



DIRECT FX

## Global Currency Payments & Transfers

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# Terms and Conditions

*The Client warrants and acknowledges that:*

### 1. Basis of Instruction

- a. The Client is an Australian resident or Australian citizen living abroad.
- b. The Client is acting as principal only and not as agent for any third party whose identity has not been disclosed to Direct FX.
- c. Direct FX may rely on facsimile, scanned pdf or digital copies of the Client Agreement, and all identification documents relating to the Client, when those are required.
- d. The Client consents to Direct FX using information gathered from the Client during the application process, to electronically verify the Client's identity, for the sole purpose of compliance with the Anti-Money Laundering and Counter-Terrorist Financing Act 2006.
- e. The Client consents to Direct FX sharing information gathered from the Client during the application process, with Dun & Bradstreet and relevant Credit Reporting Agencies for the sole purpose of verifying the Client's identity, for the purpose of compliance with the Anti-Money Laundering and Counter-Terrorist Financing Act 2006.
- f. Where the Client is a company entity, the Authorised Persons named on the Client Agreement supplied with these Terms and Conditions are authorised by the Client to give Instructions to Direct FX on behalf of the Client.
- g. The information provided by Direct FX is general in nature and does not take into account any of the Client's personal needs or circumstances. Therefore, before acting or relying on any of the information provided by Direct FX, the Client has considered whether it is appropriate to his/her objectives, financial situation and needs.
- h. The Client has received, read, and understood, an up to date combined Product Disclosure Statement (PDS) and Financial Services Guide (FSG) for Forward Foreign Exchange Contracts, and an up to date combined PDS and FSG for Non Derivative Foreign Exchange Contracts, issued by Direct FX, and agrees to be bound by the terms and conditions contained therein.
- i. The information contained in the two combined PDS and FSG is current at the time of preparation but may be subject to change from time to time. If any new information is material, a new or supplementary document will be issued containing the new information. If the new information is not considered material, the information will be available on the Direct FX website [www.directfx.com.au](http://www.directfx.com.au) or by contacting Direct FX directly.
- j. Any disclosure document, including the most up to date PDS, FSG, and supplementary documents, or any other document required to be given to the Client by law, may be given to the Client by being placed on the Direct FX website [www.directfx.com.au](http://www.directfx.com.au).
- k. These Terms and Conditions are subject to change from time to time. Direct FX will write to Clients if any material amendment is made to the Terms and Conditions. Any amendment shall be binding with the agreement of the Client from the date of such notice. Amendments will not be retrospective. Amendments will not affect any rights or obligations that may already exist in respect of any instructions.
- l. The Client will provide Direct FX with all information, documentation, and details necessary to enable Direct FX to comply with any applicable legislation.
- m. The Client is responsible for ensuring that all information, documentation, and details provided to DirectFX are true and accurate. The Client agrees to notify DirectFX immediately in the event that the Client becomes aware of any error, change, or omission in the information, documentation, and/or details provided.

- n. The Client is responsible for ensuring Direct FX has current email contact details for the Client, to enable Direct FX to send to the Client amended Terms and Conditions, PDS, and FSG when necessary.

## **2. Instructions**

- a. The Client may provide Instructions to Direct FX verbally or in writing.
- b. Direct FX reserves the right to require written confirmation of any Instructions made by the Client.
- c. Direct FX may digitally record phone conversations with Clients and reserves the right to produce and store a transcript of the phone conversations.
- d. Direct FX may use any recording or transcript of phone conversations for the purposes of verifying the details of a Foreign Exchange Transaction or to resolve any disputes between Direct FX and the Client.
- e. Emailed or faxed At Market orders will be executed at the prevailing Exchange Rate available when Client Instructions are received by Direct FX.
- f. Emailed or faxed Client Instructions should not be considered to have been received by Direct FX until Direct FX has responded.
- g. Irrespective of whether or not Direct FX has responded to confirm Client Instructions have been received, the cancellation of Client Instructions whether made verbally or in writing, does not guarantee Client Instructions will not have been completed.
- h. The Client will send to Direct FX payment instructions for where the Clients bought currency will be deposited, once a Foreign Exchange Transaction is in place.

