

## **CURRENT TERMS AND CONDITIONS**

### **FOREIGN EXCHANGE AGREEMENT**

#### **1.0 Introduction**

1.1 This Foreign Exchange Agreement is entered into between the Client or the 'Confirmation' ("**the Client**") and Collinson Forex Limited of Collinsons & Co, as specified on the Confirmation ("**Collinson's**").

Collinson's provides services for the sale and purchase of foreign currency ("**Forex Transactions**")

1.2 Each Forex Transaction between Collinson's and the Client will be always subject to terms and conditions:

#### **2.0 Forex Transactions**

2.1 A Forex Transaction may be of any type agreed between Collinson's and the Client, for the sale or purchase of currency including but not limited to those known in the industry as:

Spot, Forward, Option and other Derivative Contracts as specified in the Confirmation.

2.2 Forex Transactions may be entered into either verbally, electronically or by written agreement between Collinson's and the Client.

2.3 Where a Forex Transaction is entered into Collinson's shall promptly confirm the terms by completing a written Confirmation of the Forex Transaction ("**Confirmation**"). The failure of Collinson's to do so will not prejudice the rights or obligations of either party under such contract.

2.4 Unless the Client notifies Collinson's of any error or omission immediately upon receipt of any Confirmation, the Client shall be deemed to have ratified and accepted the contents of such Confirmation. The Client shall not thereafter be entitled to dispute the contents of any such Confirmation and it shall (except where there is manifest error accepted by Collinson's) be conclusive evidence of the matters stated in it.

2.5 In entering into Forex Transactions, Collinson's acts as a principal and not as a broker or an agent of the Client.

#### **3.0 Limit Orders**

3.1 Collinson's will accept, on a 'best endeavours basis' only, Limit Orders from the Client to enter into a new Forex Transaction or to Close Out an existing Forex Transaction.

3.2 All Limit Orders, once accepted by Collinson's, are valid until filled by Collinson's or until the Client's request to cancel is accepted by Collinson's.

3.3 New Limit Orders placed by the Client and requests by the Client to cancel existing Limit Orders are subject to written acceptance by Collinson's.

- 3.4 New Limit Orders may not be filled, or cancelled, Limit Orders may be filled, prior to written acceptance by Collinson's of the new or cancelled Limit Order. In such cases Collinson's will have no liability for new Limit Orders not Filled and the Client will have full liability to settle cancelled Limited Orders that are filled.
- 3.5 The Client accepts that Limit Orders placed to limit losses on existing Forex Transactions ("**Stop Losses**") or to enter into new Forex Transactions at levels less favourable to the Client than the Current Market Rate as quoted by Collinson's ("**Stop Entries**") may at times be filled at a level worse than at which the order was placed. Such difference may, in times of high volatility or low liquidity, result in significant losses to the Client.

#### **4.0 Settlement and Payment**

##### 4.1 Basis of Settlement

- (a) Subject to clause 5.1, settlement obligations in Forex Transactions are to pay money in the currency specified in the Confirmation without any deduction, set-off or counter-claim whatsoever.
- (b) However, Collinson's may at its discretion set off amounts payable to the Client against amounts receivable by the Client on more than one Forex Transaction maturing on the same date upon which settlement is due to be paid by Collinson's ("**Value Date**"). The effect of this will be that only the net difference amount in the currency specified in the Confirmations is settled.

##### 4.2 Client Payments

- (a) All payments must be made in the agreed currency on the day that settlement funds are due to be paid by the client (the "**Balance Date**") without any deduction, set-off or counter-claim whatsoever.
- (b) Any deduction from the amount due by the Client, either as a result of bank charges or otherwise, may be deducted at the Current Market Rate quoted by Collinson's from the amount due to the Client or the Client's Beneficiary or Beneficiaries.
- (c) Payments must be made exactly as requested in the Confirmation.
- (d) Time is of the essence for all payments to be made by the Client and payment dates and times are essential terms of the agreement between the parties. Dates and times mean New Zealand dates and times.
- (e) Where the amount due by the Client is received after the Value Date. Collinson's reserves the right to charge for any funding costs arising from such late payment. These funding costs may either be charged as a fee to the Client or as an adjustment to the original contract rate.

