



## TERMS OF BUSINESS

© FOREX CAPITAL MARKETS AUSTRALIA LTD

Return to:

**Forex Capital Markets Australia Ltd.**  
**Suite 2, Level 18**  
**420 George Street**  
**Sydney, NSW 2000**

**Australia Tel:** 1800 109 751 | Fax 1800 195 619  
**New Zealand Tel:** 0800 450 331 | Fax 0800 450 209  
**International Tel:** +1 212 609 2952 | Fax +1 212 201 7309  
**E-mail:** [support@fxcm.com.au](mailto:support@fxcm.com.au)  
**Freephone (UK Residents):** +0808 234 8789

## **Introduction**

These terms of business, together with the Schedules and accompanying documents, as amended from time to time ("Terms of Business") apply to Retail and Wholesale clients of FXCM Australia Limited ("FXCM"). **If you are a United States Resident, you are ineligible to enter into any CFD (defined below) transaction and therefore any reference to CFDs in these Terms of Business does not apply to you.**

These Terms of Business set out the terms of the contract between you and us. These Terms of Business are legally binding and shall take effect and be deemed accepted when we receive your executed signature page to these Terms of Business.

We will deal with you on an execution only basis at all times. Please note that we shall not provide you with any advice on the merits of you entering into these Terms of Business or any Transaction. We shall not provide you with any tax advice on the same. You may wish to seek independent advice before entering into these Terms of Business and/or any Transaction.

## **Contents**

General Terms

Schedule 1 – Elective Wholesale Client Notice.

Schedule 2 – Complex Products - General Risk Disclosure Notice.

Schedule 3 – Contracts for Differences Supplement.

Schedule 5 – Account Opening Forms and Signature Page.

These Terms of Business set out important aspects of the relationship between FXCM and its clients. If there is any aspect of these Terms of Business that you do not understand or where you require further information you should contact Client Services at FXCM Australia Limited at the information below:

**FXCM Australia Limited**  
**Suite 2, Level 18**  
**420 George Street**  
**Sydney, NSW 2000**

**Australia Tel:** 1800 109 751 | Fax 1800 195 619  
**New Zealand Tel:** 0800 450 331 | Fax 0800 450 209  
**International Tel:** +1 212 609 2952 | Fax +1 212 201 7309  
**E-mail:** [support@fxcm.com.au](mailto:support@fxcm.com.au)

Clients are asked to confirm their acceptance of these terms and conditions by either signing the signature page of these Terms of Business online through FXCM's website or by signing and returning the hardcopy signature page of these Terms of Business enclosed.

## 1. General Information

- 1.1 **Information about us:** FXCM Australia Limited ("FXCM", "we" or "us") (ABN 31 121 934 432) is authorised and regulated by the Australian Securities and Investments Commission ("ASIC") under the an Australian Financial Services Licence No. 309763. FXCM's principal place of business is at Suite 2, Level 18, 420 George Street, Sydney, NSW 2000. We are required to conduct our business and dealings with you in accordance with the Corporations Act 2001 (Cth) as amended from time to time ('Act').

**Please read these Terms of Business carefully as they contain important information concerning your and FXCM's rights and obligations in relation to the services we agree to provide you. Please let FXCM know as soon as possible if there is anything which you do not understand.**

- 1.2 **Our capacity:** We will deal with you as principal unless we inform you that we are dealing with you as agent generally or with respect to any Transaction or class of Transactions and every order which we may take is accepted and executed on the basis that we act on our own account as principal and not as your agent.
- 1.3 **Your capacity:** You will enter into Transactions as principal unless otherwise agreed in writing by us.
- 1.4 **Language of Communications:** You may communicate with us in English. All FXCM standard documents will be available in English. If a document is translated into another language this will be for information purposes only and the English version will prevail.
- 1.5 **Commencement:** These Terms of Business supersede any previous agreement between us on the same subject matter and takes effect when you signify your acceptance of these Terms of Business by either signing the signature page of these Terms of Business through FXCM's webpage or by returning a signed hardcopy of the signature page of these Terms of Business. By completing and signing the signature page of these Terms of Business you confirm that you have read, understood and agree to be bound by these Terms of Business with us.
- 1.6 **Amendments:** These Terms of Business may be amended from time to time as set out in clause 27.1. Any changes to these Terms of Business will not apply to transactions opened prior to the date on which the changes become effective unless specifically agreed otherwise. Any amendments to these Terms of Business shall be deemed accepted if and when you place an order with us after the date on which the changes become effective.
- 1.7 **Duty to you:** Nothing in these Terms of Business shall exclude or restrict any duty or liability owed by us to you under the Act. If there is any conflict between these Terms of Business and the Act, the Act shall prevail.
- 1.8 **Duties and responsibilities:** We assume no greater responsibility or fiduciary duty than that imposed by the Applicable Regulations or the express terms of these Terms of Business.
- 1.9 **Investments:** The particular Investments which are available to trade from FXCM are listed on the FXCM Online Facility and updated from time to time. These Terms of Business govern your relationship with FXCM for all Investments traded with FXCM.

## 2. Warnings

- 2.1 Margined trading carries a high risk. Please note:
- (a) you may sustain a total loss of initial margin funds and any additional funds deposited with FXCM to maintain your position, in addition to any liability detailed in Section 26.7;
  - (b) you may not be responsible for debit balances directly resulting from trading activity, except in the case of a force majeure as detailed in Section 26.6;
  - (c) if the market moves against your position or margin levels are increased you may be called upon to pay substantial additional funds on short notice to maintain your position;

- (d) if you fail to comply with a request for additional funds within the time prescribed, FXCM in its sole discretion may liquidate any or all of your positions at a loss;
- (e) whether you make a profit or a loss will depend on fluctuations in the underlying security or commodity which are outside FXCM's control;
- (f) you transfer full title in and/or ownership of a portion or all of the money you deposit with FXCM shall be transferred to FXCM to the extent it represents an amount necessary to secure your open positions or cover your actual or future contingent or prospective obligations (which will be calculated daily in FXCM's sole discretion based on your daily open positions and trading and which may be greater than the Margin required to maintain your open positions, as market conditions may dictate) such that you will not have a proprietary claim over that portion or any of your money deposited and FXCM can deal with it on its own right. When money received by FXCM from you is no longer required to secure your open positions or cover your actual or future contingent or prospective obligations to FXCM, full title and ownership of the money will be transferred back to you.

2.2 You should read the General Risk Disclosure Notice at Schedule 2.

2.3 You must make an independent decision as to whether or not to enter into Margined Transactions with FXCM on our Terms of Business. Please note:

- (a) FXCM does not provide advice, FXCM will not advise on the merits or otherwise of your Margined Transactions;
- (b) the decision to place a Margined Transaction is yours alone. You (and not FXCM) are responsible for the effect a Margined Transaction might have on any open positions;
- (c) we deal with you on an execution only basis at all times;
- (d) we do not execute orders on your behalf, we simply provide a quote for a particular product and then deal as principal, and therefore do not offer best execution as detailed in Section 17.8 and 17.9 of these Terms of Business.

### 3. Interpretation

3.1 In these Terms of Business the following words and phrases have the following meanings:

Account	means an account of yours opened with us;
Account Opening Forms	means the application forms supplied by FXCM to open your Account;
Act	has the meaning given in clause 1.1 of these Terms of Business;
Affiliate	means any company or partnership controlled by, or controlling, or in common control with another person. A person, company or partnership shall be deemed to control another person, company or partnership if the former person, company or partnership possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the other person, company or partnership whether through the ownership of voting securities or partnership interests, representation on its board of directors or similar governing body, by contract or otherwise;
Applicable Regulations	means the Act, the Corporations Regulations 2001, or any other rules of a relevant regulatory authority, including ASIC or any other Rules of a relevant Market and all other applicable laws, acts, rules and regulations as in force from time to time;

ASIC	Australian Securities & Investments Commission or any regulatory body which replaces it or performs its functions.
Business Day	<p>means a day (other than a Saturday or Sunday) on which:</p> <p>in relation to a date for the payment of any sum denominated in</p> <p>(a) any Currency (other than Euro), banks generally are open for business in the principal financial centre of the country of such Currency; or</p> <p>(b) Euros, settlement of payments denominated in Euros is generally possible in London or any other financial centre in Europe selected by us;</p> <p>and</p> <p>in relation to a date for the delivery of any property,</p> <p>property of such type is capable of being delivered in satisfaction of obligations incurred in the market in which the obligation to deliver such first property was incurred; and</p> <p>for all other purposes, is not a bank holiday or public holiday in London;</p>
CFD	means any contract for difference offered by FXCM to you under these Terms of Business.
CFD Contract	means any contract which is a CFD entered into between you and FXCM;
Closing Date	means the date on which a Margined Transaction is closed in accordance with these Terms of Business;
Closing Notice	means a notice given by you or FXCM to close all or any part of any Margined Transaction;
Closing Price	means in the case of a CFD Contract the Contract Investment Price at the time a Closing Notice is effective as determined by FXCM or the Contract Investment Price at the time a CFD Contract is closed out by FXCM exercising any of its rights under these Terms of Business; or, in the case of a Rolling Spot Forex Contract, the exchange rate at which you can buy if the Rolling Spot Forex Contract you wish to close was a sell and the exchange rate at which you can sell if the Rolling Spot Forex Contract you wish to close was a buy;
Commission	means the commission, charges or other remuneration for the conduct of the business by FXCM as disclosed and as notified to you from time to time;
Contract Quantity	means the number of the Investments to which a CFD Contract relates;
Contract Financial Instrument	means the underlying Contract Investment that forms the subject of a CFD Contract;
Contract Investment Price	means the current price of the Contract Investment as determined by FXCM;
Contract Investment	means the underlying financial instrument, commodity, asset or other such investment notified by FXCM from time to time that forms the subject of a CFD Contract;
Contract Settlement	means the date on which a CFD Contract is closed;

Date	
Current Contract Value	means the Contract Investment Price multiplied by the Contract Quantity from time to time;
Credit Support Provider	means any person who has entered into any guarantee, hypothecation agreement, margin or security agreement in our favour in respect of your obligations under these Terms of Business;
Currency	shall be construed so as to include any unit of account;
Event of Default	means any of the events of default as listed in paragraphs (a) to (l) of clause 22.1 of these Terms of Business;
Exceptional Market Event	means the suspension, closure, liquidation, imposition of limits, special or unusual terms, excessive movement, volatility or loss of liquidity in any relevant market or underlying Contract Investment , or where FXCM reasonably anticipates any of the above circumstances are about to occurs;
Expiry Date	means the expiry date and time of a Margined Transaction as determined by FXCM;
FXCM Online Facility	means the online licensed trading platform of FXCM;
Initial Margin	has the meaning given in clause 15.1 of these Terms of Business;
Interest Rate	means LIBOR (the London Interbank Offered Rate) plus a mark up not to exceed 4%, or such other benchmark interest rate as may be applicable and as selected by FXCM depending upon the currency of a CFD Contract, plus a mark up not to exceed 4%;
Investment	means a Contract Investment or any asset or commodity or other investment;
Margin	has the meaning set out in clause 15.2 of these Terms of Business;
Margin Call Warnings	means a demand for such sums by way of Margin as FXCM may reasonably require for the purpose of protecting itself against loss or risk of loss on present, future or contemplated Transactions under these Terms of Business;
Margined Transaction	means any CFD, Rolling Spot Forex Contract, precious metals contract or any other Transaction liable to Margin;
Market	means any market or multilateral trading facility subject to government or state regulation with established trading rules and trading hours
Order	means an instruction to purchase or sell an Investment, open a CFD Contract, a Rolling Spot Forex Contract, , precious metals contract or other Margined Transaction at a price quoted by FXCM as appropriate;
Opening Contract Value	means in respect of any CFD Contract, the Contract Quantity multiplied by the Opening Price;
Opening Price	means in respect of any CFD Contract, the Contract Investment Price specified in an Order acceptance of which gives rise to that CFD Contract;
Product Disclosure Statement	means a product disclosure statement issued by FXCM as amended from time to time, in relation to CFD Contracts.
Related Party	means related party as that term is defined in the Act.

Retail Client	means retail client as that term is defined in sections 761G and 761GA of the Act in relation to a financial service provided to a person in respect of a financial product that is a derivative.
Rolling Spot Forex Contract	means any over the counter contract which is a purchase or sale of foreign currency entered into between you and FXCM, excluding forward contracts.
Rules	means articles, rules, regulations, procedures and customs, as in force from time to time.
Security	has the meaning given in section 92(3) of the Act.
Stock Exchange	means any financial market where a Security has its primary listing.
Take-Over Offer	means with respect to any Margined Transaction which relates to an equity Security, a takeover offer, tender offer, exchange offer, scheme of arrangement, solicitation, proposal or other event by any entity or person that results in any entity or person purchasing or otherwise obtaining or having the right to obtain, by conversion or other means 50% or more of the outstanding voting shares of the issuer of the relevant equity Security.
Transaction	means a contract in an Investment or any other contractual arrangement entered into between you and us including a Margined Transaction as defined in these Terms of Business.
United States Resident	means any natural person resident of the United States; any company, partnership, or other legal entity created or organised under the laws of any jurisdiction of the United States; a branch or agency of a foreign entity located in the United States; a trust of which the trustee is a United States resident; an estate of which a United States resident is the executor or administrator; or any account held for the benefit of a United States resident.
Variation Margin	has the meaning given in clause 15.2 of these Terms of Business.
Wholesale Client	means a person who is not a Retail Client for the purposes of the Act and Applicable Regulations as amended from time to time and in connection with the Transactions envisaged by these Terms of Business.

