

# TERMS & CONDITIONS

The parties to this agreement are: Key Currency Limited (**'Key Currency'**) of St. Piran House, Truro Technology Park, Truro, TR1 2XN United Kingdom (registered in England and Wales with company registration number 09603083) and the client named in the account opening form attached to these terms and conditions (the **'Client'**) (the **'Account Opening Form'**).

## 1. INTRODUCTION

1.1 Key Currency is authorised by the Financial Conduct Authority (**'FCA'**) as a payment institution under the registration number 753989.

1.2 The Client wishes to enter into a contract or contracts with Key Currency for the purchase, sale and delivery of currency. The Client agrees with Key Currency that all transactions shall be carried out on the terms and conditions set out below (the **'Terms'**). The Terms shall come into force as soon as the Client signs the Account Opening Form or accepts the Terms online, and shall continue until terminated in accordance with the Terms.

1.3 It is important that the Client reads and understands these Terms, which will apply to all dealings between the Client and Key Currency. If there are any terms that the Client does not understand or does not wish to agree to, the Client should discuss it with Key Currency before signing the Account Opening Form or accepting the Terms online. The Client should only sign the Account Opening Form or accept the Terms online if the Client agrees to be bound by these Terms.

1.4 Please note that foreign currency exchange rates are subject to fluctuations outside the control of Key Currency. Historical prices are not a reliable indicator of future prices.

## 2. KEY CURRENCY'S SERVICES

2.1 Key Currency may in its absolute discretion provide, or continue to provide, the following services to the Client: (a) **Foreign Exchange Services:** Key Currency may enter into transactions for the sale, purchase and delivery of currency (**'FX Contracts'**) with the Client in accordance with an instruction by the Client (such instruction being an **'FX Order'**). FX Contracts may include spot contracts, fixed forward contracts, open forward contracts, limit orders and stop orders (as detailed on the Key Currency website).

(b) **Payment Services:** Following the execution of an FX Contract and subject to these Terms, Key Currency may transfer the converted currency to the Client's bank account or the bank account of a third party (the **'Payee'**) in accordance with an instruction by the Client (such instruction being a **'Payment Instruction'** and the onward transfer being an **'Onward Payment'**).

2.2 Key Currency will always contract as principal with the Client and deal with the Client on an execution only basis.

2.3 Key Currency's contracts with Clients are for settlement or delivery. That means at maturity the Client must take delivery of funds to a bank account. Clause 5 sets out terms applicable to payments to Key Currency.

2.4 Key Currency provides facilities for the purchase or sale of currencies for both commercial and personal purposes, for example the fulfilment of international payments. Key Currency does not provide the services for speculative or investment purposes. The Client confirms that: (a) it has or will have a personal or commercial (as appropriate) need for the currency which is the subject of each transaction and no transaction will be for the purpose of speculation or investment; and

(b) it is acting on its own account and not on behalf of any other person.

2.5 Key Currency may provide information about foreign exchange markets and related matters from time to time. However, Key Currency does not provide advice and will not provide advice to the Client upon the merits of a proposed FX Contract or Payment Service, or provide taxation or other advice to the Client. In entering into an FX Contract and/or issuing a Payment Instruction the Client must not treat any information or comments by Key Currency as advice and the Client must rely only on its own judgement (or the judgement of the Client's third party adviser).

### 3. INSTRUCTIONS AND COMMUNICATIONS

3.1 The Client may provide instructions (including FX Orders and Payment Instructions) and other communications to Key Currency:

(a) in person at a Key Currency office at the address and during the opening hours list on the Key Currency website;

(b) by telephone through the Key Currency helpline at 01872 487 500

(c) by fax at 01872 487 501

(d) by email via your designated Account Manager; or

(e) using the online system provided by Key Currency (the '**Online System**') in accordance with Clause 24.

Unless a clause provides otherwise, if instructions are required to be provided "in writing", then the Client must provide such instructions either by fax, email or, where made available to the Client, using the Online System.

3.2 The Client may authorise another named person (an '**Authorised Person**') to give FX Orders and/or Payment Instructions to Key Currency on behalf of the Client by providing written instructions to Key Currency in accordance with Clause 3.1.

3.3 Key Currency is entitled (but not obliged) to act upon instructions which are or reasonably appear to be from the Client or any Authorised Person.

3.4 Key Currency may contact the Client or their Authorised Person by telephone, fax, email or by post at the contact details provided by the Client in the Account Opening Form or, where made available to the Client, by the Online System. It shall be the Client's responsibility to inform Key Currency of any changes to the Client's contact details.

3.5 All communications between Key Currency and the Client (including information and notifications which Key Currency is required to provide to the Client in relation to the Payment Services) shall be in English.

### TERMS APPLYING TO FOREIGN EXCHANGE SERVICES

#### 4. INITIATING A FOREIGN EXCHANGE TRANSACTION

4.1 The Client or its Authorised Person may from time to time provide an FX Order to Key Currency in accordance with Clause 3.

4.2 Following receipt of an FX Order, Key Currency shall, if it is willing to accept the FX Order, agree with the Client the terms on which it is willing to enter into the FX Contract.

4.3 If Key Currency accepts the FX Order, Key Currency shall subsequently provide a contract note to the Client confirming the details of the FX Order (the '**Contract Note**') either by fax or email, or (where the Client has not advised Key Currency of its fax or email contact details) by post. The Contract Note shall include details of:

- (a) the FX Order and the exchange rate applying;
- (b) the date for delivery of or payment for the currency (the '**Maturity Date**');
- (c) Key Currency's charges in relation to the FX Contract;
- (d) Key Currency's charges in relation to the Payment Service;
- (e) in the case of an FX Contract which is not a spot contract, instalment payments to be made by the Client as determined in Key Currency's absolute discretion; and
- (f) in the case of an FX Contract where payment for currency is to be made in a currency other than sterling, the currency in which payments by the Client are to be made.