##### 4.3 Collinson's Payments

- (a) Collinson's obligation to perform this agreement is subject to and conditional upon the Client having first paid all amounts required to be paid to Collinson's

under each Forex Transaction. These payments must be received by Collinson's as cleared funds without recourse or Collinson's having cleared payments originally received on a recourse basis.

- (b) Collinson's will not be responsible for, nor have any liability for, any delay in payment of the Client or the Client's Beneficiaries or agents where such delay is caused by any bank or third party.
- (c) Collinson's will not be responsible for, nor have any liability for, bank charges deducted by paying or receiving banks or other financial intermediaries.

## **5.0 Set Off**

5.1 Collinson's may at its discretion at any time set off, deduct or counter-claim any amount which is or may become payable by the Client against any amount which is or may become payable by Collinson's to the Client so that only the net balance remains owing. This right may be exercised whether or not:

- (a) The amounts concerned relate to Forex Transactions.
- (b) The amounts concerned arise under this of a different agreement between Collinson's and the Client.
- (c) The amounts concerned are due in the same of different currencies.

## **6.0 Deposits and Margins**

6.1 Where delivery of currency is due to occur at a date in the future beyond two (2) business days after the Contract Date referred to in the Confirmation ("**Forward Contract**") then delivery is subject to the payment of money of the deposit ("**Initial Deposit**") Collinson's may also make delivery subject to the payment of further deposits ("**Margin Deposits**") by the Client.

6.2 An Initial Deposit (at a rate determined by Collinson's in its absolute discretion) is payable by the Client to secure the Client's obligation under the Forward Contract and will be recorded in the Confirmation issued by Collinson's.

6.3 Collinson's may, in its absolute discretion, raise or lower the Initial Deposit requirement which, once established, may apply to existing as well as to any new Forward Contracts.

6.4 Collinson's may from time to time revalue the Client's Forex Transactions that have not fully matured ("**Open Positions**") by Marking to Market the Clients Open Positions. This is a revaluation based on the Current Market Rate quoted by Collinson's and applying it as if the Open Position was to be Closed at that date. Where such revaluation results in an Unrealized Loss to Collinson's (less any Margin Deposits still retained by Collinson's reducing the value of the Initial Deposit of the Client by more than 50%) Collinson's may in its absolute discretion call upon the Client to make immediate payment of a Margin Deposit sufficient in sum to restore the original value of the Initial Deposit.

- 6.5 Collinson's, in its absolute discretion, may apply Margin Deposits against either one or more Open Positions of the Client and may do so at any time from receipt of, to the repayment of, the Margin Deposits.
- 6.6 Collinson's may, in its absolute discretion reallocate Initial Deposits between Open Positions of the Client where total value of all the deposits applied against individual Open Position records a negative value when that Open Position is revalued by Marking to Market as set out in clause 6.4 above.
- 6.7 Collinson's will, upon request, repay Margin Deposits to the Client when revaluations result in the value of total deposits exceeding Initial Deposits of the Client's total Open Positions or at an earlier time when Collinson's decides it appropriate to make either a full or part repayment. However, in no case shall any Initial Deposit amount be repaid prior to final Settlement of the Open Position to which the Initial Deposit applies.
- 6.8 Unless otherwise stipulated by Collinson's, Initial Deposits are payable by the close of business on the day following the Contract Date recorded in the Confirmation. Margin Deposits are payable by the close of business on the day following the day.
- 6.9 If agreed between Collinsons and the Client, Collinsons will credit the Client any net interest (less any withholding taxes) on all deposits held against the Client's Open Positions. Interest is accrued and paid annually at 31 March in each and every year. For the purposes of interest calculations, all Deposits applied against each individual Open Position are treated as one individual 'at call' deposit and any Margin Deposits not applied against individual Open Positions are treated in total as one individual 'at call' deposit. However, in the absolute discretion of Collinsons, deposits may be adjusted by the amount of any Unrealized Losses (as set out in clause 6.4 above) for the purposes of determining any interest payment.
- 6.10 Payment of all deposits by the Client to Collinsons is essential terms of this Agreement and time is of the essence with respect to them. The deposits are in consideration if and in part performance of the Client's obligations in this Agreement. Unless stated otherwise in the Confirmation, all deposits are paid are the property of Collinsons and are not held by Collinsons as stakeholder, nor are they held in trust for the Client.

