fit.

## 25. NOTICE

25.1 Any notice or other writing required or permitted to be given under these Terms or for the purposes of these Terms ("Notice") shall be in writing and shall:

a) If to the Client, be sent by prepaid registered mail or delivered by hand to the address of the Client set out in the Application Form, or such other address designated in writing by the Client, or by Moneytech posting a Notice to the Moneytech Website; and

(i) if posted on the Moneytech Website, Notice is deemed to have been given five (5) days after the Notice was posted; or

(ii) if the Notice was sent to the address of the Client, the Notice is deemed to have been given on the day after the Notice was sent, unless delivered by hand in which case the Notice is deemed to have been given on delivery.

b) If to Moneytech, be sent by prepaid registered mail or delivered by hand to the address of Moneytech as set out in these Terms or such other address as Moneytech has designated in writing, and such Notice is deemed to have been given on the day after the Notice was sent, unless delivered by hand in which case the Notice is deemed to have been given on delivery.

**Moneytech Limited**  
6/97 Pacific Highway  
North Sydney NSW 2060

Any Notice given or made under these Terms may also be sent by Moneytech by email if:

- a) The Notice is sent to the email address last notified by the intended recipient to the sender; and
- b) The sender keeps an electronic or printed copy of the Notice sent.

A Notice sent by email will be deemed to have been given on the first to occur of:

- a) Receipt by sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;

- b) The time that the Notice enters an information system which is under the control of the recipient; and
- c) The time that the Notice is first opened or read by an employee or officer of the recipient.

## 26. TERMINATION

26.1 Either party may terminate these Terms at any time by giving the other notice in writing to that effect.

26.2 Termination does not release either party from an existing obligation or liability under these Terms.

26.3 In the event Client terminates the Terms, Moneytech shall not be required to accept or process any Transaction thereafter placed by the Client.

26.4 Subject to clause 26.5, termination by either party shall not affect any Transaction previously entered into and shall not relieve either party of any outstanding obligations arising out of these Terms, nor shall it relieve the Client of any obligations arising out of any Transaction entered into prior to such termination.

26.5 In the event that Moneytech is made aware of or has reason to believe any of the following:

- a) The Client has provided false or misleading information to Moneytech; or
- b) That the Client has participated or is participating or has assisted or is assisting in money laundering or terrorist financing activities;
- c) That the Client is being officially investigated by law enforcement and/or regulatory agencies; or
- d) That an Insolvency Event has occurred,

then Moneytech, at its sole discretion, may terminate the Terms immediately by Notice to the Client, and Moneytech shall be relieved of any obligations set out in these Terms, including any obligations arising out of any Transaction already placed with and Accepted by Moneytech.

## 27. MARKET DISTURBANCE NOTICE

27.1 Moneytech may give a notice (Disturbance Notice) to the Client at any time if it forms the view that market conditions in the relevant financial market for the currency concerned are seriously disturbed.

27.2 this includes circumstances where, in Moneytech's opinion deposits in the currency concerned are not available in the ordinary course of business to Moneytech in the relevant financial market or because of national or international,

political or economic circumstances or exchange controls, it is impractical.

27.3 When a Disturbance Notice is given, Moneytech's obligations will be suspended while it and the Client negotiate alternative arrangements. If both parties reach agreement before the Settlement Date, those alternative arrangements will apply. If they do not reach agreement within that period, each will be released from its obligations under the relevant transaction.

## **28. GOVERNING LAW AND JURISDICTION**

28.1 These Terms are governed by the laws of New South Wales.

28.2 The parties irrevocable submit to the non-exclusive jurisdiction of the courts of New South Wales.

28.3 No party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.