

# Foreign Exchange Customer Agreement

## 1. Introduction

**1.1** This Agreement is entered by and between Templer Holdings Management Limited (hereinafter called the "Company", "we", "us" and "our"), whose registered office is at P.O. Box 116, Sea Meadow House, Blackburne Highway, Road Town, Tortola, British Virgin Islands, and each of the undersigned (hereinafter called the "Customer", "you" and "your") as of the date this Agreement is accepted by the Company.

**1.2** This Agreement sets out the terms upon which the Company will deal with the Customer in respect of foreign exchange contracts.

**1.3** This Agreement shall govern all Contracts entered into between the Customer and the Company and should be read carefully by the Customer together with the Risk Disclosure Notice and any other documents which we have supplied to you.

**1.4** This Agreement enters into force on the date we notify to you in writing and shall supersede any previous agreement between the parties relating to the subject matter of these Terms. Each contract you enter into after such date shall be subject to the terms of this Agreement.

**1.5** The defined terms used in this Agreement are set out in Term 23.

## 2. Services to Customers

**2.1** Subject to your fulfilling the obligations under this Agreement, we will provide to you a dealing service in respect of such currencies as may from time to time be offered by us. Unless otherwise agreed, you will need to initiate a further agreement with us in respect of any other services that we agree to provide to you.

**2.2** You accept that neither any limit on your account nor any amount of margin you have paid puts any limit on your potential losses in respect of a Contract. We refer you to paragraph 1 of the Risk Disclosure Notice.

**2.3** In relation to any Contract we enter into such Contract as principal and not as agent on the your behalf. You will also enter into each Contract with us as principal. This means that unless we have otherwise agreed in writing, we will treat you as client for all purposes and you shall be directly and personally responsible for performing your obligations under each Contract entered into by you. If you act in connection with or on behalf of someone else, whether or not you identify that person to us we shall not accept that person as an indirect client of ours and we shall accept no obligation to them, unless otherwise specifically agreed in writing.

**2.4** All dealings with you will be carried out by us on an execution-only basis. The Company is under no obligation, unless otherwise agreed in this Agreement: to satisfy ourselves as to the suitability of any Contract for you; to monitor or advise you on the status of any Contract; to make margin calls; to close out any of your Contracts. Unless otherwise specifically agreed, we do not owe a duty of best execution.

**2.5** You shall not be entitled to ask us to provide you with investment advice relating to an Exchange Rate, Contract, or quote nor to make any statements of opinion to encourage you to enter into a particular Contract. We may, at our discretion, provide information: in relation to any Contract or Exchange Rate about which you have enquired, particularly regarding procedures and risks attaching to that Contract or Exchange Rate and way of minimising risk; by way of factual market information, including information provided by way of market reports.

However, we shall be under no obligation to disclose such information to you and in the event of us supplying such information, it shall not constitute a personal recommendation to you.

**2.6** Notwithstanding Term 2.5, you agree that you rely on your own judgment in entering into a Contract with us and we shall not, in the absence of our fraud, wilful default or gross negligence, be liable for any losses, costs, expenses or damages suffered by you arising from any inaccuracy or mistake in any information given to you including, without limitation, information relating to any of your Contracts with us. Subject to our right to void or close any Contract in the specific circumstances set out in this Agreement, any Contract entered into by you following such inaccuracy or mistake shall nonetheless remain valid and binding in all respects on both you and us.

## 3. Charges

**3.1** The Company shall not charge the Customer commission or any fee for transactions (contracts), unless otherwise agreed in writing. The Company shall instead make its profit on Spread, which applies when you enter into a Contract.

**3.2** The Company will notify the Customer in writing of any changes to these charges before they come into effect.

## 4. Pricing

**4.1** In relation to this Agreement, upon your request in accordance with Term 4.2, we shall quote a price (an "Exchange Rate") (in relation to the Currencies in respect of which you wish to enter in to the Contract) at which a single unit of the first Currency (the "Base Currency") may be bought with, or (as the case may be) sold in, units of the second Currency. We shall quote higher and lower figures for each Exchange Rate, the difference between the two figures being our "Spread".

**4.2** We shall not be obliged to quote prices or accept orders or instructions in respect of the Contract out of normal trading hours for Exchange Rate. We may, at our absolute discretion, quote prices and accept orders and instructions and act on your offer to enter into a Contract outside our normal hours of trading for the Exchange Rate to which the Contract relates.

**4.3** You acknowledge and accept that when you close out a Contract the Spread may be larger or smaller than the Spread quoted when you entered into that Contract. You acknowledge that where there is an Underlying Market and transactions are carried out at any time when the Underlying Market is closed or trading volumes are low, the Spread may be higher than for Contracts entered into when that market is open.