## **7.0 Term, Extension and Pre-Deliveries of Forward Contracts**

- 7.1 Unless otherwise agreed in writing by Collinsons, the initial term of a Forward Contract (as described in clause 6.1 above) shall not exceed 12 months from the Contract Date referred to in the Confirmation.
- 7.2 Unless otherwise agreed in writing by Collinsons at the time of entering into a Forward Contract, an extension to any Forward Contract is undertaken as a "Market Rate Roll". Any pre-delivery to any Forward Contract is undertaken as a "Historic Rate Roll".
- 7.3 Extensions undertaken as Market Rate Roll shall not exceed 12 months in duration.
- 7.4 Extensions, which are agreed to as Historic Rate Roll, are limited to no more than three extensions of term within a six-month period with no individual extension having a term greater than three months.

## **8.0 Authority and Communications**

- 8.1 The Client shall be responsible to provide Collinsons with a list of persons authorized to enter into Forex Transactions on its behalf and shall have sole responsibility for ensuring the reliability and communication of the list to Collinsons. Collinsons may rely on the list at all times, but is not bound to inquire or not whether persons who, in dealing with Collinsons, represent themselves as being on the list, or otherwise authorized are in fact duly authorized.
- 8.2 The Client must ensure that all its communications with Collinsons in relation to Forex Transactions are made clearly and in a form acceptable to Collinsons.
- 8.3 Collinsons rely on all communications received by it and believed in good faith to have originated from the Client as if that communication was made by and with the full authority of the Client. Collinsons may assume each communication received is made by and with the full authority of the Client if it is consistent with a practice or established pattern of dealing in Forex Transactions. This includes offers made by a person who has succeeded to a position where the previous holder of that position had the required authority.
- 8.4 The parties agree to the electronic or tape recording by either party of telephone conversations between the parties with or without an automatic tone warning device and the use of such recordings or transcript from such recordings as evidence in any dispute or anticipated dispute.
- 8.5 Any such telephone recordings or transcripts of such recordings made by Collinsons may be destroyed by Collinsons in accordance with Collinson's normal practice and without notice to the Client.

## **9.0 Amendment to Termination**

- 9.1 Collinsons may from time to time amend, alter, modify, substitute or supplement the terms and conditions of this Agreement. If an Agreement had been actually signed (electronically or otherwise) between Collinsons and the Client, then Collinsons shall give two Business Days notice in writing of such change. Unless otherwise terminated by the Client in accordance with provisions of Clause 9.3, the Client will be deemed to have accepted such changed terms and conditions.
- 9.2 The terms and conditions upon which a Client enters into new Forex Transactions under this Agreement are those terms and conditions (as so amended, altered, modified, substituted or supplemented under Clause 9.1) in force at the time the Client enters into a new Forex Transaction.
- 9.4 If the Agreement is terminated, Collinsons in its absolute discretion may Close Out all Open Positions of the Client in accordance with Clause 10.4.

## **10.0 Default Events**

- 10.1 The following events constitute Default Events.

- (a) The Client breached or fails to comply with any terms of the Confirmation of this Agreement or any terms of each Forex Transaction including, but not limited to, the failure to pay an amount due within the stipulated time including Initial Deposits and Margin Deposits.
  - (b) If any dispute arises between Collinsons and the Client relating to the Confirmation (as referred to in Clause 2.4 of this Agreement).
  - (c) The Client commits any act of insolvency, bankruptcy, suspends payment of its debts, makes a composition with any of its creditors or any steps are taken to appoint a receiver, statutory manager, liquidator or provisional liquidator or to bankrupt or wind up the Client.
  - (d) The Client, if an individual, dies or becomes of unsound mind or mentally disordered (in the sole opinion of Collinsons).
  - (e) The Client fails to adequately disclose the nature of and reason for any settlement of purchased currency when requested by Collinsons acting within the guidelines of the Financial Transactions Reporting Act 1996 (a New Zealand Statute) and any amendments thereto or any similar legislation of a jurisdiction other than New Zealand or any legislation of an Exchange Control nature of any jurisdiction.
  - (f) If it becomes unlawful for Collinsons to maintain or give effect to all or any of the obligations under this Agreement or if Collinsons or the Client is requested to close a Contract, or any part thereof, by any regulatory authority whether or not that request is legally binding.
- 10.2 If any Default Event occurs Collinsons shall have the right to Close Out any Forex Transactions of the Client including the right to Close Out all or any part of the Client's Open Position without giving prior notice to or receiving authority from the Client.
- 10.3 The Client unconditionally and irrevocably appoints Collinsons as its agent with all necessary authority to carry out any action to protect Collinsons's position and do these things in the basis that Collinsons will not be liable for action taken in good faith, following a Default Event.
- 10.4 If Collinsons chooses to Close Out one or more of the Client's Open Positions following a Default Event, then those Forex Transactions will be immediately cancelled as follows: -
- (a) Collinsons will sell back to the Client (at Current Market Rates as quoted by Collinsons) the currency originally purchased by Collinsons, or will buy back from the Client (at Current Market Rates as quoted by Collinsons) the currency originally sold by Collinsons.
  - (b) The net difference, if other than New Zealand Dollars ("NZD"), shall be immediately converted to NZD by Collinsons (at Current Market Rates as quoted by Collinsons).
  - (c) Where the aggregate amount of NZD due to the Client (including deposits and any accrued interest applied against the Open Positions is Closed Out) is greater

