

# COMMTRADE PLATFORM MARKET RULES

## 1. Rules are binding

Each Registered User placing an Order, and each other person who instructs OMF to place an Order, in relation to a Market Product on the CommTrade Platform agrees to be bound by these Rules.

In these Rules, capitalised terms are defined in clause 9 below.

## 2. Relationship with Terms of Use

All Registered Users are also bound by the Terms of Use. Where there is a conflict or inconsistency between these Rules and the Terms of Use, OMF may determine which will prevail.

## 3. How does the CommTrade Platform work?

3.1 The CommTrade Platform is open for business and Orders may be placed during Market Trading Hours (although cancellations may be entered by the Registered User who placed the Order or OMF at any time before a Buyer and a Seller are matched up, including outside Market Trading Hours).

3.2 Registered Users place Orders on the CommTrade Platform in respect of Market Products in order to be matched with other Registered Users who want to enter into a Transaction for the sale and purchase of the relevant Commodities.

3.3 Registered Users may place or cancel Orders which meet Product Specifications directly on the CommTrade Platform.

3.4 OMF may place or cancel Orders which meet Product Specifications on the CommTrade Platform on behalf of persons (including persons who are not Registered Users) on the basis of telephone or email instructions to OMF. Email instructions should only be considered to be received upon written acknowledgement by OMF.

3.5 Registered Users may only place Orders in relation to Emissions Units if they are an NZEUR Registered User or on behalf of another NZEUR Registered User.

3.6 Subject to clause 3.7, an Order must be:

- (a) at a price in respect of one whole Unit of the relevant Commodity;
- (b) in New Zealand currency and with no fractions of cents;
- (c) for a minimum of 5000 Units; and
- (d) in multiples of 1000 Units.

3.7 OMF may publish on the CommTrade Platform or otherwise accept any other minimum or maximum amount of Units for any purpose from time to time.

## 4. How does CommTrade identify a Match?

4.1 OMF may determine the manner in which Orders are listed on the CommTrade Platform from time to time. Generally, OMF will list Bids and Offers on the CommTrade Platform in price order and otherwise in the order in which they are received, and Bids and Offers will be matched up on the same basis.

4.2 OMF will not match up an Offer with a lower Bid, or vice versa.

4.3 OMF may match up a partial amount of the Units in a Bid or Offer with a corresponding Offer or Bid (an **Incomplete Match**) and the balance of the first Bid or Offer will remain listed on the CommTrade Platform at the same price in respect of the balance (if any).

4.4 OMF will have no liability to any person for any non-compliance with any part of this section 4 in relation to the operation of the CommTrade Platform.

## 5. How are Transactions settled?

5.1 When a Bid and an Offer have been matched, OMF will send a Term Sheet to the Nominated E-Mail Address of each of the Buyer and Seller confirming the terms of the Match and proposing terms for a Transaction and options for the method of settlement of the Transaction.

5.2 Matching of a Bid and an Offer does not create a binding contract. No binding contract will exist until a Buyer and Seller enter into a separate contract in relation to the proposed Transaction, either on the Standard Transaction Terms or such other terms as the Buyer and Seller may agree. All Transactions are subject to usual know your customer compliance checks and settlement processes.

5.3 The method of settling the Transaction may be by (but is not necessarily limited to):

- (a) direct settlement of the Transaction between the Buyer and the Seller;
- (b) settlement through OMF; or
- (c) settlement through an Escrow Service (if available).

5.4 Once the Term Sheet has been issued, OMF will contact the Buyer and the Seller to confirm documentation of the Transaction and the proposed manner of settlement. The identities of the Buyer and of the Seller will not be revealed to the other party until they have agreed the terms of settlement. In the case of 5.3(b) and 5.3(c), the identities of the Buyer and Seller will not be revealed until the Transaction is complete.