**4.4** As provided in Term 4.2 we will quote prices directly to you either via our online dealing software or by telephone. You accept that our quoting of a higher or lower figure for each Exchange rate (whether via the Internet or by phone) does not constitute an offer to enter into a Contract at those levels. A Contract will be initiated by you offering to enter into a Contract with us on an Exchange Rate at the level quoted by us. We may accept or reject your offer at any time until the Contract has been executed or we have acknowledged that your offer has been withdrawn. A Contract will be deemed to have been entered into between us or closed only when your offer has been received and accepted by us. Our acceptance of your offer will be evidenced by our confirmation of the terms of the Contract to you. Quotes displayed by us on pages on our internet website are only indicative and you acknowledge that we may not accept any offer to open or close a Contract at the level of such indicative quotes.

**4.5** We reserve the right to not to accept your offer to enter into or close a Contract if any of the conditions set out in Term 4.6 are not satisfied at the time you offer to enter into or close a Contract. However, we may, in our absolute discretion, allow you to enter into or, as the case may be, close the Contract in which case you will be bound by the opening or closing of such Contract, notwithstanding that the conditions in Term 4.6 were not satisfied. If we have already opened or closed a Contract prior to becoming aware of any failure to satisfy the conditions set out in Term 4.6 we may, in our absolute discretion, either treat such a Contract as void from ab initio or close it at our then prevailing price.

**4.6** The conditions referred to in Terms 4.4. and 4.5 are as follows:

- (a) a quote must be obtained from us and given by a person who is an Approved Person;
- (b) a quote must not be expressed to be given on an “indicative only” basis;
- (c) if a quote is made to you via the online dealing software provided to you by us, your offer to open or close the Contract must be given whilst the quote is valid;
- (d) if a quote is made to you over the telephone, you can only trade on that quote during the same telephone conversation in which the quote was given to you. The person giving the quote must not have informed you before you make the offer to open or close the Contract that the quote is no longer valid;
- (e) the telephone and internet conversation during which you instruct us to enter into the Contract must not be terminated as a result of circumstances beyond our reasonable control before we have received and accepted your offer;
- (f) a quote must not be manifestly erroneous;
- (g) when you place a trade at the currently quoted price for the relevant market, which creates an Open Position, it should be within the minimum contract size;
- (h) when you offer to enter into a Contract to close part but not all of an open Position, the part of the Contract which you offer to close must not be smaller than the minimum size;
- (i) a Force Majeure Event must not have occurred;
- (j) when you offer to open a Contract an Event of Default must not have occurred in respect of you;
- (k) when you offer to enter into a Contract which will create an Open Position, you must have sufficient funds in the relevant account to cover your initial margin requirement in respect of that Open Position;
- (l) when you offer to enter into a Contract in a particular Currency, the creation of the Open Position must not result in you exceeding any position or other limit which we have placed on your dealing with us;
- (m) as provided in Term 4.2, your offer must be given to us during our normal hours of trading for the Exchange Rate in respect of which you offer to open the Contract; and
- (n) before the quote is given to you must have specified the Contract size in respect of which you wish to place a trade.

## **5. Entering into a Contract**

**5.1** You will enter into a Contract by buying or selling the Base Currency at the Contract Rate. If you open a Contract where you buy the Base Currency, the Rate will be the higher figure quoted by us for the Exchange Rate in respect of which the Contract is made and if you enter into a Contract where you sell the Base Currency, the Contract Rate will be the lower figure quoted by us for the Exchange Rate in respect of which the Contract is made.

**5.2** Upon entering into a Contract, we will allocate it a deal number which will be notified to you via the online dealing software provided to you by us and upon our confirming the Contract under Term 10.8.

**5.3** Each Contract opened by you will be binding on you, notwithstanding that by entering into the Contract you may have exceeded any position or other limit, which we have placed upon your dealings with us.

## **6. Settlement and Closing out Contracts**

**6.1** All Contracts will not be settled by delivery of the gross amounts of the Currencies underlying such Contracts. Instead, the party which has an obligation to deliver the greatest amount of the non-Base Currency to the other will pay the amount by which its obligation to deliver such Currency exceeds that of the other party.

**6.2** If you have entered into a Contract in respect of two Currencies and have not closed out a Contract by 11:00pm (London time) on the Nomination Date then instead of settling the Contract on the Value Date, we shall roll over this Contract to next Value Date and while your Contract remains open the amount of roll-over will be calculated and will accrue on a daily basis.

**6.3** If you close out a Contract where earlier you bought the Base Currency, the Rate will be the lower figure quoted by us for the Exchange Rate in respect of which the Contract is made and if you close out a Contract where earlier you sold the Base Currency, the Contract Rate will be the higher figure quoted by us for the Exchange Rate in respect of which the Contract is made.

**6.4** You acknowledge and agree that obligations in relation with Terms 6.1 to 6.3 which are not denominated in dollars will be converted into dollars at the current exchange rate.

