

## GCEN Terms and Conditions of Service

### 1 General

1.1 The terms and conditions set out in this agreement (as amended by GCEN and notified to the client from time to time) ("terms") shall apply as between GCEN and the applicant named above or the person named in any document evidencing an order for services (as defined in clause 2.1 below) to any such order, whichever placed, where that order is accepted (whether expressly or impliedly, verbally or in writing) by GCEN ("contract") and shall prevail in the event of any inconsistency with the terms any other agreement between the parties.

1.2 This agreement shall come into force on the earlier of the date set out above and the date that these terms are communicated to the client (whether by post, fax or email or by reference to the GCEN website).

1.3 Any reference to GCEN or the client in this agreement shall be deemed to include that party's officers, employees and/or agents.

1.4 References to clauses are to the clauses and subclauses of this agreement and the headings in this agreement are for convenience only and shall not affect its interpretation.

1.5 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

### 2 The services

2.1 GCEN's services shall be limited to providing facilities for the sale, purchase and physical delivery of foreign currencies for use in connection with a trade or business or for other commercial (but not, for the avoidance of doubt, investment) purposes only (the "services"). Such services include, without limitation to the foregoing, forward contracts, forward time option contracts and limit orders.

2.2 GCEN shall record all contracts in writing and send a copy to the client at the time the contract is concluded.

2.3 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.

2.4 GCEN may from time to time provide the client with information concerning the foreign exchange markets, but will not at any time offer advice to the client on taxation, investment products or markets or the merits or otherwise of any currency transaction. The client accepts that any such information does not constitute advice and does not form part of the services and agrees that it shall rely purely on its own judgement when entering into any contract.

2.5 In providing the information referred to in clause 2.4 above, GCEN makes no warranty or representation as to its accuracy, and hereby excludes to the fullest extent possible any and all losses suffered by the client in relying on such information.

2.6 The client hereby warrants and represents that all orders are placed in pursuance of the client's usual trade or business; that the client is not acting for any third party; and that the transactions are for "Commercial Purposes", not for regulated activities as defined by the Financial Services & Markets Act 2000.

2.7 Each order shall stand as a separate contract and 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 contract.

2.8 The client shall indemnify GCEN and keep it indemnified against any losses suffered by GCEN as a result of any breach of paragraph 2.6 and/or 2.7 by the client.

### 3 Instructions

3.1 GCEN may, at its absolute discretion, accept or refuse (without attributing any reason or being liable for any claims, loss of profits, depletion of goodwill or damage (whether direct, consequential or anticipated) occasioned as a result) any order for services or any instruction relating to services from any officer, employee or agent of the client. Where only certain named personnel are authorised by the client to place orders and give instructions to GCEN, an "authorised personnel" list shall be annexed to these terms, and where such a list is annexed, GCEN shall only deal with those authorised persons.

3.2 Orders may be placed and instructions may be given orally or in writing (by post or by electronic transmission), save that in the case of an oral order or instruction, GCEN may at any time and for any reason, including, without limitation, to clarify an ambiguous order or instruction, to close the client's account and/or to remit the client's funds to a third party, require the client to confirm such order or instruction in writing in such form as GCEN may specify from time to time. Alternatively, GCEN may itself (without any obligation to) confirm the order or instruction to the client in writing (by post or by electronic transmission), which shall be final and conclusive evidence (in the absence of manifest error) of the order or the instruction.

3.3 Once an order or instruction has been given by or on behalf of the client it cannot be rescinded, withdrawn or amended without GCEN's express consent.

3.4 GCEN will issue a contract note in respect of each contract entered into with the client. The contract note may be sent to the client by post or by electronic transmission (electronic mail or facsimile) and will not prejudice in any way the rights of either party.

3.5 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 (time being of the essence), the client shall be deemed to have agreed and accepted the contents of that document and it will be legally binding on the client.

3.6 On accepting the first order from a new client, GCEN will set up an account for that client and may (at its absolute discretion and without any obligation to do so) set up separate accounts for separate contracts for both new and existing clients.

3.7 For each account that GCEN operates in the client's name, GCEN may, but shall not be obliged to, send the client a monthly statement detailing the transactions that took place during the preceding calendar month.

### 4 Financial provisions

4.1 The client shall facilitate payment of cleared funds into an account in GCEN's name, held at a bank chosen by GCEN and designated as a client account (the "transaction account") to the value of the currency to be sold by the client (the "sale currency") in order to secure payment. GCEN may, in its absolute discretion and without assigning a reason therefore, request a deposit from the client in respect of any order for currency, in which case the deposit shall be payable immediately into the transaction account.

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 set out in the contract note (being the date on which the currency becomes available and the client becomes obliged to pay).

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") notice 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 Without prejudice to and notwithstanding the rights of GCEN set out in clause 7 below, where GCEN has not received payment of any sale currency that is due in full from the client, GCEN may (but shall not be obliged to) delay any contract between GCEN and the client until GCEN has received the sale currency, at which time GCEN may sell such sale currency at the rate of exchange prevailing on the actual date of sale.

4.5 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 any payment to be made to the client such sums as GCEN is required by law to deduct or is otherwise obligated to pay in respect of taxation liabilities, broker transfer charges, the client's failure to pay the sale currency due or any other costs incurred in the performance by GCEN or non-performance (including, but not limited to, non-payment) by the client of that contract or any other contract between GCEN and the client.

4.6 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.

4.7 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.

4.8 The client undertakes warrants and represents that all funds to be provided by the client 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 or permit the creation of any charge, lien or other encumbrance over any funds so provided.

