



## TERMS AND CONDITIONS FOR THE PROVISION OF PAYMENT SERVICES

These terms and conditions concern the execution of payment transactions from and into payment accounts of customers whether the instructions for the execution of the payment transactions are given or transmitted to the Payment Service Provider directly or through the Payee of any remittance, transfer, or payment.

### 1. Definitions

In this document, unless the context otherwise requires:

“**Applicable Law**” means all laws of any jurisdiction that are applicable to this Agreement including the Payment Services Law, to any of the Parties hereto or to any activity of any of the Parties hereto as amended and in force from time to time, and the rules, regulations, directives, orders, requirements, licenses or permits issued thereunder, including, without limitation, any judgments, decisions, rules, regulations, directives, orders, requirements, licenses and permits of any court or other competent authority.

“**Business Day**” means every day on which banks are open for normal banking operations both in Cyprus and in the country and city abroad with which any specific banking transaction may be associated.

“**Company’s Website**” means the official webpage for payment transactions, [www.tfimarkets.com](http://www.tfimarkets.com) and includes all sub-domains or micro-sites of this. The Company may operate other websites for marketing and communication purposes.

“**Company**” means TFI Markets Ltd.

“**Consumer**” means a natural person who, in respect of this Contract, is acting for purposes other than his or her trade, business or profession.

“**Customer**” means a natural or legal person (including executors, administrators of assets and heirs or successors and assignees, receivers and liquidators, custodians and trustees) who maintains a Payment Account with the Company and uses the Company as the Payment Service Provider for payment transactions, whether as the Payer or the Payee. The term “Customer” or “Client” shall be used interchangeably in this Agreement and during the provision of Payment Services. Where the expression “Customer” includes more than one person it shall be construed to mean all or any of them and their obligation shall be joint and several; References to any gender shall include all genders.

“**Close Out**” means the termination, cancellation or a reversal of a Trade or pending Trade.

“**Close-out Margin Level %**” refers to the margin level % under which the Company may close open positions.

**'Durable Medium'** means any instrument which:

- (a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
- (b) allows the unchanged reproduction of the information stored.

**"Fees and Charges Table"** means the list of fees and/or charges and/or commissions and/or expenses which are in force at the time of execution of the payment transaction and/or any other transaction with the Company, and which will be provided by the Company to the Customer in a durable medium and also on the internet at the Company's website.

**"Force Majeure Event"** means any abnormal and unforeseen circumstances beyond the Control of the Company, the consequences of which would have been unavoidable despite all efforts to the contrary, including but not limited to, acts of God or public enemy, war, civil war, terrorism, insurrections or riots, explosions, earthquakes, natural disasters or serious accidents, epidemics or quarantine restrictions, closure of the relevant markets, general insolvency of issuers, industrial disputes, declaration of state of emergency, delay in transportation and/or telecommunication service and/or power supply breakdown, failure or malfunction of any telecommunication or computer service or systems, any change in any Applicable Law.

**"Foreign Exchange Forward Exchange Contracts"** (**'FX FECs'**) includes Fixed Foreign Exchange Forward Contracts (**'Fixed FX FECs'**), and Flexible Foreign Exchange Forward Contracts (**'Flexible FX FECs'**). **FX FECs** are regulated financial instruments subject to the provisions of the **MIFID II Directive**, UNLESS the **Payment Purpose Exclusion** applies.

**"Fixed FX FEC"** is a binding agreement between the Company and the Customer in which they agree to exchange (pay or receive) specific currencies at a fixed price for settlement at a predetermined time in the future (the maturity date), subject to any conditions included in this Agreement.

**"Flexible FX FEC"** is a binding agreement between the Company and the Customer in which they agree to exchange (pay or receive) specific currencies at a fixed price for settlement within a specified time period up to maturity of the contract, subject to any conditions included in this Agreement. The contract may be settled partially or fully and at various dates up to maturity, as long as by the maturity date, the full amount agreed is exchanged.

**"Loss"** and **"Losses"** means all taxes, duties, levies, fees (including without limitation fees, registration fees, legal fees, accountancy fees and/or any other professional fees) charges, claims, proceedings, judgments, expenses, costs (including, without limitation, costs of investigation and expenses of litigation) fines, penalties, settlement payments, losses, damages and liabilities;

**"Margin"** is the initial margin amount that the Company determines (in its sole discretion) that the Client is required to provide to the Company for the purpose of securing or collateralising the Client's obligations and liabilities to the Company according to the Client's open positions. It is calculated as follows: Positions in each currency are netted and translated into USD. The net position in each currency is multiplied by its corresponding margin requirement as per the table included in the Schedule to this Agreement. Then the long and short margin requirements are summed separately and the higher of the two in absolute value is the client's overall margin requirement.

**"Margin Call"** means a request by the Company to the Client for Margin.

**"Margin Call Level %"** means the margin level % under which the Company will make a Margin Call.

**"Margin Level %"** means an index characterizing the Account, calculated as Equity/Margin.

**"Equity"** is the balance in the specific collateralized client Account plus or minus unrealized profit/loss in the specific collateralized client Account.

“**Micro-Enterprise**” means an enterprise which at the time of conclusion of the payment service agreement meets the criteria of a microenterprise, in accordance with the applicable law.

“**MIFID II Directive**” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instrument, as may be amended or replaced from time to time.

“**MIFID Org Regulation**” means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms.

“**Non-Financial Counterparty**” means, within the meaning of Article 2(9) of the European Infrastructure Market Regulation (EU Regulation 648/2012, ‘EMIR’ an undertaking which is not a an investment firm, a credit institution, an insurance undertaking, an assurance undertaking, a UCITS, an institution for occupational retirement and an alternative investment fund managed by AIFMS.

“**Order**” means a request by the Client to the Company to enter a Trade.

“**Overnight Libor**” means the London Inter Bank Offered Rate which is fixed on a daily basis by the British Bankers’ Association, which applies for deposits held overnight.

“**Payee**” “(Beneficiary)” means a natural or legal person who maintains a payment account and is the intended recipient of funds which have been the subject of a payment transaction in the said payment account.

“**Payer**” means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order.

“**Payment Account**” means an account kept with the Company in the name of one or more Customers, and which is used for the execution of Payment Transactions.

“**Payment Instrument**” means personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order.

“**Payment Order**” means any instruction by a payer or payee to the Company requesting the execution of a Payment Transaction.

“**Payment Purpose Exclusion**” means, within the meaning of Article 10 of the **MIFID Org Regulation**, (as may be amended or replaced from time to time), an **FX FEC** which is a means of payment that satisfies all of the following requirements:

- (i) it is entered into in order to facilitate payment for identifiable goods or services, or direct investment;
- (ii) is settled physically (although non-physical settlement is permissible by reason of a default or other termination event),
- (iii) at least one of the parties is **Non-Financial Counterparty**, and
- (iv) it is not traded on **Trading Venue**.

Indicative examples of how the Payment Purpose Exclusion works, are provided at the following link: <https://www.tfimarkets.com/payment-purpose-examples>. The examples may be updated from time to time. The Client is responsible for making its own assessment, and the examples provided should by no means be interpreted as advice or opinion of the Company, which will bear no responsibility or liability in respect of the Client’s actions or decisions.