than the aggregate amount of NZD due to Collinsons, then the difference will be payable immediately by Collinsons to the Client as directed.

- (d) Where the aggregate amount of NZD due to the Client (including deposits and any accrued interest applied against the Open Positions is Closed Out) is less than the aggregate amount of NZD due to Collinsons, then the difference will be payable immediately by the Client to Collinsons as directed.

10.5 If any payment due by the Client arising from a default event is not paid on the Balance Date, then the Client must pay to Collinsons interest on the amount unpaid (both before and after judgement). The interest rate per annum will be equal to Collinson's cost of funds as determined by Collinsons plus an additional 5% Pa, of the said amount unpaid.

10.6 The Client must also pay to Collinsons, "upon demand", such other amounts as are necessary to compensate Collinsons for any other damages, losses, costs (including any legal costs or costs of collection on a solicitor-client basis) and expenses arising out of, or consequential to any Default Event.

10.7 Collinson's certificate as to the amount due under clauses 10.4 (c) & (d) and 10.6 will be conclusive.

## **11.0 Indemnity**

11.1 The Client shall at all time indemnify (and keep indemnified) Collinsons for all losses which Collinsons suffers:

- (a) in it's proper performance of services to the Client; or
- (b) where the Client fails to honour it's obligations under this or any other agreement; or
- (c) where Collinsons exercises it's right under clause 10.2 above; or
- (d) on the happening of a Default Event.

11.2 Such losses include (but are not limited to) all costs of collection (including Collinson's actual legal costs), expenses, liabilities, loss of profits, consequential losses, costs incurred to third parties, and costs incurred in taking such actions as Collinson (in it's absolute discretion) considers reasonable to mitigate any losses it incurs or could incur.

11.3 The certificate of Collinsons as to the amount due under Clause 11.2 shall, except for manifest error be conclusive.

## **12.0 Limitation of Liability**

12.1 Any defect in the Forex Transaction provided by Collinsons shall not entitle the Client to cancel this Agreement.

12.2 Collinsons contracts with the Client for the sale and purchase of foreign currency only. The Client acknowledges that all contracts are entered into at its own risk and that, subject to Collinsons complying with the Client's instructions as to delivery of currency,

no liability whatsoever shall attach to Collinsons in respect to any losses suffered by the client as a result of a Forex Transaction.