Upon receipt by the Client of the Contract Note, the Client should check the Contract Note for any omissions and/or errors. In the event of any omission and/or error, the Client must provide immediate notice in writing to Key Currency in accordance with Clause 3 setting out full details of the omission and/or error. Subject to Clause 4.4, notwithstanding any omission and/or error in the Contract Note, the FX Contract relating to the FX Order detailed in the Contract Note will be binding on the Client and Key Currency, and Key Currency's and the Client's rights under these Terms in respect of the FX Contract shall apply with full effect.

4.4 Key Currency will not be bound by any FX Contract where it is reasonably determined by Key Currency that there is a Manifest Error in the purchase or sale price quoted in the Contract Note. In these Terms, a "Manifest Error" refers to a manifest or obvious misquote of the purchase or sale price quoted to the Client, including a misquote based on a published price source on which Key Currency has relied in connection with the FX Contract, having regard to the market conditions at the time the FX Order was received.

4.5 Once Key Currency has transmitted a Contract Note confirming an FX Order in writing, the Client may only amend or cancel the Contract Note if Key Currency expressly agrees (and any such amendment or cancellation shall be on the conditions specified by Key Currency) or otherwise in accordance with the provisions of Clause 4.8.

4.6 Key Currency may at its absolute discretion refuse any FX Order or instructions given by the Client without giving any reason or being liable for any loss the Client suffers as a result of such refusal.

4.7 Key Currency may (but shall not be obliged to) require further confirmation or information from the Client or an Authorised Person of any FX Order or instruction if:

- (a) Key Currency considers that such confirmation or information is desirable or that an FX Order or instruction is ambiguous;
- (b) Key Currency has not satisfied itself that the person giving the FX Order is the Client or an

Authorised Person; or

(c) the instruction is to close the Client's account or to remit the Client's funds to a third party.

4.8 The Client does not have any right under the Financial Services (Distance Marketing) Regulations 2004 to cancel any FX Contract. However the Client may terminate an FX Contract entered into under these Terms prior to the Maturity Date of such FX Contract by giving notice in writing to Key Currency in accordance with Clause 3 subject to the following conditions:

- (a) Each party will remain liable to perform accrued but unperformed obligations which have fallen due before termination, but all other rights will cease upon such termination.
- (b) The Client will be liable for all of the costs, expenses and losses (and interest at the rate referred to in Clause 17 on any such sums) that Key Currency may incur (including any action it may take or have taken to cover or reduce its exposure) as a result of Key Currency entering into such FX Contract with the Client (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to such FX Contract). Any excess amount held by Key Currency in respect of an FX Contract shall be returned to the Client after deducting all other sums due to Key Currency.

## **5. DELIVERY OF AND PAYMENT FOR FX CONTRACTS AND DEDUCTIONS**

5.1 Where Key Currency enters into an FX Contract for the Client, the Client must take physical delivery of and pay for the currency in question on or before the Maturity Date, such payment to be made in Sterling or in such other currency as shall be specified in the Contract Note.

5.2 Key Currency does not accept payments in physical cash (coins and banknotes) from any Client.

5.3 The Client shall pay by electronic transmission (or by such other means as agreed with Key Currency in any particular case) in cleared funds into a bank account nominated by Key Currency (the '**Transaction Account**') the full amount stated in the Contract Note and, in the case of any FX Contract which is not a spot contract, such instalments as Key Currency may specify in the Contract Note and/or subsequently notify to the Client from time to time. Failure by the Client to pay the full amount specified in the Contract Note and all such further instalments shall relieve Key Currency of any obligation to make any corresponding payment it may be required to make under the relevant FX Contract. The Client must make sure cleared funds are received in the Transaction Account on or before the Maturity Date.

5.4 The Client accepts that:

- (a) prior to undertaking an FX Contract, Key Currency will deduct from any payment received from the Client those costs and charges which Key Currency is entitled to make pursuant to these Terms; and
- (b) the Client is solely responsible for ensuring that, following the deductions referred to in Clause 5.4(a) and the application of the exchange rate agreed in the Contract Note, the amount of any Onward Payment will be sufficient to fulfil any obligations that Client has to the relevant Payee.

## **6. MONEY PAID TO Key Currency**

6.1 Where Key Currency receives money from the Client pursuant to Clause 5, Key Currency shall hold any money belonging to the Client in a designated segregated client account pending

the settlement of the FX Contract or the making of any Onward Payment, subject to any deductions Key Currency is entitled to make pursuant to these Terms.

6.2 Where Key Currency provides Payment Services to the Client, upon money becoming due and payable under the FX Contract by Key Currency to the Payee identified in the relevant Payment Instruction, such money held by Key Currency pending payment will be transferred from the Transaction Account into a bank account nominated by Key Currency (the '**Safeguarded Account**') until transferred to the Payee in accordance with the Payment Instruction. In accordance with Clause 6.1, the Safeguarded Account shall be a designated segregated client account.

6.3 Key Currency shall only make payments out of money held for the Client in accordance with the Client's instructions subject to Clauses 6.3(a) and 6.3(b):

(a) Money paid by or on behalf of the Client and held by Key Currency may only be applied, withdrawn or transferred for the following purposes: (i) Settlement of transactions between Key Currency and the Client.

(ii) Payment of other sums due and payable to Key Currency by the Client under these Terms or under any FX Contract including without limitation any Margin Call (as defined below), advance or instalment payments, transfer charges and interest.

(iii) Making an Onward Payment.

(iv) Withdrawal or retention of interest by Key Currency in accordance with Clause 17.2.

(v) Any deduction made in accordance with Clauses 5.4 and 6.5.

(b) Following termination of all outstanding FX Contracts between Key Currency and the Client under these Terms, any excess amount held by Key Currency for the Client in respect of the Client's FX Contracts shall be returned to the Client after first being applied by payment to Key Currency in satisfaction of all claims of Key Currency against the Client arising under these Terms or under any FX Contract. The Client shall not be entitled to the return of any monies held by Key Currency at any time when there are any amounts which may be or become owing to Key Currency under these Terms or any FX Contract and the Client's entitlement in respect thereof shall be limited to such monies after deduction of the amounts so owing.

