

## DEFINITIONS

**"Client"** shall mean the person, firm or organisation to whom the Company provides services for the purchase or sale of currencies for physical delivery.

**"Client Money"** means monies paid to TorFX by the Client that will be held in trust for the Client in a designated Client account separately from Company funds. The Client is still the beneficial owner of such funds until such time as the Company incurs costs, loss of profits or liabilities in connection with or arising out of the Client's Contract(s), including, without limit, liabilities we incur with third party banks or similar entities. TorFX may also offset any deposit(s) or other monies we are holding in respect of any one of your contracts against any costs, loss of profits or liabilities that we incur in connection with any or arising out of any other contract you have with the Company.

**"Company" or "TORFX"** means Tor Currency Exchange Limited (company number 5193147) of Penlowarth, Penzance, Cornwall, TR18 4ED.

**"Delivery Date / Value Date"** means the date on which the Client will expect to have the use of the currency funds he has purchased in his designated account.

**"Forward"** means a transaction where the Delivery Date is later than two working days after the date when the transaction is agreed.

**"Interbank Rate"** means the rate at which banks will trade large amounts of currency with each other.

**"Limit Order"** is an instruction placed by the Client with the Company to buy currency at a specified level better than the current available rate.

**"Margin Call"** means a requirement for the Client to make additional deposit against a forward contract to buy or sell currency which has suffered losses due to adverse market movement.

**"Payment Date"** means the date agreed at inception of the transaction between the Client and the Company which is specified on the Contract Note when the Client must deliver his funds to the Company to ensure that the Company can meet the agreed Delivery Date for the Client's purchased currency.

**"Payment Instruction"** means an instruction given to the Company by the Client, instructing the Company to make payment of funds belonging to the Client to a nominated bank account, details of which are provided by the Client.

**"Spot"** means a transaction (as defined herein) where the delivery date is two working days after the Transaction is agreed.

**"Stoploss Order"** is an instruction placed by the Client with the Company to buy currency if and when the exchange rate deteriorates to a specified level that is worse than the current available rate.

**"TorFX Spread"** means the difference between the "Interbank Rate" and the rate offered to the client.

## 1 THE NATURE OF THE SERVICES

- The Company's services consist of the provision of spot and forward currency contracts for the sale and purchase of currency on behalf of the Client.
- The services provided by the Company specifically exclude advice of any nature upon the advantages or disadvantages of a proposed transaction or trade, or any other advice of any nature.
- Upon receipt of a signed copy of this Agreement made between the Company and the Client, the Company will enter into a transaction for the purchase or sale of currencies subject to the terms and conditions hereof.
- Each transaction entered into by the Company on behalf of the Client will be supported by a contract note confirming the transaction. The contract note may be sent to the Client by the Company or its duly authorised agent and may be an original or a copy. The contract note will set out the relevant particulars of the completed transaction.
- The Company may enter, at its discretion, into contracts with the Client relating to spot currency transactions or forward currency transactions which provide for delivery of currency.
- No deals shall be entered into for speculative purposes.

## 2 CLIENT'S INSTRUCTIONS

- The terms and conditions of this Agreement confirm that the Client wishes to enter a contract for the purchase, sale and delivery of currency with the Company subject specifically to the terms of this agreement, which shall not be varied without the consent of the Company in writing.
- The Client may give TorFX oral or written instructions relating to a transaction for the purchase or sale and delivery of currency. In the case of oral instructions, TorFX shall be entitled to act upon the instructions placed by a Client. Once an oral instruction has been given and accepted by a TorFX dealer, there is a binding contract between the Client and TorFX for TorFX to execute the order and the Client to pay the sums due to the Company under the terms of the contract. TorFX may also, in its absolute discretion, require the Client to return a signed contract note to the Company within 30 minutes of the transaction being agreed orally. If this is required, your TorFX dealer will inform you on the telephone at the time of placing the trade. In the event that a signed contract note is required, the formation of a contract is not dependent on the return of the contract note and the contract becomes binding once an instruction has been given and accepted by a TorFX dealer on the telephone. Failure to return the signed contract note within this period may result in termination of the trade as detailed in section 10 of these terms.

