

# Margin Foreign Exchange Terms and Conditions



FUTURES & OPTIONS PARTICIPANT



*Connecting you to world markets*

# TERMS & CONDITIONS

## 1 INTERPRETATION

1 In this agreement:

**“Agreement”** means the agreement constituted by the Client Application Form completed by you, these terms and any amendment made in accordance with these terms and any other written agreement between you and us which we agree forms part of this Agreement;

**“Application Form”** means the form entitled “Client Application Form” on [www.omf.co.nz](http://www.omf.co.nz);

**“Authorised Representative”** means each person authorised by you to instruct us on your account and behalf as listed in the Application Form or advised in writing to us by you from time to time;

**“Business Day”** means a day (other than a Saturday or Sunday or public holiday) on which trading banks and foreign exchange markets are or will be open in New Zealand;

**“Bought Currency”** means the currency to be received by you in exchange for the currency to be provided by you under a Position and in the case of an Option the currency to be received by the Client if it is exercised (and the amount of that currency may be nil);

**“Bought Option”** means an Option purchased by you pursuant to this Agreement;

**“Call Option”** gives its buyer the right, exercise-able at any time until Expiry Date, to require the seller of the Option to enter into a Position with the buyer, whereby the seller agrees to exchange a given amount of the Bought Currency for an amount of the Sold Currency, at the Strike Price of the Option, for delivery on the Value Date of the Position created by the exercise of the Option;

**“Default Event”** means any event described in clause 12;

**“Excess Variation Margin”** means the amount of your Variation Margin plus your Unrealised Profits minus your Unrealised Losses at that time;

**“Expiry Date”** in relation to each Option, is the last day upon which the Option may be exercised.

**“Initial Margin”** means an amount required to be deposited by you with us under clause 9;

**“Insolvent”** means insolvent, bankrupt, in liquidation, receivership or statutory management, under administration or reconstruction, struck-off or removed from the register under the Companies Act 1993, wound up, dissolved, subject to any assignment for the benefit of creditors or subject to any arrangement or compromise with creditors and **“insolvency”** has the corresponding meaning;

**“Logon ID”** means, collectively, the Client’s identification number and password;

**“Margin”** means Initial Margin or Variation Margin or both;

**“Market Rate”** means at any time the rate of exchange which is quoted to us by a bank dealing in the interbank foreign exchange market;

**“Online Terms and Conditions”** means the terms and conditions entitled “Online Terms and Conditions” on [www.omf.co.nz](http://www.omf.co.nz) ;

**“Option”** means a Call Option or Put Option bought or sold pursuant to this Agreement;

**“Position”** means a margin foreign exchange transaction entered into by you pursuant to this Agreement under which the parties agree to exchange an agreed amount of one currency for an agreed amount of another currency for settlement on the Value Date (and, for the avoidance of doubt, either agreed amount may be nil);

**“Premium”** is the price of an Option as notified by us;

**“Put Option”** gives its buyer the right, exercisable at any time until Expiry Date, to require the seller of the Option to enter into a Position with the buyer, whereby the seller agrees to exchange a given amount of the Sold Currency for an amount of the Bought Currency at the Strike Price of the Option, for delivery on the Value Date of the Position created by the exercise of the Option;

**“Site”** means the internet website [www.omf.co.nz](http://www.omf.co.nz);

**“Sold Currency”** means the currency to be provided by you in exchange for the currency to be received by you under a

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Position and in the case of an Option, the currency to be provided by you if it is exercised (the amount of that currency may be nil);

“**Sold Option**” means an Option sold by you pursuant to this Agreement;

“**Spot Date**” means the date on which a Position falls due for settlement in accordance with prevailing conventions in the interbank market where a Position is entered into for spot delivery;

“**Strike Price**” means the rate of exchange at which an Option may be exercised;

“**Unusual Volatility**” is deemed to have occurred on any day if the following inequality is satisfied in respect of either the Bought Currency or the Sold Currency under a Position or Sold Option at any time on that day;

$$\frac{OG + TH - TL}{YC} \geq 0.015$$

where OG is

- (a) if  $TH < YL$ ,  $YL - TH$ ; or
- (b) if  $TL > YH$ ,  $TL - YH$ ;
- (c) in any other case, nil; and

TH is the highest price of the currency between 8 am and 5 pm (Sydney time) on that day;

TL is the lowest price of the currency between 8 am and 5 pm (Sydney time) on that day;

YH is the highest price of the currency between 8 am and 5pm (Sydney time) on the previous day;

YL is the lowest price of the currency between 8 am and 5pm (Sydney time) on the previous day;

YC is the price of the currency at or around 5 pm (Sydney time) on the previous day; as quoted on the Reuters Monitor System page ASAP or equivalent page on another quotation system.

