

## TERMS AND CONDITIONS

1. **TRANSACTIONS AND SERVICES**
  - 1.1 We may buy from and sell to you a currency against another currency, and buy from and sell to you any option to buy and sell a currency against another currency and effect any forward exchange contract, in accordance with any instruction accepted by us at the rate and on the dates specified in an instruction.
  - 1.2 You acknowledge that we are not obliged to enter into any transaction with you or accept any instruction.
  - 1.3 You agree that deliveries under a transaction will only be made before the maturity date of a forward exchange contract or the commencement of the option period for an optional period forward exchange contract, if we agree. In the event that we agree we may at our discretion apply any rate of exchange which we deem reasonably appropriate for early delivery.
  - 1.4 Deliveries or payments in relation to a currency transaction, including deliveries under a forward exchange contract, or an option that has been exercised, will be made in the manner specified in your instructions or where not so specified, in the manner specified by the party designated in your instructions as entitled to receipt, unless we reasonably believe that there are clear mistakes, in which case we may complete delivery in the manner we reasonably consider appropriate, without incurring any liability.
  - 1.5 When you receive a transaction confirmation, you must sign or acknowledge the same to us by facsimile or by other electronic means. You also agree that the transaction is effective and binding on you even if you do not sign or otherwise acknowledge the transaction or if we do not send you a transaction confirmation.
  - 1.6 Before entering into a transaction or any time thereafter, we may at our discretion request a transaction deposit, which will be due and payable immediately, the amount of which will be either 10% of the open position which such transaction creates or otherwise such amount which is solely determined by us at our discretion. An amount equivalent to the transaction deposit to the extent not applied by us or set off by us is payable to you once the full payment obligations of the transaction are discharged in clear funds. We may at any time during a transaction apply or setoff the whole or any part of any transaction deposit against any amount due by you to us.
  - 1.7 You may at our discretion vary the terms of any forward exchange contract. If we agree to such variation you agree that the existing forward exchange contract will be then terminated and a new forward exchange contract will be entered into which reflects the variation. You agree that the exchange rates for the new forward exchange contract and for the termination of the original forward exchange contract may differ to the previous exchange rates. All losses and additional costs in relation to the above are solely your responsibility and you must pay this to us within 24 hours of our notifying you of them
  - 1.8 We may at our discretion at any time during a transaction request margin calls which will be immediately due and payable, the amount of which will be sufficient to provide us with an amount which as a result of an adverse market movement, you would lose if the transaction was closed out or otherwise such amount that we will determine at our discretion. We may use, setoff and apply funds provided under any margin call in the same way as if they were funds provided as a transaction deposit
  - 1.9 If you do not pay the premium on an option or perform all of your obligations under a forward exchange contract including failing



to pay a transaction deposit or margin call, we may (but are not obliged to) in addition to our other rights under this agreement or at law at any time and without notice:

- (a) discharge and close out one or more or all such options and forward exchange contracts . This may require us to sell or buy the necessary covering currency to terminate the relevant forward exchange contract(s) in your name;
- (b) decline to enter into any transaction with you; and
- (c) exercise our right of setoff under clause 14.

You will pay us all costs, expenses and losses incurred by us in entering and/or terminating the relevant option(s) and forward exchange contract(s) and in exercising our rights under this clause.

1.10 We may, but are not obliged to, provide foreign exchange advisory services to you in relation to your business if requested by you. All such services will be billed by us to you at such rates and on such basis as agreed with you on an ongoing basis. The provision of these services is subject to these terms and conditions and in particular clause 8.

1.11 If on any date amounts would otherwise be payable between you and us in the same currency in respect of two or more transactions, each party's obligation to make those payments will be satisfied by the payment of the net amount of those obligations, by whichever of you or us has the greatest aggregate obligation to the other.

## 2. TRANSACTION CONFIRMATIONS

2.1 If we send you a transaction confirmation and you do not immediately notify us of errors or omissions then we are entitled to assume that the transaction confirmation is correct in all respects and to act on the

transaction accordingly without incurring any liability to you.

2.2 If there are any errors or omissions in any instruction and our transaction confirmation you must advise us immediately during our business hours and if you do not do so for whatever reason within 24 hours of the day that we send our transaction confirmation, then you will be deemed to have accepted its terms and our transaction confirmation will (in the absence of manifest error) be conclusive proof of the details of the instruction, and in acting on the same we will incur no liability to you.