**6.5** Upon us being informed or becoming aware of your death, we may close out each of your Contracts (whether your account is held in your sole name or jointly with other(s)).

**6.6** Our additional rights to close out one or more of your Contracts in specific circumstances are set out in Terms 4.5, 11.1, 13, 16.3, 17, 18.2 and 18.3.

## **7. Netting**

**7.1** All Contracts are subject to the terms of the Netting Agreement.

## **8. Stop and Limit Orders**

**8.1** We may, in our absolute discretion, accept an instruction (a "Stop" or "Limit" Order) from you to enter into a Contract when our quote for the relevant Exchange Rate, or (as the case may be) the Exchange Rate itself or a market quotation relating thereto, reaches or goes beyond a level specified by you. It is implied that such instruction is to apply for an indefinite period (a "Good Till Cancelled" or "GTC" order).

**8.2** If we accept a Stop or Limit Order then, when the level of our current quote or (as the case may be) the relevant Exchange Rate or market quotation relating thereto reaches or goes beyond the level of your Stop or Limit Order, provided that the conditions in Term 4.6(h), (i), (j) and (k) are satisfied, your instruction will be executed automatically at the level of our current quote. You acknowledge that where the relevant Exchange Rate or Underlying Market is a rapidly moving market, our quote may have gone beyond the level of your Stop or Limit Order by the time your order is executed. You further acknowledge that your instruction may be executed by us irrespective of the length of time for which the level of your Stop or Limit Order is reached or exceeded.

**8.3** You may with our prior consent (such consent not to be unreasonably withheld) cancel or amend the level of a Stop or Limit Order at any time before our quote or (as the case may be) the relevant Exchange Rate or market quotation relating thereto reaches or goes beyond the relevant level. However, once the level has been reached you may not cancel or amend the level of the Stop or Limit Order.

**8.4** If you enter into a Contract and place a Stop or Limit Order which, when executed, would be capable of closing out the Contract and you subsequently enter into a Contract which closes out that Contract prior to the level of the Stop or Limit Order being reached, we will treat that as an instruction to cancel the associated Stop or Limit Order.

## **9 Minimum Margin Balance**

**9.1** You must ensure that the amount of your Net Unrealised Losses less any credit balance in your account in excess of the amount of initial margin required by us in respect of your Open Contracts is, at all times, less than 80% of the amount of initial margin required by us in respect of your Open Contracts. Without prejudice to any of our other rights under this Agreement, in the event that such amount exceeds 80% of the amount of initial margin required by us in respect of your Open Contracts, we shall be entitled to close-out all or any of your Contracts and to exercise any of our other rights.

**9.2** For the purposes of this Term 9 "Net Unrealised Losses" means, in respect of all of your Open Contracts, the net sum (if any) which would be payable by you if such Contracts were closed out immediately at our current price.

**9.3** For the purposes of determining whether you have breached Term 9.1 above, any sums referred to therein which are not denominated in dollars shall be treated as if they were denominated in dollars by converting them into dollars at the relevant exchange rate for spot dealings in the foreign exchange market.

## **10. Instructions and Other Communications**

**10.1** You may give instructions (including orders) to enter into a Contract via the online dealing software provided to you by us or by phone.

**10.2** Any communication which is not an instruction to enter into a Contract must be given by you, or on your behalf, orally, by telephone or in writing, by e-mail, post, fax, or in such other manner as we may specify from time to time, and, if sent to us by post or by fax, must be sent to our head office, and, if sent by e-mail, must be sent to an e-mail address currently designated by us for that particular purpose. Any such communication will only be deemed to have been received by us upon our actual receipt thereof.

**10.3** If we receive an instruction to enter into a Contract other than in accordance with Term 10.1, we shall only accept and act upon such instruction at our absolute discretion and shall not be responsible for any loss, damage or cost which you suffer or incur arising out of any error, delay or omission in acting upon such instruction.

**10.4** If at any time you are unable, for whatever reason, to communicate with us, we do not receive any communication sent by you or you do not receive any communication sent by us under this Agreement, we shall not be responsible for any loss, damage or cost caused to you by any act, delay or omission resulting therefrom, where such loss, damage or cost is a result of your inability to enter into a Contract which would create a position held by you. We shall not, except where your inability to instruct us or communicate with us results from our fraud, willful default or gross negligence, be responsible for any other loss, damage or cost caused to you by any act, error, omission or delay resulting therefrom including without limitation, where such loss, damage or cost is a result of your inability to enter into a Contract which would close out a position held by you.

**10.5** You acknowledge and agree that any instruction or communication transmitted by you or on your behalf is made at your risk and you authorise us to rely and act on, and treat as fully authorised and binding upon you, any instruction which we believe in good faith to have been given by you. You acknowledge that we will rely on your account number and/or password to identify you and agree that you will not disclose these details to any person who is not duly authorised by you.

