

South Africa

# Our terms & conditions

Read on for the detail  
around the services we offer



If you have a specific question,  
talk to our helpful team on **+27 (0) 21 418 0105**  
or email them at **[info@currencydirect.com](mailto:info@currencydirect.com)**

# Terms & Conditions

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## **DISCLOSURE CONCERNING CURRENCIES DIRECT SOUTH AFRICA AS REQUIRED BY FAIS**

In terms of the Financial Advisory and Intermediary Services Act (FAIS) (Act No. 37 of 2002) the following information must be disclosed to clients and potential clients:

### **Key Individuals**

Full Name: **Nelmie Ross**

Telephone: **+27 (0) 21 418 0105**

E-mail: **Nelmie.R@currenciesdirect.com**

As a Key Individual and Representative of Currencies Direct South Africa since 06/12/2011; with the following qualification, Gordon Institute for Business Science, University of Pretoria AMP (2003).

Full Name: **Jillian Wilmans**

Telephone: **+27 (0) 21 418 0105**

E-mail: **Jill.W@currenciesdirect.com**

As a Key Individual and Representative of Currencies Direct South Africa since 06/12/2011; with the following qualification, Bachelor of Commerce, University of KwaZulu Natal, Pietermaritzburg (1996).

A full list of the authorised representatives under the above mentioned Key Individuals, their qualifications and commencement dates are available online at [www.currenciesdirect.com](http://www.currenciesdirect.com).

### **Authorised products**

Currencies Direct South Africa holds a category I FSP licence 43493 and authorised to provide financial services (advice and intermediary services) with respect to the following products:

#### **Securities & Instruments: Derivative Instruments**

We have access to, and have been accredited to market products and trade in the SPOT and FEC Market.

- CDSA do not own more than 10 % of issued shares directly or indirectly of any Life Assurer or Financial Product provider. CDSA is not an

associated company of any life assurer or product provider.

- CDSA have not earned more than 30 % of their total commission from any one product provider within the past 12 months.
- CDSA does not earn any income from commission that the Product Providers pay over to them in respect of financial services rendered with respect to products offered by these Product Providers. CDSA earn their income on a fee base.
- If we receive indirect consideration from product providers, a gift register and the Conflict of Interest Management Policy are available for inspection upon request.
- We do have Professional Indemnity Insurance cover.
- If you feel that your rights have been prejudiced, or you have been aggrieved in any way, you have the right to lodge a complaint. A copy of the complaints process is available upon request.
- All information obtained or acquired from /about you shall remain confidential unless you provide written consent, or unless Currencies Direct South Africa, is required by law to disclose such information.

"We have been made aware that no provider may request or induce me in any manner to waive any right or benefit conferred on me by, or in terms of, any provision of the FAIS Act and Code of Conduct"

**Moonstone Compliance (Pty) Ltd is the businesses compliance officer. Moonstone Compliance can be contacted at: Physical address: 25 Quantum Street, Techno Park, Stellenbosch, 7600. Tel No: 021-8838000**

# Terms & Conditions: Personal

The parties to this agreement are: Currencies Direct South Africa (Pty) Ltd ('CDSA') (K2011/117232/11) and the client named in the account opening form attached to these terms and conditions (the 'Client').

## 1. INTRODUCTION

- 1.1** From November 2011 CDSA is regulated by the Financial Services Board ('FSB') as a licensed financial service provider under the registration number [43493].
- 1.2** CDSA is mandated by the South African Reserve Bank (SARB) as a Treasury Outsourcing Company to facilitate international and cross border payments.
- 1.3** CDSA provides facilities as set by the rules and regulations laid down by the South African Reserve Bank for the purchase or sale of currencies for both commercial and personal purposes. CDSA's contracts with Clients are for settlement and delivery. That means, at maturity the Client must take delivery of funds to a bank account. CDSA provides its services to clients for the fulfilment of international payments and/ or hedging of assets. CDSA's staff do not provide advisory services.
- 1.4** The Client wishes to enter into a contract or contracts for the purchase, sale and delivery of currency with CDSA and the Client agrees with CDSA that all transactions shall be carried out on the terms and conditions (the 'Terms') set out below. The Client confirms that:
  - (a)** it has or will have a personal or commercial need for the currency which is the subject of each transaction and no transaction will be for the purpose of speculation; and
  - (b)** it is acting on its own account and not on behalf of any other person.
- 1.5** Please note that foreign currency exchange rates are subject to fluctuations outside the control of CDSA. Historical performance is no indicator for future performance.
- 1.6** These Terms shall come into force as soon as the Client signs the Account Opening Form and shall continue until terminated in accordance with their terms.

- 1.7** It is important that the Client reads and understands these Terms, which will apply to all dealings between the Client and CDSA. The Client should only sign the Account Opening Form if it agrees to be bound by these Terms.