“**Payment Service Provider**” has the meaning attributed to this term by the Payment Services Law.

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Tel: (+357) 22 749 800 ▪ Fax: (+357) 22 817 496 ▪ Email: [info@tfimarkets.com](mailto:info@tfimarkets.com) ▪ Website: [www.tfimarkets.com](http://www.tfimarkets.com)

**“Payment Services Law”** means the Provision and Use of Payment Services and Access to Payment Services Law of 2018 (Law No. 31(I)/2018) and any relevant directives as may be amended from time to time.

**“Payment Services”** means the payment services provided by the Company as listed in clause 3 below.

**“Reference Exchange Rate”** means the foreign exchange rate used as a basis to calculate any currency exchange and which is made available by the Company or originates from publicly available source.

**“Determination Base of Reference Exchange Rate”** means the basis formed by the exchange rates of domestic and/or foreign credit institutions that cooperate with the Company, providing live exchange rates that may constantly fluctuate, from which the Company chooses the best available exchange rate for the Customer.

**“Rollover Cost/income”** refers to the cost/income that the Company may charge the Client to bring forward (pre-deliver) or to extend (roll over) the Fixed FX FEC transaction or any other Trade concluded under these Terms and Conditions to a date that is earlier or later than the predetermined maturity date, in whole or in part. A Rollover Cost/Income does not apply for pre-delivering a Flexible FX FEC. Rollover Cost/income depends on the interest rates of the currencies involved in the forward transactions. Clients can view and calculate the rollover cost/income through the following link: <https://www.tfimarkets.com/rollover-fees>

**“Terms and Conditions of TFI PAY Online”** means the terms and conditions for the use of the TFI Pay Online service offered by the Company.

**“TFI Pay Online”** means the 24-hour electronic service provided by the Company in order to allow Users to have access and use the Company’s services.

**“Trade”** means an FX FEC or any other transaction the Company enters into with the Client under or in connection to this Agreement.

**“Trading Venue”** means, as defined in the MIFID II Directive, a regulated market, a multilateral trading facility (‘MTF’) or an organized-trading facility (OTF).

**“User”** means any natural person who has been granted user Access to TFI Pay Online and includes the Customer who is a natural person and/or any natural person authorized by the Customer from time to time to access TFI Pay Online on his behalf.

**“Payment Transaction”** means an act, initiated by the Payer or on his behalf or by the Payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the Payer and the Payee.

**“Unique Identifier”** means a combination of letters, numbers or symbols, specified for the use of payment services by the payment service provider and which the payment service user must transmit for the unambiguous identification of the other payment service user and/or of the payment account of the other payment service user and/or of the payment account of the other user for a payment transaction.

**“Value Date”** means the reference time by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

## 2. About the Company

TFI Markets Ltd Headquarters: 178 Athalassas Avenue, Irene Tower, 2nd Floor, 2025 Nicosia, Cyprus. Incorporated and registered under the laws of the Republic of Cyprus under Certificate of Registration No. 253524. Tel. +357 22 749800, Fax +357 22 817 496, support@tfimarkets.com (hereinafter the “Company”).

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The Company owns and/or uses and/or operated the trade names “TFI PAY” (Registration No. EE37455) and “TFI HEDGE” (Registration No. EE37454) as the names of its products which include provision of services related to payments.

Licensed Payment Institution by the Central Bank of Cyprus, 80 Kennedy Avenue, 1076 Nicosia/ P.O Box 25529, 1395 Nicosia, tel. no +357 22 714100 fax no. +357 22 714959, online register with authorized entities at [www.centralbank.gov.cy](http://www.centralbank.gov.cy), License No.115.1.2.13/2018 and Cyprus Investment Firm License by the Cyprus Securities and Exchange Commission, 19 Diagorou Str. CY-1097 Nicosia, tel. no. +357 22 506 600 fax no. +357 22 506700, register of authorized entities at [www.cysec.gov.cy](http://www.cysec.gov.cy), License no. 117/10.

### **3. Details of the Payment Services to be provided:**

**The Company is authorized to offer the below Payment Services:**

- Services enabling cash to be placed on a Payment Account as well as all the operations required for operating a Payment Account
- Services enabling cash withdrawals from a Payment Account as well as all the operations required for operating a Payment Account
- Execution of Credit Transfers, including standing orders and transfers of funds on a Payment Account with the user’s payment service provider or with another payment service provider
- Execution of credit transfers, including standing orders and transfers of funds on a Payment Account with the user’s payment service provider or with another payment service provider, where the funds are covered by a credit line for a payment service user (Covered by a separate agreement)

During the course of providing the above Payment Services, the Company may also provide the following operational and closely related ancillary services:

- Ensuring the execution of payment Transactions
- Foreign Exchange Services
- Safekeeping Activities
- Storage and Processing of Data

### **4. Foreign Exchange Forward Exchange Contracts (‘FX FECs’) where the Payment Purpose Exclusion applies**

The Company may also agree to enter into an FX FEC with the Client where the Payment Purpose Exclusion applies, in accordance with Clauses 28 and 29 of this Agreement.

### **5. Specification of Information or Unique identifier required for a payment to be properly executed:**

Payment transactions shall be executed on condition that the Customer provides the Company with the following information:

- full name and address
- The name, address and bank account no. or the IBAN of the Payee
- The correct information of the Payee’s bank including its SWIFT Bank Identifier Code (BIC) or the bank name and full address of the branch where his account is kept
- Details regarding the purpose of the transaction. The Company reserves the right to request such proof i.e invoice, agreement or other document(s) for any payment(s) so as to verify the purpose of the payment.

Where the Customer is the Payee of an incoming Credit Transfer, he should provide the Payer with the correct BIC, IBAN or number of bank account of the Company as well as his Customer code to be included in the payment order so that funds are received by the Company. The Customer's customer code shall be deemed to be the Unique Identifier and the Company shall credit the funds in the Customer's account based on this.

In the case of Standing Orders, the Customer shall supply the Company with the Payee's name and address, the Payee's bank account number or IBAN, BIC or bank name and full address of where the account is kept, the date the order will come in effect, the frequency of executing the order, the expiry (duration of validity) of the order, the account to be charged when executing the order and the amount.

In the event that the Customer provides the Company with incorrect information, the Payment Transaction may be delayed or not executed. The Company shall not be liable for any loss the Customer or any other third party may suffer due to the incorrect information provided. The Company shall not be liable in case the Customer provides the Company with wrong information and the money is transferred to the wrong account.

## **6. Instructions and Authorisation and Revocation of Authorisation.**

The Customer provides the Company with his authorization for the execution of a payment order by giving his instructions in writing, original and/or by fax and/or email and/or electronically, with the signature of the Customer or his authorized representative, which should be consistent with the specimen signature given to the Company or any other means of identification of authenticity of the payment which the Company may define from time to time.

The Company shall execute the Payment Transaction only after receiving the Customer's consent/instructions for the execution of the Payment Transaction and after verifying the authenticity of the Payment Instructions, provided that the Customer has available funds in his Payment Account.