- 3.2 **General interpretation:** A reference in these Terms of Business to a “clause” or “Schedule” shall be construed as a reference to, respectively, a clause or Schedule of these Terms of Business, unless the context requires otherwise. References in these Terms of Business to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof. A reference in these Terms of Business to “document” shall be construed to include any electronic document. References to persons include bodies corporate, unincorporated associations and partnerships/persons, firms, companies, corporations, governments, states or agencies of a state or any associations or partnerships (whether or not having separate legal personality) of two or more of the foregoing. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the Act have the same meaning in these Terms of Business unless expressly defined in these Terms of Business.
- 3.3 **These Terms of Business and the Schedules:** The clauses contained in these Terms of Business and its Schedules together constitute the Terms of Business. We may from time to time send to you further schedules with respect to a specific Market or classes of Investments which will also form part of the Terms of Business.
- 3.4 **Headings:** Headings are for ease of reference only and do not form part of these Terms of Business.

#### 4. Client Classification

4.1 For the purposes of the services provided by FXCM under these Terms of Business we will act as principal and not as agent on your behalf. We shall treat you as a Retail Client, subject to the following:

- (a) if you satisfy the definition of Wholesale Client we may notify you that we will treat you as such and the terms detailed in Schedule 1 shall apply; and
- (b) you may request a different client classification from the one we have allocated to you, but please be aware that we may decline such a request. If you do request a different categorization and we agree to such a request, you may lose the protection afforded by certain the Act, a summary of these lost protections can be found in Schedule 1. This may include, but is not limited to:
  - (i) the requirement for us to act in accordance with your best interests;
  - (ii) our obligation to provide appropriate information to you before providing our services;
  - (iii) the restriction on the payment or receipt by us of any inducements;
  - (iv) our obligation to ensure that all information we provide to you is fair, clear and not misleading; and
  - (v) the requirement that you receive from us adequate reports on the services provided to you.

#### 5. Risk of Investment

5.1 At Schedule 2 of these Terms of Business you are provided with a General Risk Disclosure Notice ("Risk Notice"). This Risk Notice sets out the particular investment risks of investing in complex financial instruments (namely, Margined Transactions). **Your execution of this document will be treated as your informed acknowledgment that you have carefully read and are prepared to accept the risks outlined in the Risk Notice.** If there is anything you do not understand it is recommended that you seek specialist independent financial and/or legal advice, in particular, regarding the suitability of complex financial instrument trading.

#### 6. Applicable Regulations, Market And Stock Exchange Requirements

- 6.1 **Subject to Applicable Regulations:** These Terms of Business and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between these Terms of Business and any Applicable Regulations, the latter will prevail; and (ii) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you.
- 6.2 **Market, Price Providing Bank, and Stock Exchange action:** If a Market, price providing bank, or Stock Exchange (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a Market or Stock Exchange) take any action which affects a Transaction, then we may take any action which we, at our discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on you.

#### Our Services

#### 7. Execution and Advice

7.1 **Execution only:** We deal with you on an execution-only basis and will not make personal recommendations or advise on the merits of purchasing, selling or otherwise dealing in particular Investments or executing particular Transactions, their taxation consequences or the composition of any account or any other rights or obligations attaching to such Investments or Transactions. You should bear in mind that merely explaining the terms of a Transaction or Investments or its performance characteristics does not itself amount to advice on the merits of the investment.

7.2 **Incidental information:** Where we do provide general trading recommendations, market commentary, guidance on shareholding disclosure or other information:

- (a) this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to a personal recommendation or advice;
- (b) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the legal, tax or accountancy consequences of any Transaction;
- (c) where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction;

## 8. Charges and Payments

- 8.1 **Charges:** You will pay our charges as agreed with you from time to time or we may deduct such charges from any funds held by us on your behalf. The charges are described in the Product Disclosure Statement.
- 8.2 **Currency indemnity:** If we receive or recover any amount in respect of an obligation of yours in a Currency other than that in which such amount was payable, whether pursuant to a judgment of any court or otherwise, you shall indemnify us and hold us harmless from and against any cost (including costs of conversion) and loss suffered by us as a result of receiving such amount in a Currency other than the Currency in which it was due.
- 8.3 If you direct FXCM to enter into any Currency Transaction:
  - (a) any profit or loss arising as a result of a fluctuation in the exchange rate affecting such Currency will be entirely for your account and risk;
  - (b) FXCM is authorised to convert funds in your Account for Margin into and from such foreign currency at a rate of exchange determined by FXCM on the basis of the then prevailing money market rates. In such circumstances, FXCM will not be liable to you for any loss suffered by you as a result of such action (although, FXCM will use reasonable endeavours to only convert such funds as may prudently be required to cover the position in respect of the relevant transaction).
- 8.4 **Payments and deliveries net:** Unless we give you written notice to the contrary, all payments and deliveries between us shall be made on a net basis and we shall not be obliged to deliver or make payment to you or both (as the case may be) unless and until we have received from you the appropriate documents or cleared funds.
- 8.5 **Remuneration and sharing charges:** We may receive remuneration from, or share charges with, an Affiliate or other third party in connection with Transactions carried out on your behalf.
- 8.6 **Dormancy Fee:** If there are no filled Orders in your account for at least one (1) year, you will be subject to a dormant account fee (the "Fee"), in return for administrative and information services and/or access provided by FXCM to active accounts. The Fee will be equal to the lesser of the remaining balance in your account or 50.00 units of the currency in which your account is denominated (JPY 5,000 for JPY denominated accounts). You will be subject to the Fee on a yearly basis thereafter if the conditions stated above are met. If you are assessed the Fee and your account balance becomes zero (0), your account will automatically be closed.
- 8.7 **Active Trader Fee:** If you choose to use FXCM's Active Trader Platform, you agree to pay a commission charge of fifty U.S. dollars (\$50 USD) per million base currency traded, per side.

## 9. Taxes

- 9.1 You are responsible for all taxes (UK or foreign) that may arise in relation to a Transaction, whether under current or changed law or practice. We shall have no responsibility for any of your tax liabilities, or for providing information or advice in respect of such liabilities and shall not be responsible for notifying you of a change in tax law or practice.
- 9.2 In the event that we become liable to pay any tax on your behalf arising from or incidental to Transactions executed by you with us you shall reimburse us on demand in full for the amount of

such tax paid by us. In the event that we become liable to pay any stamp duty, stamp duty reserve tax or any other similar documentary tax or duty in any jurisdiction (collectively "Stamp Duty") in respect of any shares purchased or otherwise acquired by us or an Affiliate in order to hedge any Margined Transaction between us and you, you shall reimburse us on demand in full for the amount of such Stamp Duty paid by FXCM.

- 9.3 You shall indemnify us (the "Indemnified Party") and keep the Indemnified Party indemnified from and against all costs, claims, demands and expenses arising in connection with (i) any failure by you to reimburse the Indemnified Party in accordance with clause 9.1 and 9.2 of these Terms of Business and (ii) any late payment or non-payment of any tax or Stamp Duty payable by you in respect of Transaction executed by you with the Indemnified Party.

## **Our Relationship with You**

### **10. Material Interest and Confidentiality**

10.1 **Material interests:** Your attention is drawn to the fact that when we deal with you or for you, we or an Affiliate or some other person connected with us may have an interest, relationship or arrangement that is material. Without limiting the nature of such interests, examples include where we or an Affiliate could be:

- (a) dealing in the investment, a related investment or an asset underlying the investment, as principal for our (or its) own account or that of someone else. This could include selling to you or buying from you and also dealing with or using the services of an intermediate broker or other agent who may be an Affiliate;
- (b) matching (e.g. by way of a cross) your Transaction with that of another customer by acting on his behalf as well as yours;
- (c) buying from you and selling immediately to another customer, or vice versa;
- (d) holding a position (including a short position) in the Investment concerned, a related Investment or asset underlying the Investment;
- (e) quoting prices to the market in the Investment, a related Investment or asset underlying the Investment;
- (f) advising and providing other services to Affiliates or other customers who may have interests in Investments or underlying assets which conflict with your own.

10.2 You accept that we and our Affiliates may have interests which conflict with your interests and may owe duties which conflict with duties which would otherwise be owed to you, and consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Regulations.

10.3 **No liability to disclose or account:** We will comply with Applicable Regulations binding on us, but we shall be under no further duty to disclose any interest to you, including any benefit, profit, commission or other remuneration made or received by reason of any Transaction or any matching transaction.

10.4 **Information Barriers:** We maintain arrangements which restrict access by our employees to information relating to areas of our business (and that of Affiliates) with which, and the affairs of clients with whom, they are not directly concerned. Accordingly, we shall not be required to have regard to or disclose to you or make use of any information which belongs to or is confidential to another client or to us or any Affiliate, and we may be unable to advise or deal with you in relation to particular investments without disclosing the reason for this.

### **11. Conflict of Interests**

11.1 **Conflicts Policy:** We are required to have arrangements in place to manage conflicts of interest between us and our clients and between different clients. We operate in accordance with a conflicts of interest policy we have put in place for this purpose under which we have identified those situation in which there may be a conflict of interest, and in each case, the steps we have

taken to manage that conflict. A summary of our conflicts policy is available on the FXCM Online Facility. Further details of this will be provided on request.

- 11.2 **Disclosure to you:** We shall not be obliged to disclose to you or take into consideration any fact, matter or finding which might involve a breach of duty or confidence to any other person, or which comes to the notice of any of our directors, officers, employees or agents but does not **come to the actual notice of the individual** or individuals dealing with you.

## 12. Market Abuse

- 12.1 **Market abuse:** By entering into any Transaction you represent and warrant that you will act in accordance with the Act and any Applicable Regulations, you are not acting in any way which is intended to or may be considered to be "market abuse", nor are you acting with the intention of contravening any other provision of the Act or any other Applicable Regulation.

## 13. Account Opening

- 13.1 An Account must be opened prior to entering into any Transaction with FXCM. No Orders can be placed until an Account has been opened and cleared funds received. Without prejudice to the foregoing, if FXCM permits you to place an Order notwithstanding that an Account has not been opened, or cleared funds received, this shall not limit your liability to FXCM pursuant to these Terms of Business in respect of the Order placed. FXCM may, at its absolute discretion, refuse to accept you as a client for whatever reason but will notify you of any such refusal, without giving any reasons, promptly following your application.

- 13.2 To assess your credit worthiness, manage credit risk and to prevent fraud (or other criminal activity) you acknowledge and agree that we may:

- (a) make periodic searches and enquiries about you and any Related Party at credit reference agencies, and your employers, if applicable;
- (b) disclose information to organisations involved in fraud prevention; and
- (c) obtain information from and disclose information to other broker-dealers or investment managers which deal in or manage investments for you concerning any payment or security default or concerning any investment which is related to or connected with Margined Transactions which you seek to open with us.

- 13.3 Any limits for your Account (including any credit limits) will be set and varied from time to time with regard to your credit status and, where applicable, the amount of funds deposited by you with us which may, in its sole discretion apply a limit to:

- (a) the size of any Transaction or series of Transactions that you may enter into; and
- (b) the amount of any loss or liability to which you may be exposed.

- 13.4 Account limits do not limit or represent your liability for losses to FXCM, and the funds you may have from time to time on deposit with us as Margin or otherwise do not represent any limit upon your financial liability to us.

## 14. Account Payments

- 14.1 **Payment:** We will only accept deposits from you by an approved credit card, crossed cheque, BACS, telegraphic transfer and SWIFT. No cash will be accepted. Payments may be denominated in Australian Dollar (AUD), New Zealand Dollar (NZD), or United State Dollar (USD) or any other Currency agreed in advance with us.

- 14.2 **Payment Terms:** You agree to make payments due to us under these Terms of Business in accordance with the following terms:

- (a) all electronic or telegraphic transfer or other bank fees in respect of payment by you shall be your sole responsibility;

- (b) if any payment is not received by us on the due date for payment then, without limitation of any other rights which we may have, we will be entitled to charge interest on the overdue amount (both before and after judgment) at the Interest Rate from the date payment was due until the actual date of payment;
- (c) if you make a payment by an approved credit card and then request that payment to be returned to the approved credit card, please note that we reserve the right to charge an administration fee (details of which are available in the Product Disclosure Statement);
- (d) you shall pay to us on demand in a full indemnity basis all costs, charges, and expenses incurred by us in relation to any overdue payment (including any referral fees);
- (e) any payment made to us will only be deemed to have been received when we receive cleared funds; and
- (f) it is your responsibility to ensure that payments made to us are correctly designated in all respects.

14.3 **Payment Withheld.** If the statement of your Account shows a credit balance, you may request us to send you a cheque or effect payment by alternative means in respect of such amount. However, we may at our discretion elect to withhold (or if applicable, deduct) any payment requested (in whole or in part) due to you if:

- (a) open Margined Transactions on the Account show notional losses;
- (b) we reasonably consider that funds may be required to meet any current or future margin requirement on open Margined Transactions due to underlying market conditions;
- (c) you have any contingent liability to us or to any of our affiliates in respect of any other account you have opened with them; and/or
- (d) we reasonably determine that there is an unresolved dispute between us in connection with these Terms of Business or any related contract.

14.4 **Base currency.** You shall designate a base currency of your Account which shall either be Australian Dollar (AUD), New Zealand Dollar (NZD), or United State Dollar (USD) or any other currency agreed in advance with us (the "Base Currency"). Any sums deposited in your Account, if in a Currency other than the Base Currency of the Account, may be converted to that Base Currency at the prevailing conversion rate as designated by us unless alternative instructions from you are accepted by us. If any interest costs, commission and other charges to be debited to your Account are in a currency other than the Base Currency they may be converted to that Base Currency at the prevailing conversion rate as designated by us.