## 2. CDSA'S SERVICES

- 2.1** CDSA will, when it decides to do so, enter into individual contracts for the sale, purchase and delivery of currency ('FX Contracts') with the Client. FX Contracts may, without limitation, include spot contracts under which currency is bought and sold for delivery immediately against receipt of payment.
- 2.2** Following the execution of a Foreign Exchange transaction and subject to these Terms, CDSA shall transfer the converted currency in accordance with an instruction by the Customer requesting the onward transfer of the converted currency to the Customer or a third party (the 'Payee').
- 2.3** As per SARB exchange control rulings the Client will at all times remain principal in the transaction with the Authorised dealer and all payments must take place from an account in the clients name or through an authorised dealer interbank trading account.
- 2.4** CDSA will not provide advice to the Client upon the merits of a proposed Foreign Exchange transaction or Payment Service (although it may provide information to the Client from time to time). In entering a FX Contract and/or issuing a Payment Instruction the Client must not treat any information or comments by CDSA as advice and must rely only on its own judgement.
- 2.5** The Client must take physical delivery of and pay for the currency in question on the date specified in the Contract Note.
- 2.6** CDSA does not accept payments in cash from any Client.

## TERMS APPLYING TO FOREIGN EXCHANGE SERVICES

## 3. INITIATING A FOREIGN EXCHANGE

- 3.1** The Client may give CDSA oral or written instructions relating to a transaction for the purchase or sale of currency (the 'FX Order'). The Client may issue written instructions to CDSA authorising any other named person (an 'Authorised Person') to give FX Orders on its behalf. CDSA is entitled to act upon instructions which are or appear to be from the Client or any Authorised Person.
- 3.2** Following receipt of a FX Order, CDSA shall, if it is willing to accept the FX Order, agree orally with the Client the terms on which it is willing to enter into a FX Contract and shall subsequently, transmit electronically to the Client a contract note which will confirm the details of the FX Order (the 'Contract Note'). That Contract Note shall include details of the applied exchange rate, the rate of exchange from the Authorised dealer and any charges in relation to the payment service.
- 3.3** The Client accepts that:
  - (a)** prior to undertaking a Foreign Exchange transaction, CDSA will deduct those costs and charges which CDSA 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 3.3(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.
- 3.4** Within thirty minutes of transmission of the Contract Note, the Client should check, complete, sign and return the Contract Note to CDSA by such means as may be agreed by CDSA. Whether or not the Client does this, the FX Contract will be binding (and CDSA's and the Client's rights under these Terms shall apply with full effect).
- 3.5** Once CDSA has transmitted a Contract Note confirming a FX Order in writing, the Client may only amend or cancel the Contract Note if CDSA expressly agrees (and any such amendment or cancellation shall be on the conditions specified by CDSA).
- 3.6** CDSA 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.

- 3.7** CDSA may (but shall not be obliged to) require further confirmation or information from the Client or Authorised Person of any FX Order or instruction.

## 4. OPERATION OF THE TRADING ACCOUNT

- 4.1** The client shall pay by electronic transmission into the dedicated bank account established by CDSA in the clients own name (trading account) or to the authorised dealer interbank trading account.
- 4.2** This clause 4.2 shall apply to the Clients Trading Account:
  - (a)** Where the trading account is held with a South African Authorised Dealer, CDSA shall operate the account as per the signed mandate. This means funds in this account will be held for the purposes set out in Clause 4.2 (b) and shall only make payments out of the trading account or apply sums held in it in accordance with the clients instructions, or as otherwise specified in Clause 4.2 (b);
  - (b)** The purposes for which money paid into the Trading Account by or on behalf of the Client is held and may be applied, withdrawn or transferred are:
    - (i)** settlement of an agreed transaction;
    - (ii)** payment of other sums due and payable to CDSA by the Client under these Terms or under any FX Contract;
    - (iii)** making an Onward Payment;
    - (iv)** withdrawal or retention of interest by CD in accordance with Clause 11.2.

- 4.3** CDSA may, but shall not be required to, make any payment under any FX Contract without first having received confirmation satisfactory to it that cleared funds for all sums due and payable by the Client to the Trading Account have in fact been received.

## 5. FOREIGN EXCHANGE CHARGES

The Client understands that in accordance with SARB exchange control rulings the Client will at all times remain principal in the transaction with the Authorised dealer, however the rate CDSA receives from the Authorised dealer may differ from the rate given to the client.

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

6.1 CDSA 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 at any time after the happening of any of the following events:

- (a) the Client fails to make any payment when due;
- (b) the Client dies or, becomes of unsound mind;
- (c) the Client suspends payment of its debts, has a receiver appointed of some or all of its assets, takes or has any proceedings taken against it in bankruptcy or anything similar to any of these events happens to the Client anywhere in the world;
- (d) the Client fails in any respect fully and promptly to comply with any obligations to CDSA or if any of the information supplied by the Client become materially inaccurate;
- (e) it becomes or may become unlawful for CDSA to maintain any of the obligations under these Terms or otherwise to carry on its business or if CDSA or the Client is requested not to perform or to close out a FX Contract (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding; or
- (f) CDSA considers it necessary to do so for its own protection including (without limitation) in the following circumstances:
  - (i) protection from fraud;
  - (ii) protection from Client default;
  - (iii) protection from market failure;
  - (iv) protection from adverse or volatile market conditions; and
  - (v) protection from loss by CDSA.

6.2 If the Client becomes aware of the occurrence of any event referred to in Clauses 6.1(a), 6.1(c), 6.1(d) and 6.1(e), it shall notify CDSA immediately.

6.3 If any event referred to in Clauses 6.1(a) to 6.1(f) takes place CDSA 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 11 on any such sums) that CDSA may incur (including any action it may take to cover or reduce its exposure) as a result of CDSA entering into 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 CDSA in respect of FX Contracts shall be returned to the Client after deducting all other sums due to CDSA.