Where it is agreed that an instruction for the Execution of a payment transaction may be provided by fax and/or email, a specific agreement shall be signed for this purpose.' The instructions of the Customer for the execution of a Payment Transaction may not be revoked once they have been received by the Company, subject to the exceptions provided by the legislation currently in force, as well as those provided below.

Where the Customer gives an order for the execution of a payment transaction on a particular day in the future or on the day the Customer has set funds at the disposal of the Company, the Customer can revoke the instructions until cut off time of the Business Day preceding the value date.

After the above limits have expired, the instructions may be revoked if this is agreed between the Company and the Customer, provided that in cases where a payment order to the Company is initiated by the Payee or through him or in case the payment transaction is made through a direct debit as per the relevant clauses herein below and subject to the relevant provisions of any Applicable Law, the Payee's consent shall also be required.

Where the possibility of an order to be revoked exists, the revocation shall be made in writing and the same cut off times for the receipt of an order shall apply. If the notice of revocation is received after the cut off time it shall be deemed to have been received on the next Business Day. In case a rate has been agreed for the conversion of an amount prior to the payment, the FX transaction shall be irrevocable and the Customer is responsible to pay any differences in the FX rate in case the payment order is revoked.

A payment order to the Company initiated by the Payee or through him, becomes irrevocable for the Payer as soon as the Payer transmits to the Payee the payment order or the authorization for the payment transaction.

In case the payment transaction is made through a direct debit, the Payer may revoke the order by the end of the business day which precedes the date agreed on which his payment account is to be debited at the latest.



## 7. Time of receipt of payment order and cut-off times

- a. The time of receipt of the payment order shall be deemed to be the time at which the Company receives the payment order transmitted directly by the Payer or indirectly by the Payee or through the Payee provided that the time of receipt is on a Business Day for the Company.
- b. If the point in time of receipt is not on a Business Day for the Company, the payment order shall be deemed to be received on the following Business Day.
- c. The Customer may be entitled, up to the Company's discretion, to request that a payment is executed with value on the same day of receipt of the instruction but only if the instruction is received before the cut-off time of the currency to be paid.
- d. In the case of an agreement for the execution of a transaction on a specific day or at the end of a specific period or on the day on which the Payer shall have made funds available to the Company, the agreed time is considered to be the time of receipt of the order for the purposes of implementing clause 6 (a) above and the relevant provisions of the any Applicable Law. If a non-business day for the Company has been agreed, the payment order shall be considered to be received on the following Business Day.
- e. An instruction shall not be deemed as received until the client's account is funded with the necessary funds in order to cover the amount of the payment transaction or until the customer provides to the Company any other documentation required.
- f. Cut-off time is the time during a Business Day for the Company after which instructions received for the execution of a payment transaction shall be deemed to have been received on the next Business Day. Depending on the Payment Transaction to be executed and the currency, the cut-off times may vary. Specific cut-off times for each currency and/or type of transaction shall be made available from the Company's Customer Support and/or the Company website.

## 8. Time-frames for the execution of payment orders

If the Payee's PSP is established in a Member State and the Payment Transaction is executed in Euro from a Euro account, the amount shall be credited to the Payee's PSP's account within two Business Days after the day of receipt of the payment order if the order is received in writing, original and/or by fax and/or by scanned email, or within one Business Day after the day of receipt of the order if the order is received through electronic application as this may be defined by the Company in the future.

If the Payee's PSP is established in a Member State and the Payment Transaction is carried out in Euro by debiting a Payment Account kept in another currency of a Member State or the Payment Transaction is carried out in the currency of a Member State other than Euro by debiting a Payment Account kept in a currency of a Member State, the account of the Payee's PSP shall be credited within 4 working days from the time of receipt of the payment order.

The above time frames shall not apply in cases where the Payment Transaction is effected in any other currency than a currency of a Member State, where the Payee's account is kept in a country other than a Member state, in case the information provided by the Customer is incorrect or in the event any other provisions of the law apply.

Where the Company acts on behalf of the Customer as Payee, if the Payment Transaction is effected in Euro or in the currency of a Member State, the account of the Customer shall be credited on the day of crediting the Company's account with the amount of the Payment Transaction, provided that the notice for the receipt of the funds and the crediting of the Company's account is received prior to the Cut-off time mentioned in clause 6 above.

The Company may accept cash deposits in one of the Company's accounts held with a bank/co-operative society. The value date which will apply shall be the same value date as that applied by the bank/co-operative society which the Company holds an account with.

If the Payment Transaction is carried out or if the account to be credited is kept in a currency other than the currency of a Member State, the above time frames shall not apply. Additionally, the above time frames shall not apply in the event that the necessary information as described in clause 3 above is not provided with the Payment Transaction.

The Company shall not be obliged to obtain the Payee's prior consent in order to credit the account with the amount of the Payment Transaction.

## 9. Charges, Interest and Exchange Rates

- a. The Company shall have a right to charge the Customer for the maintenance of the Payment Account and/ or any fees, charges, commissions for the Execution of Payment Transactions in accordance to the Fees and Charges table given to the Customer at the time of opening of the Payment Account and also available on the Company's website.
- b. The Company shall have the right to charge/credit the client a Rollover Cost/Income due to the delay of or request of the client to extend the settlement of any Trade concluded under these Terms and Conditions. In case the Company accepts the client's request to extend the settlement of a Trade or the client delays the settlement of a Trade the Company will charge/credit the abovementioned Rollover Cost/Income and in this case the applicable value date of the Trade will be rolled over to the next business day, unless otherwise agreed with the client.
- c. The Company shall have the right to charge/credit the client a Rollover Cost/Income should the Company accept a client's request to pre-deliver any Trade concluded under these Terms and Conditions, except where the Trade refers to a Flexible FX FEC.
- d. In accordance with the provisions of the Payment Services Law, for payment transactions provided within the European Union where both the Payer's and the Payee's Payment Service Providers are, or the sole Payment Service Provider in the payment transaction is, located in Member States and the payment is done in the currency of a Member State, for payments which do not involve currency exchange, the Payee shall pay the charges levied by his Payment Service Provider and the Payer shall pay the charges levied by his Payment Service Provider.
- e. A different arrangement for charges can be made only in case the payment involves currency exchange, at an additional charge, according to the Table of Charges and Fees.
- f. In the event that currency conversion is required before the execution of a Payment Transaction, the Company shall effect the conversion at the selling (bid) or buying (ask) rate as applicable, which applies on the time of agreement for the currency conversion (transaction time). This shall be calculated on the basis of the exchange rates received on any FX derivative instrument from the Company's liquidity providers plus or minus a margin.
- g. The Company shall not pay any interest on the Customer's balances.
- h. The Company, on its discretion, shall charge the Customer debit interest equal to the Overnight Libor of the Payment Account's currency plus margin 3% for any debit balances that may occur in the Customer's Payment Account.
- i. The following are expressly agreed:



- (i) Due to the volatility of the Foreign Exchange market, changes to the exchange rates shall be applied immediately and without any notice to the Customer.
- (ii) The company, in order to apply in its transactions with the Customer, the constantly fluctuating exchange rates, seeks the prior approval of the Customer for the execution of the transaction based on the Determination Base of Reference Exchange Rate, as defined in the present terms, and the final exchange rate at which the currency conversion is carried out, as per the client's request, is agreed with the client, who has the choice of either accepting or rejecting it.
- (iii) Exchange rates provided by phone or any other means without an agreement for currency conversion being concluded, are indicative only and can change any time.