14.5 All payments from your Account will be made on your request in the Base Currency of that Account unless another Currency is agreed in advance between you and us and may be made in the form of a return payment to a credit card, crossed cheque naming you, via BACS transfer, Telegraphic Transfer or SWIFT or any other means we approve. We shall not be obliged to make any payment to you unless your cash balance remaining after making the payment would be sufficient to cover your Margin and any unrealised losses in relation to your open Margined Transactions.

14.6 No instructions to pay a third party from your Account will be accepted by us unless otherwise agreed in writing by us.

14.7 In the event the applicable paying agent declines to transfer funds from you to us for any reason then we may treat any Margined Transaction placed or entered into in reliance upon receipt of the funds as void and of no further effect and we shall be entitled to recover any losses arising from any such Margined Transaction from you.

14.8 Your cash balance:

- (a) will be credited from time to time with the amount of each payment of Margin and any other payment received by us from you pursuant to these Terms of Business; and
- (b) will be debited by:

- (i) the amount of each payment made by us to you at the your request pursuant to clause 14 of these Terms of Business; and
  - (ii) realised losses payable.
- 14.9 You hereby indemnify and hold us harmless against any costs or expenses (including all legal costs) which we may incur, either before or after the commencement of any legal action, to recover the requisite payment as a result of your failure to make payment within the stipulated period. We may convert money standing to your credit on your Account or paid by you to us or due to be paid by us from one currency to another at prevailing market rates available to us (after accounting for commissions or charges).

## 15. Margin

- 15.1 **Margin Arrangements:** As a condition of entering into a Margined Transaction, we may in our sole discretion require the deposit of funds or other collateral acceptable to us as security for payment of any losses incurred by you in respect of the Transaction ("Initial Margin"). Initial Margin is due and payable immediately as a condition to opening the relevant Margined Transaction and we may decline to open any Margined Transaction if you do not have sufficient available cash in your Account to satisfy the Initial Margin required for that Transaction at the time the relevant Order is placed.
- 15.2 Margin requirements may be set and varied without prior notice from time to time at our discretion including without limitation subsequent variation of any Margin rates set at the time that a Margined Transaction is opened ("Variation Margin" and together with Initial Margin, "Margin").
- 15.3 **Form of Margin:** Margin shall be provided by or on behalf of you in cash. You must inform us immediately if you cannot, or believe you will not be able to, meet a Margin payment when due. You are obligated to maintain in your account, at all times, sufficient funds to meet all Margin requirements. We are not obliged to make Margin Call Warnings of you at all or within any specific time period. You may by agreement with us satisfy a Margin Call Warning by providing collateral in a form acceptable to us.
- 15.4 We are entitled to require payment of Margin of you (whether resident in the UK or in another jurisdiction) by telegraphic transfer or any other method of immediate/electronic funds transfer acceptable to us. Only funds received net of any bank charges, which relate to the transfer, will be credited as paid.
- 15.5 **Close-out:** In the event that there is insufficient Margin in your Account or in the event that the deposited Margin is not sufficient to meet the required Margin rates, as determined by us in accordance with clause 15.2 of these Terms of Business, we may in our sole discretion choose to close or terminate your Margined Transaction immediately, without notice to you. Subject to clauses 15.6 and 15.8 of these Terms of Business, this will not constitute an Event of Default. If we choose not to close or terminate your Margined Transaction, we may make a Margin Call Warning in accordance with clause 15.7 of these Terms of Business.
- 15.6 Without prejudice to the foregoing, any Transaction entered into by you or on your behalf which results in there being insufficient Margin to cover any actual or anticipated losses or liabilities in connection with your Account will constitute an Event of Default and we may in our discretion exercise our rights in clause 22 of these Terms of Business, whether there has been a Margin Call Warning or not.
- 15.7 **Margin Call Warnings:** Notwithstanding the fact that we are not obliged to make Margin Call Warnings prior to liquidating your Margined Transactions if you fail to maintain sufficient funds to meet the Margin requirements, Margin Call Warnings may be made at any time by telephone, telephone answering machine message, voice mail, letter, fax, e-mail or any other means of electronic communication. Therefore you must notify us immediately and provide alternative contact details to ensure Margin Call Warnings can be made if you will not be contactable at your usual contact details provided, e.g. when you are traveling or on holiday. Any Margin Call Warnings we make of you may be made by any method of communication listed above. We shall be deemed to have made a Margin Call Warning if we notify you electronically via the FXCM Online Facility. We shall not be liable for any failure by us to contact you or attempt to contact you. Should we

decided to make a Margin Call Warning, the terms and conditions of the Margin Call Warning will be detailed within the Margin Call Warning and we reserve the right to change the terms and conditions of any Margin Call Warning based on market conditions, without notice to you. If we make a Margin Call Warning, in no way does this waive our right to liquidate your Margined Transactions as detailed in Section 15.5.

- 15.8 Any payment made by or on your behalf in satisfaction of a Margin Call Warning must be received by us within the time specified within the Margin Call Warning. We may in our sole discretion close or terminate your Margined Transactions without notice to you immediately and decline to enter into any further Margined Transactions with you if you fail to honour any Margin Call Warning and this shall constitute an Event of Default and we may exercise our rights in clause 22 of these Terms of Business.
- 15.9 You acknowledge that we may be obliged, in the absence of formal arrangements to the contrary, to close your Margined Transaction in the event that a Margin Call Warning remains unsatisfied after a period of five (5) Business Days.
- 15.10 Any action taken by us in connection with or pursuant to a Margined Transaction by us at a time at which any Event of Default specified in clause 22 of these Terms of Business has occurred (whether or not we have knowledge thereof) shall be entirely without prejudice to our right to refuse any further performance thereafter, and shall not in any circumstances be considered as a waiver of that right or as a waiver of any other rights of ours should any such Event of Default have occurred.

### **Order Placement**

#### **16. Online Access**

- 16.1 **Access Code:** In order to use the FXCM Online Facility you will need to request a username and password ("Access Code") from FXCM. You will need to provide the Access Code each time you wish to use the Online Facility.
- 16.2 In relation to the Access Code you acknowledge and undertake that:
- (a) you will be responsible for the confidentiality and use of your Access Code.
  - (b) other than with our prior written consent, you will not disclose your Access Code to persons other than your Authorised Representatives for any purpose whatsoever.
  - (c) FXCM may rely on all instructions, orders and other communications entered using your Access Code, and you will be bound by any transaction entered into or expense incurred on your behalf in reliance on such instructions, orders and other communications; and
  - (d) you will immediately notify us if you become aware of the loss, theft or disclosure to any third party or of any unauthorised use of your Access Code.
- 16.3 If FXCM believes that your Access Code is being used without your knowledge by unauthorised persons, we may without prior notice suspend your rights to use the FXCM Online Facility. Further, if FXCM believe that you have supplied your Access Code to other persons in breach of clause 16.2(b) of these Terms of Business, then we may terminate these Terms of Business forthwith.

#### **17. Instructions and Basis of Dealing**

- 17.1 **Placing of instructions:** Unless otherwise agreed by FXCM all Orders for execution of Transactions between you and FXCM must be given to us electronically through the FXCM Online Facility or by telephone. You acknowledge and agree that your order may be received, transmitted and executed by FXCM or its agent. FXCM will be your principal to any Transaction arranged by an agent of FXCM. FXCM will take responsibility, and be liable, for all conduct of its agents. The charges, remuneration and commission receivable by FXCM set out in these Terms of Business and other documents we may direct you to, will not differ because of your involvement with an agent appointed by FXCM.

- 17.2 **Communication of Orders:** Orders by telephone will only be accepted by FXCM or its agent during specified hours which will be notified to you from time to time. FXCM or its agent may impose more restrictive time limits on when orders may be placed. When you place an order by telephone, you can do so only by talking directly to a broker of FXCM or a broker of FXCM's agent. No messages may be left, and no orders may be placed using answer phone or voicemail facilities or by facsimile. All telephone calls are recorded for the purposes of fraud prevention and quality control and by agreeing to these terms and conditions you agree to the recording of such telephone conversations.
- 17.3 Any Order to execute a Transaction shall not take effect unless actually received by FXCM. FXCM shall be entitled to rely upon any instruction given or purporting to be given by you or any other person on your behalf without further enquiry as to the genuineness, authority or identity of any such person giving or purporting to give such instructions.
- 17.4 FXCM may, at its discretion refuse to accept any Order from you but will notify you of any such refusal, without giving any reasons, promptly following receipt of your instructions. FXCM may cancel any instructions previously given by you provided that FXCM has not acted on your instructions. Acceptance of your Order will be evidenced by FXCM's confirmation of that Order. The validity of any Order shall not, however, be affected by you not receiving confirmation of an Order. Acceptance of any Order does not constitute any agreement or representation that your initial Margin or Margin requirement in respect of the Order or your existing Order is satisfied.
- 17.5 **Regulated Market.** You acknowledge and agree that by executing the signature page of these Terms of Business that you have given us your prior express consent to execute all Orders outside a regulated market or multi-lateral trading facility (as such terms are defined by the Act).
- 17.6 **Confirmations:** FXCM may post confirmations on-line, which you will be able to access using the FXCM Online Facility. FXCM will post details of your Account activity on-line and you will be able to generate daily, monthly and yearly reports of Account activity as well as reports of each executed trade. Updated Account information will be available no more than twenty-four hours after any activity takes place on your Account. Posting of Account information on your on-line Account will be deemed delivery of confirmation and Account statements. Account information will include trade confirmations with ticket numbers, purchase and sale rates, used Margin, amount available for Margin trading, statements of profits and losses, as well as current open or pending positions and any other information as required by the Act. Please notify us if you wish to receive confirmations in hard copy or by e-mail rather than through the FXCM Online Facility. Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within three (3) Business Days of dispatch to you or we notify you of an error in the confirmation within the same period.
- 17.7 **Intermediate brokers and other agents:** We may, at our entire discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Affiliate of ours, and may not be in the United Kingdom. To the extent permitted by law, neither we nor our respective directors, officers, employees or agents will be liable to you for any act or omission of an intermediate broker or agent. No responsibility will be accepted for intermediate brokers or agents selected by you.
- 17.8 **No Best Execution** We will deal with you as principal in relation to any Orders and we will not act as your agent or act on your behalf in relation to any Orders. Rather, we will provide you with a price quote and you may place an Order on the basis of that price quote. Accordingly, we do not owe you any obligation of best execution and do not agree to obtain the best possible price for you.
- 17.9 If we execute any Orders on your behalf, such as executing Orders as your agent, such Orders will be executed in accordance with our Order Execution Policy, a copy of which we have separately provided on the FXCM Online Facility, which may be amended from time to time.
- 17.10 **Aggregation of orders:** To the extent that we expressly agree in writing to execute Orders on your behalf in accordance with clause 17.9 of these Terms of Business, we may combine your Order with any Orders of our own and Orders of other customers. By combining your Orders with those of other customers we must reasonably believe that this is in the overall best interests of our customers. However, on occasions aggregation may result in you obtaining a less favourable price. Where we aggregate your Order with Orders of other customers, you agree that allocation of the investments concerned may be done within a period of five (5) Business Days after the Order has

been filled. Where an Order for a particular customer has been aggregated with Orders for another customer, we will take great care to ensure a fair allocation of Investments available across those Orders. Where there is an insufficient quantity of Investments available to fill all Orders any allocation undertaken by us will be:

- (a) completely even across all interested parties;
- (b) take account of the time of receipt of an Order such that Orders are allocated in due turn; or
- (c) take account of the size of each Order with allocation being in proportion to the relative Order sizes.

17.11 **Execution Errors:** All orders executed by FXCM should be displayed on FXCM's Online Facility. Any failure or delay in any order being displayed on FXCM's Online Facility shall not affect the validity of the order. If FXCM has executed an order, but it is not displayed, it is solely your responsibility to make further inquiry of the FXCM Online Facility to obtain confirmation of the execution of the order. Any failure or delay by you in contacting FXCM shall not affect the validity of any order. Once an order has been executed, you should be deemed to have entered into a corresponding contract with FXCM whether or not the corresponding order is displayed on the FXCM Online Facility.

17.12 If you incorrectly or erroneously submit an order, which is executed, you shall notify FXCM of the error immediately upon becoming aware of the error. You shall also notify FXCM at the same time whether you wish FXCM in respect of the error trade to either:

- (a) maintain the contract in your name with FXCM in the same size and at the same price as the executed order; or
- (b) reverse the executed order.

## 18. Appropriateness

18.1 Before accepting any Order, you must record your investment knowledge and experience in the Account Opening Forms.

18.2 On the basis of this information and in accordance with the Applicable Rules we will assess whether opening an Account is appropriate for you. We will not be able to take your borrowings or leverage into account in assessing your investment risk appetite or capacity. You should be aware that leverage may dramatically increase the risk of investments, particularly where large positions can be taken in reliance on a small amount of initial Margin, as is common when dealing in Margined Transactions. Where you are classified as a Wholesale Client we will make certain assumptions about the appropriateness of the service provided, and we are entitled to assume that you have the requisite knowledge and experience in the relevant investment field. If you do not consider this to be the case, you must make us aware of this prior to the provision of the service and provide us with any available information as to the level of your knowledge and experience. It is your responsibility to inform us in writing of any information which might reasonably indicate that this assessment should be changed.

## 19. Client Money

19.1 Any money received by FXCM in respect of your Account will be deposited and held by us on trust in a segregated trust account established, maintained and operated in accordance with the Act. The funds deposited into individual FXCM client accounts are not separated from each other. All FXCM clients' funds are co-mingled into one trust account. Client money provisions may not insulate any individual FXCM client's funds from a default in FXCM's segregated trust account. Such a default may arise from any FXCM client's trading. Assets in FXCM's segregated trust account that belong to non-defaulting FXCM clients are potentially at risk, even though the non-defaulting FXCM clients did not cause the default. We will not be liable for the solvency, act or omission of any institution holding under this clause 19.