- 12.3 Without limited or expanding the other terms of this Agreement, the Client's sole remedy against Collinsons will be limited to breach of contract. Collinson's sole and total liability for such claim shall be limited to the re-supply of the Forex Transaction again at the original rate.
- 12.4 Subject only to Collinson's liability for breach of contract (if any) pursuant to clause 12.3 above Collinsons (together with any of its employees, agents and Directors) will not be liable to the Client for any form of loss or damage or claims. Such claims include breach of contract, statute or duty in tort (including negligence) or any other claim in equity or otherwise at law for any losses or damages.
- 12.5 Notwithstanding anything else herein contained or implied, Collinsons enters this Agreement as a business or trade transaction with the Client and to the fullest extent possible, excludes all of its legal liabilities under any relevant consumer protection legislation (including, in New Zealand, the Consumer Guarantees Act 1993).
- 12.6 The client at all time relies on its own judgement only and although Collinsons may provide information to the Client from time to time, it will not provide advice to the Client upon the merits of a proposed Forex transaction or provide taxation or other advice to the Client. Any information that may be given to the Client by Collinsons will be on the basis that it is provided in good faith and with Collinson's 'best endeavours' undertaking not to be misleading. However, Collinsons does accept liability for any losses or damage incurred by the Client (whether direct or indirect) as a result of such advice or information. Clients act upon any advice or information from Collinsons entirely at their own risk.
- 12.7 There clauses 12.1 to 12.7 inclusive shall survive termination of this Agreement.

### **13.0 Representations and Acknowledgements**

- 13.1 The Client represents and warrants that:
- (a) No available act of bankruptcy or insolvency exists at the Contract Date of any Forex Transaction.
  - (b) All Forex Transactions are in the normal course of business or are legitimate commercial or investment activities and none are in contravention of the Financial Transactions Reporting Act 1996 (a New Zealand statute) and any amendments thereto or any similar legislation of a jurisdiction other than New Zealand.
  - (c) All Forex Transactions are and will be on its own behalf unless otherwise disclosed to Collinsons and where such disclosure has been made Collinsons may in its absolute discretion decline to enter into the Forex Transaction, The Client will provide to Collinsons, upon request, such information regarding its financial and business affairs and identify as Collinsons reasonable require.

- (d) All sums by way of deposit or other settlement are the unencumbered property of the Client and do not and will not constitute any preferential payment to Collinsons.
- (e) It will advise Collinsons of any change in its circumstances as set out above, before any Settlement.

13.2 The Client acknowledges that:

- (a) Entering into Forex Transactions carries the risk of loss as well as the prospect of profit.
- (b) It is the Client's responsibility to advise Collinsons the name(s) and account details of any party to receive the benefit of the Forex Transaction ("**the Beneficiary**") together with the amount of currency purchased by the Client to be settled to that Beneficiary. Unless so advised, Collinsons will hold the purchased currency on behalf of the Client without any obligation to pay interest to the Client on the amounts so held.
- (c) It is aware the Collinsons may, on its own account or on behalf of other Clients, enter into Forex Transactions that may run counter to the Clients interests. Collinsons is entitled to do so and owed no duty of disclosure or care to the Client in respect of such Forex Transactions.

**14.0 Force Majeure**

14.1 Collinsons shall not be liable for any loss suffered by the Client as a result of Collinson's non-performance by reason of impossibility, illegality, impracticability or generally as a result of circumstances beyond Collinson's control including (but not limited to):

- (a) any requirement to comply with any law or direction of any kind which financial institutions like Collinsons customarily obey; or
- (b) events arising directly or indirectly from the occurrence of any natural or man made disaster, armed conflict, act of terrorism, riot, labour disruption,
- (c) computer or electronic communication or funds transfer failure; or
- (d) any bank's or other financial institution's errors, delays or miscalculations.

**15.0 Proper Law and Jurisdiction**

15.1 This agreement shall be governed by New Zealand law in every particular including formation and interpretation and shall be deemed to have been made in New Zealand;

- (a) Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction in New Zealand;
- (b) The submission by the parties to such jurisdiction shall not limit the right of Collinsons to commence proceedings arising out of this agreement in any other jurisdiction it may consider appropriate;

- (c) Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 18.0.

## **16.0 Dispute Resolution**

- 16.1 If at any time a dispute arises between Collinsons and the client relating to the existence or terms of any Contract, Collinsons may at any time in its discretion without prior notice to or any further authority from the Client take whatever action that it considers appropriate in relation to the disputed Contract (including Closing Out any or all contracts of the Client). Collinsons will notify the Client (verbally or in writing) as soon as it is practically possible thereafter of any action it has taken but any failure by Collinsons to give such notice will not prejudice the validity of such action.

## **17.0 Assignment**

- 17.1 The Client may not, without prior written consent of Collinsons transfer this Agreement or any interest or obligation in or under this Agreement and any purported transfer without such consent shall be null and void.