## **3. Trading**

- a. The Client is to provide Direct FX with the sold currency in Cleared Funds without set-off, counterclaim, or deduction whatsoever before receiving the bought currency.
- b. If Cleared Funds are received on the required date, but after normal banking cut off times, DirectFX will make settlement as per the Client settlement instruction, on the next Business Day following the trade Settlement Date.
- c. Sold currency needs to be paid immediately for Same Day Contracts, in a way that will ensure the payment is received as Cleared Funds, in time for Direct FX to deliver the bought currency. Same Day Contracts can only be affected within certain business hours and will be dependent on banking payment cut off times.
- d. For Spot Contracts, sold currency must be delivered to Direct FX in Cleared Funds one Business Day following the Transaction Date.
- e. For Forward Contracts, if an Initial Margin is due, it must be received in Cleared Funds one Business Day following the Transaction Date. The balance of the sold currency must be received in Cleared Funds one Business Day prior to the Settlement Date.
- f. For Forward Contracts, where the Initial Margin required is 10% of the Contract Face Value, if the value of the Initial Margin falls below 5% of the Contract Face Value, Direct FX may, at its discretion, require Additional Margin payments to restore the security held by Direct FX to 10% of the Contract Face Value. Where the Initial Margin required is 5% of the Contract Face Value, if the value of the Initial Margin falls below 2% of the Contract Face Value, Direct FX may, at its discretion, require Additional Margin payments to restore the security held by Direct FX to 5% of the Contract Face Value.
- g. Additional Margin due must be received by Direct FX in Cleared Funds one Business Day following the communication of a Direct FX Margin Call.
- h. Direct FX will only accept and make electronic bank payments.
- i. The Client agrees to release and indemnify Direct FX against all actions, claims, costs, demands, and losses, arising from or in any way relating to, Direct FX in good faith accepting or acting on any instructions received by telephone, fax, or email which are, or are purported to be, from the Client.
- j. Direct FX retains the right and discretion not to trade at any time and may refuse to do so without giving any reason.

## **4. Trading Acknowledgements**

- a. The Exchange Rate quotations provided by Direct FX are not a forecast or advice on where Direct FX believes Foreign Exchange Rates will be at a future date.
- b. Direct FX is in no way obligated to honour any indicative At Market Exchange Rate quoted.

- c. The Client has no interest in or claim over the funds Direct FX lodges with its counterparties that have been withdrawn from the Client Funds Account to secure funding arrangements, nor in any contracts held with those counterparties.
- d. Direct FX are not responsible for the late delivery of bought funds due to late receipt of Client sold Cleared Funds, bank payment system related issues, or other third party provider problems out of its control.
- e. The ability for DirectFX to complete Limit and Stop Loss Orders is dependent upon DirectFX's ability to access suitable Exchange Rates. This ability is totally independent to the Interbank market and the trading activities of any other provider of a similar service.
- f. Direct FX will have no liability to the Client for any loss or damage suffered by the Client or any other party as a result of Direct FX's refusal to trade.
- g. Amending Settlement Dates can only be done at the agreement of Direct FX and may result in the Exchange Rate being amended to reflect the impact of the longer or shorter Settlement Date.
- h. Subject to the Corporations Act 2001 and the Trade Practices Act 1974:
  - i. Direct FX will not be liable to the Client for any claim which arises as a result of currency fluctuations between the Transaction Date and the Settlement Date;
  - ii. Direct FX will not be liable to the Client for any claim which arises as a result of the Client's non-compliance with these Terms and Conditions;
  - iii. Direct FX shall not be liable for any claim arising save for direct losses caused by the negligence of Direct FX in its execution of a Foreign Exchange Transaction;
  - iv. Direct FX shall not be liable for any loss suffered as a result of any actions or delays by any third parties;
  - v. Direct FX shall not be liable for any loss suffered arising from any cause beyond the reasonable control of Direct FX, including any delay or non-performance of its obligations;
  - vi. The Client agrees to indemnify and continue to indemnify Direct FX against any and all liabilities incurred by Direct FX in the proper performance of its duties and obligations; and
  - vii. Without prejudice and subject to these Terms and Conditions, the total aggregate liability of Direct FX to the Client for any claim will not exceed the lesser of:
    - a. The total amount paid by the Client to DirectFX in respect of the transaction giving rise to the claim; or
    - b. AUD200,000.

## 5. Close Out

- a. There is no cooling off period. Transactions cannot be cancelled. However, a contract can be Closed Out prior to or on Settlement Date in these circumstances:
  - i. As a result of a change in the Client's circumstances meaning the contract is no longer necessary, the Client and Direct FX may agree to Close Out a contract – effected by the Client purchasing an equal and opposite contract from Direct FX. This can only be done with the agreement of Direct FX.
  - ii. The Client breaches one of these Terms and Conditions – effected by Direct FX purchasing an equal and opposite contract in the market at the prevailing market Exchange Rate
  - iii. The Client is made bankrupt – effected by Direct FX purchasing an equal and opposite contract in the market at the prevailing market Exchange Rate
  - iv. Direct FX are required to do so by a law enforcement authority – effected by Direct FX purchasing an equal and opposite contract in the market at the prevailing market Exchange Rate

The Client agrees to notify Direct FX immediately if any of these circumstances become applicable.

In circumstances ii, iii, and iv, Direct FX may Close Out the trade without notice to the Client or any other party and without incurring any liability to the Client.
- b. In all Closed Out transactions Direct FX will calculate the financial gain or loss incurred. In the event a profit has resulted Direct FX will make payment to the Client of the profit amount. In the event a loss has resulted, the Client will be required to make payment of the loss amount and any other fees or costs incurred by Direct FX in Closing Out the trade, in Cleared Funds, the following Business Day.
- c. In all Closed Out transactions Direct FX may set off any Margin Payments held or other monies owing by the Client to Direct FX.