19.2 You hereby also grant to FXCM the right to pledge, re-pledge, invest or loan, either separately or with the property of other FXCM clients, to itself or to others, any securities or other property held by FXCM as Margin or security in respect of your Account. FXCM shall at no time be required to

deliver to you the identical property delivered to or purchased by FXCM for your Account. The purpose of this provision is to allow FXCM to use the funds, securities, currencies and other property as collateral. By executing these Terms of Business, you authorise FXCM and its affiliates to use all funds, securities, currencies and other property of Client as specified in this provision.

- 19.3 You hereby agree that FXCM may, in FXCM's sole and absolute discretion at any time, apply and transfer from your Account to any of your other accounts held with FXCM or an affiliate of FXCM or other approved financial institution, in each case or its associates, any of the funds, securities, currencies or other property held in your Account, whether either your Account or the other account is held by you individually or jointly with others
- 19.4 You acknowledge that FXCM will be under no obligation to pay interest on balances in respect of your Account and that you are therefore waiving and forgoing any entitlement to interest under the Act. You hereby acknowledge and agree that we will not pay you any interest in respect of your Account and that any interest will accrue to FXCM.
- 19.5 In the event that there has been no movement in your balance for a period of six (6) years after the date you become entitled to a transfer of your money held by FXCM in respect of your Account (notwithstanding any payments or receipts of interests or similar funds) and we are unable to trace you despite having taken reasonable steps to do so, such money shall be treated by FXCM as unclaimed money and dealt with in accordance with Applicable Regulations.

## 20. Net Payment

- 20.1 We may at any time set off any liabilities to make payment owed by us to you against any liability of yours to make payment to us.

## **Representations and Undertakings**

### 21. Representations, Warranties and Covenants

21.1 **Representations and warranties:** You represent and warrant to us on the date these Terms of Business come into effect and as of the date of each Transaction that:

- (a) [For individuals] you are of sound mind, legal age and legal competence;
- (b) regardless of any subsequent determination to the contrary, you are suitable to trade Margined Transactions and that you are aware of the risks involved with such transactions;
- (c) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform these Terms of Business and such Transaction and to grant the security interests and powers referred to in these Terms of Business;
- (d) any change to the details supplied on your Account Opening Forms must be immediately notified to us in writing;
- (e) the persons entering into these Terms of Business and each Transaction on your behalf have been duly authorised to do so;
- (f) these Terms of Business, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, Order, charge or agreement by which you are bound;
- (g) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default (a "Potential Event of Default") has occurred and is continuing with respect to you or any Credit Support Provider;
- (h) unless you have informed us otherwise you act as principal and sole beneficial owner (but not as trustee) in entering into these Terms of Business and each Transaction;

- (i) any information which you provide or have provided to us in respect of your financial position or other matters is accurate and not misleading in any material respect;
- (j) you are willing and financially able to sustain a total loss of funds resulting from Transactions;
- (k) you have consistent and uninterrupted access to internet service and the e-mail address provided on your Account Opening Forms;
- (l) except as otherwise agreed by us, you are the sole beneficial owner of all Margin you transfer under these Terms of Business, free and clear of any security interest whatsoever other than a lien routinely imposed on all Securities in a clearing system in which such Securities may be held; and
- (m) if you are not a resident in Australia, you are solely responsible for ascertaining whether any Transaction entered into under these Terms of Business is lawful under applicable laws of the jurisdiction of your residence.

21.2 **Covenants:** You covenant to us that:

- (a) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause;
- (b) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself or any Credit Support Provider;
- (c) you will use all reasonable steps to comply with all Applicable Regulations in relation to these Terms of Business and any Transaction, so far as they are applicable to you or us;
- (d) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Regulations; and
- (e) the information disclosed in the Account Opening Forms (including any financial information) is true, accurate, and complete in all material respects. You must notify FXCM immediately of any changes to any information you have provided to FXCM.

## 22. Events of Default

22.1 If at any time:

- (a) you fail to comply fully and immediately with any obligation to make any payment when due under these Terms of Business or to make or take delivery of any property when due under these Terms of Business;
- (b) we have reasonable grounds to believe that you are in breach of any material provision of these Terms of Business;
- (c) we consider it necessary or desirable for our own protection or any action is taken or event occurs which we consider might have a material adverse effect upon your ability to perform any of your obligations under these Terms of Business;
- (d) we consider it necessary or desirable to prevent what is considered to be or might be a violation of any laws, Applicable Regulations, the Act, or good standard of market practice;
- (e) you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you, or any indebtedness of yours is not paid on the due date therefore or becomes capable at any time of being declared due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to these Terms of Business ("Proceedings") are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible);
- (f) you commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts

under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, insolvency officer or other similar official (each an "Insolvency Officer") of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing;

- (g) an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of an Insolvency Officer of you or any substantial part of your assets;
- (h) You or any Credit Support Provider (or any Insolvency Officer acting on behalf of either of you) disaffirm, disclaim or repudiate any obligation under these Terms of Business or any guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party, or of you, in favour of us supporting any of your obligations under these Terms of Business (individually a "Credit Support Document");
- (i) any representation or warranty made or given or deemed made or given by you under these Terms of Business or any Credit Support Document proves to have been untrue, false or misleading in any material respect as at the time it was made or given or deemed made or given;
- (j) any Credit Support Provider fails to comply with or perform any agreement or obligation to be complied with or performed by you or it in accordance with the applicable Credit Support Document;
  - (i) any Credit Support Document expires or ceases to be in full force and effect prior to the satisfaction of all your obligations under these Terms of Business, unless otherwise agreed in writing by us;
  - (ii) any representation or warranty made or given or deemed made or given by any Credit Support Provider pursuant to any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
  - (iii) any event referred to in paragraphs (d) to (g) or (j) of sub-clause 1 of this clause occurs in respect of any Credit Support Provider; or
  - (iv) you are dissolved, or, if your capacity or existence is dependent upon a record in a formal register, the registration is removed or ends, or any procedures are commenced seeking or proposing your dissolution, removal from such a register, or the ending of such a registration;
- (k) where you or your Credit Support Provider is a partnership, any of the events referred to in paragraphs (d) to (g) or (j) of sub-clause 1 of this clause occurs in respect of one or more of your or its partners;
- (l) an Event of Default (however described) occurs in relation to you under any other agreement between us;

then we may exercise our rights under clause 22.2 of these Terms of Business.

22.2 Upon occurrence of an Event of Default we may by notice specify a date for the termination of any outstanding Transactions entered into between us except that the occurrence of an Event of Default under subparagraphs (d) to (g) or (j) of clause 22.1 shall result in the automatic termination of any outstanding Transaction. Neither of us shall be obliged to make any further payments or deliveries under any Transactions which would but for this clause, have fallen due for performance on or after the termination of any outstanding Transactions. We shall be entitled without prior notice to you:

- (a) instead of returning to you investments equivalent to those credited to your Account, to pay to you the fair Market value of such investments at the time we exercise such right;
- (b) to sell your investments in our possession or in the possession of any nominee or third party appointed under or pursuant to these Terms of Business, in each case as we may in our absolute discretion select or and upon such terms as we may in our absolute discretion think fit (without being responsible for any loss or diminution in price) in order to realise funds sufficient to cover any amount due by you hereunder;

- (c) to close out, replace or reverse any Transaction, buy, sell, borrow or lend or enter into any other Transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate to cover, reduce or eliminate our loss or liability under or in respect of any of your contracts, positions or commitments;
- (d) to realise in accordance with this clause or to sub-pledge any securities or other assets of yours held by FXCM;
- (e) to call any guarantee or indemnity provided by or on behalf of you;
- (f) to exercise our rights of set-off pursuant to this clause;
- (g) to close any and all of your Accounts; and/or
- (h) to treat any or all Transactions then outstanding as having been repudiated by you, in which event our obligations under such Transaction or Transactions shall thereupon be cancelled and terminated.

22.3 We shall not lose any of our rights under this clause by reason of any delay on our part in the exercise thereof, but in no circumstance shall we be under any obligation under these clauses to exercise any such right or, if we do exercise any such right, to do so at a time or in a manner beneficial to you. We may at our absolute discretion close out Transactions either on a single or collective basis.

22.4 Where we exercise our right under this clause to close out a Transaction the closing out shall be effected by us in whole or in part at such time or times and at such price or prices as determined by us at our reasonable discretion. The amounts payable under the Transaction being closed out shall then be immediately due.

22.5 Where we exercise our right under this clause to realise any Investments or other assets of yours held by us, we shall be entitled to sell those Investments or assets at the market price (as determined by us in our reasonable discretion) at the time the sale takes place. We shall have the right to choose the time, place and method of such sale at our discretion. Any costs of sale shall be borne by you.

22.6 If any Event of Default specified in this clause occurs, we may by notice in writing to you require settlement of all open Transactions to take place in accordance with this clause on the settlement date which for this purpose shall be the date on which notice is given.

22.7 Where settlement of all Transactions are to be made under this clause no further payments shall be made in respect of any open Transaction after the settlement date and each open Transaction shall immediately be settled by your payment of the settlement amount.

22.8 You shall give us notice of an event specified in clause 22.1 as soon as you become aware of its occurrence.

22.9 We shall be entitled, following any of the events specified in clause 22.1 to set-off (i) any obligation to make payment to you against any obligation owed by you to make payment to any Affiliate and (ii) any obligation of yours to make payment to us against any obligation of any Affiliate to make payment to you.

22.10 Any obligations shall be satisfied by the net settlement (whether by payment, set-off or otherwise) of the amounts due between us with respect to all the outstanding terminated Transactions. With respect to each outstanding terminated Transaction we shall determine its total cost, loss or gain (including, if appropriate, any loss of bargain, cost of funding or other loss or gain as a result of the termination) and any net amount for all the outstanding terminated Transactions determined by us in accordance with the foregoing due either from you to us or from us to you shall be immediately payable upon its calculation. We shall not be obliged to make any payment or delivery scheduled to be made by us under a Transaction or these Terms of Business for as long as an Event of Default has occurred and is continuing.

## 23. Termination

- 23.1 You may terminate these Terms of Business immediately by giving written notice to us.
- 23.2 We may terminate these Terms of Business with you by giving you ten (10) Business Days notice, except that we may terminate these Terms of Business immediately if you fail to observe or perform any provision of these Terms of Business, or upon the occurrence of any Event of Default, or if you have no open Transactions in your Account at the time when the notice of termination is sent. At any time after the termination of these Terms of Business, we may, without notice, close out any of your open Transactions at the end of day Closing Price.
- 23.3 Termination shall be without prejudice to accrued rights and remedies and the existence and enforceability of any open Transaction, which shall continue until close in accordance with these Terms of Business, unless otherwise specified.
- 23.4 Upon terminating these Terms of Business, all amounts payable by you to us will become immediately due and payable including (but without limitation):
- (a) all outstanding fees, charges and commissions;
  - (b) any dealing expenses incurred by terminating these Terms of Business; and
  - (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.
- 23.5 Termination shall not affect then outstanding rights and obligations (in particular those in clause 26 (Exclusions, Limitations and Indemnity), clause 27 (Miscellaneous) and clause 29 (Dispute Resolution) to these Terms of Business) and Transactions which shall continue to be governed by these Terms of Business and the particular clauses agreed between us in relation to such Transactions until all obligations have been fully performed.

## 24. Manifest Errors

- 24.1 A "Manifest Error" means a manifest or obvious misquote by us, or any Market, Stock Exchange, price providing bank, information source, commentator or official on whom we reasonably rely, having regard to the current market conditions at the time an Order is placed. When determining whether a situation amounts to a Manifest Error, we may take into account all information in our possession including, without limitation, information concerning all relevant market conditions and any error in, or lack of clarity of, any information source or announcement.
- 24.2 We will, when making a determination as to whether a situation amounts to a Manifest Error, act fairly towards you but the fact that you may have entered into, or refrained from entering into, a corresponding financial commitment, contract or Transaction in reliance on an Order placed with us (or that you have suffered or may suffer any loss of profit, consequential or indirect loss) shall not be taken into account by us in determining whether there has been a Manifest Error. We reserve the right, without prior notice, to:
- (a) amend the details of such a Transaction to reflect what we consider in our discretion, acting in good faith, to be the correct or fair terms of such Transaction absent such Manifest Error/s;
  - (b) if you do not promptly agree to any amendment made under (a) herein we may void from its inception any Transaction resulting from or deriving from a Manifest Error; and/or
  - (c) refrain from taking any action at all to amend the details of such a Transaction or void such Transaction.
- 24.3 We shall not be liable to you for any loss, cost, claim, demand or expense you suffer (including loss of profits or any indirect or consequential losses) resulting from a Manifest Error or our decision to enforce the details of a Transaction notwithstanding any Manifest Error, except to the extent caused by our own fraud, willful default or gross negligence. In the event that a Manifest Error is made by any Market, Stock Exchange, price providing bank, information source, commentator or official on

whom we reasonably rely, we will not be liable to you for any loss, cost, claim, demand, or expense, except to the extent caused by our own fraud, willful default or negligence.

