

TERMS AND CONDITIONS PART 1

TERMS AND CONDITIONS OF THIS AGREEMENT— DEFINITIONS

(a) The COMPANY shall mean Baydonhill plc of 160 Brompton Road, Knightsbridge, London SW3 1HW

(b) The CLIENT shall mean the person, firm or organisation to whom the COMPANY provides services for the purchase or sale of currencies for physical delivery only.

1. INTERPRETATION

In this Agreement : “**Account**” means the bank account which the parties agree in a Transaction is the bank account to which the Customer Currency is to be sent by the Company. “**Applicable Regulations**” means all laws and regulations from time to time in force relating directly or indirectly to the buying or selling of Currency including the Money Laundering Regulations 2003 and The Proceeds of Crime Act 2002. “**Business day**” means any day, other than a Saturday, Sunday or other public holiday in the U.K. “**Company**” means Baydonhill plc of 160 Brompton Road, Knightsbridge, London SW3 1HW. “**Company Currency**” means the Currency which the Company agrees to sell to the Customer and the Customer agrees to purchase in a Transaction. “**Conditions**” means these terms and conditions and include a completed and signed Customer Application form and Compliance Check List in the Company’s current form.

“**Currency**” means the official currency in use in any jurisdiction. “**Customer**” means a person or persons who having executed a set of these Conditions place an Order. “**Customer Currency**” means the Currency which the Customer agrees to sell to the Company and the Company agrees to purchase in a Transaction. “**Default Event**” means:

(i) In the case of a Customer (a) If the Customer is in breach of his obligations in a Transaction (b) If a Customer is unable to pay his debts as they fall due (c) If in the opinion of the Company any information provided by the Customer is incorrect or misleading in any material respect (d) If any event occurs which the Company reasonably believes will have a material adverse effect on the Customer’s ability to comply with his obligations under these Conditions (e) If the Company reasonably believes that the Customer or a Transaction is or is likely to be in breach of any Applicable Regulations.

(ii) In the case of the Company means a breach of the terms of a Transaction by the Company which if capable of remedy is not remedied within 5 Business days after the Customer has served written notice on the Company relating to such failure. “**Deposit**” means the advance payment payable to the Company by the Customer in relation to a Forward Trade or a Time Option Forward Trade. “**Force Majeure**” means in relation to either party any circumstances beyond the reasonable control of that party (including without limitation any acts or restraints of Governments or public authorities, strikes, lock-outs, or other industrial action, terrorism, war, revolution, riot or civil commotion). “**Forward Trade**” means a Transaction where the Settlement Date is more than two working days after the date of a Transaction. “**Order**” means either a verbal order by the Customer for the purchase and sale of Currency in which the Currencies being purchased and sold by the Customer, the quantity of such Currencies, and the applicable rate of exchange, the Settlement Date, the Account including the address of the bank at which the Account is held and the number of the Account and method of payment are agreed or an order is received by the Company by fax or by email containing such information. “**Proceedings**” means any action or other proceedings relating to these Conditions or a Transaction. “**Settlement**” means the payment or payments by the Customer to the Company of Customer Currency relating to a Transaction “**Settlement Date**” means the date which the Company and the Customer have agreed is the date by which the Customer must have made Settlement in a Transaction. “**Spot Trade**” means the purchase and sale of Currency for Settlement within two working days. “**Time Option Forward Trade**” means a Forward Trade where the Customer is entitled to request payment by the Company of part of the Company Currency to the Account before the Settlement Date. “**Transaction**” means an agreement between the Company and the Customer for the sale and purchase of Currency. References in these Conditions to any statute or **Applicable Regulations** include any subsequent modification, amendment or extension. Reference to a “document” will include any electronic document and a “party” means a party to a Transaction. The Masculine will include the feminine and the neuter and the singular will include the plural and vice versa as the context requires.

2. CONTRACTING

2.1 A copy of these Conditions has been signed by the Customer to indicate the Customer’s agreement and acceptance of them and the Company and the Customer agree that each Transaction incorporates these Conditions. 2.2 The Company and the Customer enter into a Transaction (“the time of contracting”) on acceptance by the Company of an Order. An order may be accepted verbally, by

email or by fax by the Company. Where an Order is accepted by email or by fax the Order will be deemed to be accepted when the Company’s email or fax (as the case may be) is transmitted to the Customer’s email address or fax number (regardless of whether or when it is received by the Customer)

2.3 The Company may accept or refuse an Order at its absolute discretion without any liability to the Company

2.4 Where the Customer requests the Company to make a part payment of Company Currency to the Account pursuant to a Time Option Forward Trade he shall first make payment to the Company of the equivalent amount of Customer Currency by the method agreed at the time of contracting and the provisions of Clause 4.1 shall apply to the payment of Company Currency to the Account. The Customer shall not be entitled to require the Company to use the Deposit or any part of it towards such payment unless the balance of Customer Currency due to the Company in the Transaction is of no greater value than the Deposit.

