

Terms of Service  
Commercial Foreign Exchange Physical Delivery Service Agreement

1. Introduction

1.1 Global Currency Exchange Network Limited (GCEN) of The Stable Block, Oasts Business Park, Redhill, Watlingbury, Maidstone, Kent, ME18 5NN provides facilities for the purchase or sale of currencies for use in connection with a trade or business or for other commercial purposes. GCEN contracts with clients for the physical delivery of currency only.

1.2 The applicant identified as the other party to this agreement below (“the Client”) wishes to enter into contracts for the sale and delivery of currency with GCEN in connection with its business or for other commercial purposes and has agreed with GCEN that all transactions shall be completed and carried out on the terms and conditions (“the Terms”) set out below.’

1.3 The Headings in this agreement are for convenience only and shall not affect its interpretation.

2 The Service

2.1 GCEN's services as provided for here-in shall be limited to dealing and entering into contracts for the sale and purchase of currency (“Contracts”) which may include without limitation to the foregoing, Forward Contracts, Forward Time Option Contracts and Limit Orders, with the Client.

2.2 GCEN shall unless otherwise agreed, contract as principal with the Client for the delivery of the currency in question and deal with the Client on an execution basis only.

2.3 The client hereby agrees that all orders are placed in pursuance of the clients usual trade or business and that the client is not acting for any third party and that the client will take physical delivery of the purchased currency upon payment of the full amount of the sold currency as dictated by GCEN on the occasion of each individual contract. In this regard the Client warrants that the transactions are for “Commercial Purposes”, not investment purposes as defined by the Financial Services Act 1986.

2.4 GCEN will, at its absolute discretion, accept orders to transact for the client, verbally or in writing by post or electronic transmission from any member of the client; staff duly authorised to place orders in the ‘Authorised Personnel’ provisions annexed to this agreement.

2.5 When entering into any contract the Client shall rely purely on its own judgement. GCEN may from time to time provide the client with information concerning the foreign exchange markets but GCEN will not offer any advice to the client on the merits or otherwise of any currency transaction or provide advice on taxation or any investment products or markets to the client.

3 Instructions

3.1 The Client may give GCEN oral or written orders or instructions relating to a transaction for the purpose of the sale and delivery of currency. GCEN shall be entitled to act upon the oral or written order or instruction of any other person authorised or nominated by the client. In the case of an oral order, or oral instruction GCEN will require the Client to confirm such order or instruction in writing but GCEN will itself confirm the order or instruction by fax to the Client which in itself shall be deemed to be (if not the fact) confirmation of the order or the

instruction that GCEN may act upon with impunity, notwithstanding the eventuality of the Client failing to confirm the same in writing as requested herein.

3.2 Once an order or instruction has been given by or on behalf of the Client it cannot be rescinded, withdrawn or amended without GCEN' express consent. GCEN may at its absolute discretion refuse any dealing instruction given by the Client without giving any reason or being liable for any loss occasioned thereby.

3.3 GCEN may (but shall not be obliged to) require confirmation (in such form as GCEN may specify from time to time) from the Client of any order or instruction if:

3.3.1 GCEN considers that such confirmation is desirable or that an order or instruction is ambiguous; or

3.3.2.1 The instruction is to close the Clients account or to remit the Clients funds to a third party.

3.4 GCEN will issue a contract note in respect of each contract executed for the client. The contract note will be sent to the client by electronic mail or facsimile and will not prejudice in any way the rights of either party.

3.5 GCEN may, but is not obliged to send the Client a monthly statement with respect to each account of the Client which shall include details of transactions during the preceding calendar month.

3.6 Unless the client notifies GCEN of any error or omission within 24 hours of receipt of any contract note, settlement notice or other document issued by GCEN, the client shall be deemed to have agreed and accepted the contents of the document and its shall be accepted that it is an accurate representation of the facts of its nature and content and will be legally binding on the client.

#### 4 Financial Provisions

4.1 The Client shall facilitate payment into an account held at a bank designated by GCEN, in the name of GCEN and designated as a Client Account (the 'Transaction Account') cleared funds to the value of the currency to be sold by the Client (the 'Sale Currency') in order to secure payment.

4.2 The Client shall pay any outstanding amount of the sale currency into the Transaction Account in cleared funds prior to the specified value date.

4.3 GCEN shall not be required to settle any Contract or to pay to the Client, or to the Client's order, any amount in respect of such contract without GCEN first having received from the bank where the Transaction Account is held or from any broker or dealer with or through whom GCEN executes currency transactions (the 'Broker') to the effect that the amount of Sale Currency due and payable by the Client to GCEN in respect of the contract, has in fact been received.

4.4 All payments due from the Client to GCEN under these terms shall be made in full without any set-off, counterclaim, deduction or withholding whatsoever. GCEN may deduct from the payment to be made to the Client such amounts as GCEN may be required by law to deduct in respect of taxation liabilities or as may be charged to GCEN by the Broker in respect of transfer charges.