## 25. Arbitrage

- 25.1 Internet, connectivity delays, and price feed errors sometimes create a situation where the price displayed on the FXCM Online Facility do not accurately reflect the market rates. The concept of arbitrage and “scalping”, or taking advantage of these internet delays, cannot exist in an OTC market where the client is buying or selling directly from the principal. FXCM do not permit the practice of arbitrage on the FXCM Online Facility. Transactions that rely on price latency arbitrage opportunities may be revoked, without prior notice. FXCM reserves the right to make the necessary corrections or adjustments on the Account involved, without prior notice. Accounts that rely on arbitrage strategies may at FXCM’s sole discretion be subject to FXCM’s intervention and FXCM’s approval of any Orders. Any dispute arising from such quoting or execution errors will be resolved by FXCM in their sole and absolute discretion.
- 25.2 FXCM shall have no obligation to contact you to advise upon appropriate action in light of changes in market conditions or otherwise.
- 25.3 You agree to indemnify and hold FXCM, its Affiliates and any of their directors, officers, employees and agents harmless from and against any and all liabilities, losses, damages, costs and expenses, including legal fees incurred in connection with the provision of the services under these Terms of Business to you provided that any such liabilities, losses, damages, costs and expenses have not arisen for our gross negligence, fraud or willful default.

## 26. Exclusions, Limitations and Indemnity

- 26.1 Nothing in these Terms of Business shall exclude or restrict any duty or liability owed by us to you under the Act (as may be amended or replaced from time to time).
- 26.2 **General exclusion:** Except as set out in 26.1 above neither we nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses (including direct, indirect, incidental, punitive, or consequential loss, loss of profits, lost data, loss of use of the FXCM Online Facility, business interruption, costs of substitute, services or downtime costs), whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under these Terms of Business (including any Transaction or where we have declined to enter into a proposed Transaction) unless such loss arises directly from our respective gross negligence, willful default or fraud. To the extent permitted by law, we will not be liable for losses suffered by you or any third party for any special damage, or loss of profits or loss of goodwill or reputation or loss of business opportunity arising under or in connection with these Terms of Business, whether arising out of negligence, breach of contract, misrepresentation or otherwise. Nothing in these Terms of Business will limit our liability for death or personal injury resulting from our negligence.
- 26.3 **Trading Losses:** For the avoidance of doubt, in no circumstances shall we be liable to you, or responsible, for any losses or other costs or expenses of any kind arising out of or in connection with the placement of Orders by you, or the execution of Transactions with us.
- 26.4 **Tax implications:** Without limitation, we do not accept liability for any adverse tax implications of any Transaction whatsoever.
- 26.5 **Changes in the market:** Without limitation, we do not accept any liability by reason of any delay or change in market conditions before any particular Transaction is effected.
- 26.6 **Force majeure:** Since we do not control signal power, its reception or routing via Internet, configuration of your equipment or reliability of its connections, we shall not be liable for any claims, losses, damages, costs or expenses, including attorney’s fees, caused directly or indirectly, by any breakdown or failure of any transmission or communication system or equipment or computer facility or trading software, whether belonging to us, our Affiliates, you, any market, or any settlement or clearing system when you trade online (via Internet) or for any cause preventing us from performing any or all our obligations, any act of God, war, terrorism, malicious damage, civil commotion, industrial acts, any Exceptional Market Event, or acts and regulations of any

governmental or supra national bodies or authorities which in our opinion prevent an orderly market in relation to your Orders (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, we shall use commercially reasonable efforts to resume performance and we may give you written notice. Upon occurrence of a Force Majeure Event, all of our obligations under these Terms of Business shall be immediately suspended for the duration of such Force Majeure Event. Additionally, we may take any one or more of the following steps:

- (a) alter normal trading times;
- (b) alter the Margin requirements;
- (c) amend or vary these Terms of Business and any Transaction contemplated by these Terms of Business, insofar as it is impractical or impossible for us to comply with our obligations;
- (d) close any or all open Transactions, cancel instructions and orders as we deem to be appropriate in the circumstances; and/or
- (e) take or omit to take all such other actions as we deem to be reasonably appropriate in the circumstances having regard to the positions of yours, ours, and other customers.

26.7 **Indemnity.** Without prejudice to our rights in clause 15 of these Terms of Business, you shall pay to us such sums as we may from time to time require in any of your Accounts with us and, on a full indemnity basis, any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which we may incur or be subjected to with respect to any of your Accounts or any Transaction or any matching Transaction on a Market or with an intermediate broker or as a result of any misrepresentation by you or any violation by you of your obligations under these Terms of Business (including any Transaction) or by the enforcement of our rights. Notwithstanding anything to the contrary, you will be liable for any and all debit balances not directly resulting from trading activity.

26.8 You agree to indemnify and hold FXCM, its affiliates, employees, agents, successors and assigns harmless from and against all liabilities, losses, damages, costs and expenses, including attorney's fees resulting from use of programmable trading systems, whether built by you yourself or by any third party and executed on or using the FXCM Trading Station or any other trading platform offered by FXCM.

26.9 **Claims from your customers:** To the extent you have entered Orders for the account of your customers, you shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of claims raised by your customers. This clause shall not be affected by the termination of these Terms of Business.

26.10 **FXCM Online Facility.** Access to the FXCM Online Facility is provided "as is". FXCM makes no warranties, express or implied, representations, or guarantees as to the merchantability, fitness for any particular purpose or otherwise with respect to the FXCM Online Facility, its content, any documentation or any hardware or software provided. Technical difficulties could be encountered in connection with the FXCM Online Facility. These difficulties could involve, among others, failures, delays, malfunction, software erosion or hardware damage, which difficulties could be the result of hardware, software or communication link inadequacies or other causes. Such difficulties could lead to possible economic and/or data loss. In no event will FXCM or its Affiliates or any of their employees be liable for any possible loss (including loss of profit or revenue whether direct or indirect), cost or damage including, without limitation, consequential, unforeseeable, special or indirect damages or expense which might occur as a result of or arising out of using, accessing, installing, maintaining, modifying, de-activating or attempting to access the FXCM Online Facility or otherwise.

26.11 **Internet Failures:** Since FXCM does not control signal power, its reception or routing via Internet, configuration of your equipment or reliability of its connection, FXCM cannot be responsible for communication failures, distortions or delays when using the FXCM Online Facility.

## 27. Miscellaneous

- 27.1 **Amendments:** We reserve the right to amend the terms and conditions of these Terms of Business from time to time by posting such changes on the FXCM website and in accordance with the Act. You are responsible for regularly reviewing these Terms of Business for any modifications and agree to be bound by the same. You may not amend these Terms of Business unless such amendment is in writing and signed by an authorised officer of FXCM. Unless otherwise agreed, an amendment will not affect any outstanding Order or Transaction. If you do not wish to accept any amendment made by us to these Terms of Business you may by notice to us close your open Margin Transactions and your Account in accordance with these Terms of Business.
- 27.2 **Notices:** Unless otherwise agreed, all notices, instructions and other communications to be given by us to you under these Terms of Business may be verbal or in writing and shall be given to your last known home address, place of work, telephone number (including a telephone answering machine), fax number, e-mail address or other contact details. All notices, instructions and other communications to be given to FXCM by you under these Terms of Business should be sent to the Compliance Officer whose details are available on the FXCM website.
- 27.3 Each notice, instruction or other communication to you (except confirmations of trade, statements of account, and Margin Call Warnings) shall be conclusive unless written notice of objection is received by us within five (5) Business Days of the date on which such document was deemed to have been received. Any notice, instruction or other communication shall be deemed to have been duly given when received or given as follows, whichever is the earlier:
- (a) when left at your last known home or work address;
  - (b) if given by leaving a telephone answering machine message or voice mail message, one hour after the message being left on the relevant medium;
  - (c) if sent by first class post, in the ordinary course of the post and in any event on the next day (or third in the case of air mail) after posting (excluding Sundays and public holidays); and/or
  - (d) if sent by e-mail, one hour after sending, provided no "not sent" or "not received" message is received from the relevant e-mail provider/s.
- 27.4 You will notify us in writing of any change of your address or other contact details in accordance with this clause.
- 27.5 **Assignment:** These Terms of Business shall be for the benefit of and binding upon us both and our respective successors and assigns. No assignment of these Terms of Business or any rights hereunder shall relieve you of any of your obligations or liabilities hereunder. You shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer rights or obligations under these Terms of Business or any interest in these Terms of Business, without FXCM's prior written consent, and any purported assignment, charge or transfer in violation of this clause shall be void. FXCM may assign these Terms of Business by providing not less than ten (10) Business Days written notice to you, except where it is impracticable in the circumstances. You hereby instruct us as the case may be that upon any such assignment, any monies held as Client Money be transferred to the Assignee to be held as Client Money on your behalf.
- 27.6 **Disclosures:** In order to comply with its obligations under the Companies Act 1985 & 2006, the Financial Services and Markets Act 2000, the FSA Handbook, the United Kingdom Listing Authority's Listing Rules, the City Code on Takeovers and Mergers, and any other Applicable Regulations (together the "Legislation") we may be required to make certain disclosures relating to your Transactions, which may or may not include disclosing your identity. In addition to complying with its obligations under the Legislation, we may comply with any request for information regarding any Transaction from any relevant regulatory or governmental authority. You agree that such compliance does not cause us to breach any obligation of confidentiality which we owe to you pursuant to these Terms of Business.
- 27.7 **Time of essence:** Time shall be of the essence in respect of all obligations of yours under these Terms of Business (including any Transaction).

- 27.8 **Rights and remedies:** The rights and remedies provided under these Terms of Business are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under these Terms of Business (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.
- 27.9 **Set-off:** Without prejudice to any other rights to which we may be entitled we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) at any time owing between you and us.
- 27.10 **Partial invalidity:** If, at any time, any provision of these Terms of Business is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms of Business nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.
- 27.11 **Entire Agreement:** These Terms of Business, and any references to other agreements herein, together with any schedules attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, agreement and representations with respect to the subject matter.
- 27.12 **Waiver:** We are entitled to waive or relax any of these Terms of Business from time to time without notice to you. No failure or delay in exercising or relaxation by us of these Terms of Business shall operate as a general waiver of the relevant term, condition, right or power and no partial or single exercise of any term, condition, right or power shall preclude any other or further exercise of some or any of our other rights and remedies against you. In particular, and without limitation, where these Terms of Business specify certain limits or parameters to your trading activities or Margin requirements, we shall be entitled from time to time and with or without notice to you to allow you to breach such limits or parameters.
- 27.13 **Recording of calls:** We may record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of the Orders or instructions given.
- 27.14 **Electronic communications:** Subject to Applicable Regulations, any communications between us using electronic signatures shall be binding as if it were in writing. By execution of these Terms of Business you give your consent to the receipt of communications by electronic means which but for your consent must be made using a durable medium under Applicable Regulations. Orders or instructions given to you by electronic means will constitute evidence of the Orders or instructions given. You hereby consent that account information and trade confirmations will be made available to you on the FXCM Online Facility in lieu of delivery via mail or e-mail. You will be able to access this information using your Access Code. Updated information will be available no more than twenty-four hours after any activity takes place on your account, absent any Force Majeure Event or service interruption. If you no longer wish to communicate in this way, you must revoke this consent in writing. If you do not wish to communicate via electronic means at all, you must inform us of your wishes prior to you signing the signature page of these Terms of Business.
- 27.15 **Our records:** Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 27.16 **Your records:** You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of Orders submitted and the time at which such Orders are submitted.

27.17 **Third party rights:** The parties to these Terms of Business do not intend that any provision of these Terms of Business should be enforceable by any person who is not a party to these Terms of Business.

27.18 **Co-operation for proceedings:** If any action or proceeding is brought by or against us in relation to these Terms of Business or arising out of any act or omission by us required or permitted under these Terms of Business, you agree to co-operate with us to the fullest extent possible in the defence or prosecution of such action or proceeding.

## 28. Dispute Resolution

28.1 Upon receipt of a complaint from you, the FXCM employee that receives the complaint will attempt to resolve the issue. If the complaint cannot be resolved at the first point of contact or after reasonable investigation and discussion with you, the matter will be referred to a senior member of the relevant FXCM division. If you are dissatisfied with the outcome, you will be requested to provide: (a) written notice specifying the nature of the complaint, the desired outcome and what action you think will settle the complaint; and (b) all relevant material to support the complaint.

28.2 Complaints should be addressed to the Complaints Officer and sent to FXCM. Upon receipt of written notice ("Lodgment Date"), FXCM's Complaints Officer will: (a) within 5 days of the Lodgment Date, provide a written acknowledgment of receipt and an indication of the likely time-frame in which FXCM will respond to the complaint; (b) consider and investigate the circumstances surrounding the complaint; (c) advise Client of the criteria and processes applied by FXCM in dealing with complaints; (d) upon request, provide Client with any relevant, non-confidential, material relating to the complaint; and (e) communicate directly with Client, with a view to resolving the complaint in a fair and timely manner.

28.3 No later than 45 days following the Lodgment Date, the Complaints Officer must: (a) notify Client in writing of the decision in relation to the complaint; (b) provide Client with written reasons for the decision; (c) outline to Client the remedies, if any, available to Client; and (d) advise Client of any further avenues for complaint and the time frames involved in those avenues. Where Client has redress (financial or otherwise), FXCM will promptly provide Client with information regarding that redress. If the complaint is not resolved within 45 days following the Lodgment Date, the Complaints Officer will inform Client of the reasons for the delay.

28.4 You may contact the Client Services Department should you require further information on how complaints are handled by FXCM internally.

## 29. External Dispute Resolution

29.1 Clause 29 applies only where you are a Retail Client.

29.2 In the event that your complaint is unable to be resolved by FXCM in accordance with its internal complaints handling system, you may refer the complaint to the Financial Ombudsman Service ("FOS") for determination in accordance with its rules, provided that the complaint falls within the rules of the FOS.

