



## TORFX TERMS & CONDITIONS

It's important that you (the Client named in the account application) read these Terms & Conditions (the "Terms") in full, because they govern your relationship and every transaction you undertake with TorFX Pty Ltd ABN 27 103 142 829 AFSL 246838 ("TorFX" or "us").

### 1. INTRODUCTION & KEY POINTS

- a. These Terms and Conditions (the 'Terms'), as updated from time to time, apply to your current relationship with TorFX and all transactions, and by transacting with us, you agree to be bound by them.
- b. You have advised TorFX that you wish to transact with us in foreign exchange ("FX") contracts in accordance with your instructions from time to time.
- c. You understand and acknowledge that trading in FX Contracts involves risk and the potential for losses, and you accept this risk.
- d. You understand that TorFX only provides general advice/information and will never provide you with personal advice, and you will never rely on any advice provided by TorFX. It is your sole obligation to ensure you consider your personal objectives, circumstances and needs, and obtain professional advice, to ascertain that trading is suitable for you.
- e. It's important that you understand all of these Terms, and it is assumed that you have obtained professional advice before proceeding with this arrangement or any transaction.
- f. You must let us know if you have any questions or concerns, because once you have opened the account and accepted our Terms, you will be bound by all of them.
- g. You understand and acknowledge that neither TorFX nor any associated entity shall ever guarantee the outcome of any FX Contract or transaction, and shall never be responsible or liable for the results of any instruction/payment issued by you. For the sake of clarity, this means you are solely liable for every instruction issued, payment made and beneficiary selected, regardless of outcome, loss or mistake (by you).
- h. In executing these Terms, you are appointing TorFX as your agent for the purpose of dealing in FX Contracts and authorising TorFX to do (or not do) all things reasonably necessary.
- i. All parties are bound by the applicable financial services laws and regulations (as modified from time to time).

### 2. CLIENT REPRESENTATIONS AND WARRANTIES

You represent and warrant to TorFX that as at the date you accept these Terms AND every time you issue an order or Payment Instruction with us, that

- a. You are acting as principal on your own account, and TorFX is acting as principal in all dealings with you,
- b. You have full power, legal capacity and authority to enter into these Terms and perform your obligations under every transaction.
- c. Where there is more than one party to the account, decisions and instructions are made on a fully informed and jointly agreed basis by all parties.
- d. You understand that these Terms comprise a legal, valid and binding obligation and are enforceable against you.



- e. All orders placed and FX Contracts entered into by you are lawful and do not breach any agreement or judgement to which you are subject.
- f. TorFX will not be liable under any circumstances for any loss incurred as a result of your choice of beneficiary and we shall have no obligation to conduct any due diligence on, or in any way establish the veracity of your chosen beneficiary.
- g. All information provided to TorFX at any time throughout the relationship, is accurate and current, and no material information has been withheld.
- h. You will provide all information reasonably sought by TorFX regarding your financial/business affairs and/or your identity.
- i. You are not insolvent, and no resolution has been passed or order has been made for your winding up or liquidation nor has there been any appointment of a receiver and/or manager or an administrator of other insolvency official in respect of you or any of your assets.
- j. Where you are a trustee, the Trust has been properly constituted, remains valid, and complies with applicable laws and Trust Deed obligations. The Trust Deed properly authorises and empowers you to enter into FX Contracts, these transactions fall within the authorised investment strategy, and you have an unrestricted right to be fully indemnified or exonerated out of Trust property in respect of any losses or liabilities incurred.
- k. Where you are an investment manager, you are properly authorised and empowered to enter into FX Contracts, and these transactions fall within the authorised investment parameters of the agreed/disclosed mandate.
- l. Where excess funds have been transferred into your account as a result of an error by TorFX, you herewith acknowledge that you have no legal entitlement to retain such funds, and will ensure they are transferred back to TorFX in full within 3 days of receipt. You further acknowledge that any failure to do so, will render you liable on a full indemnity basis for all direct and indirect costs incurred by TorFX in pursuing the recovery of thereof.
- m. You have received, read and understood the Financial Services Guide, Target Market Determination and the Product Disclosure Statement, and have notified TorFX of any questions or concerns you have in relation to these documents.
- n. You satisfy the key criteria set out in the Target Market Determination, namely, (i) you have satisfied our customer identification and verification requirements; (ii) you have provided an appropriate reason or need for remitting funds to another country; (iii) you are able to provide cleared funds in order to meet your settlement obligations; and (iv) you are not using our products as a speculation or investment service.
- o. You will advise us immediately if any of the above representations are no longer true or accurate.