- d. Direct FX may, in its absolute discretion, Close Out any transaction it considers necessary to do so for its own protection.

## **6. Fees and Interest**

- a. Direct FX does not charge fees, on the basis that the full amount of the Client bought currency is paid by Direct FX to the Client nominated beneficiary account, in one transaction, correctly, in reliance of correct payment instructions having been provided by the Client to Direct FX.
- b. Direct FX may charge a fee when the Client requires Direct FX to:
  - a. make more than one payment of the Clients bought currency to the Client beneficiary account
  - b. amend an incorrect payment instruction, after payment has been made
  - c. trace a payment or receive a bank confirmation of credit
- c. The Client's beneficiary bank may deduct their own transaction fees.
- d. Intermediary banks required to process payments on route to the Client beneficiary account, may charge fees, when payments are made to Clients in currencies other than Australian and New Zealand dollars.
- e. When Client's bought currency is returned to Direct FX by the beneficiary or intermediary bank, because an incorrect payment instruction has been supplied to Direct FX by the Client, those payments may have a fee deducted from them by the bank returning the payment to Direct FX.
- f. Direct FX is entitled to receive any interest received from Client Fund accounts. Direct FX will not pay interest on funds held in Client Fund accounts.

## **7. Interpretation**

- a. A Foreign Exchange Transaction is in place between the Client and Direct FX at the point when the Client Instructions are completed.
- b. Each Foreign Exchange Transaction constitutes a separate agreement.
- c. In the event that a conflict arises between these Terms and Conditions and any agreement made between Direct FX and the Client or any other document, the provisions of these Terms and Conditions shall prevail.
- d. These Terms and Conditions and any agreement made with Direct FX will be subject to and governed by the applicable laws of New South Wales, Australia.

## Defined Terms

**Additional Margin** payments required for Forward Contracts to restore the security held by Direct FX to 5 or 10 percent of the Contract Face Value

**At Market** the prevailing Exchange Rate available.

**At Market Order** a request to trade at the current At Market Exchange Rate.

**Authorised Persons** people authorised by the Client to give Instructions to DirectFX on behalf of the Client.

**Business Day** when banks are open for business to receive or pay a required currency

**Cleared Funds** funds that have been deposited into our Client Funds Account and are available to withdraw.

**Client** a party or parties entering into the Foreign Exchange Transaction with Direct FX

**Client Agreement** for personal Clients, the agreement constituted by the completion and submission of the online application form [www.directfx.co.nz/ApplyAccount.html](http://www.directfx.co.nz/ApplyAccount.html). For company Clients, constituted by the completion of the Business Client Agreement given to prospective Clients to complete and return to Direct FX

**Client Funds Accounts** Client funds are held in Client Funds Accounts, and used and withdrawn in accordance with the Australian Corporations Act 2001, the New Zealand Financial Markets Conduct Act 2013, and these Terms and Conditions.

**Client Instructions** includes the Client placing and cancelling orders with Direct FX

**Closed Out Transaction** effected by purchasing an equal and opposite contract to the original Foreign Exchange Transaction.

**Contract Face Value** the value of the Foreign Exchange Transaction in terms of the sold currency.

**Direct FX** Direct FX Ltd, New Zealand Company # 1133594, Australian Registered Business # 114 868 978

**Exchange Rate** the rate at which one currency will be exchanged for another.

**Foreign Exchange** a Foreign Exchange Transaction

**Foreign Exchange Transaction** an agreement to exchange one currency for another at an agreed Exchange Rate on an agreed Settlement Date.

**Forward Contract** a Foreign Exchange Transaction where the Settlement Date is later than two Business Days after entering the transaction.

**Instructions** placing and cancelling orders.

**Initial Margin** the security payment required for Forward Contracts.

**Interbank** bank to bank transactions.

**Interbank Market** where banks buy and sell between each other.

**Limit Order** an Instruction to transact at an Exchange Rate not currently available.

**Margin Call** will be made by us to you if you need to pay an Additional Margin to us. Made by Direct FX to the Client by telephone, email, or fax.

**Margin Payment** includes the Initial Margin and any Additional Margin.

**Non Derivative Foreign Exchange Contracts** are Foreign Exchange Contracts offered by Direct FX that are not Forward Contracts

**Same Day Contract** a Foreign Exchange Transaction where entering a transaction and settlement take place on the same day.

**Settlement Date** the date on which one currency will be exchanged for another.

**Spot Contract** a Foreign Exchange Transaction where the Settlement Date is two Business Days after entering the transaction.

**Spot Exchange Rate** the rate at which Spot Contracts are quoted

**Terms and Conditions** set out how trading will be conducted between the Client and Direct FX.

**Transaction Date** the date on which the Foreign Exchange Transaction is agreed.