**10.6** You understand and agree that any telephone conversation with us will or may be recorded for accuracy and you consent to such recordings will be our sole property and you accept that they shall constitute evidence of the instructions given.

**10.7** You agree that in the event of a dispute over any instruction (including a dispute as to whether you have entered into a Contract), we may close out the actual/alleged Contract, which is the subject of the dispute in accordance with [Term 18.2](#).

**10.8** We will confirm each Contract which you enter into.

(a) If you enter into a Contract with us via the online dealing software provided to you by us or in such other manner as we may specify from time to time, a confirmation will be e-mailed to you on the business day following the day upon which the Contract is entered into.

(b) You will, in the absence of manifest error, be bound by and deemed to have acknowledged the content of any confirmation provided to you unless you have notified us to the contrary in writing within two business days of the day on which you are deemed to have received the confirmation in accordance with Term 10.10 below (in the case of other confirmations). In the event that you think that you have opened or closed a Contract but we have not sent you a confirmation in respect of that Contract, any query in relation to the purported Contract will not be entertained unless: (i) you inform us within two business days of the day on which you ought to have received such confirmation that you have not received it; and (ii) you can provide accurate details of the time and date of the purported Contract.

(c) We will provide you with a statement of your account on a monthly basis.

(d) You acknowledge and accept that all your confirmations and monthly statements will be e-mailed to your introducing broker and/or your introducing agent.

**10.9** We may communicate with you by e-mail and you consent to our corresponding with you by e-mail at any time whatsoever.

**10.10** Any correspondence, document, written notice, confirmation or statement will be deemed to have been properly given if sent by e-mail, one hour after we have transmitted them to any e-mail address last notified by you to us.

**10.11** It is your responsibility to ensure that we are notified of your current and correct address and contact details. Any change to your address or contact details must be notified to us immediately in writing unless we agree to another form of communication. We may, at our absolute discretion, agree to accept a change of address or contact details orally.

**10.12** In the event of a failure or delay to receive any communication from us sent by e-mail to you, as no electronic system is entirely reliable or always available, you accept that we are not liable to you for any loss or damage, howsoever caused, arising directly or indirectly out of a failure or delay by you to receive an e-mail. Further, you understand and accept that e-mails we send to you are not encrypted and therefore are not secure.

**10.13** We are authorized by you without any further authority or notice to act upon your instructions given or purporting to be given on your behalf, including your duly appointed power of attorney, by facsimile transmission communications (“faxed instructions”).

(a) In accordance with the aforesaid, you indemnify us and keep us indemnified, on demand against all losses, costs, damages, claims, demands and expenses which we or you incur or sustain through our acting or failing to act upon any such faxed instructions whether or not:

(i) such faxed instructions are made or transmitted without your authority; or

(ii) such losses and other matters mentioned above arise directly or indirectly from any operational failure or fault or any error however occurring in the course of the transmission of the faxed instructions whether relating to equipment belonging to us, to you or any other party.

(b) All faxed instructions shall be subject to and treated in accordance with the Terms of this Agreement and you acknowledge that instructions to enter into a Contract will not be accepted by fax, in accordance with Term 10.1 and 10.3.

- (c) We will be entitled but not bound to act on faxed instructions received in accordance with this Term.
- (d) You agree and acknowledge that the pages printed by our facsimile machines shall be conclusive evidence of such faxed instructions and this authority and indemnity shall not be prejudiced by any confirmation or other communication relating to such faxed instructions or by the absence thereof.

## **11. Margin**

**11.1** You shall provide to and maintain with us initial and/or variation margin in such limits as we, in our sole discretion, may require from time to time under this Agreement. Such sums of money shall only be paid in the form of cleared funds (in our bank account) unless, by separate written agreement, we accept other assets from you as collateral for initial or variation margin payments. If assets other than cash are accepted, we shall be entitled to realize such assets, in circumstances defined in the separate agreement. In the event that any applicable debit card authority or other paying agent declines to transfer funds to us for any reason whatsoever then we may, at our absolute discretion, treat any Contract entered into by us in reliance upon receipt of those funds as void from the outset or close it at our then prevailing price and recover any losses arising from the voiding or closure of the Contract from you.

**11.2** In making any calculation of the initial or variation margin we require from you, we will, at our absolute discretion, regard to your overall Open Positions including any of your net unrealized losses.

**11.3** All payments of margin (other than payments of initial margin under Term 11.5 which are due and payable in accordance with that Term) are due and payable by you on our oral or written demand regardless of the time of day at which such demand is made. If a written demand is sent to you by e-mail, it will be deemed to have been made as soon as you are deemed to have received such notice in accordance with Term 10.10. We shall also be deemed to have made a demand on you if:

- (a) we have left a message requesting you to contact us and you have not done so within a reasonable time after we have left such message; or
- (b) we are unable to leave such a message and have used reasonable endeavours to attempt to contact you by e-mail (at the e-mail address last notified to us by you) but have been unable to contact you at such manner. Any message, which we leave for you requesting you to contact us should be regarded by you as extremely urgent unless we specify to the contrary when we leave the message.