**TorFX reserves the right to store all telephone recordings and use them to resolve any dispute arising between TorFX and the Client.**

- Any instruction or order given to the Company by the Client can only be amended or cancelled **by telephone** during normal business hours (9:00am - 5:30pm Monday

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to Friday).. Any instruction to cancel or vary any order must be given prior to the order being fulfilled by TorFX. Orders remain active and may be fulfilled outside normal business hours. All limit and stoploss orders will remain active until they are fulfilled, or until an instruction to cancel the order is communicated to the Company by the Client in accordance with the provisions of this clause. Any instruction given by the Client that results in a fulfilled trade is the responsibility of the Client. Any loss made as a result of closing out a trade where TorFX have acted upon a Client's instruction and the Client no longer wishes to proceed with the trade is the responsibility of the Client. All limit and stoploss orders will be fulfilled when the TorFX trading rate reaches the specified level. The TorFX trading rate will be the "interbank rate" plus or minus the TorFX Spread. The TorFX spread will depend on the volume of currency traded and is calculated by, and at the discretion of a TorFX dealer.

- The Company shall not be obliged to accept an instruction and may use its discretion at any time following the receipt of any instruction to decline acceptance.
- Any omission or error that is contained in the contract note or relating to the transaction must be notified to the Company within 24 hours of receipt of the contract note. The Company shall be entitled to assume the contract note has been received by the Client once it has been sent to an email address or fax number that the Client provides to the Company. **The Client must inform the Company within 1 hour of agreeing a currency transaction if no contract note has been received.**
- By this Agreement the Client irrevocably undertakes to take physical delivery of and pay for the currency in question on the date specified on the relevant contract note and to pay such further sums required to be paid by the Company pursuant to the terms of the transaction at the Company's discretion.
- The Client will rely on their own judgement when entering into a transaction and will not rely on any information, advice or opinion communicated by the Company or its employees.
- In the event that a Client notifies TorFX orally and/or in writing that it is authorising another person to convey their instructions to TorFX, TorFX may rely on the instructions of the said authorised person as if conveyed by the Client in person. The Client will be wholly responsible for any instruction given by the said authorised person.
- In the event of Clients opening a joint account with TorFX then TorFX may accept instructions from any of the stipulated individuals, each of whom will be a Client that is jointly and severally liable to TorFX pursuant to these Terms and Conditions.
- In the event that a Client wishes to cancel a Payment Instruction, the Client must notify the Company and the Company must expressly accept the cancellation no later than the end of the business day prior to the agreed payment date. The end of the business day shall be taken as being 4:30pm.

## 3 PAYMENT REQUIREMENTS

- For 'spot' transactions, the Client shall make payment of cleared funds to a designated bank account in the name of TorFX, to the value of the currency to be purchased no later than 4:15pm on the working day after the instruction to buy or sell currency was given to TorFX by the Client.
- For 'forward' transactions, the Client shall make payment of cleared funds to a designated bank account in the name of TorFX, to the value of the required deposit on any particular deal, no later than 4:15pm on the working day after the instruction to buy or sell currency was given to TorFX by the Client. The Client shall pay the outstanding amount of the sale currency into a designated bank account in the name of TorFX in cleared funds no later than one business day prior to the 'value date'.
- TorFX reserve the right to make a 'Margin Call' to re-establish the deposit to the original percentage level for any particular trade if at any time the margin falls below half of the original level required due to adverse market movement. In the event of a Margin Call being made, the Client shall pay all those monies pursuant to the Margin Call in cleared funds into a designated bank account in the name of TorFX within 24 hours of TorFX first attempting to communicate the Margin Call to the Client. The Client's failure to do so shall be a fundamental breach of the conditions of the trade and shall entitle TorFX, without prejudice to any other remedy available, to immediately and without notice to the Client terminate the trade without liability. The Client shall remain liable for any losses incurred as a result of such termination.
- It is the Client's responsibility to ensure they are contactable and that sufficient contact details have been provided to TorFX in order that TorFX may communicate a Margin Call to the Client by telephone. If TorFX cannot contact the Client using the details provided by the end of the day on which the margin call arose TorFX shall be entitled to terminate the trade as detailed in 3 (c) of these Terms and Conditions.
- The Company will not account to the Client in respect of any contract entered into between the Company and the Client for any amount until such time as the Company has received confirmation to its satisfaction that cleared funds have been received.
- Any monies or payments due from the Client to the Company for any purpose shall be paid in full and the Client shall have no right to set off any sum in respect of any counterclaim, set off or other deduction of any nature.
- Unless by prior agreement with the Client, TorFX shall only accept payment made to it from a bank account bearing the Client's name and not from any third party.**
- The Company reserves the right to deduct such sums as it may be required to deduct by LAW.
- In the event that the amount of any payment received by the Company is less than the amount required as detailed on the contract note, the Company reserves the right to deduct the value of the shortfall from the currency purchased by the Client.
- A client may withdraw consent previously given for the execution of a payment they have instructed TorFX to make on their behalf as long as the cancellation is received by TorFX no later than the close of business on the business day prior to the date on which the payment is due to be made by TorFX.