## 10. Means of Communication

The Customer agrees that the Company shall be entitled to record all communications between the Parties or any representative thereof and maintain such records at its discretion and without further notice.

The Company shall make available to the Customer all the information that the Company is obliged, according to the relevant provisions of the Payment Services Law, to provide or to make available to the Customer. This information includes, the amount of the payment transaction and of any charges, where applicable, the exchange rate used, and the debit or the credit value date depending on whether the Customer is a Payer or Payee. Such information shall be made available at least on a monthly basis, free of charge.

The Company shall provide to the Customer the abovementioned information as obliged by the relevant provisions of the Payment Services Law or any other notices, statements or other documents either:

1. by posting it to the mailing address provided by the Customer
2. by electronic means i.e email or fax, provided that such information has been provided to the Company and that the Customer has given his consent to receive information by electronic means
3. in any other durable medium the Company considers suitable.

As regards the use of the TFI Pay Online service by the User (who is a natural person who has been granted user Access to TFI Pay Online and may be the Customer or authorized by the Customer for this purpose), the Company aims at the immediate updates of the accounts following Payment Transactions. The provision of such information is further subject to the relevant terms on provision of information of the Terms and Conditions of TFI Pay Online.

In case the Customer has to notify the Company, he can do so by:

1. telephone by calling +357 22 749800 on a 24 hour basis 5 days a week (Mon-Fri)
2. fax +357 22 817496
3. email: support@tfimarkets.com
4. in writing at the Company's postal address: P.O Box 16022, 2085 Nicosia, Cyprus

Failure of the Customer to do so shall be considered as negligence.

## 11. Language of Terms and Conditions and communications

The present Terms and Conditions, the account opening forms and any other related or ancillary documents (the 'Documents') have been done in an English and in a Greek version. Both versions are valid and legally binding; provided that, if and where there is a conflict between the English and the Greek versions for purposes of interpretation the English version shall prevail, irrespective of whether the parties chose and signed the Greek

language versions of the Documents.

Communications with the Company can be done either in English or in the Greek language, and the Company will operate a bilingual website with materials in both languages.

The Company reserves the right to register and/or operate other websites and/or electronic systems for marketing and/or promotional purposes in any language other than the abovementioned languages.

The Customer should always read and refer to the Website for all information and disclosures about the Company and its activities.

## **12. Right for repetition of the Terms and Conditions**

This Agreement and these Terms and Conditions contained herein, and any amendments to them, shall be published on the Company's website and should the Customer require to re-visit them, he shall be referred to the website.

## **13. Use and Safekeeping of the Payment Instrument**

- 13.1** The Customer shall act with all due care and diligence in the performance of this Agreement, and it shall act responsibly and in accordance with the legal provisions concerned and it should immediately inform the Company of any irregularity.
- 13.2** The Customer and each person entitled to use the Payment Instrument must do so responsibly and in accordance with the terms governing the issue and use of the Payment Instrument, as stated and particularized in this Agreement and in the Terms and Conditions of TFI PAY Online, as applicable.
- 13.3** The Customer and each person entitled to use the Payment Instrument must safe keep any Payment Instruments provided by the Company at all times. The Customer and each person entitled to use the Payment Instrument must keep any Payment Instructions, Access Codes to the Company's Website or any other paper or electronic payment instrument, used to send instructions to the Company by any means (including email, fax, online), confidential and secure at all times. Should the Customer or any other person entitled to use the Payment Instrument become aware of or suspect that any of the Payment Instruments have been lost or stolen, fraudulently accessed, misappropriated, intercepted, or exposed to abuse, used without authorization or any information was disclosed to a third party, he must notify the Company without undue delay as described in the relevant 'communication' section.

## **14. Suspension of a Payment Instrument**

- 14.1.** The Company may at any time and at its absolute discretion request and/or demand from the Customer and/or the User to terminate the use of a Payment Instrument and/or to suspend or block the use of a Payment Instrument and/or to limit and/or deny the Customer and/or the User's access to TFI PAY ONLINE and refuse to execute any payment order (collectively 'Suspension of Payment Instrument') for justified reasons, including:
  - 14.1.1** where there is reasonable doubt as to the safety of the Payment Instrument
  - 14.1.2** where there is suspicion of fraudulent or without authorization use of the Payment Instrument

- 14.1.3 where there is reasonable doubt as to the credibility of the Customer and where there is considerably increased risk of his inability to settle his debt, should there is a credit connected to the payment instrument.
- 14.2. Should the Company exercise its right to Suspend a Payment Instrument, it shall notify the Customer in any manner it deems appropriate as provided for in this Agreement, and will provide the reason of the suspension if possible, before or immediately after the suspension at the latest.
- This obligation of the Company to notify the Customer will not apply in case such information would conflict with any safety reasons or if it is prohibited by a provision of the Cyprus or EU law.
- 14.3. The Company will cease the suspension of the Payment Instrument or replace it with a new Payment Instrument as soon as the above circumstances stop to exist and provided that this is not prohibited by another provision of the Cyprus or EU Law.
- 14.4 The Company shall not be liable for any damage and/or loss suffered by the Customer as a result of the above actions for the above reasons.

## 15. Responsibility and Liability

- 15.1 The Company shall perform its obligations with reasonable care.
- 15.2 In any event and notwithstanding anything in this Agreement:
- 15.2.1 The Company shall be liable to the Customer only for direct loss suffered as a result of the Company's wilful neglect in the performance of its obligations pursuant to these Terms and Conditions or fraud on behalf of the Company and/or its employees, and in circumstances where the loss is reasonably foreseeable by the Company.
- 15.2.2 The maximum liability of the Company in respect of any payment made or received under or in connection with this Agreement, howsoever arising (including by way of contract and/or tort) is the amount of the payment plus interest on the face value of the payment for the period of payment delay, calculated based on the overnight LIBOR of the relevant currency or other reference rate, which will be communicated to the Customer in case LIBOR is not available.
- 15.2.3 Liability of the Company for any loss of profit or opportunity, indirect, incidental or consequential loss or damage (including special or punitive damages) even if advised of the possibility of such loss or damage is expressly excluded.
- 15.2.4 No liability of the Company exists for any amount or loss or damage of any kind that may result to the Customer (including without limitation, any direct, indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, use of money, or other loss or damages) in relation to:
- 15.2.4.i Any act or omission of the Customer or any of the Customer's third parties (including Customer's agents, contractors or vendors);
- 15.2.4.ii Fraudulent conduct by the Customer and/or any third party engaged by the Customer;
- 15.2.4.iii Customer's negligence or wilful misconduct including in relation to the provision of correct and sufficient information required for the proper provision of any Payment Service.

15.2.5 The Customer agrees to indemnify the Company on demand against any:

15.2.5.i Actions, claims, demands, proceedings which may be brought against the Company; and

15.2.5.ii Losses, costs, damages, expenses (including, without limitation, legal fees) or liabilities incurred or sustained by the Company,

which arise out of or in connection with the proper performance of the Company's duties under these Terms and Conditions in accordance with applicable laws and regulations, the Customer's instructions, or the Customer's breach of any of its obligations or duties under these Terms and Conditions.

