

Terms & Conditions

The parties to this agreement are: The Currency Cloud Ltd "TCC", of Ground Floor, 6-8 Fenchurch Buildings, London EC3M 5HT (registered and trading address). TCC is registered, in England and Wales with company registration number 6323311 and the client named in the account opening form attached to these terms and conditions (the 'Client'). TCC is Authorised by the Financial Services Authority (FRN 531019) for the provision of payment services and with HM Revenue & Customs as a Money Services Business "MSB" (Reg. No. 12272696).

1.1. TCC provides facilities for the purchase or sale of currencies for both commercial and personal purposes. TCC contracts with Clients are for settlement or delivery. That is, at maturity the Client must take delivery of funds to a bank account. TCC provides its services to clients for the fulfillment of international payments and/or hedging of assets and not for speculative purposes. TCC's staff do not provide advisory services.

1.2. The Client wishes to enter into a contract or contracts for the purchase, sale and delivery of currency with TCC and the Client agrees with TCC that all transactions shall be carried out on the terms and conditions (the 'Terms') set out below. The Client confirms that:

(a) it has or will have a personal or commercial need for the currency which is the subject of each transaction and no transaction will be for the purpose of speculation or investment; and

(b) it is acting on its own account and not on behalf of any other person.

1.3. Please note that foreign currency exchange rates are subject to fluctuations outside the control of TCC. Historical performance is no indicator for future performance.

1.4. It is important that the Client reads and understands these Terms, which will apply to all dealings between the Client and TCC. If there are any terms that the Client does not understand or does not wish to agree to, it should discuss it with TCC before signing the Account Opening Form. The Client should only sign the Account Opening Form if it agrees to be bound by these Terms.

2. TCC'S SERVICES

2.1. TCC will, when it decides to do so, enter into contracts for the sale, purchase and delivery of currency ('Contracts') with the Client. Contracts may, without limitation, include:

(a) spot contracts under which currency is bought and sold for delivery immediately against receipt of payment;

(b) fixed forward contracts under which currency is bought and sold for delivery at a fixed future time;

(c) open forward contracts under which currency is bought and sold for delivery at a time subsequently instructed by the Client within an agreed period or, failing such instructions, at the end of the agreed period;

(d) In the event of a Forward Trade the Client shall immediately pay a part payment as Margin as specified by TCC, into the Nominated Account in cleared funds. The Client shall pay any outstanding balance of the sold currency into such Nominated Account not later than one Working Day before the Value Date of the particular Forward Trade. TCC reserves the right to make a Margin Call to re-establish the Margin to the original percentage level agreed for the particular Trade if the Margin subsequently falls below that threshold. TCC reserves the right to make a Margin Call in excess of the original percentage level agreed for any particular Trade, and

(e) limit orders under which currency is bought and sold for delivery if and when an agreed exchange rate is available.

2.2. TCC will always contract as principal with the Client and deal with the Client on an execution only basis.

2.3. TCC will not provide advice to the Client upon the merits of a proposed currency transaction or provide taxation or other advice to the Client (although it may provide information to the Client from time to time). In entering a Contract the Client must not treat any information or comments by TCC as advice and must rely only on its own judgment (or the judgment of any third party adviser).

2.4. The Client must take physical delivery of and pay for the currency in question on the date specified in the Contract Note (as defined in Clause 3.2) (the 'Maturity Date'), and, if advance or installment payments are called for by TCC in the Contract Note or under Clause 4, to make such payments at such time or times as TCC may require to fulfill the Contract.

3. INSTRUCTIONS

3.1. The Client may give TCC electronic, oral or written instructions relating to a transaction for the purchase or sale and delivery of currency (the 'Order'). The Client may authorise any other person (an 'Authorised Person') to give Orders on its behalf and TCC is entitled to act upon instructions which are or appear to be from the Client or any Authorised Person.

3.2. Following receipt of an Order, TCC shall, if it is willing to accept the Order, agree electronically or orally with the Client the terms on which it is willing to enter into a Contract and shall subsequently fax or transmit electronically to the Client a contract note which will confirm the details of the Order (the 'Contract Note').