### **3. ACCOUNT ESTABLISHMENT/OPERATION**

- a. TorFX has agreed to establish an account in your name.
- b. If you are more than one person, the account shall be in all the parties' names as joint tenants, and each party shall be jointly and severally liable.
- c. Only you can transact and issue orders to TorFX on the account, unless authority is provided in writing;
- d. No cash deposits will ever be accepted into Tor FX's account at any time.
- e. FX Contracts create an obligation to settle the transaction at a future date (the Settlement Date) in cleared funds.
- f. All dealings will be undertaken at the absolute discretion of TorFX, and we may refuse to deal on your behalf in our sole discretion and without explanation.
- g. TorFX acts as principal in all transactions, and may act as a market maker, in quoting you prices.



- h. TorFX may (knowingly or unknowingly) take the opposite side of your FX Contract, and our directors and representatives can deal on their own account.
- i. You will receive transaction confirmations, which shall be deemed accurate, unless you object within 24 hours.
- j. Transaction notifications from TorFX stating the amount due and payable are assumed to be correct, and will be binding on you, unless either party identifies a material error.
- k. We may increase our Advance Payment requirements or close any of your open FX Contracts, if in our reasonable opinion, exceptional market conditions exist.

#### 4. ACCOUNT INSTRUCTIONS

- a. You may request on a Business Day that TorFX quote a price at which TorFX is prepared to enter into an FX Contract.
- b. You may instruct us via our online trading facility, or via email or telephone, where we agree to accept such method of instruction, and agree to be bound by the specific terms and conditions relevant to using those methodologies.
- c. A price quotation by TorFX does not constitute an offer to enter into an, or close an existing, FX Contract.
- d. Upon receiving a quote from TorFX, you may offer to enter into an FX Contract with us at the price quoted.
- e. TorFX is in no way obliged to accept your offer, and may in our absolute direction, refuse to enter into transaction, and shall not be liable for any loss suffered by you as a result of such refusal.
- f. You are obligated to provide us with an Advance Payment, in the amount advised by TorFX, payable upon acceptance of your offer to enter into an FX Contract.
- g. You will be issued with a Deal Confirmation, and must advise us of any omissions or errors within 24 hours, otherwise the contents will be deemed accurate and conclusive evidence of the agreed transaction. The Deal Confirmation may only be amended or cancelled with our express agreement and subject to any conditions we deem necessary.
- h. Your obligation to provide us with the requested Advance Payment must be met, regardless of any dispute regarding the content of the Deal Confirmation.
- i. No binding contract exists between us for any transaction unless and until a Deal Confirmation has been issued.
- j. TorFX will not be bound by any FX Contract where we have reasonably determined there is a manifest error in the purchase or sale price quoted.
- k. You may authorise another person to provide instructions on your behalf, and TorFX is entitled (but not obligated) to act on such instructions which appear to be authorised.
- l. You may only authorise a person to act on your behalf where they are an employee or director of your company, or a family member appointed to act in your temporary absence.
- m. You will be solely liable to advise us of any change in authorised person, or unauthorised loss or theft, and will be solely liable for any losses incurred as a result of any instructions which are unauthorised, forged or fraudulently given.
- n. TorFX will not be liable for any losses incurred due to any reliance on an instruction we reasonably assume came from you, nor will we be liable for any refusal to act where we have any doubt about whether the instruction was properly authorised by you.
- o. You shall be responsible for all orders, the accuracy of information provided, and any use of your name and password using the online trading facility.
- p. It is your responsibility to ensure you keep any passwords secret, and to ensure that third parties do not obtain access to your trading account, and you accept full responsibility for any transaction effected using your password.