### 4 DEFAULT

(a) TorFX reserves the right to terminate/ close out all or part of any contract (without notice to, or any further liability to the Client for any losses that may be sustained as a result) or deal for which the Client has failed to provide the required payment to a designated bank account in the name of TorFX in cleared funds within the payment deadlines specified in these terms and conditions.

(b) After terminating/ closing out any deal, TorFX will send a settlement notice, showing any loss arising from the closing out. Any balance due to TorFX must be paid in cleared funds to a designated bank account in the name of TorFX no later than 48 hours after the settlement notice has been communicated to the Client.

(c) In the event that the Client shall fail to make any payment due to the Company pursuant to the terms of this Agreement or to the contract note, then the Company reserves the right to claim interest on any outstanding sum at a rate of 10% per annum over the base rate of a major UK clearing Bank, from time to time, payable upon demand and calculated daily from the date of default until payment is received.

(d) The Company shall be entitled to compound monthly outstanding interest.

### 5 THE WHOLE AGREEMENT

(a) The terms and conditions of this Agreement are the conditions in force at the date of this Agreement and shall not be superseded, amended or varied in any way whatsoever without the written consent of the Company.

(b) No representation made orally by the Company, its servants or agents shall be binding upon the Company or shall form part of this Agreement, unless they are agreed in writing by a Director of the Company.

(c) The Company reserves the right to record telephone conversations between the Company, the Client and or its representatives without warning.

**(d) The Client, by accepting these terms and conditions, acknowledges and accepts that evidence of any such recordings may be referred to by the Company in respect of any dispute or difference between the parties.**

### 6 ANY DEFAULT OR BREACH BY THE CLIENT

(a) If the Client fails to make any payment due under the terms of this Agreement or any transaction between the Company and the Client, the Company may, at its discretion, terminate any transaction entered into, without notice. This includes when TorFX has made reasonable attempts to contact the Client using the contact details provided in order to communicate a Margin Call (as described in 3 (c - d)) but cannot make contact within the specified period. The Client shall remain liable for any losses incurred as a result of such termination. The loss shall be determined by the difference between the original trade price agreed with the Client and the price at which TorFX has terminated the matching contract with our bank or broker.

### 7 LIMITATION OF LIABILITY

(a) The Client shall keep the Company indemnified in respect of all losses, claims and consequential losses suffered by the Company during the performance of its services under the terms of this Agreement.

(b) The Client shall pay all legal fees or costs incurred in connection with the enforcement of these terms and conditions or legal fees incurred in connection with any dispute or difference arising under this agreement that is resolved in favour of the Company.

(c) TorFX shall not be liable to the Client for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its control, including but not limited to the following: Act of God, government act, war, fire, flood, explosion, failure of computer equipment, banking system failures, communications systems failure or industrial action by a third party.

(d) TorFX accepts no responsibility for and shall have no liability in respect of any delay in onward payments attributable to a third party such as a bank. Furthermore, TorFX shall not be liable for any charges or deductions made by a third party in the processing of a Client payment. Some banks charge a "receiving fee", and it is the responsibility of the Client to establish whether their nominated receiving bank will charge such a fee.

(e) TorFX will not be bound by contracts where the price we have quoted to the Client is a manifest error. "Manifest error" means where the price quoted to the Client is at our discretion and in our reasonable opinion incorrect, which will usually but not exclusively be in circumstances where the incorrect price does not allow TorFX to make a profit on the spread between that price and the price we agree with our bank or broker.

(f) TorFX may accept orders at the weekend, or other times when the spot foreign exchange markets are closed. Prices quoted will be based on the last trading price prior to the market closing, and in the unusual event that the price has moved significantly so that TorFX cannot make a profit on the spread between the price quoted to the Client and the price available from our bankers when the market opens, TorFX will be entitled to treat this contract as void.