6.4 The Transaction Account, Safeguarded Account and any other designated client account established by Key Currency will be pooled accounts, meaning the accounts will contain money received from all Key Currency's clients and the money in such accounts will be held for and applied towards all of Key Currency's clients. Such accounts may also temporarily receive and hold money belong to, or otherwise due and payable to, Key Currency. The accounts are not individually segregated accounts of the Client. Accordingly, monies held in the accounts will be held, applied, moved, withdrawn or transferred for purposes related to Key Currency's other clients.

6.5 Key Currency may deduct from money held for the Client any amount the Client owes to Key Currency including any fees, costs, taxation liabilities, margin calls under Clause 8.3, or charges incurred by Key Currency in relation to such Client, however they arise, and apply such deduction in meeting such liabilities.

6.6 Where the Client pays money into the Transaction Account in advance of entering into an FX Contract, such money will be held by Key Currency until the FX Contract is entered into between Key Currency and the Client and the FX Contract is settled or an Onward Payment is made. If,

following a reasonable amount of time, no FX Contract is entered into, then the money may be returned to the Client in accordance with Clause 6.3(b).

## **7. FOREIGN EXCHANGE CHARGES**

Key Currency's charges in relation to Foreign Exchange Services will be as set out in the Contract Note. The Client understands that because Key Currency deals as principal the exchange rate it offers the Client will not be the same as the rate Key Currency obtains itself.

## **8. ADDITIONAL CONDITIONS FOR FORWARD FX CONTRACTS**

8.1 This Clause 8 applies in respect of any forward FX Contract, meaning an FX Contract under which currency is bought and sold for delivery at a future time.

8.2 The Client will be required to notify Key Currency not less than 2 Business Days before the Maturity Date of the details of the beneficiary(ies), the payment means and the delivery instructions.

8.3 Subject to any facility, Key Currency will require an agreed security payment from the Client for each order for a forward FX Contract and Key Currency will be entitled to request from the Client additional security payments in amounts notified by Key Currency to the Client in the event of exchange rate fluctuations at any time prior to the Maturity Date ("**Margin Call**"). The Client agrees that it is the Client's responsibility to ensure that it is contactable and has provided sufficient contact details so that Key Currency can contact the Client in the event of a Margin Call. If Key Currency is unable to contact the Client by the end of the day in which a Margin Call occurs Key Currency will be entitled to terminate the FX Contract in accordance with Clause 10.

8.4 With Key Currency's agreement the Client may draw down against an open forward FX Contract at any time up until its Maturity Date.

## **9. FOREIGN CURRENCY CHEQUE OR BANK DRAFT PURCHASE**

9.1 Key Currency may agree in writing to purchase and exchange into Sterling or another currency a non-Sterling cheque or a non-Sterling bank draft (a "**Draft**") which the Client has received in the name of the Client and this Clause 9 applies to all such purchases and exchanges.

9.2 The Client must forward a request for each foreign currency cheque or Draft purchase together with the relevant cheques and/or drafts to Key Currency.

9.3 All cheques and Drafts presented to Key Currency by the Client may be examined by Key Currency for validity and negotiability (transferability) and any item Key Currency considers may not be valid or negotiable will be returned to the Client as soon as reasonably practicable at the Client's risk.

9.4 All cheques and Drafts must be endorsed by the Client as "payable to Key currency Limited" and be signed by the Client or an Authorised Person.

9.5 Key Currency agrees to pay the Client in Sterling or another agreed currency the value of the cheque or Draft in accordance with Key Currency's value dating policy and subject to the charges notified to the Client by Key Currency from time to time.



9.6 Any cheque or Draft returned to Key Currency as not able to be negotiated or cleared following presentation by Key Currency will be returned to the Client, at which time the Client agrees to immediately reimburse Key Currency any monies paid to the Client, or on the instruction of the client, together with any charges imposed by the returning institution.

9.7 Any item lost, stolen, or destroyed in transit during the clearing process will be reported to the Client within a reasonable period of Key Currency receiving notification of this. Key Currency will supply the Client with a letter confirming that Key Currency has not received value for the item from any bank involved in the clearing and/or paying of the item.

## **10. DEFAULT, CLOSE OUT & REFUSAL TO PERFORM FX CONTRACTS**

10.1 Key Currency may refuse to perform or may close out all or any part of any FX Contract, without incurring any liability to the Client for losses that may be sustained as a result and without giving notice to the Client or receiving any instructions from it, upon or at any time after the happening of any of the following events:

(a) The Client fails to make any payment when due under these Terms or any FX Contract.

(b) Key Currency has been unable to contact the Client by the end of the day in which a Margin Call occurs.

(c) For a Client who is an individual, the Client: (i) dies or, in Key Currency's reasonable suspicion, becomes of unsound mind; or  
(ii) suspends payment of its debts, makes or takes steps with a view to making any moratorium, assignment, composition or similar arrangement with creditors, has a receiver appointed in respect of some or all assets, takes or has any proceedings taken against them in bankruptcy, or has anything similar to any of the events described in this Clause 10.1(c) happen to the Client anywhere in the world.

(d) For a Client who is **not** an individual, the Client: (i) suspends payment of its debts;  
(ii) makes or takes steps with a view to making any moratorium, assignment, composition or similar arrangement with its creditors;  
(iii) has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed in respect of some or all of its assets;  
(iv) is the subject of a winding up, administration or dissolution;  
(v) or any person takes any steps, or the Client allows any steps to be taken, for its winding up, administration or dissolution (except for a solvent amalgamation or reconstruction approved in advance in writing by Key Currency) or gives notice to Key Currency of an intention to appoint an administrator;  
(vi) is the subject of a meeting of its shareholders, directors or other officers, which meeting was convened for the purpose of considering any resolution for, to petition for or to make application to or to file documents with a court or any registrar for, its winding up, administration or dissolution or If any such resolution is passed;  
(vii) is subject to a request from its shareholders, directors or other officers for the appointment of, or giving notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or  
(viii) suffers anything similar to the events described in this Clause 10.1(d) anywhere in the world.