6.4 If for any reason a FX Contract is closed out or does not proceed to completion, CDSA will send to the Client any sum due to the Client or a notice setting out the sum due from the Client. The Client shall bear all the losses/expenses of CDSA whatsoever that may arise on account of such close out or cancellation, and CDSA 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 CDSA. For such purpose, CDSA 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 CDSA incurs as a result of such conversion shall be paid for by the Client.

6.5 If the Client's payment, is dishonoured, returned or stopped for whatever reason, CDSA shall levy an administrative charge of ZAR150 in respect of each such payment. This administrative charge will become payable by the Client in addition to any other sums due under these Terms.

6.6 CDSA shall not be responsible in any way for any delay in payment by it under these Terms relating to Foreign Exchange services which is caused by the Client or any other third party, including but not limited to bank delay, failure or delay of any 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 Foreign Exchange transaction are made promptly and within the time limits specified by the particular FX Contract.

## 7. LIMITATION OF LIABILITY AND INDEMNITY FOR FOREIGN EXCHANGE

7.1 CDSA shall not be liable to the Client:

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

(b) for an amount greater than the maxima stated in Clauses 7.2 and 7.3.

7.2 The maximum liability of CDSA under a particular FX Contract, shall in no circumstances exceed an amount equal to the currency sold by CDSA under that FX Contract.

7.3 The maximum aggregate liability of CDSA in respect of Foreign Exchange services shall in no circumstances exceed an amount equal to the aggregate value of currency sold by CDSA under the FX Contracts.

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

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

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

(c) CDSA 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.

7.5 The provisions in this Clause 7 shall survive termination of any FX Contract or other agreement under these Terms relating to

Foreign Exchange and CDSA's certificate under Clause 7.4 shall, unless it is manifestly inaccurate, be conclusive.

## TERMS APPLYING TO PAYMENT SERVICES

### 8. PAYMENT INSTRUCTIONS

8.1 The Client or its Authorised Person may from time to time orally or in writing issue a Payment Instruction to CDSA. Such Payment Instruction shall be given in accordance with Clause 15.1(b) and must confirm details of the proposed Payee including its full name, account details for payment and any unique identifier confirmed to the Client by the Payee.

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

(a) (a) where the Payment Instruction would otherwise be deemed to be received on a day which is not a 'Business Day' or is received after 13:00 South African time (the "Cut-Off Time") on a Business Day, CDSA has the right to treat the Client's Payment Instruction as having been received on the next Business Day; and

8.3 Following receipt of a Payment Instruction, CDSA may:

(a) refuse that Payment Instruction and if it does so, CDSA shall (unless it would be unlawful for CDSA 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;

(b) request further confirmation or information from the Client or Authorised Person of any Payment Instruction.

8.4 The Client may not revoke a Payment Instruction after it has been received by CDSA except:

(a) if Clause 9.3 applies and the Transaction Account has not been debited before the Client notifies CDSA; or

(b) if the Client has agreed with CDSA that the Onward Payment is to be made on a specific day or on the last day of a certain period and the rev-

ocation is received by CDSA prior to the Cut-Off Time on the Business Day preceding the specified day for the making of the Onward Payment; or

- (c) if agreed with CDSA and, in the case of any payment transaction which has been initiated by the Payee, the relevant Payee.

Any revocation of a Payment Instruction in accordance with this Clause 8.5 must be given in writing to CDSA by email (including email attaching a PDF).

**8.5** CDSA 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 CDSA whatsoever that may arise on account of the revocation; and
- (b) CDSA may charge interest at the rate referred to in Clause 11, on any sums due to CDSA pursuant to this Clause 8.5.

**8.6** Following a Foreign Exchange transaction, CDSA 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 the Transaction Account, 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;
  - (iv) (a breakdown of charges and/or interest payable by the Client; and
  - (v) the date on which the Payment Instruction was deemed to be received by CDSA.

## 9. SAFEGUARDS AND SECURITY

**9.1** 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;
- (b) uses the Payment Services provided by CDSA in accordance with the terms and conditions for their use; and
- (c) notifies CDSA by the means listed in Clause 15.1(b) 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.

**9.2** CDSA 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; 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 (or immediately after doing so, CDSA 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, CDSA must allow the outstanding element of the Onward Payment or the resumption of the Client's use of the Payment Service (as appropriate).

**9.3** 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 CDSA as soon as possible via the helpline or e-mail address listed in Clause 15.1(b). Failure to notify CDSA within 13 months of the date of monies being debited from the Transaction Account could result in the Client losing its entitlement to have the matter corrected.

## 10. LIABILITY AND INDEMNITY FOR PAYMENT SERVICES

**10.1** 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 that Client has notified CDSA within 13 months of the monies being debited from the Transaction Account, unless Clause 10.2 applies, CDSA shall refund to the Client the full amount debited erroneously or without authorisation.

**10.2** The Client will be liable for all payments debited from the Transaction Account 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 9.1(a).

**10.3** CDSA 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, CDSA 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.

**10.4** CDSA is liable to the Client for the correct execution of a Payment Instruction unless:

- (a) Clause 10.3 applies; or
- (b) CDSA 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 CDSA shall, on request, make immediate efforts to trace the payment and notify the Client of the outcome. Where CDSA is liable to the Client under this Clause 10.4 it must without undue delay refund to the Client the amount of:
  - (i) the non-executed or defective payment and, where applicable, restore the Transaction Account to the state in which it would have been in had the defective payment not taken place; and
  - (ii) any charges and interest which the Client has paid as a conse-

quence of the non-execution or defective execution of that Onward Payment.