## 3. INSTRUCTIONS TO US

3.1 You agree that each of the persons in the client application form as authorised signatories are authorised to give us instructions and that we are authorised (though not obliged) to act in accordance with any instruction given to us by any such person, or any person who purports to be such person. If you wish to change the persons authorised to give us instructions you must notify us in writing. Such changes will only take effect upon receipt by us of such written notification. You acknowledge that until receipt of such notice we are entitled to rely on your most recent list of authorised persons.

3.2 You agree that, we are entitled to assume that the person giving an instruction on your behalf has your authority and you authorise us to rely and act upon any instruction (whether or not in writing) which we believe to have been given by you or on your behalf by any agent or intermediary whom we believe to have been duly authorised by you.

3.3 You agree we can act on any facsimile instruction which is signed (or appears to be signed) by an authorised person and you agree to indemnify us against all losses costs, damages, claims which we incur



through our acting or failing to act upon such faxed instructions

3.4 You agree that you are bound by all telephone instructions even though the telephone instruction is not later confirmed by you or us. To verify the identity of the caller giving the instruction we are only obliged to request that the caller give his or her name. If that caller identifies him or herself as an authorised person we are entitled to assume that the caller is that person.

3.5 In relation to any telephone instruction received from you, we will be entitled to ask you to confirm to us on the same day the details of the instruction by facsimile or email. Until we receive clear written confirmation we may, but shall not be obliged to, act on telephone instructions advising payment details or instructing us to make payment to an account the details of which we have not been notified and we incur no liability for declining to act until receipt of written instructions relating to those instructions.

3.6 You consent to our recording all telephone instructions and communications although we are not obliged to do so. You confirm that if we do record any telephone instruction or any other telephone communications we are not obliged to keep the recording or its contents for any particular period and the recording and its contents are our property.

3.7 You agree that we can act on any email instruction which is from (or appears to be from) an authorised person. You acknowledge that you are solely responsible for the security and integrity of the information that you send us or receive from us by electronic means. We will not be liable to you in any way for any loss, disclosure or alteration to any electronic communication.

#### 4. CLEAR FUNDS

4.1 Unless otherwise agreed with us, clear and immediate funds must be received by us

from you before we are obliged to make any payments on your behalf.

4.2 Your payment obligations under a transaction will not be satisfied unless and until we receive from you payment in clear and immediate funds of all moneys in the relevant currency necessary to discharge all of your obligations to us. If, despite our receipt from you of cleared funds, that payment to us is subsequently dishonoured or reversed by anyone (including but not limited to our or your bank) then your payment obligations will be treated as never having been discharged.

#### 5. CREDIT AND AUTHORISATION LIMITS

5.1 You agree that:

- (a) we may inform you of a limit (being a credit authorisation or other form of limit) or you may inform us of an authorisation limit, in each case applicable to some or all transactions;
- (b) we are not obliged to provide credit to you;
- (c) an authorisation limit is not a credit limit and vice versa.

5.2 You acknowledge that if we act on an instruction which would result in a limit being exceeded;

- (a) we may not advise you, although we will use our reasonable endeavours to do so;
- (b) you will continue to be liable to us for all amounts including those above the limit; and
- (c) we are not obliged to, though may, act upon any subsequent instruction where a limit might be exceeded.

#### 6. WITHHOLDINGS

6.1 You agree that if we are required under any legislation or by any regulatory authority to withhold any amount due to you or pay any



such amount otherwise than as directed by you due to such legislation or authority, then we are authorised to do so without your consent and without incurring any liability to you.

## 7. INDEMNITY BY YOU

7.1 Except in the case of gross negligence or wilful default on our part, you agree to indemnify us against all claims, losses, damages, expenses, costs and liabilities of any kind suffered or incurred by us in connection with:

- (a) us acting in accordance with any instruction (including facsimile, email and telephone instructions) whether or not the instruction was given with your due authorisation and whether the instruction has been altered without your authorisation;
- (b) any breach by you of this agreement;
- (c) any unauthorised conduct of your employees, former employees, agents or former agents;
- (d) any cheque or other negotiable instrument which is tendered by you or on your behalf but subsequently not met on first presentation or dishonoured or cancelled subsequently dishonoured with the proceeds reversed.

7.2 You agree that we shall be released from all liabilities and obligations which we may have to you in respect of a transaction where we have acted in accordance with that instruction upon the basis set out in this agreement.