(e) The Client fails in any respect to fully and promptly comply with any obligations to Key Currency under these Terms.

(f) If any of the representations made or information supplied by the Client are or become materially inaccurate.

(g) If it becomes or may become unlawful for Key Currency to maintain or give effect to all or any of the obligations under these Terms or otherwise to carry on its business.

(h) If Key Currency or the Client is requested not to perform or to close out an FX Contract (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding.

(i) Key Currency considers it necessary to do so for its own protection including (without limitation) in the following circumstances: (i) protection from fraud or money laundering; (ii) protection from Client default; (iii) protection from market failure; (iv) protection from adverse or volatile market conditions; and (v) protection from loss by Key Currency.

10.2 If the Client becomes aware of the occurrence or likely occurrence of any event referred to in Clauses 10.1(a) to 10.1(h) above, it shall notify Key Currency immediately.

10.3 If any event referred to in Clause 10.1 above takes place Key Currency shall at its discretion be entitled to cancel any FX Contract then outstanding and charge the Client with all of the costs, expenses and losses (and interest at the rate referred to in Clause 17 on any such sums) that Key Currency may incur (including any action it may take to cover or reduce its exposure) as a result of Key Currency cancelling FX Contracts with the Client (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to the FX Contracts). Any excess amount held by Key Currency in respect of the FX Contracts shall be returned to the Client after deducting all other sums due to Key Currency.

10.4 If for any reason an FX Contract is closed out or does not proceed to completion, Key Currency will send to the Client any sum due to the Client or a notice setting out the sum due from the Client (as appropriate). The Client shall bear all the losses/expenses of Key Currency whatsoever that may arise on account of such close out or cancellation, and Key Currency shall have the right to use any monies of the Client held by it to offset such amounts as are owed by the Client to Key Currency. For such purpose, Key Currency shall be entitled to convert any currency held by it and such conversion shall be at the rate of exchange available to it. Any fee or charge which Key Currency incurs as a result of such conversion shall be paid for by the Client.

10.5 If the Client's cheque, or any other method of payment, is dishonoured, returned, not met on first presentation or stopped for whatever reason, Key Currency shall levy an administrative charge. This administrative charge will become payable by the Client in addition to any other sums due under these Terms.

## **11. LIMITATION OF LIABILITY AND INDEMNITY FOR FOREIGN EXCHANGE SERVICES**

11.1 In addition to any limitation on liability under Clause 14 below which may apply to the Foreign Exchange Services, Key Currency shall not be liable to the Client:



(a) for any delay or failure to perform its obligations under these Terms relating to Foreign Exchange Services or any FX Contract by reason of any cause beyond the reasonable control of Key Currency, but Key Currency shall try to perform those obligations as soon as it reasonably can in any event;

(b) for any loss resulting from the determination of Manifest Error by Key Currency;

(c) Key Currency acting on a written, oral, telephone, fax or electronic FX Order which reasonably appeared to Key Currency to be from the Client or an Authorised Person; or

(d) for any consequential or indirect loss (such as loss of profits, loss of contract or opportunity) the Client may incur as a result of Key Currency failing to perform its duties under an FX Contract; or

(e) for an amount greater than the maxima stated in Clauses 11.2 and 11.4.

11.2 Without prejudice to Clause 11.1 above, Key Currency shall not be responsible in any way for any delay in payment by it under these Terms relating to the Foreign Exchange Services which is caused by the Client or any other third party, including but not limited to bank delay, postal delay, payment network delay, the failure or delay of any fax or electronic transmission, or delay caused by accident, emergency or act of god. For the avoidance of doubt the Client accepts that the Client is solely responsible for ensuring that all payments which the Client is required to make under any FX Contract are made promptly and within the time limits specified by the particular FX Contract and these Terms.

11.3 The maximum liability of Key Currency under a particular FX Contract, whether arising in contract, tort or otherwise, shall in no circumstances exceed an amount equal to the value (expressed in sterling) of the currency sold by Key Currency under that FX Contract as at the due date of settlement of that FX Contract.

11.4 The maximum aggregate liability of Key Currency to a Client in respect of Foreign Exchange Services provided under these Terms, whether arising in contract, tort or otherwise, shall in no circumstances exceed an amount equal to the aggregate value of currency sold by Key Currency to the Client under FX Contracts issued in accordance with these Terms expressed in Sterling as at the due date of settlement of each FX Contract.

11.5 The Client shall, on demand by Key Currency, compensate Key Currency from and against all liabilities, damages, losses and costs (including reasonable legal costs), duties, taxes, charges, commissions or other expenses incurred by Key Currency in the proper performance of Foreign Exchange Services or the enforcement of its rights under these Terms relating to Foreign Exchange Services and, in particular, but without limitation, against all amounts which Key Currency may certify to be necessary to compensate it for all liabilities, damages, losses and costs (including reasonable legal costs), duties, taxes, charges, commissions or other expenses incurred by Key Currency (including loss of profit and losses and expenses from any action Key Currency takes to seek to cover or reduce its exposure under any FX Contracts) as a result of:

(a) the Client breaching any provision of these Terms relating to Foreign Exchange Services or any FX Contract;

(b) Key Currency acting on a written, oral, telephone, fax or electronic FX Order which reasonably appeared to Key Currency to be from the Client or an Authorised Person; or

(c) Key Currency or the Client exercising its rights under these Terms to close out all or any part of any FX Contract before its applicable Maturity Date.

11.6 Any certificate given by Key Currency under Clause 11.5 shall, unless it is manifestly inaccurate, be conclusive evidence of any amounts payable under that provision. The provision in this Clause 11 shall survive termination of any FX Contract or other agreement under these Terms relating to the Foreign Exchange Services.

## TERMS APPLYING TO PAYMENT SERVICES

### 12. PAYMENT INSTRUCTIONS

12.1 The Client or its Authorised Person may from time to time provide a Payment Instruction to Key Currency in accordance with Clause 3. Such Payment Instruction must confirm the details of the proposed Payee including its full name, account details for payment and any unique identifier confirmed to the Client by the Payee.