**10.5** CDSA shall not be liable to the Client for any delay or failure to perform its obligations under these Terms or any Contract (including any delay in payment) by reason of any cause beyond the reasonable control of CDSA including but not limited to any action or inaction of the Client or any third party, bank delay, postal delay, failure or delay of or electronic transmission, any accident, emergency, act of God or any abnormal or unforeseeable circumstances.

## TERMS APPLYING GENERALLY

### 11. INTEREST

**11.1** 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 South African Reserve Bank Repo Rate (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.

**11.2** CDSA may receive and retain or apply for its own benefit any interest which arises in respect of any sum paid into the Transaction Account.

### 12. CHANGES TO THESE TERMS

**12.1** CDSA may amend these Terms insofar as they relate to Foreign Exchange by notice in writing to the Client at any time and such amendments shall take effect from the date specified by CDSA but may not affect any rights or obligations that have already arisen and will not be retrospective.

**12.2** CDSA 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 11.1, which in each case may be applied immediately.

### 13. DISPUTES AND COMPLAINTS

**13.1** Any complaint regarding these Terms or any FX Contract or any Payment Instruction should in the first place be directed to CDSA's helpline +27 (0) 21 4180105 or at the email address of [infos@currencydirect.com](mailto:infos@currencydirect.com).

Our procedure when receiving your complaint:

- (a) As soon as we receive your complaint, we will send you an acknowledgement of receipt. Please take into consideration that the method of communication chosen by you will determine how quickly we will receive and respond to your complaint.
- (b) We will investigate and attempt to resolve your complaint to your satisfaction within 6 weeks of receipt of your complaint
- (c) If we are unable to resolve your complaint within 6 weeks, or are unable to resolve the complaint to your satisfaction, you have the right to refer your complaint to the Ombud appointed specifically for this purpose. The contact details of the Ombud is as follows:  
**PO Box 74571  
Lynnwood Ridge  
0040  
Telephone: (012) 470 9080 / 99  
Fax: (012) 3483447  
E-mail: [info@faisombud.co.za](mailto:info@faisombud.co.za)**
- (d) Please remember however that you must refer the complaint to the Ombud within 6 months from the date of the notice in which we inform you that we cannot resolve the complaint to your satisfaction.

### 14. CLIENT'S REPRESENTATIONS AND UNDERTAKINGS

**14.1** The Client represents to CDSA 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 and has full power 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;

- (b) all sums paid to CDSA by the Client under these Terms belong to the Client and are not subject to any charge or other rights of third parties;
- (c) all information supplied to CDSA 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;
- (d) the Client has a valid commercial or personal reason for requiring the currency it buys under each FX Contract, has not entered into any FX Contract speculative purposes;
- (e) the Client will take physical delivery of the currency bought.

**14.2** The Client will promptly provide to CDSA:

- (a) on request such information regarding its financial and business affairs and/or identity, as CDSA may reasonably require (including without limitation any information required for CDSA 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).

**14.3** The Client will notify CDSA immediately if it becomes aware of the occurrence, or likely occurrence, of any of the following events:

- (a) the Client failing or being unable to make any payment when due under these Terms or any FX Order;
- (b) the Client suspending payment of its debts, making or taking steps with a view to making any composition or similar arrangement with its creditors, having a receiver appointed of some or all of its assets, taking or having any proceedings taken against it in bankruptcy, or anything similar to any of these events happening to the Client anywhere in the world;
- (c) the Client failing in any respect fully and promptly to comply with any obligations to CDSA under these Terms

or otherwise;

- (d) any of the representations of or information supplied by the Client becoming materially inaccurate;
- (e) it becoming unlawful for CDSA to maintain or give effect to all or any of the obligations under these Terms or otherwise to carry on its business;
- (f) CDSA or the Client being requested not to perform or to close out a FX Contract (or any part thereof) or make an Onward Payment (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding.

### 15. COMMUNICATIONS

**15.1** All communications between CDSA and the Client) shall be in English and:

- (a) CDSA may contact the Client via the telephone or the email or postal address(es) advised by the Client in the Account Opening Form. It shall be the Client's responsibility to inform CDSA of any changes to the Client's contact details; and
- (b) the Client can contact CDSA via the helpline +27 (0) 21 4180105 or at the email address of [infos@currencydirect.com](mailto:infos@currencydirect.com).

### 16. GENERAL

**16.1** These Terms and the Account Opening 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.

**16.2** 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 legal validity or enforceability of any other provision of these Terms or any Contract shall in any way be affected as a result.

**16.3** 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.

**16.4** If CDSA makes any recordings or transcripts it may also destroy them in accordance with its normal procedures.

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

### 17. DATA PROTECTION

**17.1** The Client authorises CDSA to collect, use, store or otherwise process any personal information provided by the Client. ('Personal Information') to enable CDSA and/or members of its group and/ or the organisation which introduced or referred the Client to CDSA to provide and/or improve its services. CDSA will take steps to ensure that it is appropriately protected.

**17.2** CDSA may also use the Personal Information to provide the Client with news and other information on CDSA'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 CDSA at the above address. The Client has indicated below where it consents to receiving information on such services and activities.