**11.4** It is your responsibility to notify us immediately of any change in your contact details and to provide us with alternative contact details and ensure that our calls for margin will be met if you will be uncontactable at the contact address notified to us. We shall not be liable for any losses, costs, expenses or damages incurred or suffered by you as a consequence of your failure to do so.

### **Initial Margin**

**11.5** In respect of each Open Position, which you create by entering into a Contract, you shall, unless otherwise agreed by us, pay initial margin. Such initial margin will be due and payable immediately upon you entering into the Contract. When you enter into a Contract if the Contract creates an Open Position the amount of initial margin payable by you will be the amount, which we have notified to you before, or at the time that, you enter into the Contract. In the event that we do not notify such amount to you before, or at the time that, you enter into the Contract initial margin will be 1% of the amount of the Open Position, which such Contract creates.

**11.6** If we agree that you are not obliged to pay initial margin on entering into a Contract, we may nevertheless require payment of initial margin in respect of that Contract at any time thereafter. We shall at any time be entitled to require you to make additional payments of initial margin on your Open Positions.

### **Variation Margin**

**11.7** Unless otherwise agreed by us, you shall immediately on demand (including on our deemed demand in accordance with Term 11.3) make variation margin payments sufficient to provide us with an amount which, when a movement adverse to a Contract entered into by you has taken place, you would lose if the Contract was closed out on the basis of our current quotation for the Exchange Rate concerned.

## **12. Payments**

**12.1** You may make any payment to us by telegraphic transfer. If we accept any payments to be made in connection with this Agreement or any Contract by credit card we reserve the right to levy an administrative charge.

**12.2** We reserve the right to require payments of the minimum amount accepted by common usage by such banks for telegraphic transfers or more, or other currency equivalent, to be made by telegraphic transfer to our bank.

**12.3** You acknowledge and agree that (without prejudice to any of our other rights under this Agreement to close out your Contracts and exercise other default remedies against you) where a sum is due and payable to us in accordance with this Agreement and sufficient cleared funds have not yet been credited to our bank account, we shall, regardless of whether or not your and/or our bank was open at the time of day at which such sum became due and payable, be entitled to treat you as having failed to make a payment to us when due and payable and to exercise our rights under Term 13.2, including (without limitation) our rights to close out your Contracts.

**12.4** Margin payments or any other payment due will, unless otherwise agreed or specified by us, be required in sterling, euros or dollars. When we consider it necessary, or when so requested by you, we may convert money standing to your credit or paid by you

to us in one Currency to another Currency. Such conversions will be made at an exchange rate within 0.5% of the prevailing market rate at the time of the conversion.

**12.5** Money standing to the credit of your account will, subject to Terms 12.6 and our right to set such sums off against any margin calls or charges which are outstanding, be remitted to you if requested by you. Where you do not make such a request, we shall be under no obligation to, but may, in our absolute discretion, remit such monies to you. Such monies will be returned by us to the bank account previously notified to us by you, other than in exceptional circumstances when we may, at our absolute discretion, consider a suitable alternative. All bank charges howsoever arising shall, unless otherwise agreed, be for your account.

**12.6** We shall be under no obligation to pay any money to you if that would reduce your credit balance (less running losses) to less than the margin payments required on your Open Positions. Subject thereto and to Term 13, the money requested by you will, if you are entitled to it, be sent to you within two business days.

### **13. Default**

**13.1** Each of the following constitutes an “Event of Default”:

- (a) your failure to provide any initial and/or variation margin, deposit or other sum due under this Agreement in respect of any Contract;
- (b) your failure to perform any obligation due to us;
- (c) where any Contract or group of Contracts or any realised or unrealised losses on any Contract or group of Contracts entered into by you results in you exceeding any position or other limit which we have placed upon your dealings with us;
- (d) any breach by you of Term 9;
- (e) the initiation by a third party of proceedings for your bankruptcy (if you are a individual) or for your winding-up or for the appointment of an administrator or receiver in respect of you or any of your assets (if you are a company) or (in both cases) if you make an arrangement or composition with your creditors or any procedure which is similar or analogous to any of the above is commenced in respect of you;
- (f) where any representation or warranty made by you in Term 16 is or becomes untrue;
- (g) you are or become unable to pay your debts as and when they fall due;
- (h) if you are an individual, your death; and
- (i) any other circumstance where we reasonably believe that it is necessary or desirable to take any action set out in Term 13.2 in order to protect ourselves, you or any or all of our other clients.