3. CUSTOMER OBLIGATIONS

3.1 For Forward Trades or Time Option Forward Trades the Customer will pay the Deposit within the period agreed at the time of contracting. The Deposit represents part of the Customer Currency due to the Company on Settlement but will remain the property of the Customer until Settlement and subject to the rights of the Company contained in Clause 6 of these Conditions will be returned to the Customer upon termination of a Transaction. The Deposit may be used as collateral for forward positions held by the Company with regulated financial institutions. All Forward Trades or Time Option Forward Trades will be subject to mark to market and Baydonhill may make margin calls on the Customer at its discretion. The amount of margin call will not exceed market loss, as calculated by Baydonhill at the time each margin call is made.

3.2.1 The Customer agrees and acknowledges that any payments due to the Company must be made by the Customer and drawn on an account of the Customer and not by any third party or drawn on the account of any third party. Any payment on behalf of the Customer by a third party will be refused or returned by the Company and shall not constitute a payment to the Company for the purposes of a Transaction.

3.2.2 The Customer will pay by the method agreed with the Company at the time of contracting any balance unpaid of the Customer Currency due to the Company in a Transaction on or before the Settlement Date.

3.2.3 Where the Customer makes Settlement by cheque unless the cheque is unconditionally cleared within five Business days of its proper presentation, the cheque shall not constitute a payment to the Company for the purposes of that Transaction.

3.3 Where the Company has properly terminated a Transaction the Customer shall be liable to the Company for any loss that the Company may suffer in selling the Company Currency purchased in relation to that Transaction.

3.4 The Customer agrees that the Company may record all telephone conversations with the Customer with or without any warning tone or other notification either to record the terms upon which the Company and the Customer enter into any Transaction or in connection with termination of a Transaction (as well as for any quality control programme and for training purposes) and such recordings shall be evidence in any dispute between the Company and the Customer.

3.5 The Customer agrees to comply with and adhere to all Applicable Regulations in relation to any Transaction and to provide information required by the Company in relation to any Applicable Regulations.

3.6 All payments due from the Customer to the Company will be paid in full and the Customer will have no right of set off or counterclaim in relation to any payment due to the Company from the Customer.

3.7 The Customer confirms that no Transaction will be for the purposes of speculative activity (with the intention of profiting solely from currency movements) and that there shall be physical delivery of the Currency to the Account in accordance with the terms of a Transaction.

3.8 The Customer will not assign the benefit of any Transaction.

4. COMPANY’S OBLIGATIONS AND LIMITATIONS ON COMPANY’S LIABILITY

4.1.1 The Company will not be under any obligation to pay the Company Currency to the Account until it has unconditionally received the Customer Currency in full as cleared effects.

4.1.2 Following receipt of the Customer Currency unconditionally in full as cleared effects the Company will make

payment of the Company Currency to the Account (less any deduction permitted by these Conditions).

4.1.3 For the avoidance of doubt the provisions of this Clause 4.1 shall also apply to the obligations of the Company to make any payment of Company Currency in the case of a partial Settlement under a Time Option Forward Trade.

4.2 The Company shall have the right to deduct from the Company Currency to be sent to the Account or from any Deposit such sums as it may be required to deduct by law together with any other deductions applicable to the Transaction.

4.3 The Company shall be entitled to assume that information provided by the Customer about his personal and financial circumstances remains true and materially accurate without any obligation on the part of the Company to make any enquiries before each Transaction and the rights of the Company arising under these Conditions or in any way relating to a Transaction and the liability of the Customer for any breach of these Conditions shall not be thereby affected.