- 5.5 Where the Buyer and Seller elect to settle pursuant to clause 5.3(b) or 5.3(c), the Transaction must be documented using the Standard Transaction Terms, unless otherwise agreed between the parties and, in the case of clause 5.3(b), OMF, or in the case of clause 5.3(c), the provider of the Escrow Service.
- 5.6 If the Buyer and the Seller cannot agree the terms of the Transaction, or on a method of settlement of the Transaction, no contract will result and the Match will be of no effect.
- 5.7 Settlement of Transactions will be in accordance with the terms of the relevant Transaction Documents. In relation to a Transaction in respect of Emissions Units, Sellers are responsible for transferring Emissions Units in accordance with NZEUR protocol. Buyers are responsible for making payment pursuant to the Transaction Documents.
- 5.8 Notwithstanding clause 5.2, if a Registered User places an Order on the CommTrade Platform which results in a Match being made, the Registered User is expected to settle the Transaction with the relevant Buyer or Seller counterparty. If a Registered User refuses to enter into a Transaction with a Buyer or Seller counterparty, OMF may ban that Registered User from using the CommTrade Platform either temporarily or permanently.
- 5.9 Except as otherwise agreed with OMF, where a Transaction is entered into, the terms of that Transaction may not permit, contemplate or otherwise create an understanding that the obligation of the parties may be satisfied by means other than actual delivery.

## 6. Fees

- 6.1 Subject to clause 6.3 each Registered User who submits an Order must pay to OMF the Match Fee in respect of each Match that results, together with any GST (if any) payable in respect of the Match Fee. OMF may, however, elect not to charge or may reduce a Match Fee at any time.
- 6.2 Except as otherwise agreed between a Registered User and OMF from time to time, in respect of each Match that is made, Match Fees will be invoiced by OMF on the first, and payable on the 20<sup>th</sup>, Business Day of the month following the making of the Match.
- 6.3 Except as otherwise published on the CommTrade Platform or otherwise agreed between a Registered User and OMF from time to time, no Match Fee will be payable (and OMF will refund it if already paid) in relation to a Match which does not result in a completed Transaction.
- 6.4 OMF may charge additional brokerage in cases where it acts as the settling agent.

## 7. Changes to these Rules

- 7.1 OMF may change or replace these Rules at any time with immediate effect by posting the changed or new Rules on the CommTrade Platform. The changed or new Rules will apply to any Offers or Bids which have not yet been matched, unless it would be materially financially adverse to the Registered User responsible for the Offer or Bid.
- 7.2 Where OMF publishes any item or matter on the CommTrade Platform, no further notification to Registered Users is required.
- 7.3 Each Registered User is responsible for ensuring that it is at all times familiar with the current Rules.

## 8. General terms

- 8.1 If OMF is permitted to make any decision or do anything under these Rules, it can do so at its sole discretion.
- 8.2 OMF may suspend or close the CommTrade Platform at any time for any reason and without notice to any person.
- 8.3 If any part of these Rules is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of these Rules.
- 8.4 The rights and obligations of any person under these Rules do not merge on completion of any Transaction.
- 8.5 These Rules will be governed by and construed in accordance with the law of New Zealand and all Registered Users, Buyers and Sellers irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.

## 9. Definitions and interpretation

- 9.1 In these Rules, unless a contrary intention appears:

**Act** means the *Climate Change Response Act 2002*.

**Bid** means a bid placed on the CommTrade Platform as an invitation to enter into a contract to buy Market Products at a specified price.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which trading banks and foreign exchange markets are or will be open in New Zealand, the NXZ is open for processing settlement transactions and any registry on which title to Units is recorded is operating.

**Buyer** means the person who is agreeing to buy Units in a Term Sheet.

**Commodity** has the meaning given to it in the Securities Markets Act 1988 and includes, to avoid doubt, Emissions Units.

**CommTrade Platform** means the online facility located at [www.commtrade.co.nz](http://www.commtrade.co.nz) on which Registered Users may place Bids and Offers for the purpose of identifying a Match in order to enter into a Transaction.