15.2.6 Force Majeure. The Company shall not be liable for any failure, delay or interruption in the performance of its obligations hereunder if such failure, delay or interruption results from the occurrence of a Force Majeure Event and the Company shall have no responsibility of any kind for any loss or damage thereby incurred or suffered by the Customer. In such cases all amounts due to the Company Provider hereunder shall continue to be paid as and when due and the Customer's remaining obligations shall continue in full force and effect and the obligations shall be performed and carried out as soon as legally and practicably possible after the cessation of such event or circumstances.

Provided that the Company, when it becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement shall forthwith notify the Customer of the occurrence of the Force Majeure Event and of the period for which it is estimated that such failure or delay will continue (if possible to be estimated) and that the Service Provider shall take reasonable steps to mitigate the effect of the Force Majeure Event.

15.2.7 **Company's failure to comply with obligations to Applicable Law:** The Company shall not be liable to the Customer to comply with its obligations under this Agreement if the non-compliance is due to the obligations of the Company under any Applicable Law, including Cyprus or EU Law.

15.2.8 **Use of intermediary financial institutions.** The Company may use intermediary banks or payment institutions for the execution of Payment Transactions (the 'Intermediary'). In the selection, appointment and review of the Intermediary the Company shall exercise all due skill, care and diligence taking into account the expertise and market reputation of the Intermediary; but shall bear no responsibility or liability for any act or omission of the Intermediary affecting the Customer's rights.

## 16. Notification and rectification of unauthorized or incorrectly executed Payment Transactions.

16.1 The Customer shall obtain rectification of an unauthorised or incorrectly executed payment transaction from the Company only if the Customer and/or User notifies the Company without undue delay on becoming aware of any such transaction giving rise to a claim, including that under section 89 of the Payment Services Law, and no later than thirteen (13) months after the debit date.

The applicable deadline for notification in respect of a Customer who is not a Consumer, or a Micro-Enterprise shall be two (2) months from the date when the Company has provided or made available the information regarding the execution of the transaction. The above time limits for notification do not apply where the Company has failed to provide or make available the information on the payment transaction in accordance with the relevant provisions of the Payment Services Law.

- 16.2 In the above case, and provided that the notification was made on time, the Customer is entitled to full rebate of the amount debited and any charges/fees that he incurred due to the payment, so that his account is restored to the same state in which it would have been had the unauthorized payment transaction not been made. The full refund of the amount should take place no later than by the end of the following business after the Company has been notified of the Payment Transaction. Provided that the Company may not refund the amount as above when it has reasonable grounds for suspecting fraud.
- 16.3 Where the payment transaction was affected in a currency of a Member state and the Payment Service Provider of the Payee is established in a Member State, in the event the Customer disputes the correctness of a Payment Transaction, the Company shall bear the burden of proving that the Payment Transaction was authenticated, accurately recorded, entered in the accounts and not affected by any technical breakdown or other deficiency. Provided that, where the Customer is not a Consumer or a micro-enterprise the Company shall not bear such burden of proof.
- 16.4 If, following the refund of the amount of the Payment Transaction by the Company, a relevant investigation concludes that the Customer was not entitled to the rebate, the Company shall reverse the crediting and/or with charge the Payment Account with the said amount. The Company will provide the Customer with reasonable notice before making any such reversal and/or charge.

## 17. Liability of the Payer and the extend of the charge of the Customer

- 17.1 Notwithstanding all that is mentioned in clause 15 above, the Customer will be charged with an amount up to Euro 50 resulting from the use of a lost or stolen Payment Instrument or from the misappropriation of a Payment Instrument. This clause shall not apply if:
- 17.1.1 the loss, theft or misappropriation of a Payment Instrument was not detectable to the Customer prior to a Payment Transaction, except where the Customer has acted fraudulently; or
  - 17.1.2 the loss was caused by acts or lack of action of an employee, agent or branch of the Company or of an entity to which its activities were outsourced; or
  - 17.1.3 the Company has not required that strong Customer authentication be applied; or
  - 17.1.4 the Company has not provided the Customer with the ability to notify the Company and request immediate blocking of the Payment Instrument.

## 18. Customer not entitled to restitution in specific cases

- 18.1 Notwithstanding clauses 15 and 16 of this Agreement, the Customer shall not be entitled to restitution in whole or in part and shall bear all the losses relating to any unauthorized payment transactions in the following cases:
- 18.1.1 The loss was incurred due to the fraudulent act(s) of the Customer and/or the User, or
  - 18.1.2 The loss was incurred due to a breach by the Customer and/or the User of one or more of their obligations in this Agreement and/or the Terms and Conditions of TFI PAY Online with intent or gross negligence, or
  - 18.1.3 The loss was incurred due to the failure of the Customer and/or the User to use the Payment Instrument in accordance with the relevant provisions of this Agreement and/or the Terms and Conditions of TFI PAY Online with intent or gross negligence, or

18.1.4 The loss was incurred due to the failure of the Customer and/or the User to comply with their obligations to safekeep the Payment Instrument with intent or gross negligence, e.g. not notifying loss or theft or misappropriation of the Payment Instrument, or not notifying the Company of a change or address or contact details.

18.2 Provided that, the Customer shall not bear any loss incurred from unauthorized Payment Transactions:

18.2.1 From the point in time the Customer and/or User has notified the Company in accordance with clause 15 of this Agreement, unless he acted fraudulently, or

18.2.2 Where the Company failed to provide adequate means to the Customer and/or the User to notify the Company of loss, theft, misappropriation, or unauthorized use of the issued Payment Instrument pursuant to the relevant provisions of Section 52 of the Payment Services Law.

## 19. Responsibility of the Company for a payment order initiated directly by the Payer

19.1 The Company has the following responsibility and obligations where the Customer is not a Consumer or a Micro – Enterprise and subject to the provisions of clause 15 of this Agreement.

19.2 Subject to the provisions of clauses 14 and 15.1 of this Agreement, if the Payment Transaction was initiated directly by the Payer, the Company shall be liable to the Payer for the correct execution of the Payment Transaction unless it can prove to the Payer, and where relevant, to the Payee's Payment Service Provider, that the amount of the payment transaction arrived to the Payee's Payment Service Provider. If the amount of the Payment Transaction arrived to the Payee's Payment Service Provider, the Payee's Payment Service Provider shall be liable to the Payee for the correct execution of the Payment Transaction.

In any case, it is understood that the Company shall not be obligated to refund any amount prior to receiving confirmation of the cancellation of the order by an associate and/or intermediary whom the Company uses for the purposes of effecting the Payment Transaction. It is provided that if the amount of a Payment Order has been converted in another currency, the Company shall be obligated to refund the amount of the Payment Order after converting it back to the original currency at the buying rate applicable on the date of crediting the Payer's Account and which is based on the Reference Exchange Rate.

19.3 If the Customer is the Payer and provided that the liability of the Company specified in clause 18(2) exists, the Company shall immediately refund to the Customer the amount of the non-executed or defective Payment Transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. The credit value date on the Payer's payment account shall be no later than the date the amount had been debited.