- q. Where you do not provide sufficient or timely instructions or responses, TorFX may take whatever steps we consider necessary to protect you or ourselves, regardless of the cost to you.
- r. TorFX shall respond to instructions or transaction requests as soon as practically possible, but we shall not be deemed to have received such, until we have actual knowledge, and provided a Deal Confirmation in response.
- s. You agree to use the online trading facility solely for your business or investment purposes and will never distribute the platform to any third party.
- t. You agree that you will be financially liable for any transactions executed through the online trading facility.
- u. TorFX expressly makes no representations and provides no warranties in relation to the operation or usability of the online trading facility, nor regarding the timeliness, accuracy, completeness or reliability of any information, service or transaction provided through the use of the facility.
- v. Where automatic order execution is offered to you, TorFX is entitled to change the price on which your order is executed to the market value at the time the order was received.
- w. TorFX does not warrant that access to or use of the online trading facility will be uninterrupted or free of errors, or meet any particular standard of performance or quality, and expressly disclaims any implied warranties associated with the facility.
- x. Where the online trading facility is not operational for any reason, you agree to contact TorFX via telephone or email to make alternate order entry arrangements.
- y. TorFX will not accept any liability under any circumstances for any direct, indirect or consequential damages which may result from your use of (or inability to use) the online trading facility.
- z. You agree that you are using the online trading facility at your own risk and will not hold TorFX liable for any form of loss or damage resulting from the use (or unavailability) of it.
- aa. You are responsible for providing and maintaining the equipment and services necessary to access the online trading facility, and for any fees or charges associated with such.
- bb. You are strictly prohibited from using the online trading facility to publish, post or disseminate defamatory, obscene, offensive or unlawful material, or otherwise use the facility for an improper purpose in the sole opinion of TorFX.
- cc. TorFX may at any time, in our sole discretion, terminate or restrict your access to the online trading facility, and you will remain liable for any outstanding fees, charges and obligations incurred prior to termination.

## 5. LIMIT ORDERS

- a. TorFX may agree to enter into a Limit Order contract which is a standing instruction deemed to have been issued by you, without further correspondence or notice, to enter into an FX Contract at a certain requested exchange rate (Limit Order Threshold Exchange Rate).
- b. There is no guarantee that a Limit Order contract can or will be executed at the Limit Order Threshold Exchange Rate.
- c. Limit Order contracts can either be entered into for a specified period of time (Validity Period) or indefinitely.
- d. Limit Order contracts which are instructed outside of trading hours on a Business Day will be processed as if received on the next Business Day.
- e. You will receive confirmation of the Limit Order contract immediately after it has been agreed with us. Any errors in the confirmation received must be notified to us within 24 hours, and will otherwise be accepted as accurate.



- f. If TorFX is able to offer the Limit Order Threshold Exchange Rate during the Validity Period, you will be deemed to have sent the order to us at the time we offer that rate, and we will both be bound by the contract.
- g. If TorFX is unable to offer the Limit Order Threshold Exchange Rate during the Validity Period, then no order will be deemed to have been made, and the Limit Order contract will expire null and void at 4pm on the last Business Day of the Validity Period.
- h. If no Validity Period has been specified, you may terminate the Limit Order contract at any time prior to TorFX issuing the contract (and only if that has not occurred), either during trading hours on a Business Day, or to be accepted on the next Business Day.

## 6. ADVANCE PAYMENTS

- a. TorFX may require you to pay a specified sum of money in cleared funds (the “Advance Payment”) within a specified timeframe, as determined in our sole discretion, in order to protect ourselves from the obligation incurred by dealing in FX Contracts on your behalf, prior to entering into an FX Contract with you.
- b. TorFX reserves the right to change the Advance Payment or other deposit requirements which may apply to existing or new positions at any time.
- c. Where TorFX requires additional funds from you in order to cover market movements, you must pay that amount immediately upon being given notice by TorFX.
- d. TorFX may refuse to enter into any new FX Contract, and may close an existing FX Contract, without further reference to you, where the amount requested has not been received in cleared funds within the mandated timeframe.
- e. It is your sole responsibility to monitor and manage your open positions and exposures through the online trading facility, and ensure that any requests for Advance Payments are met.
- f. No credit shall be extended to you directly or indirectly by TorFX at any time.