29.3 You may lodge a complaint with the FOS by sending the necessary documents and information to:

Financial Ombudsman Service  
GPO Box 3  
Melbourne VIC 3001  
Australia

29.3 A determination FOS will be binding on FXCM only if you accept the decision.

## 30. Information and Intellectual Property:

30.1 You acknowledge and agree that FXCM is the sole owner (except to the extent owned by third party licensors and except to the limited extent licensed by FXCM to any other financial institutions and their clients) of all right, title and interest (collectively the "IP Rights") in and to the FXCM Online Facility, the data and other information generated by the FXCM Online Facility ("Data") produced by

and distributed by or through the FXCM Online Facility and each component thereof and all intellectual property and propriety rights with respect thereto, including, without limitation, patent, copyright, trade secret, trademark and other proprietary rights in and to the FXCM Online Facility and each component thereof, and to all modifications, including custom modifications, to the FXCM Online Facility and each component thereof, whether made by or with the assistance of you and any other person and any know how, techniques, methodologies, equipment or processes used by FXCM, the look and feel of the FXCM Online Facility and each component thereof and all of FXCM's software (front and back end) all registered trademark applications, trademarks and service marks, trade names, URL registrations and all pricing information and other Data.

30.2 You shall not obtain any intellectual property rights in or to the IP Rights.

### 31. Identification and Disclosure of Information

31.1 **Identification of client identity:** In accordance with the Anti-Money Laundering and Counter-Terrorism Act 2006 (AML/CTF Act), FXCM has an obligation to collect information and verify the identity of its clients. FXCM will carry out its customer identification and verification procedures in accordance with the AML/CTF Act. You declare that:

- (a) you are not aware and have no reason to suspect that the monies used to fund your Transactions have been or will be derived from or related to any money laundering, terrorism financing or similar activities illegal under the applicable law or regulations or otherwise prohibited under any international convention or agreement (AML/CTF Law);
- (b) you not aware and have no reason to suspect the proceeds of your Transactions will be used to finance any illegal activities;
- (c) you will provide all additional information and assistance that FXCM or its Affiliates may request in order for FXCM or its Affiliates to comply with any AML/CTF Law.

31.2 You acknowledge that FXCM or its Affiliates may refuse any order or instruction from you if it is concerned that the request or transaction may breach any obligation of, or cause FXCM or its Affiliate to commit or participate in any breach of AML/CTF Law and neither FXCM nor its Affiliate will incur liability to you in doing so.

31.3 **Disclosure of information:** When submitting your application form to open an account with FXCM, you will be providing FXCM (and other entities within FXCM Holdings, LLC (the "FXCM Group")) with your personal information. FXCM or other entities in FXCM Group may maintain records of all transactions and activities on your Account(s), including, but not limited to, details of liquidations on your Account(s). FXCM or other entities in FXCM Group may also collect information about you from publicly available sources such as company registers. We will also collect and hold information about you when you complete an online application or other type of form or operate and deal on your Account through FXCM's websites. Your personal information will be held by us in accordance with National Privacy Principles in the Privacy Act 1988. At any time, upon request, you may gain access to the information FXCM holds about you.

31.4 You need not give FXCM any of the personal information about you requested in the application forms. However, without that information FXCM Group may not be able to open an account for you.

31.5 In accordance with the Privacy Act 1988, you agree that Veda Advantage Information Services & Solutions Ltd. ("VISS") may seek your credit information if it considers it relevant to assessing your application for commercial credit. You agree to VISS obtaining from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by VISS. You agree to VISS obtaining personal information about you from other credit providers, whose names you have provided for VISS or that may be named in a credit report, for the purpose of assessing your Application for commercial credit made to VISS. You agree that VISS may obtain a consumer credit report about you from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owned by you.

31.6 FXCM has requested the information required in the application form to enable FXCM to determine whether it will deal with you using the FXCM Trading Station. That information, together with the information collected and maintained by FXCM during the course of its relationship with you, is

required to keep you updated whilst you are a client in relation to matters such as your Margin obligations and the funds, securities, currencies or other property in your Account(s) and possibly other activities of FXCM. FXCM and/or the FXCM Group also require the information to manage and administer the products and services provided to you. FXCM may also be required to provide your personal information to ASIC and other regulatory and government bodies from time to time in Australia and overseas. FXCM and/or FXCM Group may also disclose your personal information to: (i) financial institutions and other similar organisations in connection with its corporate activities or that are nominated by you; (ii) the FOS, courts, arbitrators and other dispute resolution bodies; (iii) external service providers and professional advisers (which may be located overseas) that provide services to FXCM and/or FXCM Group; (iv) any actual or potential delegate or assignee as referred to in the Terms of Business; (v) any other person or entity as required or authorised by law; and (vi) any organisation which you request FXCM to act, or any persons acting, on your behalf, including your financial adviser, broker, solicitor or accountant.

- 31.7 We may also record telephone conversations between you and persons working for us. Such recordings, or transcripts from such recordings, may be used to resolve any dispute between you and us and with a view to satisfying our statutory obligations (if any) including requests from regulators and other government bodies. Recordings or transcripts made by us of your telephone conversations may be destroyed under our normal practice, which is to destroy them usually, but not necessarily, 2 calendar months after the date of the conversation.
- 31.8 FXCM may use personal information held about you for: (i) marketing FXCM Group products and services to you; (ii) developing an understanding of the products and services you may be interested in obtaining from FXCM; (iii) any other purpose you have consented to; and (iv) any use which is required or authorised by law.
- 31.9 FXCM takes all reasonable steps to protect your personal information from misuse, loss, unauthorised access, modification or disclosure. Should you have any questions or complaints about the protection of privacy of your personal information held by FXCM, you should contact FXCM. If a complaint is not resolved to your satisfaction, you may complain to the Privacy Commissioner.
- 31.10 You can gain access to any information FXCM holds about you by calling 1800 109 751., or electronically mailing [compliance@fxcm.com](mailto:compliance@fxcm.com). FXCM will process your request usually within 14 days. If your request is complex, more time may be needed in which case we will advise you of the extra time required. In some circumstances the law may allow FXCM to deny you access. In such a case FXCM will explain to you the reason for refusing access. There is no fee for requesting access to the personal information about you held by FXCM, although FXCM may charge you the reasonable cost of processing your request.
- 31.11 FXCM requires that you promptly notify FXCM of any changes to the personal information that FXCM holds about you. This will ensure that the personal information about you held by FXCM is up to date and enable us to keep you informed of the continuing circumstances of your Account(s), Margin obligations and trading activities. You may ask FXCM at any time to correct personal information about you held by FXCM which you believe is inaccurate. Should FXCM disagree with you as to the accuracy of the information, you may request that FXCM attach a statement to that information noting that you consider it inaccurate or incomplete.

## 32. Governing Law

- 32.1 **Governing law.** A Transaction which is subject to the Rules of a Market shall be governed by the law applicable to it under those Rules. Subject thereto, these Terms of Business shall be governed by and construed in accordance with the laws of New South Wales, Australia.
- 32.2 **Jurisdiction.** Without prejudice to any rights you may have to refer a complaint to the FOS, as further set out in clause 27.19 of these Terms of Business, each of the parties irrevocably:
- (a) agrees for our benefit that the courts of New South Wales shall have jurisdiction to settle any suit, action or other proceedings relating to these Terms of Business ("Actions") and irrevocably submits to the jurisdiction of such courts (provided that this shall not prevent us from bringing an action in the courts of any other jurisdiction); and

- (b) waives any objection which it may have at any time to the laying of venue of any Actions brought in any such court and agrees not to claim that such Actions have been brought in an inconvenient forum or that such court does not have jurisdiction over it.

33. **FXCM MT4 Powered by Boston Technologies Letter of Direction**

The following additional terms apply to clients utilizing FXCM MT4 Powered By Boston Technologies ("The Program"). If Client utilizes The Program, Client agrees to the additional terms and authorises FXCM to act accordingly by signing this Client Agreement.

30.1 Client wishes to utilize The Program to execute trades and to direct trade orders and trade details to FXCM. Client's utilizing The Program will not be entering trades orders and trade details directly with FXCM, but rather will be entering trade orders and trade details through The Program, a third party. Client hereby authorizes and directs FXCM to enter trades for Client's account in accordance with trading signals generated and sent to FXCM by The Program. In consideration of opening Client's account, Client acknowledges and agrees to the additional terms and conditions, as follows:

- (a) Client fully understands that the trade orders and trade details are generated by The Program and not by FXCM and that FXCM's responsibility is to use commercially reasonable efforts to enter orders pursuant to the trade orders and trade details generated by The Program and as received by FXCM. Client confirms that FXCM has not solicited, or in any other way recommended, Client's participation in The Program. Client has made inquires and conducted research into The Program sufficient to make an informed investment decision. FXCM cannot imply or guarantee that Client will make a profit from The Program and Client agrees that FXCM will not be held responsible for The Program's performance or trading losses incurred in Client's account as a result of trading pursuant to The Program.
- (b) FXCM will enter trade orders for Client's account in accordance with the trade orders and trade details generated by The Program. Client understands that Client's trading access through The Program will be provided by The Program provider and not by FXCM.
- (c) If more than one FXCM client is using the same system or service as The Program, Client acknowledges that FXCM may enter block orders to enhance order execution, in which case a fair and systematic fill allocation method will be employed. Client understands and acknowledges that FXCM will only be responsible for using its commercially reasonable efforts to execute, in a timely fashion, the trade orders and trade details generated by The Program. FXCM shall not be responsible for any error or malfunction of The Program, mechanical or communication line failure, system errors, data failure or any other causes beyond its control. Client acknowledges that FXCM can accept and execute orders only if actually received or generated and then on a "not held" basis (*i.e.* FXCM shall not be held responsible for the execution of the order at the price indicated or otherwise).
- (d) Client has had the opportunity to ask questions on how Client's account will be handled and acknowledges that Client has not purchased The Program from FXCM. Client understands that there is no trading system or recommendation service, including The Program, that is free from the risk of loss. FXCM does not imply or guarantee that Client will make a profit and Client agrees that neither FXCM nor any of its officers, directors, employees, consultants, agents or affiliates will be held responsible for the performance of The Program or trading losses in Client's account.
- (e) FXCM may act upon the authority given by this letter of direction until Client revokes the authority by written notice addressed and actually delivered to FXCM, in accordance with the instructions and details on FXCM's website. FXCM may also terminate the authorization over The Program at any time for any reason in its sole discretion and will provide Client with written notice. Client shall be responsible for any open lots in Client's account at the time The Program is terminated. Client shall permit FXCM to execute offsetting orders for any open lots in Client's account at the time the letter of direction is terminated.
- (f) Client agrees that, in the absence of willful or wanton misconduct, neither FXCM nor any of its officers, directors, employees, consultants, agents or affiliates will be held liable for any act or omission in the course of or in connection with Client's participation in The Program. Client shall indemnify FXCM, its principals, officers, directors, employees, agents, successor and/or assigns from all losses and/or liability (including reasonable attorney's and/or accountant's fees) incurred or resulting from this letter of direction to utilize The Program, provided that there has been no judicial determination that such liability was the result of gross negligence or recklessness or intentional misconduct by FXCM, and further provided that the conduct that was the basis for such liability was not undertaken in the actual and reasonable belief that it was in the best interest of Client's account.

## 31. FXCM Mobile TS II Trading System (hereinafter referred to as “Mobile TS II”) Terms of Service and Risk Disclosure

### 31.1 Terms of Service:

IT IS STRONGLY RECOMMENDED THAT YOU FAMILIARIZE YOURSELF WITH THE FUNCTIONALITIES OF MOBILE TS II BY USING THE DEMO VERSION PRIOR TO MANAGING YOUR LIVE ACCOUNT VIA A PORTABLE DEVICE. FXCM RECOMMENDS MOBILE USERS NOT TO USE MOBILE TSII AS THEIR PRIMARY TRADING PLATFORM. INSTEAD MOBILE USERS SHOULD USE MOBILE TSII AS A SUPPLEMENTAL RESOURCE TO FXCM'S TRADING STATION.

- (a) Mobile TS II is comprised of mobile trading software provided exclusively through public telecommunication networks, circuits and other public connections to FXCM Online Facility. Mobile TS II utilizes public telecommunication network circuits for the transmission of messages. FXCM shall not be liable for any and all circumstances in which you may experience a delay in price quotation or an inability to trade caused by network circuit transmission problems that may arise between you and any internet service provider, phone service provider, or any other service provider or related to any other problems outside the direct control of FXCM.
- (b) FXCM will endeavour to use commercially reasonable efforts to ensure the security of information and transactions conducted via Mobile TS II. However, you are obligated and solely responsible to keep your password(s) and other confidential information secret and ensure that third parties do not obtain access to your account or your portable device. You will be solely liable for any and all trades executed by means of your password(s) even if such use may be wrongful. FXCM may rely on all orders and instructions submitted using your password(s) without further inquiry or verification.
- (c) You agree that neither FXCM nor its third party service providers will be liable for the reliability or accuracy of the information made available via Mobile TS II. Such information is reasonably believed to be accurate and timely; however, there are no explicit or implicit warranties of accuracy or timeliness in connection therewith or continued availability of this information, and such information should not be relied upon as such.
- (d) You agree that FXCM Online Facility is the primary means relied upon for all order and trade related services, including but not limited to confirmations, account balances, margin balances, price quotes, account status, and account details. In the event of any inconsistencies in the above between FXCM Online Facility and Mobile TS II, FXCM Online Facility will prevail.
- (e) You agree that you will not rely on the Mobile TS II as your primary means of placing trades. You agree that the Mobile TS II is being provided solely as a convenience and not as an alternative to FXCM Online Facility or telephoning the FXCM trading desk.