**Emissions Unit** means a "unit" as defined in the Act.

**Escrow Service** means any escrow service for the receipt and payment of settlement proceeds operating from time to time in relation to the settlement of Transactions.

**Forward Agreement** means an agreement between a Buyer and Seller to trade a Commodity at a future date.

**GST** means goods and services tax chargeable, or to which a person may be liable, under the *Goods and Services Tax Act 1985*.

**Incomplete Match** has the meaning given in clause 4.3

**Market Products** means Spot Agreements and Forward Agreements in relation to Commodities for which Orders may be listed on the CommTrade Platform, as published on the CommTrade Platform by OMF from time to time.

**Market Trading Hours** means the period between 10am and 4pm of each Business Day or such other period as OMF publishes on the CommTrade Platform from time to time.

A **Match** is made when OMF pairs up a Bid and an Offer on the CommTrade Platform, and where, applicable, includes an Incomplete Match.

**Match Fee** means the fee payable to OMF as published on the CommTrade Platform or otherwise agreed between OMF and a Registered User from time to time, in respect of a successful Match.

**Nominated E-mail Address** means the e-mail address specified by a Registered User to be used for communications in relation to the CommTrade Platform.

**NZETS** means the New Zealand Emissions Trading Scheme.

**NZEUR** means the New Zealand Emissions Unit Register.

**NZEUR Registered User** means a person or organisation that has registered as either a mandatory or voluntary participant in the NZETS.

**Offer** means an offer placed on the CommTrade Platform as an invitation to enter into a contract to sell Market Products at a specified price.

**OMF** means OM Financial Limited.

**Orders** means Bids or Offers.

**Product Specifications** means the standardised details pertaining to Market Products, as published by OMF on the CommTrade Platform from time to time.

**Registered User** means:

- (a) a person who has registered and been approved by OMF as a user of the CommTrade Platform in accordance with the Terms of Use; or
- (b) OMF.

**Rules** means these rules for the CommTrade Platform.

**Seller** means the person identified as such in a Term Sheet.

**Spot Agreement** means an agreement between a Buyer and Seller to trade in respect of a Commodity immediately.

**Standard Transaction Terms** means standard transaction terms prescribed by OMF for Transactions from time to time.

**Term Sheet** means a term sheet sent to the Nominated E-mail Address of each of the Buyer and Seller confirming a Match and proposing possible terms to settle a Transaction.

**Terms of Use** means the terms of use which govern the use of the CommTrade Platform, as published from time to time on the CommTrade Platform.

**Transaction** means an agreement for sale and purchase of a Commodity (whether by way of Spot Agreement or Forward Agreement) between a Buyer and the Seller following a Bid and an Offer having been matched on the CommTrade Platform.

**Transaction Documents** means each document entered into by the Buyer and Seller in respect of a Transaction.

**Unit** means one unit of a Commodity in respect of which Orders are placed on the CommTrade Platform.

9.2 In these Rules, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include every other gender;
- (c) headings are for convenience of reference only and shall not affect the construction of these Rules;
- (d) references to dates and times are to dates and times in New Zealand;
- (e) references to currency are to New Zealand currency;
- (f) a reference to a "person" includes:
  - (i) an individual, body corporate, association of person (whether corporate or not), trust, state, agency of state and any other entity (in each case, whether or not having separate legal personality); and

- (ii) that person's successors, permitted assigns, executor and administrators (as applicable);
  - (g) a reference to any legislation or rule includes any statutory regulations, rules, orders, or instruments made or issued pursuant to that legislation or rule and any amendment to, or re-enactment or replacement of, that legislation or rule;
  - (h) any undertaking, representation, warranty or indemnity by two or more persons (including where two or more persons are included in the same defined term) binds them jointly and severally; and
  - (i) no provision or expression is to be construed against a person on the basis that the person (or its advisers) was responsible for its drafting.
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