“**Value Date**” means the date, agreed at the time of the deal is entered into, to be the date of settlement of a Position (specified in the deal confirmation) and in the case of a Position created on exercise of an Option, two Business Days after the Option is

exercised or such other date agreed at that time;

“**Variation Margin**” means an amount deposited by you with us under clause 9 including any increase or reduction therein arising under clause 7 on settlement of a closed out Position or Option;

“**you**” or “**your**” has the meaning given to it in the Application Form;

“**we**”, “**us**” or “**our**” means OMFfinancial Limited.

- 2 You acknowledge that a Position or Option may be closed out without a physical exchange of the Bought Currency for the Sold Currency and references in the definition of “Position” to an exchange of currency and settlement and in the definitions of “Bought Currency” and “Sold Currency” to amounts to be received by you or provided by you under a Position shall be construed as if that Position were to be unwound by delivery under clause 5.
- 3 You acknowledge that notwithstanding you have an agreed Value Date, each Position continues indefinitely until it is unwound by delivery in accordance with clause 5 or by being closed out in accordance with clauses 6, 13, 14, 15, or 16 and references in the definitions of “Position” and “Value Date” to settlement shall be construed as if that Position were to be unwound by delivery.
- 4 If you comprise more than one person this Agreement binds each of you jointly and severally.
- 5 Headings are for convenience only and shall not effect the construction of this Agreement.

## **2 ESTABLISHMENT OF ACCOUNT**

- 2.1 Upon entry into this Agreement, we shall establish an account in your name.
- 2.2 All moneys deposited to the credit of that account shall be paid into a segregated bank account established and maintained by us with our bank. Funds in this account are not combined with funds belonging to us and the funds are not used by us other than for the purposes set out in this Agreement.
- 2.3 We may split your account into different sub-accounts denominated in different currencies and references in this Agreement to your account shall be taken to include

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references to all such sub-accounts or the relevant sub-accounts (as the case requires).

- 2.4 Where two or more natural persons and no other are named as the client the account shall be established in their names as joint tenants unless they specifically advise otherwise. In all other cases, the account shall be established in the names as tenants in common.
- 2.5 In accordance with New Zealand company law, our accounting records contain entries from day to day of all receipts and disbursements of client funds received and paid by us. Your access to these accounting records is not considered necessary as we fully disclose our obligations to you in contract notes and account statements. Our accounting records are independently audited by an external auditor.

### **3 ENTRY OF POSITIONS AND OPTIONS**

- 3.1 You may request us (which may be by telephone) on any Business Day to quote:
- (a) the rate at which you may enter a Position and the Initial Margin required by nominating the amount and currency of either the Bought or Sold Currency and the currency against which it is to be exchanged, the Value Date of the Position and whether you wish to take delivery of the Bought Currency; or
  - (b) the Premium at which you may sell or buy an Option and (if applicable) the Initial Margin then required by nominating whether you wish to buy or sell, whether a Put Option or a Call Option, the amount and currency of either the Bought or the Sold Currency and the currency against which it is to be exchanged, the Strike Price and the Expiry Date.
- 3.2 If the quote is acceptable to you, you may immediately upon receiving the quote, instruct us (which may also be by telephone) to arrange the entry by you of a Position or Option equivalent to that for which the quote was sought. Receipt by us of your instruction shall constitute an offer by you to us to enter into such a Position or Option.
- 3.3 We are under no obligation to accept your offer to enter into a Position or Option, and
- in particular, we are not obliged to accept your offer to enter into a Position or Option:
- (a) if you have exceeded or would exceed a limit applying to you under clause 3.7; or
  - (b) until we have received the Initial Margin and or the Premium required in respect of that Position or Option in cleared funds.
- 3.4 The Initial Margin required in respect of a Position or Sold Option or the Premium required in respect of a Bought Option (if not already received from you by us) shall be payable upon our accepting your offer to enter into a Position or buy or sell an Option.
- 3.5 If we accept your offer to enter into a Position or Option, we will issue to you a written confirmation of that Position or Option promptly after it has been entered into in the form of a deal confirmation, but failure by us to issue a deal confirmation will not prejudice or affect that Position or Option and we will not have any liability as a result of a failure to issue a deal confirmation. If we decide not to accept your offer to enter into a Position or Option, we will advise you of that decision promptly.
- 3.6 You undertake to examine the terms of each deal confirmation immediately upon receipt and unless you notify us within (48) forty-eight hours, disputing the deal, you agree that the contents of the deal confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal. Upon receipt within (48) forty-eight hours of written notice as to a disputed deal, we will investigate the matters disputed and you will co-operate with us in good faith to resolve the dispute. You, will, notwithstanding any such dispute, continue to satisfy your obligation to pay Margin calls made by us in respect of that Position or Option as if the details contained in the deal confirmation are correct and not the subject of dispute.
- 3.7 We may, in our absolute discretion, limit the value of Positions or Options you may enter into or have outstanding under this Agreement and may at any time by notice to you set a limit:
- (a) beyond which if you wish to enter into any further Positions or Options you must seek and obtain credit approval from us; and

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(b) beyond which you may not enter into any further Positions or Options whatsoever;

3.8 You may exercise an Option by notice to us between the hours of 8.30am and 5.00pm (Auckland time) on any Business Day until the Expiry Date for the Option. The exercise of an Option shall be subject to this Agreement, create the rights and obligations that constitute a Position.

