



# Terms & Conditions

## Definitions

In these Terms and Conditions:

**The Client** – shall mean the organization, company or individual that is signatory and addressee on the account opening application and/or the counterparty to a Transaction with the Company.

**The Company** – Number One Capital Markets Limited is authorized and regulated by Vanuatu Financial Services Commission (VFSC) with its registered Office at Suite T19, First Floor, Tana Russet Plaza, Kumul Highway, Port Vila, Efate, Vanuatu (company number: 15035).

**License:** Number One Capital Markets is a fully license company with Vanuatu Security License (License Number 15035)

**Authorized Persons** – shall mean any individuals, as listed on the Company registration form, that are approved by the

Client to conduct Transactions on behalf of The Client. Authorized Persons may be amended in writing by the Client, addressed to the Company, at any time.

**Confirmation** – shall mean the document issued by the Company to the Client recording the principal commercial terms of a Transaction.

**Initial Margin** – shall mean the amount required by the Company in respect of each new Transaction in accordance with **Section 6 of these Terms and Conditions**.

**Margin Call** – shall mean amounts required to be paid by the Client to the Company in respect of a Transaction in advance of its Settlement Date in accordance with Section 6 of the Terms and Conditions.

**Segregated Client Account** – shall mean an account opened by the Company in the name of the Client and for the sole use of the Client in which currencies purchased can be held until instructions are received to pay monies away.

**Spot Transaction** – means a Transaction for which the Settlement Date is two Working Days after the Transaction is agreed or such earlier date as the Company may, in its discretion and in accordance with the practice of the London Foreign Exchange market, agree.

**Transaction** – shall mean an agreement between the Company and the Client for the purchase and/or sale of foreign currency.

**Working Days** – shall mean Monday to Friday (5 days 24 hours)

### Changes to Our Terms and Conditions

The Company may change these terms and conditions from time to time, for example in order to comply with changes to the law or due to changes in market conditions. If the company makes any changes to these terms, they will be published on the company web site: [www.n1cm.com](http://www.n1cm.com)

**Financial Markets**

**No Advice** - The Company is happy to provide you with ad hoc market information on request, the company does not provide advice in respect to when to trade. The client should not treat any information provided as advice. It is up to the client to decide when to provide the company with instructions and up to the client to ensure that their instructions are suitable for them and their circumstances.

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## 1. The Service

- 1.1. The Company and the Client, subject to these terms and conditions, will from time to time enter into Transactions, in accordance with the Client's or authorized Person's, written or (at the discretion of the Company) verbal instructions.
- 1.2. The Company may, at its discretion, provide information to the Client on practical aspects of dealing in the foreign exchange market. However, the Client enters into a Transaction at its own discretion and risk and should not be, and is not entitled to be, reliant on the Company for advice on the timing or terms of any Transaction nor on the then current state of the foreign exchange or other market conditions or future direction of exchange rate movements.
- 1.3. Each Transaction will be evidenced by the issue of a written Confirmation sent by the Company to the Client by electronic transfer, facsimile or post.

## 2. Client Representations and Undertakings

- 2.1. The Client represents as at the date of each Transaction and in respect of each such Transaction that: The Client is acting as principal in the Transaction, has full power and authority to enter into the Transaction and is the beneficial owner of all monies paid by way of Initial Margin or as a result of a Margin Call (in each case) free from any charge or encumbrance; the information provided by the Client in relation to the Transaction is accurate and current and that any further information required by the Company, relevant to a Transaction, will be accurate and complete in all material respects; The Transaction is for commercial purposes only and not investment purposes (as contemplated by the Vanuatu Financial Services Commission); and it has relied upon its own judgment in entering into the Transaction and has not placed any reliance on the Company in respect thereof.
- 2.2. The Client undertakes to provide the Company, forthwith upon its request, with any and all information that the Company may be required, or considers necessary or desirable, to provide to any applicable governmental or regulatory authority in relation to anti-money laundering laws and regulations.
- 2.3. It is the Client's responsibility to ensure that they and all authorized Persons keep safe any password which the client or any authorized Person may at any time be required to use to access any part of Number One Capital Markets services. Should the client become aware of, or suspect that, an unauthorized person or third party has knowledge or access to their password, the client must inform Number One Capital Markets immediately.