### 31.2 Fees:

- (a) If you are trading via an FXCM Micro Account, your account will be charged and debited a service fee of \$0.10 per 1,000 unit lot for each trade entered using the Mobile TS II.

### 31.3 FXCM Mobile TS II Risk Disclosure:

- (a) You understand that by choosing to conduct trading activity via Mobile TS II, you assume and accept certain risks for which you agree that neither FXCM nor its third party service provider shall be liable, including but not limited to the risk of: power outages; broken connections; network circuit obstruction or congestion; transmission failures; transmission delays; the risk of delayed communications during periods of increased market volatility; and/or other occurrences outside FXCM's direct control (collectively, “Technical Problems”). Order execution via Mobile TS II is not guaranteed. You hereby agree to indemnify and hold FXCM harmless with respect to any and all losses you may sustain in connection with any and all Technical Problems. Customer service inquiries relating to Technical Problems should be directed to FXCM. However, in no event will FXCM be liable for your inability to engage in trading activity via Mobile TS II and FXCM shall not be responsible for any losses or missed opportunities incurred by you due to the delayed or non-delivery of any order or instruction via Mobile TS II.
- (b) You agree that FXCM shall not be responsible for any fees associated with your use of Mobile TS II should you incur any fees from your internet service provider, phone service provider, or any other service provider used to access Mobile TS II.

- (c) Online trading and trading via portable device, no matter how convenient or efficient, do not reduce the risks associated with foreign exchange trading. FXCM will not be liable to you or any third party for the accuracy or timeliness of any and all information provided via Mobile TS II or for any and all actions on such information.
  
- (d) IF YOU HAVE ANY DOUBTS AS TO WHETHER AN ORDER PLACED VIA MOBILE TS II HAS BEEN EXECUTED, YOU SHOULD NOT PLACE ADDITIONAL ORDERS VIA MOBILE TS II; RATHER, YOU SHOULD CONTACT FXCM FOR INFORMATION REGARDING ORDER STATUS OR LOG ON TO THE FXCM ONLINE FACILITY. FXCM'S PHYSICAL TELEPHONE TRADING DESK IS MAINTAINED DURING TRADING HOURS AS AN ALTERNATIVE METHOD OF COMMUNICATION DURING MOBILE TS II SERVICE INTERRUPTIONS OR WHEN EXPERIENCING TECHNICAL PROBLEMS.

**ELECTIVE WHOLESALE CLIENT NOTICE**

**1. FXCM MAY CLASSIFY YOU AS A WHOLESALE CLIENT IN ACCORDANCE WITH CORPORATIONS ACT IF YOU SATISFY ANY REQUIREMENT OF THE CORPORATIONS ACT FOR THAT PURPOSE. THESE INCLUDE ANY ONE OF THE FOLLOWING CRITERIA**

- 1.1 You have been certified by a qualified Australian accountant to have net assets in excess of \$AU2.5m or gross income in each of the last 2 financial years of at least \$250,000 ('wealthy investor');
- 1.2 You are a regulated financial services entity or control at least \$AU10m for investment in financial products, or are an entity whose securities are listed on a financial market or an exempt public authority ('professional investor');
- 1.3 You have been determined to have previous experience in entering into transactions for financial services or financial products similar to the Transactions envisaged under these Terms of Business or by any other person who certifies that determination to FXCM ('sophisticated investor');
- 1.4 The price or value of the Transactions you enter with FXCM is at least \$AU500,000 where the price or value is calculated according to a single transaction, by an agreed instalment arrangements or by an aggregate method permitted under the Act and Applicable Regulations from time to time.
- 1.5 You are carrying out Transactions in connection with a business which is not a 'small business' as defined in the Act and Applicable Regulations from time to time (currently a small business. has less than 20 employees unless it is a manufacturing company, in which case the number of employees is 100 people).

**2. AS A CONSEQUENCE OF CLASSIFICATION AS A WHOLESALE CLIENT, YOU WILL LOSE THE FOLLOWING PROTECTIONS AFFORDED TO RETAIL CLIENTS (APART FROM THOSE WHICH ARE ALSO PROVIDED TO WHOLESALE CLIENTS) UNDER THE ACT:**

- 2.1 Direct offer financial promotions - we will not be obliged to comply with the anti-hawking provisions under the Act relating to restrictions on and the required contents of direct offer financial promotions. We do not need to provide you in a direct offer financial promotion, with sufficient information for you to make an informed assessment of the investment to which it relates.
- 2.2 PDS/FSG - we will not be obliged to provide a copy of Product Disclosure Statement and Financial Services Guide before you acquire services from FXCM to assess the investment to which they relate.
- 2.3 Understanding of risk - we will not be required to provide you with the written risk warnings and notice required for Retail Clients in relation to Transactions in complex financial instruments, in particular derivatives and warrants, and stocklending.
- 2.4 Disclosure of charges, remuneration and commission - we will not be required to disclose in writing before conducting any designated business on your behalf the basis or amount of their charges for conducting that business, or the amount of remuneration or commission or other income payable to FXCM or their Affiliates for conducting the regulated business.
- 2.5 Financial Ombudsman Service - Access to the Financial Ombudsman and the right to claim compensation does not extend to you as a Wholesale Client.

**3. YOUR ATTENTION IS ALSO DRAWN TO THE FOLLOWING RULES, WHICH ARE LIMITED IN THEIR APPLICATION TO WHOLESALE CLIENTS WITH THE FOLLOWING POSSIBLE CONSEQUENCES FOR CLIENTS:**

- 3.1 Financial promotion - Certain rules under the Act relating to the form, content and checking and otherwise concerning financial promotions generally will not apply.
- 3.2 Appropriateness - we are entitled to assume that you have the necessary level of experience and knowledge to understand the risks involved in relation to any investment, service, product or transaction. Where we provide you with investment advice, we are entitled to assume that you have the requisite knowledge and experience to understand the risks involved.

- 3.3 Confirmation of transactions to customers - The rules relating to the confirmation of Transactions will apply in a modified form. Provisions regarding extra reporting requirements for dealings with Retail Clients and provision of hard copies of confirmations not accessed electronically will not apply.
- 3.4 Communication - we may have regard to your expertise as a Wholesale Client when complying with the requirements under the regulatory system that communications be clear, fair and not misleading. Additionally, we may have regard to your expertise as a Wholesale client when complying with the requirements to provide you with a general description of the nature and risks of particular Transactions. If you have any queries on this warning or require any further information, you should contact our Compliance Officer.

**COMPLEX PRODUCTS - GENERAL RISK DISCLOSURE NOTICE**

This notice does not disclose all of the risks and other significant aspects of derivatives products such as futures and options. **You should not deal in derivatives unless you understand the nature of the contract you are entering into and the extent of your exposure to risk. You should also be satisfied that the contract is suitable for you in the light of your circumstances and financial position.**

Certain strategies, such as “spread” position or a “straddle”, may be as risky as a simple “long” or “short” position. Whilst derivatives instruments can be utilised for the management of risk, some investments are unsuitable for many investors. Different instruments involve different levels of exposure to risk, and in deciding whether to trade in such instruments you should be aware of the following points:

- (a) **Contracts for Difference** can be likened to futures which can be entered into in relation to the FTSE-100 index or any other index or share, as well as Currency. Spread Bets are a form of Contracts for Difference. However unlike other futures and options, these contracts can only be settled in cash. Investing in a CFD or a Spread Bet carries risks similar to investing in a future or an option and you should be aware of these. Transactions in CFD or a Spread Bet may also have a contingent liability and you should be aware of the implications of this as set out in paragraph (c) below.
- (b) **Investing in precious metals, rolling forex or currency options** carries similar risks as investing in a future and you should be aware of these. Transactions in precious metals, rolling forex or currency options may also have a contingent liability and you should be aware of the implications of this as set out in paragraph (d) below. In addition to standard industry disclosures contained in these Terms of Business, you should be aware that **margined precious metals and currency trading are some of the riskiest forms of investment available in the financial markets and are only suitable for sophisticated individuals and institutions. Given the possibility of losing an entire investment, speculation in the precious metals or foreign exchange market should only be conducted with risk capital funds that if lost will not significantly affect your personal or institution's financial wellbeing.**

If you have pursued only conservative forms of investment in the past, you may wish to study precious metals or currency trading further before continuing an investment of this nature. **You must also realize that the limited risk in buying options means you could lose the entire option investment should the option expire worthless.** If you wish to continue with your investment, you acknowledge that the funds you have committed are purely risk capital and loss of your investment will not jeopardize your style of living nor will it detract from your future retirement program. Additionally, you fully understand the nature and risks of precious metals and currency investments, and your obligations to others will not be neglected should you suffer investment losses.

- (c) **Foreign markets.** Foreign markets involve different risks from Australian markets. In some cases risks will be greater. The potential for profit or loss from transactions on foreign markets or in foreign currency will be affected by fluctuations in foreign exchange rates. Such enhanced risks include the risks of political or economic policy changes in a foreign media, which may substantially and permanently alter the conditions terms, marketability or price of a foreign currency.
- (d) **Risk reducing orders or strategies.** The placing of certain orders (e.g. “stop loss” or “stop limits” orders) that are intended to limit losses to certain amounts may not always be affected because market conditions or technological limitations may make it impossible to execute such orders. Strategies using combinations of positions such as “spread” and “straddle” positions, may be just as risky or even riskier than simple “long” or “short” positions.
- (e) **Prices.** The prices posted on the FXCM Online System may not necessarily reflect the broader market. We will select closing prices to be used in determining Margin requirements and in periodically marking to market the positions in customer accounts. Although we expect that these prices will be reasonably related to those available on what is known as the interbank market, prices we use may vary from those available to banks and other participants in the interbank market. Consequently, we may exercise considerable discretion in setting margin requirements and collecting margin funds.

- (f) **Weekend risk.** Various situations, developments or events may arise over a weekend (Friday 16.30 EST – Sunday 18.00 EST) when the currency markets generally close for trading, that may cause the currency markets to open at a significantly different price from where they closed on Friday afternoon. Our customers will not be able to use the FXCM Online System to place or change orders over the weekend and at other times when the markets are generally closed. There is a substantial risk that stop-loss orders left to protect open positions held over the weekend will be executed at levels significantly worse than their specified price.
- (g) **Electronic trading.** Trading in OTC contracts through the FXCM Online Facility may differ from trading on other electronic trading systems as well as from trading in a conventional or open market. Customers that trade on an electronic trading system are exposed to risks associated with the system including the failure of hardware and software and system down time, with respect to the FXCM Online Facility, the individual customer's systems, and the communications infrastructure (for example the internet) connecting the platform with customers.
- (h) **Contingent liability transactions,** which are margined, require you to make a series of payments against the purchase price, instead of paying the whole purchase price immediately. You may sustain a total loss of the Margin you deposit with your dealer to establish or maintain a position. If the market moves against you, you may be called upon to pay substantial additional Margin at short notice to maintain the position. If you fail to do so within the time required, your position may be liquidated at a loss and you will be liable for any resulting deficit. Even if the Transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when you entered into the contract. Contingent liability transactions, which are not traded on or under the rules of a recognised or designated investment exchange, may expose you to substantially greater risks.
- (i) **Collateral.** If you deposit collateral as security, you should ascertain how your collateral will be dealt with. Deposited collateral may lose its identity as your property once dealings on your behalf are undertaken. Even if your dealings should ultimately prove profitable, you may not get back the same assets, which you deposited and may have to accept payment in cash.
- (j) **Commissions.** Before you begin to trade, you should obtain details of all commissions and other charges for which you will be liable. If any charges are not expressed in money terms (but, for example, as a dealing spread), you should obtain a clear written explanation, including appropriate examples, to establish what such charges are likely to mean in specific money terms.
- (k) **Insolvency.** Any insolvency or default may lead to positions being liquidated or closed out without your consent. In certain circumstances, you may not get back the actual assets, which you lodged as collateral and you may have to accept any available payment in cash. Additionally you transfer full ownership and title to a portion or all of the money you deposit with FXCM representing an amount necessary to secure your open positions or cover your actual of future contingent or prospective obligations (which will be calculated daily in FXCM's sole discretion based on your daily open positions and trading and which may be greater than the Margin required to maintain your open positions, as market conditions may dictate) such that you will not have a proprietary claim over that portion or any of your money and that portion or any of your money will not be segregated and you will rank only as a general creditor of FXCM with respect to any claim for the payment of such portion of the above described money you deposit which may therefore be irrecoverable in the event of any insolvency or default.

You should only engage in precious metals, CFD, or Rolling Spot Forex trading if you are prepared to accept a high degree of risk and in particular the risks outlined in the Risk Warning Notice. You must be prepared to sustain the total loss of all amounts you may have deposited with your firm as well as any losses, charges (such as interest) and any other amounts (such as costs) we incur in recovering payment from you.