4.4.1 The Company shall not be liable to the Customer for any delay, failure or error in sending the Company Currency to the Account pursuant to a Transaction where such delay failure or error is caused by :-

(a) Failure or error of any machine, data processing system or transmission link (whether under the control of the Company or a third party); or

(b) Any period of essential maintenance, critical change, repairs, alteration to or failure of computer systems (whether under the control of the Company or any third party) or

(c) The acts or omissions of any third party

4.4.2 Where the error, failure or delay in sending the Company Currency to the Account pursuant to a Transaction is caused by the negligence of the Company, the Company will be responsible for any losses that might ordinarily be expected to occur as a result. This may (but will not necessarily) include bank charges, lost interest or a fall in the value of the Customer Currency against the Company Currency during the period of the error, failure or delay. However this will not include any loss of profit or any type of loss arising from any failure by the Customer to enter into or to perform a Contract with a third party even if these were losses that might ordinarily be expected to occur as a result of the error, failure or delay. Also this will not include any kept claim for consequential losses.

4.4.3 In any case where the Company is liable to the Customer in respect of any Transaction (whether under statute, or in tort contract or otherwise) the Company’s liability shall be limited to the lesser of : Twice the value of the Transaction; or Five Hundred Thousand Pounds (£500,000.00), Except that where the Company’s liability arises under Clause 4.4.2, its liability shall be limited to the lesser of: four times the value of the Transaction; or One Million Pounds (£1,000,000.00). 4.4.4 The Customer agrees to insure against any losses that are greater than the sum set out in Clause 4.4.3.

4.4.5 Notwithstanding anything in this Clause 4 the Company does not exclude or limit liability :- In relation to death or personal injury arising as the result of the negligence of the Company; or Fraud on the part of the Company.

4.4.6 For the purposes of Clause 4 the phrase “the Company” includes the directors and employees of the Company while acting in the course of the business of the Company. The word “negligence” means the breach of (a) any obligation arising from express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of the contract; and (b) any common law duty to take reasonable care or exercise reasonable skill (but not only stick to duty).

5. CUSTOMER CAPACITY

The Customer agrees and confirms that he is and will be a principal in all Transactions and will not act as an agent.

6. COMPANY’S RIGHTS AGAINST CUSTOMER FUNDS

Where a Transaction is properly terminated by the Company, the Company shall be entitled to set off any loss suffered against any Deposit or other monies paid to the Company by the Customer without prejudice to the indemnity of the Customer contained in Clause 3.3.

Please Initial to confirm you have read the attached Terms and Conditions:

TERMS AND CONDITIONS PART 2

7. NO ADVICE

While the Company can provide the Customer with information, it does not provide and is not authorised to provide any advice. In placing an Order and entering into any Transaction the Customer agrees that he will rely upon his own judgment.

8. FEES

8.1 The Customer is responsible for all intermediary bank fees or bank fees associated with returned funds except where such return is attributable solely to breaches or default by Baydonhill.

9. FOREIGN CURRENCY RATES

Notwithstanding that an exchange rate is agreed at the time of contracting in relation to a Transaction the Company cannot guarantee the same rate of exchange in relation to any other Transaction.

10. TIME OF THE ESSENCE

Time is of the essence for each Transaction in relation to the payment of Deposit and/or Customer Currency to the Company and in relation to the clearing of any cheque paid by the Customer to the Company as provided in Clause 3.2.3.

11. DEFAULT INTEREST AND TERMINATION PAYMENTS

11.1 If the Customer fails to make payment due to the Company under Clause 3.2 and without affecting the right of the Company to terminate a Transaction, the Company reserves the right to charge interest on any monies due to it from the Customer at a rate of 4% above the base rate from time to time of Bank of England between the date of the Default Event and either Settlement or termination of a Transaction.

11.2 If a Transaction is terminated by the Company following a Default Event in addition to the liability of the Customer under Clause 3.3 the Customer will pay an administration fee of £150.00 in relation to a Forward Trade or Time Option Forward Trade and £100.00 in relation to a Spot Trade. Intermediary or receiving bank charges may arise over which the Company has no control. The Customer acknowledges that they are responsible for the payment of such charges and that the Company will not be held liable for such charges howsoever arising. The possibility of such charges arising should be discussed with the dealer at the time the Transaction is made.

12. POST DATED CHEQUES

Without prejudice to the other provisions of Clause 4.4, where the Customer tenders a post-dated cheque to the Company in relation to any Settlement the Customer accepts that such a cheque may be presented for payment before its due date and that any loss suffered by the Customer as a consequence is at the sole risk of the Customer.