**13.2** If an Event of Default occurs in relation to your account(s) with us or in relation to any account(s) held by you with an Associated Company of ours, we may in our absolute discretion, at any time and without prior notice, take one or more of the following steps:

- (a) close out all or any of your Contracts based on the then prevailing quotations or prices in the relevant markets or, if none, at such levels as we consider fair and reasonable;
- (b) retain any funds, investments (including any interest or other payment payable thereon) or other assets due to you, and sell them without notice to you at such price and in such manner as we in our reasonable discretion decide, applying the proceeds of sale to discharge the costs of sale and any sums secured by such funds, investments or assets;
- (c) close any or all of your accounts held with us and/or refuse to allow you to enter into further Contracts.

**13.3** We may in our absolute discretion when we consider it necessary or desirable to do the actions under Term 13.2 take steps to advise you before exercising such rights. However, any failure on our part to take one or more of such steps shall not invalidate the action taken by us under Term 13.2.

**13.4** You acknowledge that:

- (a) where you have failed to pay a margin call in respect of one or more Contracts five business days after such payment becomes due, we are obliged to close out such Contracts; and
- (b) when one or more Contracts exceed the credit or any other limit placed by us upon your dealings, and you remain in excess of your credit limit for five or more business days, we shall:
  - (i) close any or all of such Contracts; and
  - (ii) refuse to enter into any further Contracts until payments sufficient to bring you within your credit limit have been received by us, unless:
    - (I) movements in the Exchange Rates have resulted in your positions being brought back within your credit limit (and we have waived any margin calls made upon you); or
    - (II) you have been contacted by us and have undertaken to immediately fund the required margin and we are satisfied on reasonable grounds that the failure to supply margin is due to circumstances beyond your control.

### **14. The Customer’s Money and Interest**

**14.1** Your money will be held, unless we agree otherwise in writing, as trustee in our account at banks chosen by us in accordance with this Agreement.

**14.2** It is not our policy to pay interest to you on any of your money which we hold and by signing this Agreement you acknowledge that you are waiving all rights to interest.

### **15. Limitations of Liability**

**15.1** You will indemnify us and keep us indemnified on demand in respect of all liabilities, costs, claims, demands and expenses of any nature whatsoever which the Company suffers or incurs as a direct or indirect result of any failure by you to perform any of your obligations under this Terms, including under any Contract.

**15.2** Subject to all other provisions of the Terms of this Agreement (including the payments by you to us of all amounts due and payable by you to us) we are liable to you to pay you your realized available profits.

**15.3** Subject as aforesaid we shall in no circumstances be liable to you for any consequential special or indirect losses, loss of profits, loss of opportunity (including in relation to subsequent market movements), costs, expenses or damages you may suffer in relation to these Terms, unless as a direct result of our wilful default, fraud or negligence.

### **16. Representations and Warranties**

**16.1** You represent and warrant to us, and agree that each such representation and warranty is deemed repeated each time you enter into a Contract by reference to the circumstances prevailing at such time, that:

- (a) the information you provided to us in your application form and at any time thereafter is true, accurate and complete in all material respects;
- (b) you are duly authorised to and have obtained all necessary authorizations to enter into this Agreement and into each Contract and to perform your obligations hereunder and thereunder;
- (c) you act as principal;
- (d) if you are a natural person you have signed your Agreement and if you are not a natural person the person signing the Agreement on your behalf is duly authorised to do so on your behalf; and
- (e) execution, delivery and performance of this Agreement and each Contract will not violate any law, ordinance, charter, by-law or rule applicable to you or to the jurisdiction in which you are resident, or any agreement by which you are bound or by which any of your assets are affected.

**16.2** We give no warranty regarding our internet dealing or other software or their suitability for any equipment used by you for any particular purpose. You agree and acknowledge that we will not be liable for any loss or damage, howsoever caused, arising directly or indirectly out of a failure of our website(s), internet dealing or other software, whether due to mechanical, software, computer, telecommunications or other electronic systems failure.

**16.3** Any breach by you of the warranties in Term 16.1 above renders any Contract voidable or capable of being closed by us at our then prevailing prices, at our absolute discretion.

### **17. Force Majeure**

**17.1** We may, in our reasonable opinion, determine that an emergency or an exceptional market condition exists (a "Force Majeure Event"), in which case we will, in due course, take reasonable steps to inform you. A Force Majeure Event includes without limitation:

- (a) any act, event or occurrence (including, without limitation, any strike, riot or civil commotion, terrorism, war, act of God, accident, fire, flood, storm, interruption of power supply, electronic, communication equipment or supplier failure) which, in our reasonable opinion, prevents us from maintaining an orderly market in one or more of the Currencies in respect of which we ordinarily allow you to enter into Contracts;
- (b) the suspension, liquidation or closure of any market or the abandonment or failure of any event upon which we base, or to which we may relate, our quote, or the imposition of limits or special or unusual terms on the trading in any such market or on any such event; or
- (c) the occurrence of an unusual movement in the level of any Exchange Rate and/or any corresponding market or our anticipation (acting reasonably) of the occurrence of such a movement.