## 7. DEFAULTS

- a. Where any deficit is owing to TorFX after the closure of an FX Contract, TorFX will send you a notice setting out the sum due and payable, and may apply the proceeds of any of your assets held by TorFX in settlement of such debt, where you refuse or delay payment. TorFX may also elect in our sole discretion to Close Out all of your FX Contracts and refuse to enter into any further FX Contracts.
- b. TorFX may Close Out all of your open FX Contracts and refuse to enter into any additional FX Contracts (including any outstanding orders) where you:
  - (i) you fail to meet an Advance Payment request, or any other payment request;
  - (ii) you are not contactable within the required timeframe and have not made alternative arrangements to enable TorFX to obtain instructions;
  - (iii) you die or become of unsound mind;
  - (iv) you are involved in any insolvency or related event;
  - (v) you fail in any respect to fully and promptly comply with any of your obligations under these Terms;
  - (vi) it becomes unlawful for us to provide services for any reason;
  - (vii) a government or regulatory authority issues a request (whether legally binding or not); or
  - (viii) we consider necessary for our own protection, at your expense.
- c. TorFX may charge you for all the costs, expenses and losses incurred as result of entering into or closing out transactions pursuant to these Terms.
- d. TorFX may take any such action a reasonably prudent person would take in the circumstances to protect the personal obligations incurred when dealing on your behalf.



## **8. COMMISSIONS, FEES AND EXPENSES**

- a. You agree to pay (i) all legal costs, taxes, stamp duties and expenses incurred or payable by you in entering into these Terms (ii) all transaction fees, charges, Advance Payments, settlements, interest and other amounts due under these Terms (iii) all amounts equal to any fees or expenses incurred by TorFX arising out of any action taken pursuant to these Terms and any default by you, including without limitation, all reasonable legal costs on an indemnity basis (iv) interest on all unpaid amounts at a rate of 3%pa above LIBOR (at a minimum of 10%pa), where such interest shall accrue and be calculated daily and compounded monthly.
- b. You authorise TorFX to appropriate, transfer, credit or apply monies received or held by us on your behalf, in settlement of any amounts which may be outstanding by you to TorFX.
- c. Where you are given access to prices or information provided by a third party service for which a royalty or fee is payable, TorFX will have the right to effect the payment by debiting your account on a monthly basis.
- d. Where amounts are payable by both parties, netting will apply (after currency conversion if necessary) to enable the party owing the larger amount to pay the excess only to the other party.
- e. TorFX may in its sole discretion elect to reduce or waive any fee or deposit requirement for any individual or class of clients.
- f. Payments to TorFX must be made without offset, counterclaim, condition or tax withholding, unless required by law. You agree to indemnify TorFX for any tax liability which impacts the full amount due and payable to TorFX.

## **9. SEGREGATED ACCOUNTS**

- a. All money or property deposited by you with TorFX, or received on your behalf, will be held in a client segregated bank account, which is separate from TorFX's accounts although co-mingled with other client monies and property, and operated in accordance with applicable legal and regulatory requirements.
- b. The segregation of your money does not provide absolute protection from the risk of loss, where there is a counterparty default or a deficit in the client segregated bank account.
- c. TorFX are entitled to retain, or apply for our own benefit, any interest which is earned in respect of any client monies held in the client segregated bank account.
- d. Your money and property will be treated as our legal and beneficial property whilst in the client segregated bank account, to be utilised in settling your transactions and obligations under these Terms.

## **10. TORFX REPRESENTATIONS AND SERVICES**

- a. TorFX seeks to act honestly, exercise due care and diligence and act in your best interests at all times.
- b. We will never provide you with personal advice, and in transacting with TorFX you acknowledge this is the case with regard to all interactions.
- c. We will give priority to your instructions and take all reasonable steps to execute them.
- d. We will take all reasonable steps not to misuse your information.
- e. Any information or research or market view provided to you by a TorFX representative is general information only, and can never be relied upon as personal advice nor as any sort of warranty or guarantee, and no liability shall be accepted for the accuracy of any such statement or your reliance on it.