3.9 We are under no obligation to accept the exercise of a Bought Option until we have received the Premium and brokerage required in respect of the Option in cleared funds. If we exercise a Sold Option, we shall credit the Premium advised to your account.

3.10 You undertake to advise us of your intention to take delivery of the Bought Currency at the time you offer to enter into a Position or exercise an Option and you agree that should you fail to advise of such intention, we may, in our absolute discretion, only allow you to unwind that Position or Option in accordance with the provisions of clause 6 below. Any notice to take delivery shall be irrevocable.

## **4 INTEREST CHARGES ON POSITIONS REMAINING OPEN AFTER VALUE DATE**

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4.1 (a) We are entitled to interest payable daily by you in respect of a borrowing by you of the Sold Currency under a Position at the rate set by us from time to time; and

(b) You are entitled to interest payable daily by us in respect of a borrowing by us from you of the Bought Currency under a Position, from the Value Date of the Position until the date that the Position is unwound by delivery in accordance with clause 5 or by being closed out in accordance with clause 6, 13, 14, 15, or 16 at the rate set by us from time to time;

4.2 Interest payments shall be settled by us on each day by debiting or crediting your account with the daily interest rate differential between the amount of interest payable by you under the Position and the amount of interest payable by us to you under the Position. In the event that there is insufficient Excess Variation Margin in your account, you acknowledge that any amount

due under this clause is a debt due and owing by you to us.

4.3 In debiting or crediting interest to your account, we may charge or pay you interest at a rate different to the interest rate which we are charged or paid on equivalent borrowings of foreign currency by a bank and may retain the difference.

## **5 DELIVERY OF POSITIONS**

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If you have specified that delivery is required in a notice given under clause 3, you must pay to us on the Value Date that amount of the Sold Currency under the Position in cleared funds and following receipt by us of the Sold Currency, we shall credit to your account the Bought Currency under the Position.

## **6 CLOSE OUT OF POSITIONS AND OPTIONS**

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6.1 Unless you have given a notice under clause 3 above, you may unwind a Position or Option at any time by notice to us that you wish the Position or Option to be closed out whereupon we shall enter into a matching and opposite Position or Option on behalf of you on or as soon as practicable after the later of:

(a) receipt from you of such notice; and

(b) any time and date specified in such notice at which you wish the close out to occur, at the Market Rate for delivery on the later of the Value Date of the original Position and the Spot Date in respect of the matching Position.

6.2 The difference (if any) between the amount of the Bought Currency under the matching Position and the amount of the Sold Currency under the original Position or, in respect of an Option the difference between the Premium paid by you for the original or matching Option and the Premium received by you for the matching or original Option respectively, if positive shall be a "Realised Profit" and, if negative, shall be a "Realised Loss".

6.3 The closing out of a Position or Option in accordance with this clause 6 shall constitute a complete discharge of all our and your obligations to give or take delivery of any currency under that position or Option

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and has the effect of immediately cancelling the Position or Option so that the only obligations that continue in respect of the Position or Option are those provided for in clause 7.

- 6.4 You acknowledge that if you give us standing instructions to enter into a Position or Option when a particular price level is reached in the foreign exchange market the price at which the Position or Option is entered into might not be that exact price.

## **7 SETTLEMENT OF CLOSED OUT POSITIONS AND OPTIONS**

- 7.1 When a Position or Option is closed out which:

- (a) results in a Realised Profit, we will credit to your account the Realised Profit; or
- (b) results in a Realised Loss, you must (subject to clause 7.4) pay to us the Realised Loss in such currency as we may require in cleared funds within (24) twenty-four hours of being advised of the amount so payable.

- 7.2 If there is then sufficient Excess Variation Margin any amount owing by you under this clause 7 may be settled in whole or in part by debiting to your account with us an amount up to the amount of the Excess Variation Margin.

- 7.3 If you have requested payment of any money owed to you under this clause 7, we will deduct that money from your account and pay it to you by cheque or in such other manner as may be agreed between you and us. If you have not requested payment of any money so owed to you, it will be retained in your account.

- 7.4 We will set off any money owed to you under this clause against any money owed by you under this clause. Where such a set-off is made, references in this clause 7 to Realised Profit or Realised Loss shall be read as including the net amount of Realised Profit or Realised Loss (as the case may be) remaining after the set-off.