12.2 The Payment Instruction shall be deemed to be received at the time at which it is received except that:

(a) where the Payment Instruction would otherwise be deemed to be received on a day which is not a **'Business Day'** (being a day, other than a Saturday or Sunday, on which banks are open for business in London and any other geographic locations required to complete the transaction) or is received after 2.30 pm, London time (the **'Cut-Off Time'**) on a Business Day, Key Currency has the right to treat the Client's Payment Instruction as having been received on the next Business Day; and

(b) if the Onward Payment is to be made on a specified day or on the last day of a specified period (and such specified day or last day of a specified period shall be on or after whichever is the later in time of the Maturity Date, the Business Day on which cleared funds are received in the Transaction Account from the Client for the full amount required pursuant to Clause 6.1, and the Business Day on which the converted currency from the executed Foreign Exchange is received as cleared funds in the Transaction Account), the Client's Payment Instruction shall be deemed to be received on the day stated for the making of that Onward Payment or, if that is not a Business Day, on the Business Day immediately following that date.

12.3 Following receipt of a Payment Instruction, Key Currency may:

(a) refuse that Payment Instruction and if it does so, Key Currency shall (unless it would be unlawful for Key Currency to do so) notify the Client of that refusal, the reasons for that refusal (if possible), and the procedure for rectifying any factual errors that lead to that refusal. Such notification shall be given to the Client as soon as practicable following the refusal and Key Currency may charge the Client for such notification where the refusal is reasonably justified. A Payment Instruction which is refused by Key Currency shall be deemed not to have been received for the purposes of Clause 12.2; and/or

(b) request further confirmation or information from the Client or Authorised Person of any Payment Instruction, including if Key Currency considers that such confirmation or information is desirable or that a Payment Instruction is ambiguous; and/or

(c) stop the use of any foreign currency or Sterling Draft, personal security features and information or other payment procedure or instrument in accordance with Clause 13.2.

12.4 The Client does not have any right under the Financial Services (Distance Marketing) Regulations 2004 to cancel any Payment Instruction once given.

12.5 The Client may not revoke a Payment Instruction after it has been received by Key Currency except:

(a) if Clause 13.3 applies and the Onward Payment has not been debited from Key Currency's accounts before the Client notifies Key Currency; or

(b) if the Client has agreed with Key Currency that the Onward Payment is to be made on a specific day or on the last day of a certain period and the revocation is received by Key Currency prior to the Cut-Off Time on the Business Day preceding the specified day for the making of the Onward Payment; or

Any revocation of a Payment Instruction in accordance with this Clause 12.5 must be given in writing to Key Currency by email in accordance with Clause 3, such email to include an image of the relevant Payment Instruction.

12.6 Key Currency may charge the Client for any revocation by the Client of a Payment Instruction. In particular, but not by way of limitation:

(a) the Client shall bear all costs, expenses and losses of Key Currency whatsoever that may arise on account of the revocation; and

(b) Key Currency may charge interest at the rate referred to in Clause 17.1 on any sums due to Key Currency pursuant to this Clause 12.6.

12.7 Following an FX Contract, Key Currency shall:

(a) if the Client requests, make available to the Client prior to making the Onward Payment details of the maximum execution time for that Onward Payment and details of any charges payable by the Client (including a breakdown of those charges where applicable); and

(b) as soon as reasonably practicable after the amount of the Onward Payment is debited from its accounts, make available to the Client: (i) a reference enabling the Client to identify the Onward Payment made;

(ii) information on the Payee;

(iii) the amount of the payment, shown in the currency of the Onward Payment; and

(iv) a breakdown of charges and/or interest payable by the Client.

12.8 Where the Onward Payment is denominated in:

(a) Euro or Sterling, Key Currency shall ensure that the amount of the Onward Payment is credited to the Payee's payment service provider's account by the end of the Business Day following that on which the Client's Payment Instruction was deemed to be received;

(b) a currency other than Euro or Sterling but the account of the Payee's payment service provider is located within the European Economic Area ('EEA'), Key Currency shall ensure that

the amount of the Onward Payment is credited to that account by the end of the fourth Business Day following that on which the Client's Payment Instruction was deemed to be received; and

(c) a currency other than Euro or Sterling and the account of the Payee's payment service provider is located outside the EEA, Key Currency shall endeavour to ensure that it actions the Onward Payment as soon as is reasonably practicable.

### **13. SAFEGUARDS AND SECURITY**

13.1 The Client must take all reasonable precautions to prevent fraudulent use of Payment Services. In particular, it is essential that the Client, among other security measures:

(a) takes all reasonable steps to keep safe its personalised security features (including all passwords and PINs required to access the Payment Services) and any currency, Drafts and other documentary payment methods it receives;

(b) uses the Payment Services provided by Key Currency in accordance with the terms and conditions for their use as indicated in these Terms and on the Key Currency website (and in the event of any conflict, these Terms shall prevail);

(c) notifies Key Currency in accordance with Clause 3 without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of any Onward Payment or unauthorised use of the Payment Service.

Where Key Currency communicates with and accepts written instructions from the Client's e-mail address the Client must ensure that its e-mail account is secure.

13.2 Key Currency may stop or suspend any Onward Payment (in whole or in part) and/or the Client's use of the Payment Service if it has reasonable grounds for doing so relating to:

(a) the security of the Payment Service or an Onward Payment;

(b) the suspected unauthorised or fraudulent use of the Payment Service or an Onward Payment; and/or

(c) where the Onward Payment is being made in connection with a credit line, if Key Currency believes that there is a significantly increased risk that the Client may be unable to fulfil its liability to pay.

Unless doing so would compromise reasonable security measures or be unlawful, before stopping or suspending any Onward Payment (in whole or in part) or the Client's use of the Payment Service (as appropriate) or immediately after doing so, Key Currency must inform the Client and give its reasons for doing so. As soon as practicable after the reason for stopping or suspending any Onward Payment (in whole or in part) or the Client's use of the Payment Service (as appropriate) has ceased to exist, Key Currency must allow the outstanding element of the Onward Payment or the resumption of the Client's use of the Payment Service (as appropriate).