## 8. LIABILITY OF TUATARA

8.1 You agree that we are not liable to you for any loss, cost, expense, damage or liability whatsoever which may be incurred by you as a result of any factors beyond our control. This may include, without limitation, any event of force majeure, exchange control restrictions, prohibition or

suspension of means to effect transmission, market or banking conditions, acts or omissions by third parties, or failure or malfunction of any communications or computer systems.

8.2 All foreign exchange advisory services, quotes, opinions, statements and forecasts provided by us to you on any account have been given to you in good faith and we do not guarantee the accuracy of them. You acknowledge that we are under no liability to you if you rely on such services quotes, opinions, statements and forecasts or authorise or instruct us to implement a transaction based on such services, quotes, opinions, statements or forecasts.

8.3 Subject to clauses 8.1 and 8.2 and the following provisions of this paragraph, we will indemnify you against all claims, actions, demands, losses, expenses and liabilities of any kind suffered or incurred by you arising from a transaction to the extent that this arises from our gross negligence or wilful default. However, we will not be responsible to you for indirect or consequential damages or loss of profits or loss of opportunity. We will not be liable to you in any respect for any loss or damage suffered or incurred by you as a consequence of a foreign exchange advisory service or transaction provided by us to you. In any event our liability in relation to any transaction and any foreign exchange advisory service is limited to an amount which is equal to twice the margin which we receive from you in relation to that transaction or service.

## 9. MARGIN

9.1 We disclose that as we are a dealer in currency we have a spread between our purchase and sale rates and we base our rates on many factors including our assessment of market conditions.

## 10. FUNDS CREDITED TO US

10.1 You agree that it is your responsibility to notify us in writing if you anticipate that



moneys will be received or have been received by us for your credit by an overseas remitter or account. We will only be obliged to pay those moneys once they have cleared and we have received from you written notification that such moneys have been received by us for your credit.

10.2 If we pay you money or credit you with funds which you are not entitled to, you will immediately refund such amount (in cleared funds) to us upon receipt of written notification from us and until these will hold such funds in trust for us.

10.3 All payments to us, including any transaction deposits or margin calls will be made in full without setoff or any deduction or withholding of any kind, free and clear of any liens, claims, charges or encumbrances or any other interest of any third party.

## 11. TERMINATION OF THIS AGREEMENT

11.1 We may by written notice to you terminate this agreement at any time after any of the following:

- (a) any breach by you of any of your obligations under this agreement including a failure to pay an option premium, a transaction deposit or margin call under a transaction; or
- (b) you or any person on your behalf have given us false or misleading information or any of the representations or warranties made or subsequently deemed made in the Account Application is untrue or becomes untrue;
- (c) you become bankrupt or go into liquidation or have a receiver appointed or any director or partner of yours commits an act of bankruptcy or you cease to carry on your business;
- (d) if you are an individual, your death; or

(e) we have given you at least 30 days notice of our intention to terminate this agreement.

11.2 You may at any time give us 30 days notice of your intention to terminate this agreement, following the expiry of which this agreement will terminate.

11.3 Termination of this agreement will not in anyway affect our rights under this agreement that exist on or prior to the date of termination and will not affect our rights in relation to any transaction outstanding. Termination of this agreement will not affect any other outstanding obligation you have to us and will not affect your obligations to indemnify us both before and after such termination in relation to those matters referred to in clause 7 of this agreement. Our rights and benefits under this agreement continue despite termination of the agreement including but not limited to clauses 7, 8 and 11.

## 12. CONSEQUENCES OF TERMINATION

12.1 On termination of this agreement for whatever reason:

- (a) all payments outstanding under this agreement including under any transaction, will whether or not due for payment, immediately become due and payable; and
- (b) we shall as soon as it is practicable to do so discharge and close out all currency transactions or forward exchange contracts entered into by you with us or entered into by us pursuant to a transaction and determine in respect of each transaction our total cost and loss (including any cost of funding, loss or cost involved as a result of terminating or establishing any hedge or related bank position) or, as the case may be, gain as a result of the discharge and close out, in each case expressed in NZ\$ ; and shall treat each such cost or loss to us as a positive amount and each gain by us, as a negative amount



and aggregate all of such amounts to produce a single net positive or negative amount denominated in NZ\$. If the resulting net amount is a positive amount you will pay it to us immediately and if it is a negative amount we shall pay the absolute value of such amount to you.

- (c) Subject to a payment obligation arising under clause 12.1(b) above, we are released from all liability and obligations to you except to the extent of our own gross negligence or wilful default.