## **8 REVALUATIONS**

- 8.1 We may at any time, by reference to the Market Rate, revalue all Positions and

Options. Such revaluation shall be effected in the following manner:

- (a) for the purpose of this Clause 8:
  - (i) an Option created by the sale by you to us of a Call Option ("Sold Option") shall be treated as a Position under which the amount and denomination of the currency specified in the Call Option shall be regarded as that amount of currency sold at the Strike Price of the Call Option; and
  - (ii) an Option created by the sale by you to us of a Put Option ("Sold Option") shall be treated as a Position under which the amount and denomination of the currency specified in the Put Option shall be regarded as that amount of currency bought at the Strike Price of the Put Option; and
  - (iii) any other Option shall be referred to as a "Bought Option".
- (b) We shall ascertain:
  - (i) in relation to each Position or Sold Option the amount of the Sold Currency which could be purchased with the amount of the Bought Currency at the prevailing Market Rate; or
  - (ii) in relation to each Bought Option, the rate at which we would repurchase the Option;
- (c) if such amount:
  - (i) is greater than the amount of the Sold Currency under the Position or Sold Option or greater than the original Premium paid for a Bought Option, then the difference will represent an Unrealised Profit; and
  - (ii) is less than the amount of the Sold Currency under the Position or Sold Option or less than the original Premium paid for a Bought Option, then the difference shall represent an Unrealised Loss;

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- (d) the sum of each Unrealised Profit shall be the "Unrealised Profits" and the sum of each Unrealised Loss shall be the "Unrealised Losses".

## **9 MARGIN REQUIREMENTS**

- 9.1 You acknowledge that before you will be permitted to enter into a Position or Option, you may be required to deposit with us cleared funds as an Initial Margin.
- 9.2 We may at any time increase the Initial Margin requirements applicable in respect of any Position or Sold Option and require you to deposit with us cash equal to such an increase.
- 9.3 If at any time your Unrealised Losses exceed the sum of your Unrealised Profits we may require you to deposit with OMF cash in an amount equal to such excess.
- 9.4 If we make a Margin call you must pay the amount of Margin called within 24 hours of the giving of such notice by us.
- 9.5 Any decision by us as to the amount and the time for payment of a Margin call shall be final and binding on you.
- 9.6 If we make a Margin call, you acknowledge that we may refuse any request by you to enter into any further Position or Option (other than to close out an existing Position or Option) until we have confirmed receipt of the Margin call in cleared funds.
- 9.7 You will only be entitled to a refund of a Margin, or part thereof, once your obligations under this Agreement are satisfied in full.
- 9.8 We may, in our sole discretion, allow you to withdraw from your account any Excess Variation Margin but a withdrawal will be without prejudice to the provisions of clause 9.7 in respect of the balance of any Margin deposited with us.
- 9.9 You shall advise us of a phone number or numbers at or through which we can contact you 24 (twenty-four) hours per Business Day so that we may give you notice of any requirement to make payment of Margin calls under this clause.

## **10 REPRESENTATIONS**

- 10.1 You represent and warrant to us as at the date of this Agreement and each transaction under it that:
- (a) (corporate client) no resolution has been passed and no petition has been presented or order made for your insolvency;
  - (b) (individual client) you are of full age and sound mind and legally competent and no steps have been taken or legal proceedings started or threatened against you for your insolvency;
  - (c) no one except you has an interest in your account with us opened for the purposes of this Agreement and, except as disclosed to and consented to in writing by us, you enter into each transaction under this Agreement as principal and not as agent, trustee or otherwise;
  - (d) you have received from us and read and understood the Risk Disclosure Statement relating to this Agreement prior to executing this Agreement;
  - (e) you have taken such independent legal and financial advice as you consider necessary prior to executing this Agreement;
  - (f) you have the power and authority to enter into and perform your obligations under this Agreement and to enter into Positions and Options;
  - (g) all authorisations necessary to be obtained by you prior to the execution of this Agreement have been obtained;
  - (h) in executing and in giving effect to this Agreement you do not, and in entering into Positions or Options you will not, infringe any provision of any deed or other document or agreement to which you are a party;
  - (i) you will not enter into a Position or Option as or by way of gaming or wagering; and
  - (j) no Default Event has occurred or is continuing.

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10.2 You acknowledge that we enter into this Agreement in reliance on these representations and these representations survive the entering into of this Agreement and of each Position and Option.

## **11 AUTHORISED REPRESENTATIVE**

We are authorised to act on your written or verbal instructions and of each Authorised Representative. You may from time to time by notice in writing to us update Authorised Representatives. You undertake to ratify whatever an Authorised Representative shall lawfully do or cause to be done.