13. TERMINATION

13.1 The Company or the Customer may terminate a Transaction with immediate effect upon the occurrence of the Default Event on the part of the other by either verbal or written notice to the other. Termination of a Transaction shall not affect the rights of either the Company or the Customer in relation to any breach of the terms of a Transaction arising before such Termination.

13.2 Where the Company terminates a Transaction following the occurrence of a Default Event it shall be entitled at its discretion to sell or retain Company Currency purchased in relation to that Transaction.

14. WRITTEN CONFIRMATION OF TRANSACTION

14.1 The Company will use reasonable endeavours to issue a written confirmation of a Transaction to the Customer but any failure by the Company to do so shall not affect the validity of a Transaction

14.2 Where there is a failure of the system recording telephone calls operated by the Company, the written confirmation by the Company of the terms of a Transaction or the termination of a Transaction shall be evidence of the terms of a Transaction or termination of a Transaction and shall be final and binding on the Customer and the Company

15. REPRESENTATIONS AND WARRANTIES

15.1 On a continuing basis, prior to each Transaction the Customer is deemed to represent and warrant that he understands all of his obligations under these Conditions in relation to the relevant Transaction and will comply with his obligations to the Company in the relevant Transaction and that all information provided to the Company was true, accurate and complete when provided to the Company and remains true, accurate and complete in all material respects on entering into any Transaction except to the extent that any changes have been notified by the Customer to the Company in writing before a Transaction

15.2 The Customer further warrants that all funds paid or to be paid to the Company are free from encumbrances (save in relation to any rights which the Company has under these Conditions) and comply with all Applicable Regulations.

15.3 The Customer will at the request of the Company provide the Company with any information which may be required from time to time under any Applicable Regulations.

16. NO RIGHT OF CANCELLATION

If the Customer has any right given by statute or statutory instrument to cancel a Transaction the parties agree that

the Customer will not be able to cancel any Transaction once the performance by the Company of the services in relation to that Transaction has begun.

17. ENTIRE CONTRACT

17.1 The parties agree that the terms and conditions set out in these Conditions together with an Order which has been accepted by the Company represents the entire agreement in relation to any Transaction.

17.2 The parties agree that save with regard to information provided by the Customer referred to in Clause 4.3 that all liabilities for and remedies in respect of any cognisant or negligent representations made are excluded.

17.3 The parties agree that save with regard to the representations referred to in Clause 4.3 neither party has placed any reliance whatsoever on any representations, agreements, statements or understandings (whether oral or in writing including any promotional literature) made prior to the date of this contract other than those expressly incorporated or recited in this contract.

17.4 For the avoidance of doubt nothing in this Clause applies to fraud on the part of either party.

18. USE OF THE INTERNET

18.1 The Customer acknowledges that email may not be a secure medium for the communication of sensitive information. The Customer agrees that communication by email or its use of the Company's Internet site will be at the Customer's own risk.

18.2 Whenever the Customer places an Order by fax or by email the Customer accepts that the Company cannot absolutely verify that an Order is either properly placed by the Customer or does not contain errors and Orders by fax or email are at the risk of the Customer. The Customer agrees to indemnify the Company against all losses which it may incur as a result of the Company accepting an Order made by fax or email and acknowledges that the Company is under no duty to make any enquiries concerning instructions sent by fax and email which are believed by the Company to be genuine instructions from the Customer.

18.3 The Customer acknowledges that the Company's Internet site contains material which is the copyright of the Company and the Customer acknowledges that he will not acquire any rights to such material by downloading it.

19. FORCE MAJEURE

19.1 Neither party is liable for failure to perform or delay in performing any of its obligations in relation to a Transaction insofar as the performance of such obligations is prevented by Force Majeure.

19.2 The Company and/or the Customer as applicable shall promptly notify the other party of the occurrence of a Force Majeure event and use all reasonable endeavours to continue to perform its obligations in relation to the Transaction but if a Force Majeure event prevents a party from fulfilling its obligations under a Transaction for an unreasonable period the other party may forthwith terminate the Transaction by notice in writing to that party but without prejudice to the other terms and conditions of a Transaction.

20. VARIATION

No variation of any Transaction will be valid unless it is in writing, signed by or on behalf of each of the parties.