**13.3** If the Client believes that a Payment Instruction has been given, or an Onward Payment made, in error and/or was unauthorised by it, the Client must notify Key Currency as soon as possible via the helpline or e-mail address listed in Clause 3. Failure to notify Key Currency

within 13 months of the date of any Onward Payment could result in the Client losing its entitlement to have the matter corrected.

#### **14. LIABILITY AND INDEMNITY FOR PAYMENT SERVICES**

14.1 Where it is established that a Payment Instruction has been given, or an Onward Payment made, in error and/or was unauthorised by the Client (and Key Currency ought reasonably to have known that it was unauthorised) and that Client has notified Key Currency within 13 months of the monies being debited from its accounts, unless Clause 14.2 applies, Key Currency shall refund to the Client the full amount debited erroneously or without authorisation.

14.2 The Client will be liable for:

(a) all payments made by Key Currency pursuant to a particular Payment Instruction and/or Onward Payment if the Client has acted fraudulently, or has intentionally or with gross negligence not complied with its obligations under Clause 13.1(a); and

(b) where Clause 14.2(a) does not apply, up to £50 of any monies paid by Key Currency pursuant to a particular Payment Instruction and/or Onward Payment before it told Key Currency that an Onward Payment had been lost, stolen, or misappropriated or the Client's security regarding the Payment Service had been breached. After the Client has notified Key Currency, the Client will not have any further liability to Key Currency for any subsequent unauthorised payments unless the Client has acted fraudulently.

14.3 Key Currency shall not be liable for non-execution or defective execution in relation to an Onward Payment which it has made in accordance with a unique identifier given to it by the Client which proves to be incorrect. However, Key Currency shall make reasonable efforts to recover funds involved in that transaction and may charge the Client for doing so, including passing on to the Client charges made by intermediary banks and/or the payee's bank for their assistance which assist in the tracing process.

14.4 Key Currency is liable to the Client for the correct execution of a Payment Instruction unless:

(a) Clause 14.3 applies; or

(b) Key Currency can prove to the Client (and where relevant, to the Payee's payment services provider) that the Payee's payment services provider received the Onward Payment within the appropriate time period described in Clause 12.8. Key Currency shall, on request, make immediate efforts to trace the payment and notify the Client of the outcome.

14.5 Where Key Currency has failed to correctly execute a Payment Instruction, Key Currency must without undue delay refund to the Client the amount of, or if not possible pay into the segregated client account an amount equal to:

(a) the non-executed or defective payment; and

(b) any charges and interest which the Client has paid as a consequence of the non-execution or defective execution of that Onward Payment.

14.6 Key Currency shall not be liable to the Client for any:

(c) delay or failure to perform its obligations under these Terms or any FX Contract (including any delay in payment) by reason of any cause beyond the reasonable control of Key Currency including but not limited to any action or inaction of the Client or any third party, bank delay, postal delay, failure or delay of any fax or electronic transmission, any accident, emergency, act of god or any abnormal or unforeseeable circumstances; or

(d) consequential or indirect loss (such as loss of profits or opportunity) the Client may incur as a result of Key Currency failing to perform its duties under an FX Contract; or

(e) contravention of a requirement imposed on Key Currency by the Payment Services Regulations 2009 (the '**PS Regulations**') where that contravention is due to Key Currency complying with its obligations under the laws of any EEA state or other jurisdiction.

14.6 Under Regulation 63 of the PS Regulations, the Client may be entitled to a refund in certain circumstances where an Onward Payment is initiated by the Payee. It is not anticipated that any Onward Payment will be initiated by a Payee under any Payment Services provided by Key Currency and the Client represents and undertakes to that effect in Clause 20.1(i). However, details of the circumstances in which a refund may apply are available on Key Currency's website.

14.7 The provisions in this Clause 14 shall survive termination of these Terms or any agreement under these Terms.

## **15. LOST DRAFTS**

15.1 The provisions of this Clause 15 shall supplement the provisions of Clauses 13 and 14 as regards lost Drafts.

15.2 Key Currency shall be under no obligation to issue a replacement Draft or a refund where it is established by Key Currency that the original Draft has been encashed.

15.3 Key Currency agrees to issue the Client with a replacement Draft or issue a refund at an appropriate rate where the Client has placed a stop on the original Draft provided that the client indemnifies Key Currency against any loss resulting from the draft being encashed fraudulently, and in the event that the original Draft comes into possession of either the Client or the payee, the Client undertakes to take all reasonable steps to ensure that no attempt is made to encash the original Draft and that it is returned to Key Currency at the earliest opportunity and, pending its receipt by Key Currency, is held in trust for Key Currency.

15.4 Where a replacement Draft or refund is issued and the original Draft is subsequently encashed by the beneficiary of the Draft and Key Currency is unable to obtain reimbursement from the paying bank Key Currency shall be entitled to stop any replacement issued or seek immediate reimbursement from the Client.

## **16. OTHER TERMS RELATING TO PAYMENT SERVICES**

16.1 Key Currency will send the full amount of currency converted to the Payee in accordance with the Payment Instruction. However Key Currency cannot guarantee the Payee's payment service provider will not deduct a charge for receiving any Onward Payment. It is the responsibility of the Client to confirm with the Payee's payment service provider the details of any charges.



16.2 Key Currency shall make available to the Client the information which the Client is entitled to receive under the PS Regulations. That information shall be provided to the Client by email or made available via Key Currency's website or (where made available to the Client) via the Online System. In addition, the Client may at any time request from Key Currency a copy of:

(a) the then-current Terms applying between the Client and Key Currency in relation to Payment Services; and/or

(b) any information to which the Client is entitled under the PS Regulations.

16.3 The Client may terminate these Terms in relation to Payment Services at any time by giving notice to Key Currency in accordance with Clause 3. Any such termination shall be subject to Clause 18.4.