## 11. LIMITATION OF LIABILITY/CLIENT INDEMNITY

- a. Neither TorFX, nor any of its representatives, agents or associates, shall be liable to you for any expense, loss, claim, damage incurred in the provision of services.
- b. TorFX will not be responsible for the consequences, direct or indirect, for any delay or failure to act, due to third parties or causes beyond our reasonable control.
- c. No warranty or guarantee is provided regarding any information provided or sourced from third parties, and all such information is provided for your private use and cannot be communicated to third parties without our consent.
- d. TorFX will not be responsible or liable to you for the profitability or fitness for purpose of any FX Contract, and shall not hold any due diligence obligation in relation to your choice of beneficiary whatsoever under any circumstances.
- e. In the absence of negligence, fraud or dishonesty, and to the extent permitted by law, TorFX will not bear any responsibility or liability for any of your losses incurred as a result of dealing in any product or service offered by TorFX.
- f. You will indemnify TorFX and its representatives, agents and associates from and against any cost, expense, claim, action, suit, loss, damage or other amounts arising out of (i) any default by you (ii) any lawful action by TorFX (iii) our compliance with any direction or request issued by a regulatory authority.

## 12. COMPLAINTS/DISPUTE RESOLUTION

If you are dissatisfied with any aspect of our service you can take the following steps

- a. Please contact your account manager, or address your complaint or concern to [info@torfx.com.au](mailto:info@torfx.com.au) in writing. We request you provide as much detail as possible for us to assist in your investigation.
- b. An Internal investigation will be directed to the General Manager, who will endeavour to review the complaint fairly and promptly, and respond within 7 business days or such further time period that may reasonably be required given the nature of the complaint (up to 30 days). We will investigate your complaint, and provide you with our decision, and the reasons on which it is based, in writing.
- c. If you are dissatisfied with the outcome, you have the right to lodge a complaint with the Australian Financial Complaints Authority (AFCA), an approved external dispute resolution scheme, of which TorFX is a member.

Australian Financial Complaints Authority

GPO BOX 3

Melbourne VIC 3001

Telephone: 1800 931 678

Website: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)



- d. Where a transaction is disputed, we may Close Out or take any other action we consider reasonable, without prior notification to, or instruction from, you.

### **13. TERMINATION**

- a. These Terms can be terminated at any time by either party with the provision of 5 Business Days' notice (or less where legally required).
- b. Unless otherwise agreed, your open contracts will be closed out immediately upon termination, without further notice.
- c. Termination will not release either party from any outstanding obligations or liabilities under these Terms.
- d. Rights can only be waived where agreed in writing, and will not apply to subsequent breaches or failures/delays in exercising rights.

### **14. PRIVACY**

- a. In order to provide you with our services, we need to collect personal information about you and obtain your agreement as to what we collect and how we use it.
- b. If you do not provide the information requested, we are unable to provide you with services.
- c. Your entry into any transaction with us serves as permission for TorFX to collect, use and store your personal information, and disclose it to our related parties and agents for the purposes of providing you with FX services.
- d. It is your obligation to ensure all information provided to us is accurate and current, and advise changes as soon as practicable.
- e. You agree that we can carry out (and retain) electronic database searches and credit reference checks in order to verify your identity and credit standing (including that of any shareholder or officer).
- f. You acknowledge that as part of identity verification requirements, your personal details will be matched to information held by third parties. TorFX reserves the right to collect, retain and use such information in order to meet our obligations under applicable Anti-Money Laundering & Counter-Terrorism Financing laws, including the provision of reports or responses to regulatory bodies (whether legally bound to provide such or not).
- g. Our Privacy Policy on our website provides further details about how we handle your personal information.