### 3. Client Instructions

- 3.1. The Client, or an authorized Person, will from time to time, subject to these terms and conditions, use the Number One Capital Markets secure website, email or give written or verbal instructions to the Company for the purchase and/or sale and delivery of foreign currency which will from a binding and irrevocable commitment on the part of the Client.
- 3.2. The Company will email a Confirmation in respect of each Transaction which will be delivered to the Client in a timely fashion.
- 3.3. In the case of discrepancies, errors or omissions in a Confirmation the Client must notify the Company immediately by telephone or email but in any event no later than one Working Day of the date of the Transaction. The Client expressly acknowledges and agrees that any failure to notify the Company of any such discrepancies, errors or omissions shall prevent it doing so at a later time.
- 3.4. Instructions given by the Client, or an authorized Person, may not be amended or altered or cancelled without the written consent from the Company (and which, consent will not, without limitation be given where the Company has acted on such instructions to its detriment).
- 3.5. The Company retains the right to refuse to accept a Client's instruction and is under no obligation to enter into a Transaction should it choose not to do so.

### 4. Financial Obligations

- 4.1. For each Transaction, the Client agrees to pay cleared funds to the full amount specified in the Confirmation, together with any commissions or transfer charges that may apply, into the bank account specified by the Company. In some cases, where currency settlement instructions need to be given one Working Day in advance (by way of example only, Japan, New Zealand, Australia etc.), Cleared Funds must be paid in to the specified account at least one Working Day.
- 4.2. On confirmed receipt of cleared funds the Company will pay to the Client or at the Client's order the amount due and agreed in the relevant Confirmation.
- 4.3. The Company will not make any payment on behalf of the Client until cleared funds have been received, and cannot accept responsibility for a delay in onward payment due to the late arrival of such funds. The Client expressly agrees and acknowledges that banks have cut-off times, after which they will not accept same-day payment instructions, and that it is the responsibility of the Client to make themselves aware of, and where necessary comply with, these cut off times.
- 4.4. All payments made to the Company in respect of foreign exchange transactions and under these Terms and Conditions are to be made in full without set-off, counterclaim or deduction whatsoever.
- 4.5. The Company will make payments to the Client in full in respect of a Transaction unless (i) where required by law to deduct sums in respect of taxation, or (ii) it is or will be owed amounts which are incurred in respect of transfer charges that may be levied or (iii) where

the Client owes the Company amounts in respect of other Transactions and which have not been settled in accordance with these Terms and Conditions.

- 4.6. Where the Client does not pay cleared funds to the Company by the Settlement Date (as specified in 4.1), the Company will charge the Client a daily penalty unless it agrees not to in writing.

## 5. Client Acknowledgements

- 5.1. The Client acknowledges that funds will be held with those of other clients of the Company in an account or accounts held in a major Vanuatu Bank (the "Bank") unless specific and separate individual Segregated Client Accounts have been requested in writing by the Client. The terms and conditions relating to any such Segregated Client Account will be agreed between the Company and the Client.
- 5.2. The Client will have no fiduciary rights or claims against the Bank in respect of any of their funds held in such account or accounts.
- 5.3. The account or accounts with the Bank are governed by the term of a bank mandate which has been provided and is exclusively operated by the Company in accordance with its terms and that when the Bank acts on properly mandated instructions it will receive a safe receipt and discharge and will not be bound to enquire as to the purpose to which those funds are applied and the Bank shall not be prejudiced for acting on such mandated instructions.
- 5.4. The Client acknowledges that the Company is under no obligation to pay interest on any funds held on their behalf in any account.

## 6. Commissions, Charges, Margins

- 6.1. Commissions and charges such as transfer charges, due in respect of a Transaction shall be included in the Confirmation and will be paid by the Client in full.
- 6.2. A further margin (a "Margin Call") will be required and will be paid on demand in the event that the Initial Margin is insufficient (as determined by the Company in its discretion) to cover the risks incurred by the Company in the event of adverse exchange rate movements.
- 6.3. All margin provided by the Client in accordance with these Terms and Conditions may be forfeited by the Client in the event that the Company incurs any liability or loss in respect of any Transaction where the Client fails to fulfil their obligations under these terms and conditions.