**17.2** If we determine in our reasonable opinion that a Force Majeure Event exists (without prejudice to any other rights under this Agreement and our sole discretion) we may without notice and at any time take one or more of the following steps:

- (a) increase your margin requirements;
- (b) close out any or all of your Contracts at such price as we consider in good faith to be appropriate;

- (c) suspend or modify the application of any or all of these Terms to the extent that the Force Majeure Event makes it impossible or impractical for us to comply with them; or
- (d) take or omit to take all such other actions as we deem to be reasonably appropriate in the circumstances having regard to the position of the Company, the Customer and other customers.

## **18. Complaints and Disputes**

**18.1** The Customer should inform the Company immediately in writing of any dispute or complaint they may have in relation to this Agreement. We will endeavour to investigate any dispute or complaint as soon as reasonably practicable and will notify the Customer of the results of its investigation.

**18.2** We may in any case where we are in dispute with you over a Contract/alleged Contract or any instruction relating to a Contract, in our absolute discretion and without notice, close out any such Contract/alleged Contract, where we reasonably believe such action to be desirable for the purpose of limiting the maximum amount involved in the dispute and we shall not be under any obligation to you in connection with any subsequent movement in the level of the Exchange Rate concerned.

**18.3** If we close out one or more of your Contracts under this Term such action shall be without prejudice to our right to contend in relation to any dispute that such position had already been closed out by us or was never opened by you. We shall take reasonable steps to inform you that we have taken such action as soon as practicable after doing so.

**18.4** The closure of the Contract shall be without prejudice to your rights to seek compensation for any loss or damage suffered in connection with the disputed/alleged Contract or instruction, prior to the closing and to enter into a new Contract at any time thereafter, provided that such Contract is entered into in accordance with this Agreement, which shall be applied, for the purposes only of calculating any relevant limits or money required from you, on the basis that our view of the disputed events or instruction is correct.

**18.5** All disputes and complaints in connection with this Agreement (with all relevant details) must be in writing and be referred to our Compliance Department. Submission of your complaint shall not abrogate your duty to mitigate your losses.

## **19. Manifest Error**

**19.1** The Company reserves the right to void ab initio any Contract involving or deriving from a manifest error. A “Manifest Error” means any error omission or misquote which is obvious or palpable. In deciding whether an error is a Manifest Error we may take into account any relevant information including the state of the Underlying Market at the time of the error. In making such a decision we will act in our sole discretion, reasonably and in good faith. Any financial commitment that you have entered into or refrained from entering into in reliance on a Contract with us will not be taken into account in deciding whether or not there has been a Manifest Error.

**19.2** The Company shall in no circumstances, and in the absence of wilful default or fraud, be liable to you for any loss, cost, claim, damage or expense of whatsoever nature you may suffer or incur in connection with any Manifest Error. In the event that a Manifest Error is made by any information source, commentator or official upon whom we reasonably rely we shall not, in the absence of wilful default or fraud, be liable to you for any loss, cost, claim, demand or expense. Following any Manifest Error we may decide to void the Contract or, at your request, we may agree to amend the terms of the Contract to what we believe would have been fair and reasonable at the time it was entered into.

## **20. Miscellaneous**

**20.1** The Company reserves the right to close or suspend the Customer’s account at any time for any good reason (and with or without notice to the Customer).

**20.2** In the event that a situation arises that is not covered under these Terms, we will resolve the matter on the basis of good faith and fairness and, where appropriate, by taking such action as is consistent with market practice.

**20.3** No single or partial exercise of, or failure or delay in exercising any right, power or remedy (under these terms or at law) by us shall constitute a waiver by the Company of, or impair or preclude any exercise or further exercise of, that or any other right, power or remedy arising under these Terms or at law.

**20.4** Any liability of you to us under these Terms may in a whole or in part be released, compounded, compromised or postponed by the Company in its absolute discretion without affecting any rights in respect of that or any liability not so waived, released, compounded, compromised or postponed. A waiver by us of a breach of any of these Terms or of a default under these Terms does not constitute a waiver of any other breach or default and shall not affect the other Terms. A waiver by us of a breach of any of these Terms or a default under these Terms will not prevent the Company from subsequently requiring compliance with the waived obligation.

**20.5** The rights and remedies provided to the Company under these terms are cumulative and are not exclusive of any rights or remedies provided by law.

**20.6** We may assign the benefit and burden of this Agreement to a third party in whole or in part, provided that such assignee agrees to abide by the terms of this Agreement. Such assignment shall come into effect 10 working days following the day you are deemed to have received notice of the assignment in accordance with Term 10.10.



**20.7** You acknowledge that by opening an account with us and entering into Contracts you will be providing us with personal information within the meaning of the Data Protection Act 1998. You consent to us processing all such information for the purposes of performing this Agreement and administering the relationship between us. You consent to our disclosing such information to other Associated Companies and introducing brokers with whom we have a mutual relationship.