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

**17.4** If the Client wishes to obtain a copy of its Personal Information, it should contact CDSA on its helpline +27 (0) 21 4180105 or at the email address of [infos@currencydirect.com](mailto:infos@currencydirect.com).

### 18. APPLICABLE LAW

These Terms and any relationship between CDSA and the Client shall be governed by South African law and subject to the exclusive jurisdiction of the South African courts.

# Terms & Conditions: Business

The parties to this agreement are: Currencies Direct South Africa (Pty) Ltd ('CDSA') (K2011/117232/11) and the client named in the account opening form attached to these terms and conditions (the 'Client').

## 1. INTRODUCTION

- 1.1 From November 2011 CDSA is regulated by the Financial Services Board ('FSB') as a licensed financial service provider under the registration number [43493].
- 1.2 CDSA is mandated by the South African Reserve Bank (SARB) as a Treasury Outsourcing Company to facilitate international and cross border payments.
- 1.3 CDSA provides facilities as set by the rules and regulations of the South African Reserve Bank for the purchase or sale of currencies for both commercial and personal purposes. CDSA's contracts with Clients are for settlement and delivery. That means, at maturity the Client must take delivery of funds to a bank account. CDSA provides its services to clients for the fulfilment of international payments and/or hedging of assets.
- 1.4 If the Client wishes to enter into a contract or contracts for the purchase, sale and delivery of currency with CDSA and the Client agrees with CDSA that all transactions shall be carried out on the terms and conditions (the 'Terms') set out below. The Client confirms that:
  - (a) it has or will have a commercial need for the currency which is the subject of each transaction and no transaction will be for the purpose of speculation; and
  - (b) it is acting on its own account and not on behalf of any other person.
- 1.5 Please note that foreign currency exchange rates are subject to fluctuations outside the control of CDSA. Historical performance is no indicator for future performance.
- 1.6 These Terms shall come into force as soon as the Client signs the Account Opening Form and shall continue until terminated in accordance with their terms.
- 1.7 It is important that the Client reads and

understands these Terms, which will apply to all dealings between the Client and CDSA. The Client should only sign the Account Opening Form if it agrees to be bound by these Terms.

## 2. CDSA'S SERVICES

- 2.1 CDSA will, when it decides to do so, enter into individual contracts for the sale, purchase and delivery of currency ('FX Contracts') with the Client. FX Contracts may, without limitation, include:
  - (a) spot contracts under which currency is bought and sold for delivery immediately against receipt of payment;
  - (b) fixed forward contracts under which currency is bought and sold for delivery at a fixed future time;
  - (c) optional forward contracts time options under which currency is bought and sold for delivery at a time subsequently instructed by the Client within an agreed period or, failing such instructions, at the end of the agreed period; and
  - (d) limit orders under which currency is bought and sold for delivery if and when an agreed exchange rate is available.
- 2.2 Following the execution of a Foreign Exchange transaction and subject to these Terms, CDSA shall transfer the converted currency in accordance with an instruction by the Customer requesting the onward transfer of the converted currency to the Customer or a third party (the 'Payee').
- 2.3 As per SARB exchange control rulings the client will at all times remain principal in the transaction with the Authorised dealer and all payments must take place from an account in the clients name.
- 2.4 CDSA will not provide advice to the Client upon the merits of a proposed Foreign Exchange transaction or Payment Service

(although it may provide information to the Client from time to time). In entering a FX Contract and/or issuing a Payment Instruction the Client must not treat any information or comments by CDSA as advice and must rely only on its own judgement.

- 2.5 The Client must take physical delivery of and pay for the currency in question on the date specified in the Contract Note.
- 2.6 CDSA does not accept payments in cash from any Client.

## TERMS APPLYING TO FOREIGN EXCHANGE SERVICES

### 3. INITIATING A FOREIGN EXCHANGE

- 3.1 The Client may give CDSA oral or written instructions relating to a transaction for the purchase or sale of currency (the 'FX Order'). The Client may issue written instructions to CDSA authorising any other named person (an 'Authorised Person') to give FX Orders on its behalf. CDSA is entitled to act upon instructions which are or appear to be from the Client or any Authorised Person.
- 3.2 Following receipt of a FX Order, CDSA shall, if it is willing to accept the FX Order, agree orally with the Client the terms on which it is willing to enter into a FX Contract and shall subsequently transmit electronically to the Client a Contract Note which will confirm the details of the FX Order (the 'Contract Note'). That Contract Note shall include details of the applied exchange rate, the rate of exchange from the Authorised dealer and any charges in relation to the payment service.
- 3.3 The Client accepts that:
  - (a) prior to undertaking a Foreign Exchange transaction, CDSA will deduct those costs and charges which CDSA 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 3.3(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.