## **12 DEFAULT EVENTS**

12.1 It is a Default Event, whether or not it is within your control, if:

- (a) any moneys owing by you to us under this Agreement are not duly and punctually paid to us or satisfied as and when they become due;
- (b) you fail to duly and punctually perform and observe any other obligation under this Agreement or any other agreement with us;
- (c) any representation made by you or on your behalf is incorrect or misleading;
- (d) you stop payment of your debts or cease or threaten to cease carrying on business;
- (e) you become insolvent;
- (f) you become subject to a recommendation by the Securities Commission or Reserve Bank of New Zealand to the relevant Minister supporting the appointment of a statutory manager;
- (g) you die or become of unsound mind;
- (h) any security interest binding on you or your assets becomes enforceable and the holder of the security interest takes steps to enforce its security
- (i) any indebtedness of you becomes immediately due and payable, or capable of being declared due and payable, prior to its stated maturity, by reason of your or any other person's default; or

- (j) in the absence of you making alternative arrangements acceptable to us, you are not contactable by telephone, by us within any consecutive period of twenty four (24) hours, in order for us to obtain instructions with respect to a Position or Option or to give you notice of a Margin call.

## **13 ACTION FOLLOWING A DEFAULT EVENT**

13.1 On or at any time after a Default Event occurs, we, without prejudice to any other rights we may have, have the right or power (but not the obligation) in our discretion and without notice to you to do any one or more of the following:

- (a) to terminate this Agreement in accordance with clause 16;
- (b) terminate by closing out all or any of your Positions or Options (even though the Value Date of the position or the Expiry Date of the Option to be closed out may not have arrived); or
- (c) to treat all or any Positions or Options as being wrongfully determined by you in which case clause 13.7 shall apply.

13.2 If any transactions are terminated in accordance with clause 13.1(b), we will determine, as at the termination date, the mark-to-market value in New Zealand dollars of that terminated transaction. Such a determination will be made by us in good faith on the basis of market quotations obtained by us. Each quotation will be for an amount, if any, that we would have to pay someone else (expressed as a negative number) or that someone else would have to pay us (expressed as a positive number) to assume your rights and obligations under the terminated transaction(s). Where a quotation is denominated in a currency other than New Zealand dollars, we may convert the quoted amount into New Zealand dollars using an exchange rate selected by us in good faith.

13.3 Once the mark-to-market value of each terminated transaction has been determined, each value will be aggregated to obtain a final net amount. If this final net amount is negative then you must pay this amount to us. If this final net amount is positive then we must pay the absolute value of this

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amount to you. Any net amount payable to you will be subject to the right of set-off contained in clause 13.4 of this Agreement.

- 13.4 After a Default Event has occurred we are entitled to set-off any amount owed by us to you under this Agreement against any amount owed by you to us (whether or not owed under this Agreement and irrespective of the currency, place of payment or booking office of the obligation). Where an amount to be set-off under this clause is denominated in a currency other than New Zealand dollars, we may convert that amount into New Zealand dollars using an exchange rate selected by us in good faith. This clause does not have any effect on other rights of set-off we may have.
- 13.5 We will not lose any of our rights under this clause 13 by reason of any delay and if we do exercise any such right we may do so at any time and in any manner.
- 13.6 Where we exercise our right under clauses 13.1(b) and/or 14 to close out a Position or Option, the closing out will be effected on your authority now given and at your risk and expense and in your name, in accordance with clause 6 as if you have given notice on the date that we exercise our right.
- 13.7 Where we exercise our right under clause 13.1(c) to treat a Position or Option as wrongfully determined by you, we shall be entitled to debit from your account liquidated damages of an amount equal to any Realised Loss and you acknowledge that such liquidated damages are a genuine pre-estimate of our loss;

## **14 CLOSE OUT OF POSITIONS WHERE UNREALISED LOSSES EXCEED 50% OF INITIAL MARGIN**

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If the Unrealised Loss in relation to a Position or Option at any time exceeds 50% of Initial Margin in respect of that Position or Option, we may close out that Position or Option in accordance with clause 13 as if that event were a Default Event.

## **15 ILLEGALITY**

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If any event occurs (including the introduction, implementation, operation or taking effect, or any law, regulation, treaty, order, official directive or ruling, or any change in any such law, regulation, treaty,

order, official directive or ruling or in their interpretation or application by any governmental authority, or agent) which makes or declares it unlawful, impossible or impracticable for us to make the margin foreign exchange facility available to you under this Agreement then we may terminate this Agreement with immediate effect by notice to you, and close out all Positions and Options in accordance with clause 13 as if such illegality or impracticability were a Default Event for the purpose for that clause but any such termination will not relieve you of any obligations under this Agreement prior to such termination.