(g) TorFX shall have no liability in respect of damage which under English law is considered to be "consequential loss", or "indirect loss", including but not limited to; loss of revenue, loss of goodwill, loss of data, loss of business or other contractual opportunity, loss of production, or any other economic loss.

### 8 CONFIDENTIALITY

The Client agrees that the Company may carry out any check as to the Client's financial status as the Company shall deem fit. The Client accepts that the Company will attempt to verify the Client's identity by checking the details supplied against those held on a number of specific databases that the Company has access to, for

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example information from the Electoral Register, and fraud prevention agencies. A record of this process will be kept that may be used to help other companies to verify the Client's identity. The Company may also pass information to organisations involved in fraud prevention to protect the Company and other Clients from theft and fraud. If the Client supplies false or inaccurate information and the Company suspects fraud, the Company will record this and share this information with other organisations.

### 9 LAW

All disputes or differences shall be subject to the laws of England and the jurisdiction of the English Courts.

### 10 TIME OF THE ESSENCE

The Client acknowledges and accepts that time is of the essence to any transaction between the Client and the Company and that where the Company requires (as described in clause 2b), it is a strict term of that transaction between the Client and the Company that the deal confirmation issued by the Company to the Client shall be completed, signed and despatched by fax or email to the Company within 30 minutes of receipt. Failure to comply with this requirement shall entitle the Company to terminate the contract without notice to the Client. The Client shall remain liable for any losses as a result of termination as detailed on the Settlement Notice (4b). The loss shall be determined by the difference between the original trade price agreed with the Client, and the price at which TorFX has terminated the matching contract with our banks or broker.

### 11 OTHER OBLIGATIONS

(a) If the Client becomes incapacitated in any way either by insolvency or ill health, the Company shall be entitled to terminate forthwith any transaction as it deems fit.

(b) The Company reserves the right to terminate any transaction and requires such information as it deems reasonable if the Company has any cause or obligation imposed by reason of the Money Laundering Regulations.

(c) It is the Client's responsibility to keep safe any passwords which are provided by the Company. It is also the Client's responsibility to ensure that communication details provided to the Company (email for example) are secure and cannot be accessed or violated by third parties. TorFX shall be entitled to act upon instructions received from communication channels provided to the Company by the Client, and shall have no liability to the Client in respect of monies sent to third parties due to an unauthorised person accessing a Client's email, or using a Client's passwords other details that should be kept secure by the Client under the terms of this agreement.

### 12 TERMINATION

This Agreement may be terminated forthwith by the Company upon giving the Client notification of such termination in writing.

### 13 LATE PAYMENTS

In the event of any late payment due to the Company, the Company shall be entitled to charge interest at the rate of 10% per annum above the base rate of a major UK clearing Bank on any outstanding balance due.

### 14 CLIENT MONEY

(a) All money sent to TorFX by Clients will be paid by the Client into a segregated client bank account, held separately from any funds belonging to the Company.

(b) In the performance of our services we may be required to pay money held in our client accounts to a counterparty bank or broker as "margin" for your forward contract.

(c) During the settlement of your foreign exchange trade, we may be required to pay your money to our counterparty bank or broker in payment for the currency you have purchased. Currency returned to us from the counterparty will be paid directly into the corresponding segregated client account at TorFX, where it will be held until we have your forwarding instruction.

(d) In order to ensure that Client funds are safe in the unlikely event of TorFX entering administration, all Client funds are fully reconciled on a daily basis, and are always separately and individually identifiable from funds belonging to the Company.

### 15 COMPLAINTS

(a) From November 1<sup>st</sup> 2009 Clients who are eligible complainants shall be entitled to refer complaints to The Financial Ombudsman Service if a complaint is not satisfactorily resolved through the Company's complaints procedure. A copy of the TorFX Complaints Procedure is available at [www.torfx.com/complaints](http://www.torfx.com/complaints), and is also available in hard copy on request. More information on the Financial Ombudsman Service is available from the Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR.

### 16 GENERAL

**(a) Any telephone calls between the Company and the Client may be recorded, in which case the recordings will be accepted by the Client as evidence of the instructions or communications recorded.**

(b) The Company needs to record and maintain certain information about the Client's personal and financial circumstances. This data will be held in hard copy and/or electronic form. The Client hereby consents to Tor Currency Exchange Ltd recording and maintaining this information. In accordance with the Data Protection Act 1998, the Client can ask to see a copy of the personal information concerning them that is held by the Company.