## **18.0 Notices**

- 18.1 Except as otherwise set out in this Agreement, any notice, demand or other communication to be given by one party to the other pursuant to the Agreement shall be in writing. Such notice shall be delivered or sent to the parties at their respective addresses set out below or by facsimile or email to the following numbers:

- (a) In the case of Collinson:

Collinson & Co  
Level 8  
West Plaza  
Auckland, New Zealand  
P O Box 5068, Wellesley Street  
Auckland, New Zealand

Facsimile: +64 9 303 1674      Email: [forex@collinsonfx.com](mailto:forex@collinsonfx.com)

- (b) In the case of the Client:

To the postal, facsimile or email address as advised in the annexure to this Agreement or to other addresses, facsimile or e-mail numbers or addresses as one party may time to time notify in writing.

## **19.0 Definitions and Interpretations**

- 19.1 In this Agreement and any Confirmations the following terms shall have the following meanings:

**“Agreement”**: The terms and conditions of concluding business between the parties in this document.

**“Balance Date”**: The day on which any Settlement funds due by The Client are to be paid.

**“Beneficiary or Beneficiaries”**: The party or parties receiving the benefit due to Clients arising from Forex Transactions.

**“Business Day”**: A day in which the Banks and the Foreign Exchange Market are open for business and Settlements for the currencies specified on a Forex Transaction.

**“Client”**: The party specified on the ‘Application to Open an Account’ attached to this Agreement.

**“Close Out”**: The reversal of a Forex Transaction at the then Current Market Value or Rate.

**“Confirmation”**: The written advice given by Collinsons to the Client recording the essential dates and currency amounts in the Forex Transaction.

**“Contract Date”**: The day on which a Forex Transaction is entered into by the parties as recorded in the Confirmation.

**“Contract Market Value (or) Rate”**: The current market rates quoted by Collinsons.

**“Collinsons”**: Collinson & Co, Collinson Forex Limited.

**“Extension”**: Transfer of settlement obligations (in full or part) of the parties to a date following the original Value Date of the Forex Transaction as recorded in the Confirmation.

**“Forex Transaction”**: The sale and purchase of foreign currency.

**“Forward Contract”**: When delivery of currency is due to occur on a date in the future beyond two (2) business days after the Contract Date referred to in the Confirmation.

**“Historic Rate Roll”**: Extensions or Pre-Deliveries with the rate adjustment based on the original rates of the Forex Transaction as recorded in the Confirmation.

**“Initial Deposit”**: The sum of money required to be paid to Collinsons to secure a Forward Contract.

**“Limit Order”**: An order by the Client to enter a Forex Transaction at a rate more favourable to the Client than the Current Market Rate as quoted by Collinsons.

**“Margin Deposit”**: The sum of money required to reinstate part or all of the diminished value of Initial Deposits arising from Marking to Market Open Positions.

**“Market Rate Roll”**: Extensions or Pre-Deliveries with rate adjustment based on Current Market Rates as quoted by Collinsons.

**“NZD”**: New Zealand Dollars.

**“Open Position”**: Forex Transactions where Settlement obligations still remain.

**“Pre-Deliveries”**: Transfer of Settlement obligations (in full or in part) to a date prior to the original Value Date of the Forex Transaction.

**“Settlement”**: The completed delivery of currency by both parties.

**“Spot Contract”**: An agreement where the delivery of currency is due to occur in the second business day after the Contract Date specified on the Confirmation.

**“Stop Entry”**: An order to enter into a new Forex Transaction at a rate less favourable to the Client than the Current Market rate as quoted by Collinsons.

**“Stop Loss”**: An order to enter an existing Forex Transaction at a rate less favourable to the Client than the Current Market Rate as quoted by Collinsons.

**“Unrealized Loss”**: Loss or losses sustained by Collinsons arising on Marking to Market Open Positions as Current Market Rates.

**“Value Date”**: The day on which any Settlement due by Collinsons is to be paid.

19.2 In this Agreement unless the context otherwise states:

- (a) Words denoting the singular shall include the plural and vice versa and words denoting a given gender shall include all other genders.
- (b) Headings are for convenience only and shall not affect the interpretation of this Agreement.
- (c) References to clauses are to clause of this Agreement.
- (d) These Terms and Conditions of Business are dated 22 March 2001 and supersede all previous Terms and Conditions of Business.