## **16 AMENDMENT AND TERMINATION OF AGREEMENT**

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- 16.1 We may from time to time amend, alter, modify, substitute or supplement the terms of this Agreement by posting the amended terms on OMF's website – [www.omf.co.nz](http://www.omf.co.nz)
- 16.2 The terms of which you may enter into Positions or Options are the terms of this Agreement in force at the time immediately prior to you instructing us to arrange the entry by you of a Position or Option.
- 16.3 This Agreement continues unless and until a notice of termination is received by either party. The party wishing to terminate this Agreement must give not less than 2 Business Days' notice of termination and the termination takes effect on the expiry of the notice period. Termination shall not release either party from any existing obligations.
- 16.4 If this Agreement is terminated, you must unwind all existing Positions or Options within (5) five Business Days of the date of termination. If you fail to unwind any Position or Option within that (5) five Business Days period, we may close out that Position or Option in accordance with clause 13 as if that failure were a Default Event.

## **17 OUR RIGHTS**

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- 17.1 We may at any time without prior notice to you, in order to discharge your obligations (actual or contingent) under this Agreement:
- (a) apply all or part of any currency held by us in your account and any currency held by us for the purpose of your dealings in Positions or Options in such order or manner as we think

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fit, whether the liabilities are actual or contingent, primary or collateral, joint or several.

- (b) combine or consolidate all or any of your accounts with us; and
- (c) convert at a commercial rate currency held by us in your account into a currency or currencies in which payments are due from you to us and without us being responsible to you for any loss resulting from such conversion.

## **18 INDEMNITY**

18.1 You agree to indemnify us in respect of all loss, damage, costs, charges, taxes and expenses incurred by us in respect of:

- (a) the execution of your instructions in relation to Positions and Options.
- (b) the occurrence of a Default Event;
- (c) the exercise by us of our rights and powers upon the occurrence of a Default Event; and
- (d) any amount payable by you under the terms of this Agreement.

## **19 LIMITATION OF LIABILITY**

19.1 You have read, understand and accept all of the terms of this Agreement. You agree that in entering into each Position or Option you will rely only upon your judgement and our employees or agents shall have no responsibility or liability of any kind in respect of any advice given or views expressed to you on such matters, whether or not the advice is given or views are expressed at their volition or upon your request, nor will they be liable in respect of any loss incurred by you in connection with any Position or Option.

19.2 We will be under no liability arising in respect of any private dealing, contract, transaction or relationship between you and any of our employees or agents.

19.3 We have no responsibility or liability of any kind for any loss whatsoever incurred by you as a result of any delay in transmitting or failure to transmit funds caused by reasons beyond our control or as a result of our failure to timely execute orders placed with us or to transact business or otherwise

administer this Agreement in the manner contemplated by this Agreement for reasons beyond our control (including without limitation, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication failure, strikes or war).

19.4 We will be under no liability for any loss arising from or in connection with any Position or Option as a result of any moratorium change in exchange rates, currency restrictions or changes therein.

## **20 COSTS, TAXES AND EXPENSES**

20.1 You acknowledge that you are responsible for your own legal costs associated with entering into this Agreement and for all taxes and expenses incurred by you in connection with this Agreement.

- (a) You agree to reimburse us for all taxes (both direct and indirect) and expenses charges in connection with any Position or Option (other than tax on our income); and for all costs and expenses incurred by us in implementing the terms of this Agreement and in enforcing our rights under this Agreement.

## **21 PAYMENTS**

You acknowledge that if you instruct us to effect a Position or Option with us, you must pay all transaction charges, fees, Margins, Premiums, settlements, interest and any other amounts due under this Agreement on demand by us in cleared funds or otherwise as required by the terms of this Agreement.

## **22 PAYMENTS IN GROSS**

All payments by you the Client under this Agreement are to be made without any set-off by you, counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law. If you are required to make a deduction or withholding in respect of tax from any payment to be made or if we are required to pay any tax in respect of any payment made in relation to this Agreement at your request then you indemnify us against that tax and agree to pay to us an additional amount to ensure we receive a net amount (after payment of any such deductions) that is equal to the full amount we would have

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received had a deduction or withholding or payment of tax not been made.

## **23 CURRENCY OF PAYMENTS**

All amounts due to us or payable by us to you under this Agreement are payable in such currency as we may require or determine.

## **24 DEFAULT INTEREST**

You agree to pay interest and we are entitled to charge against your account interest (before as well as after judgement) on any amount due to be paid to us by you, from the date the amount becomes due until the date the amount together with interest under this clause is paid in full. Interest will be calculated daily and compounded monthly at a rate which is no less than 3% above the Official Cash Rate (OCR) of the relevant currency.

## **25 SHARING OF CHARGES**

You agree that we may share all transaction charges and fees with other persons without being required to disclose that fact to you.

## **26 POWER OF ATTORNEY**

In consideration of our entering into this Agreement, you irrevocably appoint us and each of our directors, secretary and principal executive officer and each employee whose title of office includes the word "manager" severally as your attorney at any time and from time to time following the occurrence of a Default Event to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of this Agreement, and in particular in connection with, or incidental to, the exercise of any of our rights and powers contained in clause 13.