3.3. Once TCC has transmitted a Contract Note confirming an Order, the Client may only amend or cancel the Contract Note if TCC expressly agrees (and any such amendment or cancellation shall be on the conditions specified by TCC) or otherwise in accordance with the provisions of Clause 3.6.

3.4. TCC may at its absolute discretion refuse any Order or instructions given by the Client without giving any reason, or being liable for any loss the Client suffers as a result of such refusal.

3.5. TCC may (but shall not be obliged to) require further confirmation or information from the Client or Authorised Person of any Order or instruction if:

(a) TCC considers that such confirmation or information is desirable or that a Order or instruction is ambiguous; or

(b) the instruction is to close the Client's account or to remit the Client's funds to a third party.

3.6. The Client does not have any right under the Financial Services (Distance Marketing) Regulations 2004 to cancel any Contract, however it may terminate a Contract entered into under these Terms prior to the Maturity Date of such Contract by giving written notice to TCC by fax or email SUBJECT TO the following conditions:

(a) each party will remain liable to perform accrued but unperformed obligations which have fallen due before termination, but all other rights will cease upon such termination;

(b) the Client will be liable for all of the costs, expenses and losses (and interest at the rate referred to in Clause 5 on any such sums) that TCC may incur (including any action it may take to cover or reduce its exposure) as a result of TCC entering into such Contract with the Client (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to such Contract). Any excess amount held by TCC in respect of Contract shall be returned to the Client after deducting all other sums due to TCC.

4. PAYMENT

4.1. The Client shall pay by electronic transmission (or by such other means as agreed with TCC in any particular case) in cleared funds into a bank account nominated by TCC (the 'Transaction Account') the full value of the currency to be sold by the Client under the Contract (the 'Sale Currency') including, in the case of any Contract which is not a spot contract, such installments thereof as may be specified in the Contract Note and/or as TCC may subsequently notify the Client from time to time. Failure by the Client to pay the full value or any such installment shall relieve TCC of any obligation to make any corresponding payment it may be required to make under the relevant Contract.

4.2. (a) Where the Transaction Account is held in a UK bank, or with an FSA regulated institution, TCC will hold and operate the account as a segregated client account. This means TCC shall hold the money in this account on trust for its clients for the purposes set out in Clause 4.2(b) and shall only make payments out of the Transaction Account or apply sums held in it in accordance with the Client's instructions, or as otherwise specified in clause 4.2(b).

(b) The purposes for which money in the Transaction Account is held and may be applied, withdrawn or transferred by or on behalf of TCC are:

(i) settlement of transactions between TCC and any of its clients;

(ii) payment of other sums due and payable to TCC by TCC's clients under these Terms or under any Contract including without limitation advance or installment payments, transfer charges and interest;

(iii) payment of sums due to TCC's clients in accordance with their instructions;

(iv) repayment to TCC of sums owned by TCC and temporarily paid by it into the Transaction Accounts; and

(v) withdrawal or retention of interest by TCC in accordance with Clause 5.2.

(c) The Transaction Account is one in which money received from all TCC's Clients is pooled and applied as set out in Clause 4.2(b) for all of TCC's clients. It is not an individually segregated account of the Client.

4.3. The Client must make sure cleared funds are received in the Transaction Account for the full amount of the Sale Currency and any applicable transfer charges on or before the Maturity Date.

4.4. TCC will not make any payment under any Contract without first having received confirmation satisfactory to it that cleared funds for all sums due and payable by the Client to TCC have in fact been received.

4.5. The Client must make all payments under these Terms in full without any deductions, set-off, counterclaim or withholding of any kind.

4.6. TCC may deduct from any payment to be made to the Client any amount the Client may owe to TCC or any fees, costs, taxation liabilities, or charges incurred by TCC in respect of any transaction with the Client, however they arise.

4.7. Clients should be aware that receipt of funds from TCC into their nominated/beneficiary bank account may result in charges being applied by the beneficiary/receiving bank. Any charges applied by a beneficiary/receiving bank are outside of the control of TCC. The client should therefore contact the bank directly with regards to any charges that maybe applied against funds received by the bank prior to them crediting the beneficiary account.