- 3.4 Within thirty minutes of transmission of the Contract Note, the Client should check, complete, sign and return the Contract Note to CDSA by such means as may be agreed. Whether or not the Client does this, the FX Contract will be binding (and CDSA's and the Client's rights under these Terms shall apply with full effect).
- 3.5 Once CDSA has transmitted a Contract Note confirming a FX Order in writing, the Client may only amend or cancel the Contract Note if CDSA expressly agrees (and any such amendment or cancellation shall be on the conditions specified by CDSA).
- 3.6 CDSA 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.
- 3.7 CDSA may (but shall not be obliged to) require further confirmation or information from the Client or Authorised Person of any FX Order or instruction.
4. OPERATION OF THE TRADING ACCOUNT
  - 4.1 The Client shall pay by electronic transmission into the dedicated bank account established by CDSA in the clients own name (Trading Account), the full amount stated in the Contract Note. Failure by the Client to pay the full amount specified in the Contract Note and all such further instalments shall relieve CDSA of any obligation to make any corresponding payment it may be required to make under the relevant FX Contract.
  - 4.2 This Clause 4.2 shall apply to the Clients Trading Account:

- (a) Where the trading account is held with a South African Authorised Dealer, CDSA shall operate the account as per the signed mandate. This means funds in this account will be held for the purposes set out in Clause 4.2 (b) and shall only make payments out of the Trading Account or apply sums held in it in accordance with the clients instructions, or as otherwise specified in Clause 4.2 (b).
- (b) The purposes for which money paid into the Trading Account by or on behalf of the Client is held and may be applied, withdrawn or transferred are:



- (i) settlement of an agreed transaction;
- (ii) payment of other sums due and payable to CDSA by the Client under these Terms or
- (iii) making an Onward Payment; and
- (iv) withdrawal or retention of interest by CD in accordance with Clause 12.2.

**4.3** CDSA may, but shall not be required to, make any payment under any FX Contract without first having received confirmation satisfactory to it that cleared funds for all sums due and payable by the Client to the Trading Account have in fact been received.

**4.4** CDSA may deduct from the Transaction Account any amount the Client owes to CDSA including any fees, costs, taxation liabilities, or charges incurred by CDSA in relation to such Client, however they arise.

## 5. FOREIGN EXCHANGE CHARGES

The Client understands that in accordance with SARB exchange control rulings the Client will at all times remain principal in the transaction with the Authorised dealer, however the rate CDSA receives from the Authorised dealer may differ from the rate given to the Client.

## 6. ADDITIONAL CONDITIONS FOR FORWARD FX CONTRACTS

**6.1** The Client will be required to notify CDSA not less than 2 days before the Maturity Date of any forward FX Contract or any draw down with the details of the beneficiary, the payment means and delivery instructions.

**6.2** Subject to any facility, CDSA will require an agreed security payment from the Client for each order for a forward FX Contract and CDSA will be entitled to request from the Client additional security payments in amounts notified by CDSA to the Client in the event of exchange rate fluctuations at any time prior to the Maturity Date.

**6.3** With CDSA's agreement the Client may draw down against a forward FX Contract at any time up until its Maturity Date.

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

**7.1** CDSA 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, at any time after the happening of any of the following events:

- (a) the Client fails to make any payment when due;
- (b) 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 CDSA) or gives notice to CDSA 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 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 any of these events anywhere in the world;

- (c) the Client fails in any respect fully and promptly to comply with any obligations to CDSA or if any of the information supplied by the Client become materially inaccurate;
- (d) it becomes or may become unlawful for CDSA to maintain any of the obligations under these Terms or otherwise to carry on its business or if CDSA or the Client is requested not to perform or to close out a FX Contract (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding; or
- (e) CDSA considers it necessary to do so for its own protection including (without limitation) in the following circumstances: (i) protection from fraud; (ii) protection from Client default; (iii) protection from market failure; (iv) protection from adverse or volatile market conditions; and (v) protection from loss by CDSA.

**7.2** If the Client becomes aware of the occurrence of any event referred to in Clauses 7.1(a), 7.1(b), 7.1(c) and 7.1(d), it shall notify CDSA immediately.

**7.3** If any event referred to in Clauses 7.1(a) to 7.1(e) takes place CDSA 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 12 on any such sums) that CDSA may incur (including any action it may take to cover or reduce its exposure) as a result of CDSA entering into 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 CDSA in respect of FX Contracts shall be returned to the Client after deducting all other sums due to CDSA.

**7.4** If for any reason a FX Contract is closed out or does not proceed to completion, CDSA will send to the Client any sum due to the Client or a notice setting out the sum due from the Client. The Client shall bear all the losses/expenses of CDSA

whatsoever that may arise on account of such close out or cancellation, and CDSA 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 CDSA. For such purpose, CDSA 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 CDSA incurs as a result of such conversion shall be paid for by the Client.

**7.5** CDSA shall not be responsible in any way for any delay in payment by it under these Terms relating to Foreign Exchange services which is caused by the Client or any other third party, including but not limited to bank delay, postal delay, failure or delay of any 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 Foreign Exchange transaction are made promptly and within the time limits specified by the particular FX Contract.

## 8. LIMITATION OF LIABILITY AND INDEMNITY FOR FOREIGN EXCHANGE

**8.1** CDSA shall not be liable to the Client:

- (a) for any delay or failure to perform its obligations under these Terms relating to Foreign Exchange or any FX Contract by reason of any cause beyond the reasonable control of CDSA, but CDSA shall try to perform those obligations as soon as it reasonably can in any event;
- (b) for an amount greater than the maxima stated in Clauses 8.2 and 8.3.

**8.2** The maximum liability of CDSA under a particular FX Contract, shall in no circumstances exceed an amount equal to the currency sold by CDSA under that FX Contract.

**8.3** The maximum aggregate liability of CDSA in respect of Foreign Exchange services, shall in no circumstances exceed an amount equal to the aggregate value of currency sold by CDSA under the FX Contracts.