19.4 If the Customer is the Payee and provided that the liability of the Company specified in clause 18(2) exists, the Company shall provide and credit the amount of the Payment Transaction to the Customer's paying account without delay. The credit value date cannot be later than the day the correct execution would have happened.

19.5 If the execution of the payment transaction is late, the Payee's Payment Service Provider – at the request of the payment service provider acting on behalf of the Payer – shall ensure that the credit value date on the beneficiary's payment account is not later than the day the correct execution would have happened.

19.6 The Company shall be liable to the Customer for which it acts as a Payment Service Provider, for any charges he is responsible and for any interest to which he is subject as a consequence of non-execution



or defective, including late, execution of the Payment Transaction.

- 19.7 The Company will bear no liability or obligation arising from this clause where the principal place of business of the other Payment Service Provider involved in the Payment Transaction is not located in an EEA member state.
- 19.8 The Company will bear no liability or obligation arising from this clause if a Payment Order was not executed or executed defectively due to the fact that information provided for the proper execution of the Payment Order was incorrect/insufficient.
- 19.9 In case of a non-execution or a wrong execution of a Payment Transaction and irrespective of the liability under this clause, the Company shall take reasonable steps to trace the Payment Transaction and notify the Customer and/or the User of the outcome, when this is requested by the Customer and/or the User; and, if applicable, to recover the funds which concern the Payment Transaction. Where the recovery of funds shall not be possible, the Company shall provide the Customer/User, following his written request, with all the information available to it, which is important to the Customer/User, so that he may bring a legal claim to recover the funds. The Company may apply reasonable charges for recovering the funds.

## **20. Responsibility of the Company for Payment Transactions authorized by the Payer and initiated by the Payee.**

- 20.1 The Customer and/or User, acting as a Payer, is entitled to a full refund from the Company of a Payment Transaction he has authorized, and which was initiated by or through a Payee and has been executed, provided all the following conditions are cumulatively met:
  - 20.1.1 The authorization did not specify the exact amount of the Payment Transaction.
  - 20.1.2 The amount of the Payment Transaction exceeded the amount the Payer could reasonably have expected taking into account the previous spending pattern, the conditions in this Agreement and relevant circumstances of the Payment Transaction, except where this is due to an increase or decrease associated with currency conversion provided this is in accordance with this Agreement.
  - 20.1.3 The payment transaction is made in euro or in a currency of the countries of the E.U. or the E.E.A. and the payment service provider from or to whom the payment is made is located within the countries of the E.U. or the E.E.A.
  - 20.1.4 The Customer and/or User submits a request within eight (8) weeks from the date of debiting the account.
- 20.2 Within ten (10) business days of receiving a request for a refund, the Company shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the bodies to which the Customer and/or User may refer the matter, i.e. file a complaint to the Company or the national authorities. Provided that, for purposes of examining the request for a refund, the Customer and/or User must provide the Company with all necessary and required evidence as per clause 19.1 in support of his request for a refund.
- 20.3 Notwithstanding the above clauses 19.1 and 19.2, the Customer is not entitled to refund, if
  - (a) he gave consent to execute the Payment Transaction directly to the Company and information on the Payment Transaction was provided or made available in an agreed manner to the Customer and/or the User for at least four (4) weeks prior to the date the Payment Account was debited and/or

- (b) he does not qualify as a Consumer or Micro-Enterprise.

## 21. Refusal to execute a payment order

- 21.1 The Company may at any time and at its absolute discretion, without prejudice to any of the provisions contained in this Agreement under clause 5 above with regard to the authorization for the execution of a payment order, the observance of the any Applicable Law, to refuse, delay, suspend and or terminate the execution of any order and/or payment transaction provided this is justified on the following grounds:
- funds are not available in the Customer's account
  - there is a suspicion of any illegal activity, including fraud, money laundering or terrorism financing
  - there is suspicion of an illegal transaction
  - there is a suspicion of improper use of the customer's account
  - the purpose of the payment cannot be established and/or the customer has not provided relevant supporting documentation, where these are required
- 21.2 In addition, and without prejudice to the generality of the abovementioned, the Company may take any of the above measures including delay or suspension of execution, pending the satisfactory completion of all necessary checks and due diligence for the purpose of compliance with any Applicable Law, including anti-money laundering and financial fraud prevention legislation.
- 21.3 In the case where the Company refuses to execute a payment transaction, the Company shall make available to the Customer the reason(s) for such refusal and the procedure for correcting any factual mistakes that led to the refusal, unless prohibited by other relevant Cypriot or EU legislation.
- 21.4 The Company shall not be liable for any damage and/or loss suffered by the Customer as a result of the above actions for the above reasons.
- 21.5 An instruction which the Company refused to execute is deemed as not received until the reason for which the payment was refused stops to exist (if applicable).

## 22. Amendment of this Agreement

**This Agreement may be amended under the following circumstances:**

- a. Unilaterally by the Company if such an amendment is mandatory pursuant to any amendment of any Applicable Law or if any other authority issues a decision which might, in the opinion of the Company, affect this Agreement in any way or in case the amendments are to the Customer's benefit, subject to the relevant provisions of the Payment Services Law.
- In any such case, the Company shall notify the Customer of the said amendment either by a durable medium or through the Website and the Customer's consent shall not be required for any such amendment.
- b. In cases where the amendment of this Agreement is not mandatory as provided in clause 21 (a) above, the Company shall notify the Customer of the relevant proposed amendments by durable medium in advance at least 2 months before the date on which such amendment is intended to enter into force.

In case the Customer has any objections to the proposed amendments he must notify the Company in writing (which includes the use of a valid and previously communicated email address) of such objection prior to the proposed

date for the entry into force of such amendment. Furthermore, the Customer shall have the right to terminate the Agreement at any time prior to the proposed date of entry into force of such amendments by sending the Company a registered letter, and on the condition that all pending Transactions/obligations and/or debit balances of the Customer shall be settled.

In the event that the Customer does not notify the Company of any objections on the proposed amendments before the proposed date for the entry into force of such amendments, it shall be deemed that the Customer has consented and/or has accepted the relevant proposed amendments.

In its amendment proposal, the Company shall remind the Customer of the content of this clause and his right for termination.

Specific amendment in relation to LIBOR

LIBOR is expected to be replaced by other reference rates in 2021 - 2022. The Company will make a relevant announcement on its website and notify the Customer by durable medium two months prior to the date of replacement of LIBOR, informing him of the new reference rate(s) and the differences with LIBOR. The Customer shall have the right to terminate the Agreement at any time prior to date of replacement of LIBOR by sending the Company a registered letter, and on the condition that all pending Transactions/obligations and/or debit balances of the Customer shall be settled. In the event that the Customer does not notify the Company as above, it shall be deemed that the Customer has consented to the change.

### **23. Duration of the contract**

This Agreement shall not have an expiration date and shall continue to be in force until is terminated either by the Customer or the Company, as provided in the relevant clauses herein.

### **24. Termination of the agreement**

The Customer is entitled to terminate this Agreement at any time by giving the Company written notice, specifying therein the date of termination (which must not be a date less than 1 week from the notification date), on the condition that in the case of such termination, all pending obligations and/or debit balances will be settled. The date such notice has been received by the Company shall be deemed to be the first day of the notice.