**20.8** You acknowledge and agree that the copyrights, trade marks, database and other property or rights in any information distributed to or received by you from us (including but limited to, price information), together with the contents of our websites, brochures and other material connected with our service in any database that contains or constitutes such information, shall remain the sole and exclusive property of Templer Holdings Management Limited or any third party identified as being the owner of such rights.

**20.9** You agree that you shall not permit or facilitate, and shall take steps to prevent, any sale, dissemination, re-distribution or republication of the information referred to in Term 20.8 to any third party.

**20.10** If any Term of this Agreement (or any part of any Term) shall be held by a court of competent jurisdiction to be unenforceable for any reason then such Term shall, to that extent, be deemed severable and not form part of this Agreement, but the enforceability of the remainder of this agreement shall not be affected.

## **21. Amendment and Termination**

**21.1** You agree that we may modify the terms of this Agreement at any time upon prior written notice to you. Such changes will become effective on the date specified in the notice which will be at least 10 working days following the day you are deemed to have received such notice in accordance with Term 10.10 (unless it is impracticable in the circumstances to give such notice) and will not apply to Contracts entered into prior to such date.

**21.2** The Customer may suspend or terminate this Agreement immediately by giving a written notice to the Company.

**21.3** The Company may suspend or terminate this Agreement immediately by giving a written notice to the Customer.

**21.4** Any such termination will not affect any obligation which has already been incurred by either you or us in respect of any outstanding Contract or any legal rights or obligations which may already have arisen under the Agreement or any dealings made thereunder.

## **22. Governing law**

**22.1** This Agreement and each Contract entered into with you is in all respects, governed by British Virgin Islands(BVI) law and the BVI courts will have jurisdiction to settle any disputes which may arise in relation thereto (subject to any right you may have to require a dispute to go to arbitration under Term 18.5). For such purposes, you irrevocably submit to the exclusive jurisdiction of the courts of British Virgin Islands in relation to any such dispute. Nothing in this Term 22 shall prevent us from bringing proceedings against you in any other jurisdiction.

**22.2** Where this Agreement is issued in a language other than English, the English language version shall take precedence in the event of any conflict.

## **23. Interpretation**

In this Agreement:

“Associated Company” means any holding company or subsidiary company from time to time of Templer Holdings Management Limited and/or any subsidiary company of any such holding company or its subsidiaries;

“Base Currency” has the meaning attributed to it in Term 4.1;

“business day” means

(a) any day other than a Saturday, Sunday, and a day which is a public holiday in New York; and,

(b) for the purposes of Term 6, any day on which commercial banks generally effect deliveries of the Currencies in respect of which the Contract is made in accordance with the market practice of the relevant foreign exchange market;

“closing out a Contract” means, in relation to a Contract, entering into a second Contract on the same terms (except that the Contract Rate and Contract Size may differ) as the first Contract where the obligations to deliver the Currencies are opposite to those under the first Contract;

“Contract” means a contract made between you and us in respect of two Currencies pursuant to which you agree to sell or purchase an amount denominated in the Base Currency for (in the case of a sale) or with (in the case of a purchase) an amount (as calculated in accordance with the Contract Rate) denominated in the other Currency for delivery on the Value Date;

“Contract Rate” means, in respect of a Contract, the rate at which the Base Currency is sold or purchased;

“Contract Size” means, in respect of a Contract, the amount of the Base Currency which you sell, or (as the case may be) purchase pursuant to such Contract;

“Currency” means any unit of account;

“Dollars” and “\$” denote lawful currency of the United States of America;

“Euro” and “€” denote lawful currency of the Eurozone countries of the European Union;

“Event of Default” has the meaning attributed to it in Term 13.1;

“Exchange Rate” has the meaning attributed to it in Term 4.1;

“Force Majeure Event” has the meaning attributed to it in Term 17.1;

“Internet conversation” means a conversation between you and us held via our dealing software or such other method as we may from time to time specify;

“Minimum Size” means in respect of Foreign Exchange Contract the minimum amount of Base Currency which we will deal on;

“Netting Agreement” means the agreement between us which provides for the termination and close-out of Contracts and netting of our respective obligations on your bankruptcy/insolvency or other default;

“Position Limit” means any limit, which we place on the total open position which you may have at any time;

“Spread” has the meaning given in Term 4.1;

“Sterling” and “£” denote lawful currency of the United Kingdom;

“Stop or Limit Order” has the meaning given to it in Term 8;

“Underlying Market” means the London inter-bank foreign exchange market, any other relevant market in which Exchange Rates are traded or trading in an Exchange Rate as the context requires; and

“Value Date” means the date on which Currencies are due, for delivery as agreed between us when we enter into a Contract (however, in accordance with Term 6, all Contracts will not be settled by delivery of Currencies).

**Templer Holdings Management Limited**  
**April 2003**