## **TERMS APPLYING GENERALLY**

### **17. INTEREST**

17.1 If the Client fails to make any payment required under these Terms (including under any FX Contract or Payment Instruction) when it falls due, interest will be charged on the outstanding sum at a rate of three per cent per annum over the base rate of the Bank of England (or of such monetary authority as may replace it). Such interest shall accrue and be calculated daily from the date payment was due until the date the Client pays in full and shall be compounded monthly.

17.2 Key Currency may receive and retain or apply for its own benefit any interest which arises in respect of any sum held by Key Currency in its designated client accounts (including the Transaction Account).

### **18. CHANGES TO THESE TERMS**

18.1 Key Currency may amend these Terms insofar as they relate to Foreign Exchange Services by notice in writing or in accordance with clause 3.4 to the Client at any time and such amendments shall take effect from the date specified by Key Currency but may not affect any rights or obligations that have already arisen and will not be retrospective.

18.2 Subject to Clause 18.3, Key Currency may amend these Terms insofar as they relate to Payment Services by giving at least 2 months' notice in writing to the Client. If the Client objects to the proposed amendments, it has the right, subject to Clause 18.4, to terminate these Terms as regards Payment Services without charge before the date proposed by Key Currency for the entry into force of the changes. The Client will be deemed to accept the proposed amendments unless it notifies Key Currency and terminates these Terms insofar as they relate to Payment Services before the date proposed by Key Currency for the entry into force of the changes. If no objection is received from the Client, such amendments shall take effect from the date specified by Key Currency but may not affect any rights or obligations that have already arisen and will not be retrospective.

18.3 Key Currency does not need to provide any notice to the Client of:

(a) any change to these Terms insofar as they relate to Payment Services which is more favourable to the Client; or

(b) a change to the standard interest rate applying pursuant to Clause 17.1, which in each case may be applied immediately.

18.4 For the avoidance of doubt, the termination of these Terms by the Client pursuant to Clause 16.2 or Clause 18.2 shall not affect any FX Contract nor any rights or obligations that have already arisen at the date of the termination. Following any such termination, any onward transfer of converted currency to a Payee shall be subject to such terms as Key Currency and the Client shall agree.

## 19. DISPUTES AND COMPLAINTS

19.1 If a Client is dissatisfied with any aspect of the services provided by Key Currency, the Client may inform Key Currency. All complaints should in the first instance be made in writing to Key Currency marked for the attention of the complaints officer. Key Currency will endeavour to review each complaint carefully and promptly in accordance with our [complaints policy](#).

19.2 If a complaint relates to the provision by Key Currency of Payment Services, if the Client is not satisfied with Key Currency's resolution of the complaint, the Client may be entitled to refer the matter to the Financial Ombudsman Service ('the **FOS**'). The FOS provides an out-of-court redress mechanism. Please see their website ([www.financial-ombudsman.org.uk/consumer/complaints.htm](http://www.financial-ombudsman.org.uk/consumer/complaints.htm)) for information about how to contact the FOS and how to bring a complaint.

19.3 If a dispute arises between Key Currency and the Client relating to the existence or terms of any FX Contract (a '**Disputed FX Contract**'), Key Currency may close out or take any other action it reasonably considers appropriate in relation to the Disputed FX Contract (which may include suspension of performance of the Disputed FX Contract) pending settlement of the dispute without previously notifying and/or without having received instruction from the Client. Key Currency will try to notify the Client (orally or in writing) what action it has taken, as soon afterwards as it practically can, but if it does not, the validity of its action shall not be affected.

## 20. CLIENT'S REPRESENTATIONS AND UNDERTAKINGS

20.1 The Client represents to Key Currency that, at the date of acceptance by the Client of these Terms, at the time each FX Order and each Payment Instruction is made, at the time each FX Contract is entered into and carried out and at the time each Onward Payment is made:

(a) the Client is acting as principal for its own account;

(b) the Client has full power, legal capacity and authority and has taken all necessary steps to enable it lawfully to enter into and perform these Terms and every FX Contract and Payment Instruction under these Terms;

(c) for a Client who is **not** an individual, the person(s) entering into these Terms and executing the Account Opening Form on its behalf has been duly authorised to do so;

(d) these Terms are binding upon the Client and enforceable against the Client (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and applicable principles of equity);

(e) all sums paid to Key Currency by the Client under these Terms belong to the Client and are not subject to any charge or other rights of third parties;

(f) all information supplied to Key Currency by the Client is, or at the time it is supplied will be, accurate in all material respects and the Client has not omitted or withheld any information which would make such information inaccurate in any material respect;

(g) the Client has a valid commercial or personal reason for requiring the currency it buys under each FX Contract, and has not entered into any FX Contract for investment or speculative purposes;

(h) the Client will take physical delivery of the currency bought; and

(i) no Onward Payment has been or will be initiated by the Payee (save where the Client is the Payee).

20.2 The Client will promptly provide to Key Currency:

(a) on request such information regarding its financial and business affairs and/or identity, as Key Currency may reasonably require (including without limitation any information required by Key Currency to be able to comply with its anti-money laundering obligations); and

(b) written confirmation of any changes to the Client's telephone and facsimile number(s) and email and postal address(es).

20.3 For the avoidance of doubt, the Client will notify Key Currency immediately if it becomes aware of the occurrence, or likely occurrence, of any of the events specified at Clause 10.1 above.

20.4 The Client undertakes to Key Currency that it shall promptly perform in timely fashion its obligations under these Terms, each FX Contract and each Payment Instruction.

**21. RECORDING TELEPHONE CONVERSATIONS** 21.1 Key Currency may record telephone conversations with the Client, including recording oral instructions given by telephone, but Key Currency is not obliged to do this. The parties agree to:

(a) the electronic recording by either party of telephone conversations between the parties with or without an automatic tone warning device; and

(b) the use of such recordings as evidence by either party in any dispute or anticipated dispute between the parties or relating to dealings between the parties.

21.2 If Key Currency makes any recordings or transcripts it may also destroy them in accordance with its normal procedures.