21. PROTECTION OF PERSONAL INFORMATION

By signing or otherwise confirming and accepting this document you consent to the Company processing, both manually and by electronic means, your personal data for the purposes of providing administration, management and group services and generally exercising its rights and performing its obligations under this Agreement including (without limitation) to comply with Applicable Regulations, to verify identity for anti-money laundering purposes, compliance and regulatory purposes, to fulfil obligations under any Transaction, to assess risk in relation to the Customer or to any Transaction, for enforcing rights in relation to a Transaction, for training purposes and for fraud prevention and debt recovery.

The Company will treat all personal data as confidential. Steps will be taken to ensure that the information is accurate, kept up to date, not kept for longer than is necessary, and processed only for a legitimate purpose and to safeguard against accidental loss or destruction or damage to the data.

"Processing" includes obtaining, recording or holding information or data, transferring it to other companies associated, product providers, introducing agents, or regulatory body for legitimate purposes including to solicitors and/or debt collection agencies for debt collection purposes and carrying out operations on the information or data.

In the event that the Customer has been introduced to the Company by a third party or white label service then the Customer agrees that the Company shall be entitled to provide the third party with a progress report and other relevant information including (without limitation), identity, credit and information regarding any transaction. Equally where a service the Customer has expressed interest in is provided by the Company through a third party or white label service, the Customer agrees that the Company shall be entitled to provide personal data and other relevant information to such third party or white label service provider.

The Company may contact you (including by telephone)

with details of any other similar products or promotions in which it thinks you may be interested. If at any time you wish us to cease processing your personal or sensitive personal data, or contacting you for marketing purposes, please notify us in writing. Subject to certain exceptions, you are entitled to have access to your personal and sensitive personal data held by the Company. You may be charged a fee (subject to the statutory maximum) for supplying you with such data.

The Company may search the record of the Customer through a credit reference and/or fraud prevention agency and the fact of the Company's search may be added to the record of the Customer. Details of the search will likely also be seen by other similar organisations and information may therefore also be passed as between such organisations to help to prevent fraud. The credit reference or fraud prevention agency may refer to the Electoral Register and may use a credit scoring or other automated process to verify the identity of the Customer and determine the financial standing of the Customer. The Company may record with the credit reference agency any default or failure of the Customer to comply with the terms of a Transaction. The Company is therefore authorised to disclose information outside the Company to licensed credit agencies, fraud prevention and other agencies, where it is required to do so by Applicable Regulations.

The link between joint Customers and/or any individual identified as the financial partner of the Customer may be created by credit reference agencies which will link these financial records. The Customer and anyone else with whom the Customer has a financial link understand that information concerning such others may be taken into account. This linking will continue until one of the Customer or his financial partner successfully files a disassociation at the credit reference agencies.

Where the Company is permitted to pass personal data to third parties it may do so in each case whether or not such third party is outside England and Wales (and notwithstanding that within that jurisdiction the data protection legislation offers less protection to the Customer than under English law) and the Company shall have no obligation to the Customer in relation to the use of such data by the third party.

The Company is authorised to monitor and record telephone conversations for the purposes set out in this provision.

22. PARTIAL INVALIDITY

All the provisions in a Transaction are distinct and severable and if any term or provision is held or declared to be unenforceable illegal or void in whole or in part by any Court, regulatory authority or other competent authority, it will to that extent be deemed not to form part of the Transaction and the enforceability legality and validity of the remainder of the Transaction will not be affected. However, if as a result of the operation of this Clause the rights and obligations of a party are materially altered to the detriment of that party, that party may terminate the Transaction by written notice to the other within five Business days from the date of the relevant decision of the relevant Court or other competent authority.

23. NOTICES

23.1 Any notices in writing in connection with the Transaction may be delivered either by hand or first class pre-paid letter post or by fax or email to the receiving party at the address set out in the relevant Customer Application Form or otherwise previously notified to the other party in writing.

23.2 Notice in writing will take effect:-

23.2.1 If delivered personally, at the time of delivery to the address referred to above;

23.2.2 If sent by mail, two days after posting it;

23.2.3 If sent by fax or email, to the fax or email address of the Customer set out in the Application Form, at the time of its transmission.

23.3 Any notice given verbally shall take effect at the time at which it was given

24. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

The parties agree that it is not their intention that the contractual rights arising in relation to a Transaction should be enforceable by a third party.

25. LAW AND JURISDICTION

These Conditions and each Transaction are governed by English Law and the parties submit to the non-exclusive jurisdiction of the English Courts.

Please Initial to confirm you have read the attached Terms and Conditions:

TERMS AND CONDITIONS PART 2