The Company reserves the right to impose additional charges for the termination of this agreement, according to the Charges and Fees table, should the agreement be terminated within 12 months from the date of signing.

Where the Customer is neither a Consumer nor a Micro-Enterprise, the Company reserves the right to impose such charges even after the period of 12 months, according to the Charges and Fees table.

The Company may terminate the Agreement at any time by giving the Customer a two-month written notice, specifying therein the date of termination.

The Company may terminate the Agreement immediately without giving a written notice under the following circumstances:

- a. Death of the Customer;
- b. If any application is made or any order is issued or a meeting is convened or a resolution is approved or any measures of bankruptcy or winding up of the Customer are taken;

- c. Such termination is required by any competent regulatory authority or body or court of law;
- d. The Customer violates any provision of the Agreement and/or if in the Company's opinion, the Agreement cannot be implemented;
- e. The Customer involves the Company directly or indirectly in any type of fraud;
- f. Under any circumstances specifically described and envisaged in this Agreement.

The termination of the Agreement shall not in any case affect the rights which have arisen, existing commitments or any contractual provision which was intended to remain in force after the termination of the Agreement; and in such case of termination, the Customer shall pay to the Company, subject to the relevant provisions of the Payment Services Law:

- a. Any pending fee of the Company and any other amount remaining due and/or payable to the Company under this Agreement or any other agreement between the parties;
- b. Any charge and additional expenses incurred or to be incurred by the Company as a result of the termination of the Agreement;
- c. Any damages which arose during the arrangement or settlement of pending obligations.

Upon termination of the Agreement, the Company shall immediately hand over to the Customer, at the offices of the Company or at any other site and under any condition which the Company may decide, the Customer's assets in its possession, provided that the Company shall be entitled to keep such Customer's assets as necessary in order to settle any transactions and/or pay any pending obligations of the Customer, including, without limitation, the payment of any amount which the Customer owes to the Company under this Agreement.

It is understood that any rights of withdrawal of the Customer under any law are not affected and the provisions of the Cyprus Law on void and voidable contracts apply especially under the Contracts Law.

## **25. Applicable Law and Jurisdiction**

This Agreement shall be governed and construed under the laws of the Republic of Cyprus and the competent Courts for the adjudication of disputes shall be the Courts of the Republic of Cyprus.

## **26. Filing of complaints and out of court settlement of disputes**

The Company aims to provide high quality services and to amicably resolve any customer complaints. Should the Customer have any complaints, he is encouraged to utilize the Company's Resolving Customer Complaints Procedure available on the Company's website.

Independently of the above, the Customer has the right to lodge a complaint to the Central Bank of Cyprus which is the competent Supervisory Authority and which may organise a procedure of out-of-court settlement of disputes in accordance with the provisions of the Law. The Customer may also utilize the services of the Financial Ombudsman.

## 27. Safeguarding of funds

Funds received for the purpose of a foreign exchange transaction, prior to the provision of a payment service, will be safeguarded upon the amount bought by the Customer is received by the Company from the liquidity provider.

Funds received by the Company from a Customer for the execution of a payment transaction will be kept separate at all times from those of any other legal or natural persons.

Funds not yet delivered to the payee held by the Company by the end of the Business Day following the day of receipt, shall be deposited in a separate account in a credit institution.

Funds deposited with Credit Institutions shall be protected at all times in the interest of the payment service users against claims of other creditors of the Company, especially in the event of liquidation or dissolution and will be handed over to the liquidator only by court order.

## 28. Foreign Exchange Forward Exchange Contracts ('FX FECs') where the Payment Purpose Exclusion applies

28.1 The Company may agree to enter into an FX FEC with the Client where the Payment Purpose Exclusion applies. The client understands and agrees that:

- (i) The FX FEC will be provided on the basis of this Agreement and the completion of a relevant Schedule by the client, subject to a request of a client-Non-Financial Counterparty, which the Company may, in its absolute discretion, accept or reject.
- (ii) The Company buys and sells currency for non-speculative purposes only and will NOT trade with the Client if the Client is seeking to enter into FX FECs as an investment or to profit by pure speculation on foreign exchange rate movements;
- (iii) The Client which requests to enter into an FX FEC with the Company, shall at all times be wholly responsible and obliged for meeting all the requirements of the Payment Purpose Exclusion and it represents, for the purpose of entering into an FX FEC with the Company, that the Payment Purpose Exclusion applies and has sufficient expertise to understand what the PPE is. On the basis of the Client's representation the Company will be entitled to reasonably assume, that the Client which requests to enter into an FX FEC with the Company on the basis of this Agreement and of the Schedule, meets all the requirements of the Payment Purpose Exclusion and does not enter into FX FEC as an investment or to profit by pure speculation on foreign exchange movements. The Client undertakes to immediately notify the Company if the purpose of its FX FEC (i) has ceased to become one to facilitate payment of identifiable goods, services and/or direct investment or (ii) could be considered as being for speculative reasons.
- (iv) Breach of the above terms, shall entitle the Company to full indemnification on demand by the Client, in accordance with Clause 15 of this Agreement.

Notwithstanding the above, the Company may opt to make its own assessment in relation to whether the Client's request to enter into an FX FEC with the Company meets the requirements of the PPE and is not made for speculative reasons; and in this case, the Company will not enter into an FX FEC with a Client if, in its absolute discretion, is not satisfied that the Client requesting to enter such FX FEC with the Company meets all the requirements of the PPE and is not entering the FX FEC for speculative purposes.

28.2 The Parties agree that:

- (i) In relation to Fixed FX FECs, the Client may ask the Company to bring forward (pre-deliver) or to

extend (roll over) the Fixed FX FEC transaction to a date that is earlier or later than the predetermined maturity date, in whole or in part. Should the Company accept such request, Rollover Costs may apply.

- (ii) In relation to Flexible FX FECs, early termination of any transaction will not be subject to any charges. The client acknowledges that the Company reserves the right to apply a higher mark-up on Flexible FX FEC transactions.

**28.3** At any time and from time to time, the Company may, in its sole discretion, notify the Client of a Margin Call. The Client understands and agrees that in the event the Company considers (in its sole discretion) from time to time, that the amount of Margin the Client has transferred to the Company is insufficient to secure or otherwise collateralise the Client's obligations and liabilities to the Company, the Company may make additional Margin Calls to the Client.

**28.4** In the event of a Margin Call, the Client must transfer the relevant Margin amount (or additional Margin amount, as the case may be) to the Company's designated account within twenty-four (24) hours of the Company notifying the Client of a Margin Call.

**28.5** In providing the Company with Margin, the Client agrees that in relation to such monies the following may apply at the absolute discretion of the Company:

- (i) They may become the absolute property of the Company, free from any equity, right, title or interest of the Client;
- (ii) They may be used by the Company in the ordinary course of business, including without limitation to cover any exposure the Company may have to a third-party liquidity provider with whom the Company has entered into transactions to hedge its exposure;
- (iii) They may not be maintained by the Company in a segregated account;
- (iv) They may not be subject to a trust, deemed or otherwise, in the Client's favour and
- (v) They represent an unsecured claim against the Company for an amount equal to such amount and do not represent a claim, by way of trust or otherwise to the Margin or any assets of or under the control of the Company.