5. INTEREST

5.1. If the Client fails to make any payment required under these Terms when it falls due, interest will be charged on the outstanding sum at a rate of five per cent per annum over the base rate of the Bank of England (or of such monetary authority as may replace it). Such interest shall accrue and be calculated daily from the date payment was due until the date the Client pays in full and shall be compounded monthly.

5.2. TCC may receive and retain or apply for its own benefit any interest that arises in respect of any sum paid into the Transaction Account.

6. CHARGES

TCC's charges will be as set out in the Contract Note. The Client understands that because TCC deals as principal the exchange rate it offers the Client will not be the same as the rate TCC obtains itself.

7. DISPUTES

If a dispute arises between TCC and the Client relating to the existence or terms of any Contract (a 'Disputed Contract'), TCC may close out or take any other action it reasonably considers appropriate in relation to the Disputed Contract (which may include suspension of performance of the Disputed Contract) pending settlement of the dispute without previously notifying and/or without having received instruction from the Client. TCC will try to notify the Client (orally or in writing) what action it has taken, as soon afterwards as it practically can, but if it does not, the validity of its action shall not be affected.

8. REPRESENTATIONS AND AGREEMENTS

8.1 The Client represents to TCC that, both at the date of acceptance by the Client of these Terms and at the time each Order is made and Contract is entered into and carried out:

(a) the Client is acting as principal for its own account and has full power and authority and has taken all necessary steps to enable it lawfully to enter into and perform these Terms and every Contract under these Terms;

(b) all sums paid to TCC under these Terms belong to the Client and are not subject to any charge or other rights of third parties;

(c) all information supplied to TCC by the Client is, or at the time it is supplied will be, accurate in all material respects and the Client will not omit or withhold any information which would make such information inaccurate in any material respect; and

(d) the Client has a valid commercial or personal reason for requiring the currency it buys under each Contract, will not enter into any Contract for investment or speculative purposes and will take physical delivery of the currency bought.

8.2. the Client will provide to TCC on request such information regarding its financial and business affairs and/or identity, as TCC may reasonably require (including without limitation any information required for TCC to be able to comply with its anti-money laundering obligations).

9. ADDITIONAL CONDITIONS FOR FORWARD CONTRACTS

9.1. The Client will be required to notify TCC not less than 24 hours before the Maturity Date of any forward Contract or any draw down with the details of the beneficiary, the payment means and delivery instructions.

9.2. Subject to any facility, TCC will require an agreed security payment from the Client for each order for a forward Contract and TCC will be entitled to request from the Client additional security payments in amounts notified by TCC to the Client in the event of exchange rate fluctuations at any time prior to the Maturity Date.

9.3. With TCC's agreement the Client may draw down against a forward Contract at any time up until its Maturity Date.

9.4. TCC may agree with the Client at any time prior to the Maturity Date to roll forward all or part of a Forward Contract until a later date upon agreement as to the terms and amounts payable by the Client to TCC.

10. DEFAULT, CLOSE OUT & REFUSAL TO PERFORM

10.1. TCC may refuse to perform or may close out all or any part of any Contract, with no liability for any losses that may be sustained as a result and without giving notice to the Client or receiving any instructions from the client, upon or at any time after the happening of any of the following events:

- (a) the Client fails to make any payment when due under these Terms or any Contract;
- (b) the Client dies or, in TCC's opinion, becomes of unsound mind;
- (c) the Client suspends payment of its debts, makes or takes steps with a view to making any composition or similar arrangement with its creditors, has a receiver appointed of some or all of its assets, takes or has any proceedings taken against it in bankruptcy, winding up or administration or takes or allows any steps to be taken for its winding up or administration (except for a solvent amalgamation or reconstruction approved in advance in writing by TCC) or anything similar to any of these events happens to the Client anywhere in the world;
- (d) the Client fails in any respect fully and promptly to comply with any obligations to TCC under these Terms or otherwise or if any of the representations of or information supplied by the Client are or become materially inaccurate;
- (e) it becomes or may become unlawful for TCC to maintain or give effect to all or any of the obligations under these Terms or otherwise to carry on its business or if TCC or the Client is requested not to perform or to close out a Contract (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding; or
- (f) TCC considers it necessary to do so for its own protection including (without limitation) in the following circumstances: (i) protection from fraud; (ii) protection from Client default; (iii) protection from market failure; (iv) protection from adverse or volatile market conditions; and (v) protection from loss by TCC.