COMPLIANCE DEPARTMENT  
FXCM AUSTRALIA LIMITED

**CONTRACTS FOR DIFFERENCE SUPPLEMENT****TERMS APPLICABLE TO CLIENTS WHO ENTER INTO CFD CONTRACTS**

1. Scope
  - 1.1 This Schedule supplements and amends the Terms of Business as expressly provided below. Defined terms in the Terms of Business shall be assigned the same meaning in this Schedule. In the event of any conflict or inconsistency between the Terms of Business and this Schedule the provisions in this Schedule shall prevail. You acknowledge and agree that, by executing the signature page of these Terms of Business, you agree to be bound by the terms of this Schedule.
  - 1.2 Clauses 2 to 6 of this Schedule shall govern the relationship between you and FXCM when you enter into a CFD Contract (which, for the avoidance of doubt, includes a Rolling Spot Forex Contract but does not include a Spread Bet Contract).
2. Services
  - 2.1 We deal with you only after you have requested a quote for a CFD Contract, we have quoted a price and you have given a specific instruction or Order to open a CFD Contract at the price quoted by us.
  - 2.2 You acknowledge and agree that unless otherwise agreed in writing you will not be entitled to delivery of, or be required to deliver, the Investment to which a CFD relates nor will you acquire any interest in the relevant Investment or be entitled to receive dividends or any equivalent thereof, to exercise voting rights, to receive any rights pursuant to any rights or bonus issue or to participate in any placing or open offer by virtue of your CFD position in respect of a Contract Investment which is a Security. The payment of any dividend or occurrence of any rights or bonus issue, placing, open offer or take-over in respect of a Security shall be dealt with in accordance with these Terms of Business.
3. Obtaining a Quote and Order Placement
  - 3.1 At any time which you wish to enter into a CFD Contract, or to close all or part of a CFD Contract, you may request a quote to open a CFD Contract with FXCM during the normal hours of trading for the relevant Contract Investment. FXCM may provide quotes in its sole discretion outside normal hours of trading if requested by you.
  - 3.2 CFD Contracts will be initiated by you placing an Order offering to enter into a CFD Contract in respect of a Contract Investment at the price quoted to you.
  - 3.3 Each Order must be an instruction to 'buy' or 'sell'. A 'buy' CFD Contract may also be referred to as a 'long' or 'long position' and a 'sell' CFD Contract may also be referred to as a 'short' or 'short position'.
4. Acceptance of Orders and Opening of CFD Contracts
  - 4.1 You may cancel your Order at any time by notice to us unless and until the Order has been executed in whole or in part, only if the order is an Entry Order ("Entry Order" means an order to enter the market at a specific price). If an Order has been executed in whole or in part it will not be possible for you to cancel the Order to the extent that the Order has been executed. If an Order is a Market Order ("Market Order" means an order to enter the market at the best current price), it will not be possible for you to cancel the Order at any time.
  - 4.2 For accounts using the "Non-Hedging" setting: If you give an Order to open a long position in relation to a Contract Investment on an Account where at that time you already have a short position in relation to the same Contract Investment on that Account, or give an Order to open a short position in relation to a Contract Investment where you already have a long position in relation to that Contract Investment, then we will treat your instruction to open the new position as an instruction to close the existing position to the extent of the
  - 4.3 size of the new position. If the new position is greater in size than the existing position, then the existing position will be closed in full and a CFD Contract opened in relation to the excess size of the new position.
  - 4.4 For accounts using the "Hedging" setting: You may open a position by providing us with an Order. Your request to open a new position will not close current open positions.
5. Closing a CFD Contract

- 5.1 On any Business Day on which either of us wishes to close any CFD Contract (whether in whole or in part) either party may give a Closing Notice to the other specifying the CFD Contract it wishes to close, the related Contract Investment, the Contract Quantity and the Closing Date.
- 5.2 Any Closing Notice served by you shall take effect immediately subject to prevailing Market conditions.
- 5.3 Any Closing Notice served by us pursuant to clause 5.1 of this Schedule shall take effect two Business Days following the giving of this Notice.
- 5.4 Following receipt of a Closing Notice, we shall inform you of the Closing Price of the CFD Contract and the CFD Contract will be closed at that price on the Closing Date. Any amounts payable by either party to the CFD Contract are immediately due and payable on closing and shall be paid on the Contract Settlement Date.
- 5.5 In addition to our rights at clause 22 of these Terms of Business and our rights pursuant to clause 5.1 of this Schedule to serve a Closing Notice, FXCM may close any CFD Contract in its sole discretion at any time without notice in the event that:
  - 5.5.1 it is a 'sell' CFD Contract, and due to illiquidity in the relevant Contract Investment we are unable to borrow a sufficient number of such Contract Investments to settle any underlying hedge position in respect of the CFD Contract; or
  - 5.5.2 we are required, at any time, by a lender to return any Contract Investment borrowed by us which relates to a CFD Contract and we are then unable to maintain a hedge position in respect of that CFD Contract; or
  - 5.5.3 at any time we are unable to establish or maintain a hedge position in respect of a CFD Contract;
  - 5.5.4 you fail to honour a Margin Call Warning in accordance with clause 15 of these Terms of Business;
  - 5.5.5 a Force Majeure Event is occurs; or
  - 5.5.6 these Terms of Business are terminated.

6. Calculations

- 6.1 We shall determine any Closing Price required as soon as reasonably practicable after the Closing Date to reflect the economic effect (and anticipated economic effect) on us of the event giving rise to the Closing Date including (without limitation):
  - 6.1.1 the effect (and anticipated effect) of such event on the value, transferability, liquidity and/or volatility of the CFD Contract Financial Investment;
  - 6.1.2 the effect (and anticipated effect) of such event on any hedge, contract or other trading position relating to the CFD Contract which we have or have had in place, or may reasonably have put in place;
  - 6.1.3 the effect (and anticipated effect) of such event on the value, transferability, liquidity and/or volatility of such hedge, contract or other trading position; and
  - 6.1.4 any costs we incur (and anticipate incurring) in terminating, liquidating or re-establishing any hedge, contract or other such trading position we have or have had in place.

**TERMS APPLICABLE TO CLIENTS WHO ENTER INTO CFD CONTRACTS ON SECURITIES**

7. Scope

- 7.1 Clauses 8 to 9 of this Schedule shall govern the relationship between you and FXCM when you enter into a CFD Contract the subject of which is formed by Securities.

8. Adjustments, Take-Over Offers & Suspension

- 8.1 If any Securities becomes subject to possible adjustments as the result of any of the events set out in clause 8.2 below, we shall determine the appropriate adjustment, if any, to be made to the Current Contract Value or Contract Quantity of any related CFD Contract to account for the dilutive or concentrative effect as necessary

to preserve the economic equivalent of the CFD Contract prior to the relevant event or to reflect the effect of the event on the relevant Securities such adjustments will be effective as of the date determined by us.

- 8.2 The events to which clause 8.1 refers may include without limitation the declaration by the issuer of the Securities of the terms of any of the following:
- 8.2.1 a subdivision, consolidation or reclassification of shares, or a free distribution of shares to existing holders by way of bonus, capitalisation or similar issue;
  - 8.2.2 distribution to existing holders of the underlying Securities of additional shares, other share capital or Securities granting the right to payment of dividends and/or proceeds of liquidation of the issuer, or Securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in cash or otherwise) at less than the prevailing Market price per share;
  - 8.2.3 any event in respect of the Securities analogous to any of the foregoing events or otherwise having a dilutive or concentrative effect on the Market value of the Security.
- 8.3 If at any time a "Merger Event" (as defined below) occurs or a Take-over Offer is made in respect of any relevant CFD Contract Securities, then on or after the date of the Merger Event or at any time prior to the Closing Date of such Take-over Offer, a "Calculation Adjustment" (as defined herein) may be made. Calculation Adjustment means that we shall either:
- 8.3.1 make such adjustment to the exercise, settlement, payment or any other terms of the Contract as we may determine is appropriate to account for the economic effect, if any, on the CFD Contract Securities of such Merger Event or Take-over Offer (provided that no adjustments will be made to account solely for changes in volatility) expected dividends, stock loan rate or liquidity relevant to the CFD Contract Securities or to the Contract, which may, but need not, be determined by reference to adjustment(s) made in respect of such Merger Event or Take-over Offer by an Exchange to futures or options on the relevant CFD Contract Securities traded on such Exchange; or
  - 8.3.2 determine the effective date of that adjustment (if any).
- 8.4 If we determine that no adjustment could be made under sub-paragraph 8.3 above which would produce a commercially reasonable result, we will issue a Closing Notice to you. The date of such notice will be the Closing Date. The Closing Price shall be such price as is notified by us to you. For the purposes of this clause Merger Event means in respect of any CFD Contract Securities:
- 8.4.1 any reclassification or change of the CFD Contract Securities that results in a transfer of or an irrevocable commitment to transfer all outstanding Securities of the same class as the CFD Contract Securities to another entity or person, whether by consolidation, amalgamation, merger or binding share exchange of the issuer of the relevant CFD Contract Securities with or into another entity or person (other than a consolidation, amalgamation, merger or binding share exchange in which such issuer is the continuing entity and which does not result in a reclassification or change of all such CFD Contract Securities outstanding);
  - 8.4.2 Take-over Offer of the outstanding CFD Contract Securities of the issuer that results in a transfer of or an irrevocable commitment to transfer all of them (other than Spread CFD Contract already owned or controlled by such other entity or person); or
  - 8.4.3 consolidation, amalgamation, merger or binding share exchange of the issuer of the relevant CFD Contract Securities or its subsidiaries with or into another entity in which the issuer is the continuing entity and which does not result in a reclassification or change of all such CFD Contract Securities but results in the outstanding CFD Contract Securities (other than CFD Contract Securities owned or controlled by such other entity) immediately prior to such event collectively representing less than 50% of the outstanding CFD Contract Securities immediately following such event (a "Reverse Merger").
9. Nationalisation and Insolvency
- 9.1 If all the shares, or all or substantially all the assets, of an issuer, a Securities of which represents all or part of the CFD Contract Securities of a CFD Contract, are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof, the day on which such event occurs, or is declared shall be the Closing Date. The Closing Price shall be such price as is notified by us to you.

## TERMS APPLICABLE TO CLIENTS WHO ENTER INTO CFD'S ON CONTRACT INVESTMENTS

10. Scope
- 10.1 Clause 11 of this Schedule shall govern the relationship between you and FXCM when you enter into a CFD Contract which has a Contract Investment as the basis of the Contract.
11. Exchange Suspensions and Delisting
- 11.1 If at any time trading on an Exchange market is suspended in any CFD Contract Financial Instruments which forms the subject of a CFD Contract we shall calculate the value of the CFD Contract with reference to the last traded price before the time of suspension, or the Closing Price if no trading in that Contract Investments is undertaken during the Business Day on which a suspension occurs. In the event that the aforesaid suspension continues for five (5) Business Days, we and you may in good faith agree a Closing Date and a value of the CFD Contract. In the absence of such agreement, the CFD Contract shall remain open in accordance with the provisions of this clause until such time as the aforesaid suspension is lifted or the CFD Contract is otherwise closed. During the term of a CFD Contract, in the event that the Contract Financial Instruments are suspended, we have the right to terminate the CFD Contract at our discretion and to amend or vary Margin requirements and Margin rates.
- 11.2 If a Regulated Market (as defined in the ASIC's Rules) on which a CFD Contract Financial Instrument is principally traded announces that pursuant to the rules of such Market the relevant shares have ceased, or will cease to be listed, traded or publicly quoted on the market for any reason (other than a Merger Event or Take-over Offer) and are not immediately re-listed, re-traded or re-quoted on the market or quotation system located in the same country as the Market (or where the Market is within the European Union, in any member state of the European Union), or already so issued, quoted or traded the day on which such an event occurs, or (if earlier) is announced, shall be the Closing Date. The Closing Price will be such price as notified by us to you.

## TERMS APPLICABLE TO CLIENTS WHO ENTER INTO PRECIOUS METALS OR ROLLING SPOT FOREX CONTRACTS

12. Scope
- 12.1 Clauses 13 to 14 of this Schedule shall govern the relationship between you and FXCM when you enter into a precious metals or Rolling Spot Forex Contract.
13. Closing a precious metals or Rolling Spot Forex Contract
- 13.1 For accounts using the "Non-Hedging" setting: To close a precious metals or Rolling Spot Forex Contract, you must enter into a second precious metals or Rolling Spot Forex Contract in relation to the same metal or two currencies as the first precious metals or Rolling Spot Forex Contract, but if the first precious metals or Rolling Spot Forex Contract was a buy, the second precious metals or Rolling Spot Forex Contract must be a sell, and vice versa. The first precious metals or Rolling Spot Forex contract will be closed to the extent of the contract size of the second precious metals or Rolling Spot Forex Contract. You should advise us of the precious metals or Rolling Spot Contract you wish to close out giving the metal or two currencies, identifying the Base Currency and the CFD Contract Size.
- 13.2 For accounts using the "Hedging" setting: To close a position you must provide us with an Order identifying the position, precious metal or currency, and Contract Size of the position you wish to close.
- 13.3 Realised profit or loss in respect of a precious metals or Rolling Spot Forex Contract closed will be calculated by reference to the difference between (i) the product of the CFD Contract Size and CFD Contract Rate of the opening Transaction and (ii) the product of the CFD Contract Size and CFD Contract Rate of the closing precious metals or Rolling Spot Forex Contract and shall be denominated in the second named currency for Rolling Spot Forex or USD for precious metals.
- 13.4 In addition to our rights at clause 22 of these Terms of Business FXCM may close any Rolling Spot Forex Contract in its sole discretion at any time without notice in the event that:
- (a) you fail to honour a Margin Call Warning in accordance with clause 15 of these Terms of Business;
  - (b) a Force Majeure Event occurs; or
  - (c) these Terms of Business are terminated.
14. Settlement Date, Rollover and Offset Instructions

- 14.1 FXCM will automatically rollover all open positions on your Account to the following business day unless you notify us to close your position(s) prior to 17.00 EST. FXCM will charge you a fee in respect of each such position that is rolled over.
- 14.2 Offset instructions on open positions arriving at settlement date must be given to us at least one (1) business day prior to settlement date.
- 14.3 In the absence of timely instructions from you, FXCM is authorised, at their absolute discretion, to rollover or offset all or any portion of the positions in your Accounts or to make or receive delivery on your behalf upon such terms and by such methods deemed reasonable by FXCM.
- 14.4 For the avoidance of doubt, FXCM will not arrange delivery of precious metals or currencies unless FXCM deem necessary or if we otherwise agree in writing with you.