## **27 NOTICES**

27.1 All communications, including demands for payment of Margins or other payments called for by us in relation to Positions or Options, may be made electronically or by telephone, mail, facsimile or otherwise sent to the recipient at the address, telephone, post office box or facsimile number most recently notified in writing by the recipient to the sender.

(a) A communication will be taken to be received:

- (i) if delivered in person or by telegraph, when delivered;
- (ii) if made by mail, 3 Business Days from and including the date of postage;
- (iii) if by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and.
- (iv) if given to you by email, on delivery (and a delivery report received by us will be conclusive evidence of delivery even if the communication is not opened by you);
- (v) if given to us by email, on being opened and acknowledged by us.

27.2 A notice of change of name, postal or e-mail address must be given in writing and signed by an authorised person on the account.

## **28 ASSIGNMENT**

28.1 This Agreement inures to the benefit of our successors (by merger, consolidation or otherwise) and assignees.

28.2 We may assign to or take an assignment from any party of the benefit of this Agreement or any Position or Option or the balance of your account.

28.3 You acknowledge that you may not assign or transfer all or any part of your rights and benefit under this Agreement or any Position or Option without our prior written consent.

## **29 DISCLOSURE OF INFORMATION**

29.1 You authorise us to provide such information as we see fit concerning your account, this Agreement or any Positions or Options entered into or proposed to be entered into by you to any proposed assignee or transferee of our rights under this Agreement; or to any regulatory authority in any part of the world or any other person (including our agents and subcontractors)

## TERMS & CONDITIONS

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where we reasonably consider that the disclosure is required either:

- (a) to enable us to exercise our rights or carry out our obligations under this Agreement; or
- (b) by law or regulatory requirement; or
- (c) where it is necessary to protect our interests.

### **30 INSTRUCTIONS**

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- 30.1 You agree that we may assume the authenticity of any instructions given or purportedly given by your Authorised Representative and that any person claiming to be you or your Authorised Representative is in fact that person. You authorise us to act on instructions believed by us to be authentic. We are entitled to rely on any electronic instruction which includes your Logon ID without any enquiry as to the authority or identity of the sender of that message and you are bound by any such instruction.
- 30.2 An instruction given by you electronically must be retransmitted if you receive a message or become aware that the instruction was received in an incomplete or garbled form.
- 30.3 You confirm that we are authorised to act on facsimile instructions given or purported to be given by you or your Authorised Representative regarding movements of funds in your account including payment to third party beneficiaries. Where any communication is purportedly given by you or your Authorised Representative to us by facsimile, we shall have no obligation to make any enquiry as to the authenticity, validity or legality of any such facsimile notwithstanding that any notice may subsequently be proven not to have been made, given or signed by the person purporting to give the notice. The instruction shall be valid until it is revoked in writing by you or your Authorised Representative.
- 30.4 We will only act within the parameters of your or your Authorised Representative's instructions. We will not act on a discretionary basis on your behalf unless you enter into a discretionary authority agreement with us.
- 30.5 You consent to the recording of telephone conversations with us and to our maintaining

a transaction log of all electronic communications.

- 30.6 Our records of instructions will be conclusive evidence of those instructions.
- 30.7 You agree not to dispute the validity or enforceability of electronic communications and waive any right to raise any defence based on the absence of writing.

### **31 LAW OF THE AGREEMENT**

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This Agreement is governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

### **32 MISCELLANEOUS**

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- 32.1 Subject to clause 15, the illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction does not affect its legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision.
- 32.2 Time is of the essence under the terms of this Agreement.

### **33. ACCESS TO SERVICES THROUGH THE INTERNET**

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- 31.1 Subject to complying with our Online Terms and Conditions, we grant to you a right to access the Site for the purposes of exercising your rights and complying with your obligations under this Agreement. This right of access is for your use only. We reserve the right to withdraw or suspend your access to the Site at any time.
- 31.2 You are responsible for the confidentiality and use of your Logon ID and your password. If you become aware of any loss or theft or unauthorised use of your Logon ID or password, you must notify us immediately. Your Logon ID may be cancelled at any time without notice, but we will notify you as soon as practicable thereafter if this happens.

### **34. CONSUMER GUARANTEES ACT 1993**

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34.1 If you are acquiring the services provided by us for the purposes of a business, you agree that the conditions, warranties and guarantees of the Consumer Guarantees Act 1993 and any rights you may have which are implied by common law, statute or custom that we can lawfully exclude will not apply to the Agreement. You also agree that:

- (a) you will not claim any of the remedies set out in the Consumer Guarantees Act 1993 from us; and
- (b) we will not be liable to you for any consequential loss however that consequential loss is caused or arises.