**8.4** The Client shall, on demand by CDSA, compensate CDSA from and against all liabilities, damages, losses and costs (including reasonable legal costs), duties,

taxes, charges, commissions or other expenses incurred by CDSA in the proper performance of Foreign Exchange services or the enforcement of its rights under these Terms relating to Foreign Exchange and, in particular, but without limitation, against all amounts which CDSA 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 CDSA (including loss of profit and losses and expenses from any action CDSA takes to seek to cover or reduce its exposure under any FX Contracts) as a result of:

- (a) the Client breaching any terms of these Terms relating to Foreign Exchange or any FX Contract;
- (b) CDSA acting on a written, oral, telephone, or electronic FX Order which reasonably appeared to CDSA to be from the Client or an Authorised Person; or
- (c) CDSA 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.

**8.5** The provisions in this Clause 8 shall survive termination of any FX Contract or other agreement under these Terms relating to Foreign Exchange and CDSA's certificate under Clause 8.4 shall, unless it is manifestly inaccurate, be conclusive.

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**TERMS APPLYING TO PAYMENT SERVICES**

**9. PAYMENT INSTRUCTIONS**

**9.1** The Client or its Authorised Person may from time to time orally or in writing issue a Payment Instruction to CDSA. Such Payment Instruction shall be given in accordance with Clause 19.1(b) or, where applicable, Clause 22 and must confirm details of the proposed Payee including its full name, account details for payment and any unique identifier confirmed to the Client by the Payee.

**9.2** The Payment Instruction shall be deemed to be received at the time at which it is delivered except that where the Payment Instruction would otherwise be deemed

to be received on a day which is not a 'Business Day' or is received after 13:00 South Africa time (the "Cut-Off Time") on a Business Day, CDSA has the right to treat the Client's Payment Instruction as having been received on the next Business Day; and

**9.3** Following receipt of a Payment Instruction, CDSA may:

- (a) refuse that Payment Instruction and if it does so, CDSA shall (unless it would be unlawful for CDSA 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
- (b) request further confirmation or information from the Client or Authorised Person of any Payment Instruction.

**9.4** The Client may not revoke a Payment Instruction after it has been received by CDSA except:

- (a) if Clause 10.3 applies and the Transaction Account has not been debited before the Client notifies CDSA; or
- (b) if the Client has agreed with CDSA 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 CDSA prior to the Cut-Off Time on the Business Day preceding the specified day for the making of the Onward Payment; or
- (c) if agreed with CDSA and, in the case of any payment transaction which has been initiated by the Payee, the relevant Payee.

Any revocation of a Payment Instruction in accordance with this Clause 9.5 must be given in writing to CDSA by email (including email attaching a PDF).

**9.5** CDSA 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 CDSA whatsoever that may arise on account of the

revocation; and

- (b) CDSA may charge interest at the rate referred to in Clause 12.1 on any sums due to CDSA pursuant to this Clause 9.6.

**9.6** Following a Foreign Exchange transaction, CDSA 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 the Transaction Account, 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;
  - (iv) a breakdown of charges and/or interest payable by the Client; and
  - (v) the date on which the Payment Instruction was deemed to be received by CDSA.

**10. SAFEGUARDS AND SECURITY**

**10.1** 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
- (b) uses the Payment Services provided by CDSA in accordance with the terms and conditions for their use; and
- (c) notifies CDSA by the means listed in Clause 16.1(b) 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.

**10.2** CDSA 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; 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 (or immediately after doing so, CDSA 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, CDSA must allow the outstanding element of the Onward Payment or the resumption of the Client's use of the Payment Service (as appropriate).

**10.3** 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 CDSA as soon as possible via the helpline or e-mail address listed in Clause 16.1(b). Failure to notify CDSA within 13 months of the date of monies being debited from the Transaction Account could result in the Client losing its entitlement to have the matter corrected.

**11. LIABILITY AND INDEMNITY FOR PAYMENT SERVICES**

**11.1** 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 that Client has notified CDSA within 13 months of the monies being debited from the Transaction Account, unless Clause 11.2 applies, CDSA shall refund to the Client the full amount debited erroneously or without authorisation.

**11.2** The Client will be liable for:

- (a) all payments debited from the Transaction Account 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 10.1(a);

**11.3** CDSA 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, CDSA 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.

**11.4** CDSA is liable to the Client for the correct execution of a Payment Instruction unless:

- (a) Clause 11.3 applies; or
- (b) CDSA 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 9.8. CDSA shall, on request, make immediate efforts to trace the payment and notify the Client of the outcome. Where CDSA is liable to the Client under this Clause 11.4 it must without undue delay refund to the Client the amount of:
  - (i) the non-executed or defective payment and, where applicable, restore the Transaction Account to the state in which it would have been in had the defective payment not taken place; and
  - (ii) any charges and interest which the Client has paid as a consequence of the non-execution or defective execution of that Onward Payment.

**11.5** CDSA shall not be liable to the Client for any delay or failure to perform its obligations under these Terms or any Contract (including any delay in payment) by reason of any cause beyond the reasonable control of CDSA 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.

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## TERMS APPLYING GENERALLY

### 12. INTEREST

**12.1** 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 South African Reserve Bank (repo rate) (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.

**12.2** CDSA may receive and retain or apply for its own benefit any interest which arises in respect of any sum paid into the Transaction Account.

### 13. CHANGES TO THESE TERMS

**13.1** CDSA may amend these Terms insofar as they relate to Foreign Exchange by notice in writing to the Client at any time and such amendments shall take effect from the date specified by CDSA but may not affect any rights or obligations that have already arisen and will not be retrospective.