10.2. If the Client becomes aware of the occurrence of any event referred to in Clause 10.1(a) to (e), it shall notify TCC immediately.

10.3. If any event referred to in Clause 10.1(a) to (f) takes place TCC shall at its discretion be entitled to cancel any Contract then outstanding and charge the Client with all of the costs, expenses and losses (and interest at the rate referred to in Clause 5 on any such sums) that TCC may incur (including any action it may take to cover or reduce its exposure) as a result of TCC entering into Contracts with the Client (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to the Contracts). Any excess amount held by TCC in respect of Contracts shall be returned to the Client after deducting all other sums due to TCC.

10.4. If for any reason a Contract is closed out or does not proceed to completion, TCC will send to the Client any sum due to the Client or a notice setting out the sum due from the Client. The Client shall bear all the losses/expenses of TCC whatsoever that may arise on account of such close out or cancellation, and TCC shall have the right to use any monies of the Client held by it to offset such amounts as are owed by the Client to TCC. For such purpose, TCC shall be entitled to convert any currency held by it and such conversion shall be at the rate of exchange available to it. The Client shall pay for any fee or charge that TCC incurs as a result of such conversion.

10.5. TCC shall not be responsible in any way for any delay in payment by it under these Terms caused by the Client or any other third party, including but not limited to bank delay, postal delay, failure or delay of any fax or electronic transmission or delay caused by accident, emergency or act of god. For the avoidance of doubt the Client accepts that the Client is solely responsible for ensuring that all payments required from the Client under any transaction between the Client and TCC are made promptly and within the time limits specified by the particular Contract.

10.6. If the Client wishes to change the beneficiary details or delivery instructions, it may do this by giving written notice to TCC by fax, email or pdf. TCC will use its reasonable endeavors to act on such notice, however, TCC cannot guarantee such notice will be received or acted upon immediately and TCC will continue to act in good faith in accordance with all Contracts and instructions received prior to receipt of such notice. In any event, where TCC is unavoidably committed to processing a Contract or incurring other costs, liabilities or obligations in accordance with the Client's previous instructions, TCC shall be entitled to proceed with the relevant Contract or instructions.

11. LIMITATION OF LIABILITY AND INDEMNITY

11.1. (a) TCC shall not be liable to the Client for any delay or failure to perform its obligations under these Terms or any Contract by reason of any cause beyond the reasonable control of TCC, but TCC shall try to perform those obligations as soon as it reasonably can in any event. The maximum liability of TCC, whether arising in contract, tort or otherwise shall in no circumstances exceed an amount equal to the currency sold by TCC under the Contract.

(b) If TCC fails to perform its duties under a Contract, TCC shall in no way be liable to the Client for any consequential or indirect loss (such as loss of profits or opportunity) the Client may incur as a result.

11.2. The Client shall, on demand by TCC, compensate TCC from and against all liabilities, damages, losses and costs (including reasonable legal costs), duties, taxes, charges, commissions or other expenses incurred by TCC in the proper performance of its services or the enforcement of its rights under these Terms and, in particular, but without limitation, against all amounts which TCC may certify to be necessary to compensate it for all liabilities, damages, losses and costs

(including reasonable legal costs), duties, taxes, charges, commissions or other

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expenses incurred by TCC (including loss of profit and losses and expenses from any action TCC takes to seek to cover or reduce its exposure under any Contracts) as a result of:

- (a) the Client breaching any terms of these Terms or any Contract;
- (b) TCC acting on a written, oral, telephone, fax or electronic Order which reasonably appeared to TCC to be, from the Client or an Authorised Person; or
- (c) TCC or the Client exercising its rights under these Terms to close out all or any part of any Contract before its applicable Maturity Date.

11.3. The provisions in this clause 11 shall survive termination of any Contract or other agreement under these Terms and TCC's certificate under clause 11.2 shall, unless it is manifestly inaccurate, be conclusive.

12. GENERAL

12.1. These Terms set out the entire agreement and understanding of the parties on their subject matter and supersede all previous oral and written communications on the same subject matter.