# PRIVACY POLICY

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## **1 COMMITMENT TO PRIVACY**

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- 1.1 OMFInancial Limited, its subsidiaries, partners and agents (either "OMFInancial Limited", "we" or "us") recognises its responsibility, and is committed to, ensuring the privacy of your information.
- 1.2 The following privacy policy has been developed in recognition that internet technologies, and specifically OMFInancial Limited's application of these, are rapidly evolving. This policy addresses privacy issues relevant to the Site, including all services, programs or information that you use or otherwise access from time to time via the Site that are provided by OMFInancial Limited (collectively, referred to as "the Site").
- 1.3 Should we change this privacy policy for any reason, such changes will always be posted to this page. However, if you have any further questions relating to this privacy policy, please do not hesitate to email us.

## **2. WHAT THIS PRIVACY POLICY COVERS**

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- 2.1 This privacy policy covers the following details:
  - (a) Access to, editing and deleting personal information;
  - (b) Collection of information;
  - (c) Cookies;
  - (d) Use of information;
  - (e) Use of email;
  - (f) Security; and
  - (g) Linked Sites

## **3. ACCESS TO, EDITING AND DELETING PERSONAL INFORMATION**

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- 3.1 You may ask to see your personal details that are held via the Site at any stage by emailing us. You may also ask us to correct or alter any details about you that we hold. It is your responsibility to ensure that information provided to us is accurate.

- 3.2 You may delete your user details from the Site by emailing us.

## **4. COLLECTION OF INFORMATION**

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- 4.1 As part of the registration process, we will provide you with a user name and password, which is used for statistical and security purposes.
- 4.2 From time to time, OMFInancial Limited may collect additional personal information from you in connection with optional surveys, news updates or promotions. Providing this information is optional. Feedback from surveys will be used to improve the Site.
- 4.3 If you register with the Site, you will not be anonymous to us. OMFInancial Limited collects personally identifiable information upon registration, and when you provide information for surveys, news updates or promotions. OMFInancial Limited logs your IP address (the location of your computer on the internet) and the pages you visit whenever you use the Site. This is for system administration, statistical and troubleshooting purposes.
- 4.4 We will always explicitly ask for any information that personally identifies you.

## **5. COOKIES**

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- 5.1 A cookie is a small data file placed on your computer by our server. A cookie contains information about your visit to our Site. When you visit the Site again, our server will look for the cookie and structure itself based on the information provided. A cookie identifies your computer to our web server when you visit the Site. We do not use the cookie to collect or store personal information about you. OMFInancial Limited uses browser cookies to improve the speed and reliability of our security system.

## **6. USE OF INFORMATION**

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- 6.1 Your personal information will be used only for the purposes for which it is collected, and retained only for as long as is necessary to fulfil the purposes for which the information was collected (including any time that we are required by law to retain such information).
- 6.2 We will not sell or rent your personally identifiable information to any third party.

# PRIVACY POLICY

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- 6.3 We will not use your personal information for any purpose that is not related to the products or services provided on the Site, or for any purpose for which you would not reasonably expect us to use the information.
- 6.4 The Site automatically generates logs regarding your sessions on the Site, such as the features you use, the actions that you take, and the information that you access. We generally use this information in statistical and aggregate formats to assess the effectiveness of the Site and to better understand your priorities and interests.
- 6.5 Personal data collected on the Site may be transferred to other OMFinancial Limited offices where it is necessary for the purposes for which you submitted the information. By submitting information to the Site, you consent to transmission of such information across national boundaries, provided that such information remains in the control of OMFinancial Limited.
- 6.6 We may release information about you when required to, or permitted, by law. We may also disclose information where you have authorised us to, or where disclosure is connected to the purpose for which it was collected – e.g. online registration. In all situations where we disclose your personal information to third parties, we will endeavour to inform you of such disclosure and the party to whom disclosure is made as soon as reasonably possible (if we are permitted by law to advise such details).

## **7. USE OF EMAIL**

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- 7.1 We do not spam or endorse the use of spam. We will not send emails to you that are unrelated to the Site, and we will not authorise any third party to use your email address to send you unsolicited emails.
- 7.2 If you are a registered user of the Site, we may use your email address to advise you of any upgrades or changes to the Site.
- 7.3 We may use your email address to periodically send promotional emails from OMFinancial Limited about products and services, offers or updates relating to recent developments in our services that may be relevant to you.

## **8. SECURITY PROCEDURES**

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- 8.1 To prevent unauthorised access, to maintain data accuracy and to ensure appropriate use of any information supplied by you, we have put in place physical, electronic and managerial processes to protect the information you provide on the Site.
- 8.2 Additionally, all stored user information is protected from unauthorised access through the use of secure passwords, user log-ons and other security procedures.
- 8.3 For more information about our security procedures, please email us.

## **9. LINKED SITES**

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- 9.1 The Site may contain links to Linked Sites. OMFinancial Limited is not responsible for the privacy policies of such Linked Sites. This privacy policy applies solely to information collected in the Site by us.

## **10. DEFINITIONS**

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- 10.1 All terms used in this Privacy Policy shall have the same meanings as those terms are used or defined in the Site's terms and conditions.