### 5 Limitation of liability (The client's attention is particularly drawn to this section)

5.1 Nothing in this clause 5 seeks to limit GCEN's liability to the client for death or personal injury resulting from the negligence of GCEN, its employees, agents or sub-contractors.

5.2 Subject to section 5.1 above, GCEN's total liability to the client in contract and in tort (including for negligence, breach of statutory duty and willful default) arising in connection with any contract shall be limited to damages of an amount equal to the direct loss incurred in connection with such contract, provided that GCEN's liability shall in no circumstances exceed the value of currency as at the contract date to be purchased by GCEN from the client.

5.3 GCEN shall not under any circumstances be liable to the client for loss of profits or 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) arising in connection with any contract, even if such loss was reasonably foreseeable.

5.4 The client will, 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, arising as a result of any breach by the client of these terms.

### 6 Force majeure

6.1 GCEN shall not be deemed to be in breach of this agreement or otherwise have any liability to the client for any failure or delay on the part of GCEN in performing its obligations under this agreement arising from or attributable to any act, event, omission or accident beyond the reasonable control of GCEN ("force majeure event"). GCEN shall notify the client of the occurrence of a force majeure event as soon as it is reasonably practicable following the occurrence of such force majeure event.

6.2 Where a force majeure event occurs, GCEN may (at its option), on the subsistence of such force majeure event for fourteen (14) consecutive days, and will, on the subsistence of such force majeure event for twenty-eight (28) consecutive days, cancel the contract and refund any sale currency paid under that contract to the client. The client shall not be entitled to compensation in respect of any force majeure event occurring.

### 7 Default

7.1 In addition to the rights of GCEN in clause 4.4 above, GCEN shall have the right to close any contract by entering into an equal but opposite contract or, at its absolute discretion, by any other actions deemed necessary 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 of any contract;

7.1.3 the client enters into any form of insolvency procedure (except for the purposes of solvent 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 these terms) or is unable to pay its debts as they fall due (as defined in section 123 of the Insolvency Act 1986);

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 governmental or regulatory body; or

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

7.2 Where a contract is closed out by GCEN in accordance with paragraph 7.1, a contract note will be issued and dispatched to the Client detailing the specifics of the closure and any loss suffered by GCEN as a result of such closure. In the event that GCEN suffers any loss as a result of such closure, the Client will indemnify and keep indemnified GCEN in respect of that loss and GCEN shall be entitled to deduct that loss in accordance with clause 4.5 above.

### 8 Duration, termination

8.1 Subject as set out below, these terms shall continue in force in respect of each contract until terminated by either party giving to the other written notice sufficient to conclude any foreign currency contracts enacted under these terms, provided always that any such written notice given by the client shall only be sufficient where no loss accrues to GCEN as a result.

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

8.2.1 that other party commits any material breach of any of the provisions of these terms 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;

8.2.2 either party enters into any form of insolvency procedure (except for the purposes of solvent 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 is unable to pay its debts as they fall due (as defined in section 123 of the Insolvency Act 1986).

8.3 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).

8.4 Any waiver by either party of a breach of any provision of these terms shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

8.5 The rights to terminate given by this clause 8 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.

8.6 Subject as otherwise provided in the contract, upon the termination of these terms for any reason and following the conclusion of any foreign currency transaction under these terms, neither party shall have any further obligation to the other save for any rights, obligations and/or liabilities which have arisen under these terms but have not been discharged prior to termination.

### 9 Disputes

9.1 The client shall provide GCEN with written notice if at any time it is dissatisfied with GCEN's performance of this agreement or otherwise disputes the validity or enforceability of it. Without prejudice to their rights under this agreement, GCEN and the client shall attempt to resolve the dispute in good faith, save that where the dispute remains unresolved within 28 days of notice being served on GCEN, either party may take such further steps as it considers appropriate to resolve the dispute, including, without limitation, appointing a mediator or an arbitrator or initiating court proceedings.

### 10 Notice

10.1 Any notice, document or other information ("notice") to be given by one party to the other under this agreement shall be in writing and shall be deemed to have been duly served if delivered by hand or by first class pre-paid recorded delivery post or sent by electronic transmission to the other party at such postal or electronic address or telecommunications number set out in these terms or otherwise notified to the other party from time to time. Notice shall be deemed to have been received by the recipient: if delivered personally, when left at the proper address for that party; if sent by first class pre-paid recorded delivery post, at 10.00am on the second Business Day after posting; or if sent by electronic transmission, simultaneously with effective transmission.

### 11 Nature of agreement

11.1 Nothing in these terms shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties.

11.2 These terms, together with any contract note(s) or other documents referred to in these terms or annexed hereto, contain the entire agreement between the parties and supersede all previous arrangements, agreements and understandings between the parties in respect of the services, 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.

**11.3** Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether party to this agreement or not) 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.

**11.4** It is intended that this agreement shall be reasonable as between GCEN and the client having regard to the nature of them, but if any term of this agreement (or any part of any term) is found to be invalid or unenforceable, that term or part term shall to the extent required be deemed to be severed from and not affect nor impair the validity or enforceability of any other section of this agreement and the parties shall use all reasonable endeavours to replace that term or part term with a valid and enforceable substitute term or part term that gives effect (in so far as possible) to the intended meaning behind the severed provision(s).

**12 Governing Law and Jurisdiction**

**12.1** This agreement shall be solely governed by and construed in accordance with the Laws of England, and each party hereby submits to the exclusive jurisdiction of the English Courts.