**28.6** At any time:

- (i) the Client may request the return of any excess Margin; and
- (ii) subject to the Company determining that there is excess Margin on the day on which the Client makes such request, the Company will return to the Client as soon as reasonably practicable the relevant excess (if any).

**28.7** The Client is not entitled to receive any interest on Margin delivered to the Company.

**28.8** If the Client requests and the Company agrees to Close-Out an FX FEC in advance of its original maturity or termination date, there may be a delay in the Company returning Margin (subject to any deductions the Company may make from such Margin pursuant to the terms of this Agreement) to the Client whilst the Company closes out or otherwise terminates any transaction(s) which it has entered into with its liquidity providers and such liquidity providers return the margin related to such transaction(s) to the Company.



## 29. Close Out

29.1 Without prejudice to and in addition to the rights of the parties pursuant to Clause 24 above, the Company may Close Out any or all Trades that the Client has with the Company, without notice to the Client:

- (i) if the Client fails to make any payment to the Company when due (including, without limitation, the payment of Margin);
- (ii) if the Margin level % falls below the Close-out Margin level %;
- (iii) if the Client fails to provide the Company with any information it has requested from the Client;
- (iv) Any warranty, representation or undertaking the Client has given is or becomes, in the Company's opinion, materially inaccurate, incorrect or misleading;
- (v) In the event that any application is made or any order is issued or a meeting is convened or a resolution is approved or any measures of bankruptcy or winding up of the Client are taken;
- (vi) If the Client takes any action (or refrain from taking any action) which places the Company or the Client in breach of Applicable Laws;
- (vii) If the performance of the Company's obligations under this Agreement becomes illegal or contrary to Applicable Laws;
- (viii) If the Client breaches any term of this Agreement;
- (ix) The Trade is outside the Company's risk appetite;
- (x) If the Company decides in its sole discretion that its business relationship with the Client presents a business risk to the Company; or
- (xi) If at any time during the term of an FX FEC, the Client notify the Company or the Company otherwise becomes aware that the purpose of such FX FEC (i) no longer meets all the requirements of the PPE or (ii) could be considered to have been entered, or otherwise continue to be held by the Client, for speculative reasons.

29.2. If the Company Closes Out one or more Trades pursuant to this Clause 29, or it agrees to Close Out a particular Trade(s) following a request by the Client:

- (i) where the Company has elected to Close Out any or all current Trades following the occurrence of any of the events/circumstances specified in Clause 29.1, it shall cancel any pending Orders and we will not be required to accept any further instructions or Orders from the Client;
- (ii) the Company will buy-back/sell the currency that it has sold/bought for the Client in connection to the relevant Trade(s) at any market rate that is available to the Company. If the Company incurs any Loss the Client will be liable to the Company for the amount of that Loss (as well as any costs incurred by the Company);
- (iii) the Client acknowledges that the amount of any Loss of the Company realised on the Close Out of a Trade is a debt payable by the Client to the Company and agrees that the Company may immediately deduct the total amount of any Loss (together with any costs) from the Account of the Client (if funds are available to do so);

- (iv) if the amount the Company is seeking to recover from the Client exceeds the amount of any Margin or funds available in the Client's Account, the Client must immediately pay the remaining balance to the Company upon being notified by the Company of the total amount due; and

### 30. Set-off

The Company may, at its discretion, from time to time and without the Customer's authorization or prior notice, set-off any amounts held on behalf and/or to the credit of the Customer against any of the Customer's obligations towards the Company and/or merge, consolidate or combine any accounts of the Customer with the Company. Unless otherwise agreed in writing by the Company and the Customer, this Agreement shall not give rise to rights or credit facilities.

### 31. Confidentiality and Personal Data Protection pursuant to GDPR

The Company shall have a duty of confidentiality with respect to its relationship with the Customer, both for the duration of the Agreement and following its termination. Such confidentiality shall apply to all communication, documentation or other information exchanged during the course of such relationship.

The Company shall have the right, without giving prior notice to the Customer, to disclose or report such details on the transactions of the Customer or any other details and/or information which the Company may deem necessary in order to comply with the provisions of any applicable law or third party or regulatory or other competent authority having the right to demand such disclosure or to comply with any obligation of the Company to proceed with such disclosure to any third party.

Without prejudice to the generality of the above, it is stated that the processing of personal data is permitted when this is necessary to safeguard the prevention, investigation, detection and prosecution of payment fraud.

The Company shall comply with all requirements for personal data protection of its Customers as described by the EU General Data Protection Regulation 2016/679 (hereafter "GDPR") and with Section 94 of the Payment Services Law. The Company has a published Privacy Policy, in accordance with GDPR, which can be accessed on the Company's website. Further, the Company shall use all reasonable endeavours to:

- ensure the safe-keeping of personal data of the Customer which shall include but not necessarily be limited to keeping such data in a commonly used and machine readable format that allows transmission of such data to the Customer or to any entity the Customer requests,
- implement appropriate technical and organisational measures in an effective way in order to meet the requirements of GDPR and protect the rights of the Customer,
- hold and process only of data strictly necessary for the completion of the Company's obligations under this Agreement,
- limit the access to personal data only to those needed to carry out the processing,
- maintain the ability to act and to indeed act on the Customer's request to obtain from the Company confirmation as to whether or not personal data concerning the Customer is being processed, where and for what purpose,
- maintain the ability to provide and indeed to provide a copy of the personal data to the Customer in an electronic format upon request from the Customer and maintaining the ability to erase and indeed to erase personal data and cease further dissemination and processing of the data upon the Customer's request provided that the obligation to process and maintain Customer data for certain periods of time in accordance with applicable legislation is not violated and appropriate conditions under GDPR are met,
- effectively inform the Customer without any undue delay and, at any rate, not later than within 72 hours of any personal data breach as well as of any breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, personal data.

The Customer declares that, he read and understood the published privacy policy of the company which explains in a clear and explicit manner the purpose of processing, the recipients of his personal data or the categories of recipients, the Customer's obligation to render his co-operation and the possible repercussions of not doing so, and the right of accessing and correcting with respect to the personal data that have been submitted or shall be submitted during the duration of this Agreement. Furthermore, the Customer has been informed that the Company may combine the filing systems of several departments.

Without limitation of the foregoing, the Customer further declares that, he read and understood the published privacy policy of the company which explains the following rights of the Company and provides his unconditional consent: That the Company may provide to any banks or other regulated financial institutions any supporting documentation and/or information received from the Customer necessary or related to the provision of the Payment Services stated in this Agreement.

### **32. Severability**

In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions shall remain valid and enforceable.

### **33. Declaration by the Customer**

The Customer declares that he fully understands his right to review all sides of these terms, the Charges and Fees, as well as any terms contained in any other agreement with the Company, with a lawyer of his choice, that he has had the opportunity to consult a lawyer of his choice, that he has carefully read and fully understood all the provisions of this Agreement, the Charges and Fees and that he freely, knowingly and voluntarily endorses and signs their acceptance.