**13.2** CDSA 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 15.1, which in each case may be applied immediately.

### 14. DISPUTES AND COMPLAINTS

**14.1** Any complaint regarding these Terms or any FX Contract or any Payment Instruction should in the first place be directed to CDSA's helpline +27 (0) 21 4180105 or at the email address of [infos@currencydirect.com](mailto:infos@currencydirect.com).

Our procedure when receiving your complaint:

- (a) As soon as we receive your complaint, we will send you an acknowledgement of receipt. Please take into consideration that the method of communication chosen by you will determine how quickly we will re-

ceive and respond to your complaint.

- (b) We will investigate and attempt to resolve your complaint to your satisfaction within 6 weeks of receipt of your complaint
- (c) If we are unable to resolve your complaint within 6 weeks, or are unable to resolve the complaint to your satisfaction, you have the right to refer your complaint to the Ombud appointed specifically for this purpose. The contact details of the Ombud is as follows:

**PO Box 74571  
Lynnwood Ridge  
0040  
Telephone: (012) 470 9080 / 99  
Fax: (012) 3483447  
E-mail: [info@faisombud.co.za](mailto:info@faisombud.co.za)**
- (d) Please remember however that you must refer the complaint to the Ombud within 6 months from the date of the notice in which we inform you that we cannot resolve the complaint to your satisfaction.

### 15. CLIENT'S REPRESENTATIONS AND UNDERTAKINGS

**15.1** The Client represents to CDSA 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 and has full power 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;
- (b) all sums paid to CDSA by the Client under these Terms belong to the Client and are not subject to any charge or other rights of third parties;
- (c) all information supplied to CDSA 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;

- (d) the Client has a valid commercial reason for requiring the currency it buys under each FX Contract and has not entered into any FX Contract speculative purposes;
- (e) the Client will take physical delivery of the currency bought.

**15.2** The Client will promptly provide to CDSA:

- (a) on request such information regarding its financial and business affairs and/or identity, as CDSA may reasonably require (including without limitation any information required for CDSA 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).

**15.3** The Client will notify CDSA immediately if it becomes aware of the occurrence, or likely occurrence, of any of the following events:

- (a) the Client failing or being unable to make any payment when due under these Terms or any FX Order;
- (b) the Client:
  - (i) suspending payment of its debts,
  - (ii) making or taking steps with a view to making any moratorium, assignment, composition or similar arrangement with its creditors,
  - (iii) having 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) being the subject of a winding up, administration or dissolution,
  - (v) or any person taking any steps, or the Client allowing 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 CDSA) or giving notice to

CDSA of an intention to appoint and administrator,

- (vi) being 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 any such resolution is passed,
  - (vii) being 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) suffering anything similar to any of these events anywhere in the world.
- (c) the Client failing in any respect fully and promptly to comply with any obligations to CDSA under these Terms or otherwise;
  - (d) any of the representations of or information supplied by the Client becoming materially inaccurate;
  - (e) it becoming unlawful for CDSA to maintain or give effect to all or any of the obligations under these Terms or otherwise to carry on its business;
  - (f) CDSA or the Client being requested not to perform or to close out a FX Contract (or any part thereof) or make an Onward Payment (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding.

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

## **16. COMMUNICATIONS**

- 16.1** All communications between CDSA and the Client shall be in English and:
- (a) CDSA may contact the Client via the telephone or the email or postal address(es) advised by the Client in the Account Opening Form. It shall be the Client's responsibility to inform CDSA of any changes to the Client's contact details; and
  - (b) the Client can contact CDSA via the helpline on +27 (0) 21 4180105 or at the email address on [infosa@currenciesdirect.com](mailto:infosa@currenciesdirect.com).

## **17. GENERAL**

- 17.1** These Terms and the Account Opening 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.
- 17.2** 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 legal validity or enforceability of any other provision of these Terms or any Contract shall in any way be affected as a result.
- 17.3** The Client must make all payments under these Terms in full without any deduction, set-off, counterclaim or withholding of any kind.
- 17.4** 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.
- 17.5** If CDSA makes any recordings or transcripts it may also destroy them in accordance with its normal procedures.
- 17.6** The Client acknowledges and agrees that CDSA is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's, or any shareholder of the Client's, identity and credit standing. If such

searches are carried out, CDSA may keep records of the contents and results of such searches in accordance with all current and applicable laws.

## **18. DATA PROTECTION**

- 18.1** The Client authorises CDSA to collect, use, store or otherwise process any personal information provided by the Client or from the searches referred to at Clause 17.6 above. ('Personal Information') to enable CDSA and/or members of its group and/or the organisation which introduced or referred the Client to CDSA to provide and/or improve its services. CDSA will take steps to ensure that it is appropriately protected.
- 18.2** CDSA may also use the Personal Information to provide the Client with news and other information on CDSA'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 CDSA at the above address. The Client has indicated below where it consents to receiving information on such services and activities.
- 18.3** If the Client wishes to obtain a copy of its Personal Information, it should contact CDSA on its helpline +27 (0) 21 4180105 or at the email address of [infosa@currenciesdirect.com](mailto:infosa@currenciesdirect.com).

## **19. APPLICABLE LAW**

These Terms and any relationship between CDSA and the Client shall be governed by South African law and subject to the exclusive jurisdiction of the South African courts.

## Let's talk currency

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