## **22. GENERAL**

22.1 These Terms, the Account Opening and the Online User Guide (defined in Clause 24) set out the entire agreement and understanding of the parties on their subject matter and supersede all previous oral and written communications on the same subject matter. In the event of any inconsistency, discrepancy or ambiguity between these Terms, the Account Opening Form and

the Online User Guide, the provisions of these Terms (subject to Clause 24), then the Online User Guide shall prevail.

22.2 If at any time any provision of these Terms or any Contract is or becomes illegal, invalid or unenforceable under the laws of any jurisdiction, neither the legality, validity or enforceability of such provision under the laws of any other jurisdiction nor the legality validity or enforceability of any other provision of these Terms or any Contract shall in any way be affected as a result.

22.3 Where the Client comprises two or more people as named in the Account Opening Form each person named in the Account Opening Form will be jointly and severally liable to Key Currency in respect of all obligations contained in these Terms. Any reference to the "Client" in these Terms means all persons named in the Account Opening Form jointly and severally.

22.4 The Client must make all payments under these Terms in full without any deduction, set-off, counterclaim or withholding of any kind.

22.5 If a party fails to exercise or delays in exercising any right under these Terms, by doing so it does not waive such right. The rights provided in these Terms do not exclude other rights provided by law.

22.6 The Client acknowledges and agrees that Key Currency is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's, or any shareholder or officer of the Client's, identity and credit standing. If such searches are carried out, Key Currency may keep records of the contents and results of such searches in accordance with all current and applicable laws.

22.7 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms or to any FX Contract.

## **23. DATA PROTECTION**

23.1 The Client authorises Key Currency to collect, use, store or otherwise process any personal information provided by the Client or from the searches referred to at Clause 22.6 above (**'Personal Information'**) to enable Key Currency and/or members of Key Currency's group and/or the organisation which introduced or referred the Client to Key Currency to provide and/or improve its services. This may mean passing Personal Information to individuals or organisations which may be located in countries outside the EEA. Where the Client's Personal Information is transferred outside the EEA, Key Currency will take steps to ensure that it is appropriately protected.

23.2 Key Currency may also use the Personal Information to provide the Client with news and other information on Key Currency's services and activities which may be useful to the Client, subject to the Client's consent. If the Client would prefer its Personal Information not to be used for such purposes, it should contact Key Currency at the above address.

23.3 Key Currency may pass on Personal Information to any organisations which Key Currency considers may be of assistance to the Client (which may be located outside the EEA) so that they may contact the Client with details of products and services which may interest the Client, subject to the Client's consent. The Client has indicated in the Account Opening Form, or subsequently, whether it consents to receiving information from such organisations (including by

e-mail or other electronic means) and where it consents to receiving information from organisations outside the EEA.

23.4 Other than as stated in these Terms or in Key Currency's Privacy Policy (which is available on Key Currency's website), Key Currency will not disclose the Client's Personal Information.

23.5 If the Client wishes to obtain a copy of its Personal Information, it should contact Key Currency in writing in accordance with Clause 3.

## **24. USE OF THE ONLINE SYSTEM (WHERE APPLICABLE)**

24.1 The Client may be required to complete a user set up form providing details of any Authorised Person whom may use any Online System which Key Currency may make available to the Client. The Client will be required to confirm its agreement to any system restrictions and limits prior to the Client being granted access to access to the Online System. Such access will be on the terms and conditions as to the use of the Online System as may be made available by Key Currency to the Client (the '**Online User Guide**'), which shall form part of these Terms. This Clause 24 applies subject to the provisions of the Online User Guide in relation to the Online System, and if there are any inconsistencies between this Clause 24 and the Online User Guide, the provisions of the Online User Guide will prevail. Terms which are not defined in this Clause 24 will have the meaning (if any) given to them in the Online User Guide.

24.2 The Client agrees to use the Online System only in accordance with the Online User Guide and maintain any minimum operating and browser specifications as advised by Key Currency from time to time.

24.3 The Client agrees to be solely responsible for the protection of all passwords and the Client should notify Key Currency immediately of any actual or suspected compromise of any password.

24.4 If there are any interruptions in the Online System which result in the Client being unable to use the Online System the Client should fax or telephone FX Orders and Payment Instructions to Key Currency.

## **25. APPLICABLE LAW**

These Terms and any relationship between Key Currency and the Client shall be governed by English law and subject to the exclusive jurisdiction of the English courts.

## **26. THE DIRECT DEBIT SCHEME GUARANTEE**

26.1 This Guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits.

26.2 If there are any changes to the amount, date or frequency of the Client's Direct Debit Key Currency will notify the Client 10 Business Days in advance of your account being debited or as otherwise agreed. If the Client requests Key Currency to collect a payment, confirmation of the amount and date will be given to the Client at the time of the request.

26.3 If an error is made in the payment of the Client's Direct Debit, by Key Currency or the Client's bank or building society, the Client is entitled to a full and immediate refund of the amount paid from its bank or building society.

26.4 If the Client receives a refund it is not entitled to, the Client must pay it back when Key Currency asks it to.

26.5 The Client can cancel a Direct Debit at any time by simply contacting its bank or building society. Written confirmation may be required by that bank or building society. A copy of any written confirmation should be sent to Key Currency.

## **27. PAYMENT SERVICES REGULATIONS**

27.1 Subject to Clause 27.2, but notwithstanding any other provision of these Terms:

(a) to the fullest extent that is permitted by law, the provisions of the Payment Services Regulations 2009 (as amended, restated or re-enacted from time to time) (the "Regulations") shall not apply to these Terms and any Contract; and

(b) the provisions which shall not apply as set out in Clause 27.1(a) above shall include the whole of Part 5 of the Regulations and Regulations 54(1), 55(2), 60, 62, 63, 64, 67, 75, 76 and 77 (as amended, restated or re-enacted from time to time).

27.2 The provisions of Clause 27(1) above shall not apply if (or at any time when) the Client is a consumer, micro enterprise (as defined in Commission Recommendation 2003/361/EC, as amended from time to time) or charity.