### **15. GENERAL**

- a. These Terms may be amended by TorFX with the provision of 30 days written notice.
- b. In the event that any of these Terms are found to be invalid or unenforceable, that provision will be deemed deleted, and will not impact the validity or enforceability of the remaining provisions.
- c. You are not permitted to assign or transfer your rights or obligations under these Terms or any transactions, without our express written consent.
- d. You agree to the electronic recording of any telephone or internet communications with TorFX, whether with or without any automatic tone or warning, and the use of those recordings as evidence in a dispute.
- e. You may request a copy of those recordings, for a reasonable fee, however TorFX provides no warranty regarding how long those recordings will be held or whether they can be retrieved.
- f. All communications will be assumed to take effect at time of transmission (for emails and facsimiles) and within two Business Days, if posted, and shall be assumed to be communicated to all relevant parties where you are more than one person.





- g. These Terms and our relationship and all transactions between us are governed by and construed in accordance with the laws of Queensland, Australia, and the parties submit to the non-exclusive jurisdiction of the courts and tribunals in that State.

## **16. MONEYTECH CLIENTS– THIS CLAUSE APPLIES TO MUTUAL CLIENTS OF MONEYTECH AND TORFX ONLY**

Where you are a mutual client of both Moneytech Services Pty Ltd (“Moneytech”) and TorFX, you agree that, notwithstanding any contrary instructions you may give TorFX:

- a. Where you have selected the payment method to utilise your Moneytech facility, TorFX will only accept your payment instruction upon successfully verifying with Moneytech that the payee has been previously agreed with Moneytech and, if TorFX is unable to obtain that verification, TorFX shall return the relevant funds to Moneytech (unless Moneytech instructs otherwise); and
- b. Any payments sent by Moneytech to your TorFX account which are returned to TorFX for any reason, or which cannot be transferred by TorFX due to an error, omission or otherwise shall be returned by TorFX to Moneytech (unless Moneytech instructs otherwise).
- c. Where TorFX is unable to complete a FX Contract resulting from clauses a. or b. (above). TorFX will close out the contract (unless Moneytech instructs otherwise), you agree to pay associated costs described in section 7. Default of these Terms.
- d. You expressly consent when registering with TorFX via, or as part of, a partnership with Moneytech, we will share personal data and details of your transaction information between TorFX and Moneytech, for the purpose of reconciliation of payments in this group.

These clauses apply only in circumstances where Moneytech has confirmed to TorFX that you have entered into a borrowing facility with Moneytech, and the payments referred to above are funded through that facility. TorFX is entitled to rely on any confirmation given by Moneytech as to whether or not a payment is subject to your agreement with them without making any further checks with you.

## **17. DEFINITIONS**

In these Terms, unless a different intention is expressed, the following terms are defined below. Reference to a person or individual includes bodies corporate, unincorporated associations, partnerships and individuals.

:

“Account” means your account dealing in the Foreign Exchange Contracts issued by TorFX, which is established in accordance with the terms and conditions in these Terms;

“Advance Payment” means a part payment of the final amount due on settlement in such sum as TorFX deems necessary to cover its Settlement Risk;

“Agent” means a legal entity undertaking a transaction or function on behalf of another legal entity but in its own name;



“Authorised Person” means a person authorised to bind the Client under the Terms;

"Business Day" means a day on which trading banks in Australia are open for business;

“Close Out” means cancelling the transaction and selling back the currency we have bought for you when you entered into the transaction;

“Contract” means any contract whether verbal or written, for the purchase or sale of a Foreign Exchange Contract, entered into by the Client;

“Exchange Rate” means the price of one currency in terms of another currency;

“Foreign Exchange Contract” or “FX Contract” is a transaction that involves a contract for the exchange of one currency for another at an agreed Exchange Rate. FX Contracts may include spot contracts, fixed forward contracts, open forward contracts, limit orders and stop orders (as detailed on the TorFX website);

“Payment Instruction” means an instruction by the Client to make a foreign currency payment to the bank account of a third party.

“Settlement Date” means the date on which the funds that are being exchanged must be received by us;

"Terms" means this Account Application, the Terms and any other documents annexed or incorporated by reference;

“Trust” means where you are a trust, the trust identified in the Client Details Form;

“Trust Deed” means where you are a trust, the trust deed governing the Trust as varied, substituted, supplemented or resettled from time to time.

“MoneyTech client” means any customers or clients of Moneytech which have been migrated to TorFX in accordance with the provisions of these T&C’s