12.2. TCC may amend these Terms by notice in writing to the Client at any time and such amendment shall take effect from the date specified by TCC but may not affect any rights or obligations that have already arisen and will not be retrospective. Otherwise, these Terms may only be varied by the written agreement of TCC and the Client.

12.3. If at any time any provision of these Terms or any Contract is or becomes illegal, invalid or unenforceable under the laws of any jurisdiction, neither the legality, validity or enforceability of such provision under the laws of any other jurisdiction nor the legality validity or enforceability of any other provision of these Terms or any Contract shall in any way be affected as a result.

12.4. If a party fails to exercise or delays in exercising any right under these Terms, by doing so it does not waive such right. The rights provided in these Terms do not exclude other rights provided by law.

12.5. The parties agree to:

- (a) the electronic recording by either party of telephone conversations between the parties with or without an automatic tone warning device; and
- (b) the use of such recordings as evidence by either party in any dispute or anticipated dispute between the parties or relating to dealings between the parties.

12.6. If TCC makes any recordings or transcripts it may also destroy them in accordance with its normal procedures.

12.7. The Client acknowledges and agrees that TCC is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's, or any shareholder of the Client's, identity and credit standing. If such searches are carried out, TCC may keep records of the contents and results of such searches in accordance with all current and applicable laws.

12.8. If the Client has any complaint regarding any Contract it should in the first place contact TCC on +44 (0) 203 326 8165 alternatively email compliance@thecurrencycloud.com

12.9. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms or to any Contract.

13. DATA PROTECTION

13.1. The Client authorises TCC to collect, use, store or otherwise process any personal information provided by the Client or from the searches referred to at Clause 12.7 above. ("Personal Information") to enable TCC and/or members of its group and/or the organisation which introduced or referred the Client to TCC to provide and/or improve its services. This may mean passing Personal Information to individuals or organisations that may be located in countries outside the European Economic Area ("EEA"). Where the Client's Personal Information is transferred outside the EEA, TCC will take steps to ensure that it is appropriately protected.

13.2. TCC may also use the Personal Information to provide the Client with news and other information on TCC's services and activities that may be useful to the Client, subject to the Client's consent. If the Client would prefer its Personal Information not to be used for such purposes, it should contact TCC at the above address. The Client has indicated below where it consents to receiving information on such services and activities.

13.3. TCC may pass on Personal Information to any organisations that TCC considers may be of assistance to the Client (which may be located outside the EEA) so that they may contact the Client with details of products and services that may interest the Client, subject to the Client's consent. The Client has indicated below where it consents to receiving information from such organisations (including by e-mail or other electronic means) and where it consents to receiving information from organisations outside the EEA.

13.4. Other than as stated in these Terms or in our Privacy Policy (which is available on our website), TCC will not disclose the Client's Personal Information.

13.5. If the Client wishes to obtain a copy of its Personal Information, it should contact TCC on its helpline 44 (0) 203 290 9961

14. USE OF THE ONLINE SYSTEM (WHERE APPLICABLE)

14.1. The Client will be required to complete a user set up form providing details of any Authorised Person whom may use any online system that TCC may make available to the Client (an "Online System"), and any system restrictions and limits prior to the Client being granted access to access to the Online System. Such access will be on the terms and conditions as to the use of the online system as may be available by TCC to the Client (the "Online User Guide"), which shall form part of these Terms. This Clause 14 applies subject to the provisions of the Online User Guide in relation to the Online System, and if there are any inconsistencies between it and the Online User Guide the provisions of the Online User Guide will prevail. Terms that are not defined in this Clause 14 will have the meaning (if any) given to them in the Online User Guide.

14.2. The Client agrees to use the Online System only in accordance with the Online User Guide and maintain any minimum operating and browser specifications as advised by TCC from time to time.

14.3. The Client agrees to be solely responsible for the protection of all passwords and the Client should notify TCC immediately of any actual or suspected compromise of any password.

14.4. If there are any interruptions in the Online System which result in the Client being unable to use the Online System the Client should fax or telephone Orders to TCC.

15. APPLICABLE LAW AND LANGUAGE

These Terms and any relationship between TCC and the Client shall be governed by English law and subject to the exclusive jurisdiction of the English courts. All communications between the Client and TCC shall take place in English.