4.5 Banks have specified times of cut off for the receipt and dispatch of electronic payments. GCEN accepts no responsibility for any delay in onward payment attributable to the late arrival of funds or instruction of payment relative to the cut off times of the designated bank.

4.6 In the event of any significant exchange rate fluctuations occurring between the date of contract and the Value date GCEN may require the client to provide additional funds to maintain the value and level of the deposit at the stipulated percentage rate on the original contract note. Such funds shall be paid by the client immediately and in full.

4.7 The client undertakes that all funds to be provided as security for the client's obligations hereunder will be beneficially owned by the client and will not be subject to any charge, lien or other encumbrance and the client will not create any charge, lien or other encumbrance over any funds so provided.

## 5 Limitation of Liability

5.1 The following provisions set out GCEN's entire liability to the Customer in respect of any breach of its contractual obligations arising under the Agreement (an 'Event of Default').

5.2 Nothing in this clause 5 shall be deemed to be an attempt by GCEN to limit its liability to the Customer for death or personal injury resulting from GCEN's own or that of its employees' agents' or sub-contractors' negligence.

5.3 Subject to the provisions of sub-clause 5.2 above GCEN's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the direct loss incurred in connection with such contract.

5.4 GCEN shall not be liable to the client in respect of any event of default for loss of profits, goodwill, anticipated savings, or any type of special indirect or consequential loss (including loss or damage suffered by the Client as a result of an action brought by a third party) even if such loss was reasonably foreseeable.

5.5 The client shall, on demand by GCEN, indemnify GCEN and keep it indemnified against all losses, damages and costs of any nature suffered by GCEN including any costs suffered by GCEN in covering, reducing or eliminating its risk, through the non performance of the client or where the client fails to honour any of the terms and conditions herein in respect of any contract with GCEN.

## 6 Force majeure

6.1 If GCEN is affected by Force Majeure it shall notify the Customer of that fact as soon as is reasonably practicable.

6.2 GCEN shall not be deemed to be in breach of this Agreement, or otherwise be liable to the client, by reason of any delay in performance, or non-performance, of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure, whether or not this is notified to the client at the time of its occurrence.

## 7 Default

7.1 GCEN shall have the right to close any contract by entering an equal but opposite contract or, at its absolute discretion, by any other actions deemed correct without any further liability for any loss or otherwise in the event of any of the following:-

7.1.1 any default of payment by the client

7.1.2 any other breach by the client under this agreement

7.1.3 the client goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement) or commits any act of insolvency as defined by the Companies Act 1985 as amended.

7.1.4 it becomes unlawful for GCEN to give effect to any or all of its obligations to the client under this agreement or where GCEN or the client is ordered to close out a contract by any regulatory body.

7.1.5 GCEN considers it desirable to do so for its own protection.

7.1.6 Where a contract is closed out for any of the reasons herein a contract note will be issued and dispatched to the client detailing the specifics of the closure and any loss for which the client may be liable.

## 8 Duration, termination

8.1 Either party shall be entitled to terminate this Agreement forthwith by written notice to the other if:-

8.1.1 that other party commits any breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

8.1.2 either party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this agreement) or commits any act of insolvency as defined by the Companies Act 1985 as amended.

8.2 For the purposes of clause 8.1.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

8.3 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

8.4 The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

8.5 Upon the termination of this Agreement for any reason and following the conclusion of any foreign currency transaction enacted under this Agreement and subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

## 9 Nature of agreement

9.1 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties.

9.2 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing signed by a duly authorised director of GCEN and a duly authorised representative of the client.

9.3 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of nor does it rely on any representation, warranty or other provision except as expressly provided herein, and that all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

9.4 It is intended that these terms and conditions shall be reasonable as between GCEN and the client having regard to the nature of the Agreement, but that if at any time any of these terms and conditions are either unenforceable or void at law or pursuant to any ruling of any governmental authority, Court or tribunal, it shall not adversely affect or prejudice the remainder of them or of the Agreement and it shall therefore be deemed to be excluded from these terms and conditions and (where possible) to be replaced by such other enforceable and valid term or condition as shall be as near as may be to the original in both form and effect.

9.5 This Agreement shall be governed by and construed in all respects in accordance with the Laws of England, and each party hereby submits to the exclusive jurisdiction of the English Courts.

#### 10 Notices and service

10.1 Any notice, document or other information to be given by either party to the other under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by first class pre-paid recorded delivery post or facsimile transmission or other electronic media to the recipient at the address as set out in this Agreement, or using the relevant telecommunications number of the recipient as at the date hereof, or to such other address or telecommunications number as the recipient may from time to time designate in writing for such purpose.

10.2 Any notice, document or other information shall be deemed to have been received by the recipient two working days after the date of dispatch of the same by post, or where the notice, document or information is sent by hand or is given by facsimile or other electronic media simultaneously with the delivery or transmission (as appropriate). To prove the giving of notice it shall be sufficient to show that it was dispatched or delivered.