## 7. Default

- 7.1. The Company has the right to terminate, close out or reverse a Transaction without notice to the Client if: the Client shall fail to make any payment in respect to a Transaction, when due and in accordance with these terms and conditions; or the Client materially breaches any of these terms and conditions or fails to comply with its obligations to the Company or is in breach of any statute or regulation; or It becomes or may become unlawful for the Company to maintain or give effect to all or any of the obligations under these Terms or Conditions or otherwise to carry on its business or if the Company is requested to close out a Transaction (or any part thereof) by any regulatory authority whether or not the request is legally binding or the Company in its absolute discretion considers it desirable or necessary to do so for its own protection; Or in the event that the Client becomes unable to meet its obligations as they become due or has a bankruptcy petition presented against them or the Client proposes a form of composition or arrangement to its creditors or if the Client ceases or threatens to cease all or part of its business; or any of the events specified above or anything comparable thereto occurs under the laws of any applicable jurisdiction.
- 7.2. If the Client becomes aware of the occurrence of any event referred to in Clause 7.1 above, they shall give the Company notice of such event forthwith.
- 7.3. If for any reason whatsoever the Client fails to meet its obligations to the Company hereunder and or under any Transaction may at its discretion terminate any Transaction without notice and without liability for any loss.

## 8. Indemnity

- 8.1. The Client shall indemnify and keep the Company indemnified during the proper performance of its obligations against all liabilities, claims, losses and costs incurred by the Company arising out of the breach by the Client, or any authorized Person, of all or any of these Terms and Conditions.

## 9. Disputes

- 9.1. If a dispute arises between the Company and the Client in respect to a Transaction, the Company reserves the right to take, without prior notice, whatever action it deems necessary and appropriate for account of the Client with respect to the disputed transaction.
- 9.2. The amount of liability incurred either by the Company or the Client at fault under the disputed transaction shall be equal to the direct loss plus any interest calculated under clause (7c) of these Terms & Conditions.
- 9.3. Electronically recorded conversations, transcripts of such or other relevant material reflecting conversations between the Company and the Client may be used in resolving disputes. The Client accepts that these may be referred to in the resolution of any dispute between the Company and the Client.

## 10. General

- 10.1. The Client accepts that foreign exchange markets are subject to volatility and that any transaction between the Company and client is time critical and therefore time shall be of the essence in respect of any of the Clients obligations.
- 10.2. The Client agrees that the Company may, at its discretion, carry out a check on the financial status of the Client if it believes it is necessary to do so.
- 10.3. The Client accepts that the Company may terminate any transaction(s) and provide information on such to relevant authorities in the Vanuatu or abroad in order to comply with its obligations under applicable money laundering regulations.
- 10.4. The Company may amend these Terms and Conditions by notice in writing to the Client at any time and such amendment shall be binding with the agreement of the Client from the date of such notice. Any such amendment shall not be retrospective or affect the rights or obligations that may already exist in respect of any transaction.
- 10.5. No failure or omission by the Company to carry out its obligations under these Terms and Conditions or a transaction shall give any rise to any claim against the Company if such failure or omission is, from any cause, reasonably beyond the control of the Company. The Company shall give notice to the Client that it is unable to fulfil its obligations and shall resume the performance of such obligations as soon as possible after the removal of the cause and shall notify the Client.
- 10.6. The Client agrees that nothing in this agreement shall be deemed a partnership, joint venture or agency relationship between the parties.
- 10.7. The Client may not assign or otherwise transfer the benefit of any agreement without the written consent of the Company.
- 10.8. The Client consents to the recording and storing of any data or information about the Client as may be necessarily held by the Company in order to provide services to the Client. The Client may ask to see a copy of any data or information about them that is held by the Company.

## 11. Governing Law

- 11.1. These Terms and Conditions shall be governed and construed in accordance with Vanuatu Law and the parties hereto agree that any dispute pursuant to these Terms & Conditions shall be determined by the Vanuatu Courts