### 13. SET OFF

- 13.1 We are entitled to combine accounts and set-off against any amounts due to us by you, any amounts received by us from or on behalf of you or otherwise held by us and payable to you including but not limited to moneys received as a deposit, transaction deposit under clause 1.6 or by reason of a margin call. Either any amount due to us or any amount held for you or payable to you shall be converted by us into the currency in which the other is denominated at the rate prevailing at the time of set-off. We may determine the application of any amounts which are to be set-off at our discretion.
- 13.2 You must not set-off or deduct from any amounts due by you to us, any amounts we owe you.

### 14. COMMUNICATIONS

- 14.1 Where we are required to notify you or communicate with you under this agreement we may do so verbally or in writing, including by telephone, facsimile, email or by any other form of electronic means and we do not need to notify you or communicate with you in the manner in which you may communicate with us.

### 15. AMENDMENTS

- 15.1 You agree that we may at any time and from time to time change this agreement. You agree that any changes to this agreement will apply to all transactions from the date we notify you of the change or the date you are treated as having been notified of the change whichever is earlier.

### 16. WAIVER

- 16.1 A waiver by us of any provision, condition, requirement, rights and obligations under this agreement is not effective unless we do so in writing. No failure to exercise and no delay in exercising any right under this agreement will operate as a waiver or that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

### 17. PARTIAL INVALIDITY

- 17.1 If any term or provision of this becomes void or voidable then such term or provision or part shall be severed from this agreement or amended in such manner as renders the remainder of this agreement valid and enforceable.

### 18. GST AND EXCHANGE LAWS

- 18.1 You undertake to us that:
- (a) you will observe all exchange related laws in relation to any instruction and you will assist us to do likewise;
  - (b) you will promptly supply us with all information which any legal or regulatory authority may require and/or which we may be required to supply in relation to you or any instruction.
- 18.2 To the extent to which GST may apply in relation to any taxable supply by us to you, you must pay, in addition to all other amounts payable by you to us, an amount equal to the GST on that supply and we



may recover such amount from you. Such amount shall be payable by you upon demand by us. We will provide you with a tax invoice for any such GST as becomes payable.

18.3 Each person signing the client application form represents and warrants to us that he/she is authorised to sign the application so as to bind the client named in the application to this agreement.

18.4 If the client named in the application is a partnership or trust, then the person signing the application also represents and warrants that he/she is authorised to sign the application on behalf of the partnership or trust so as to bind each of the current and future partners or trustees, jointly and severally.

## 19. **PRIVACY AND USE OF INFORMATION**

19.1 You authorise any person or organisation to provide us such personal information as we may require for the client application and to maintain the accuracy of the personal information so collected. You further authorise us to disclose to any third party details of the client application and any subsequent dealings it has with us and for the purposes of recovering amounts payable by you and the collection of credit references for the purposes of this agreement, dealing with a transactions and complying with any statutory or regulatory requirements. You acknowledge that, pursuant to the Privacy Act 1993, you have a right to information collected by us about it and to request that this information be corrected. The information will be held at our offices at Fifth Floor, 228 Queen Street, Auckland.

## 20. **NOTICES AND ASSIGNMENT**

20.1 Any notice or other written communication by us to you will be treated as having been received by you;

(a) if sent by prepaid mail, on the third business day after posting;

(b) if sent by fax, upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number last provided to us for you;

(c) if sent by email or other electronic communication, upon production of a confirmation of delivery report by the information system from which the communication was sent which indicates that the communication has entered the information system last notified to us for you.

20.2 We may, without your consent, at any time assign the whole or any part or parts of this agreement with you to any person.

20.3 You may not assign, create a security interest over or otherwise deal with any of your rights under this agreement without our consent which may be withheld in our absolute discretion.

## 21. **LAW**

You agree that the laws of New Zealand govern the interpretation and the construction of this agreement.

## 22. **INTERPRETATION AND DEFINITIONS**

22.1 Unless otherwise expressly specified all conditions and contractual obligations relating to and describing currency contracts also apply to and describe forward exchange contracts, options and the transactions resulting from the exercise of options.

22.2 If you compromise more than one person, then each such person will be bound by and liable under this agreement jointly and severally.



22.3 In this agreement the following definitions shall have the following meanings, unless the context otherwise requires:

references to “you” and “your” are references to the client named in the foregoing pages of this agreement.

references to “us”, “our “ and “we” are references to the client of Tuatara Management Limited.

“agreement” means this agreement on these terms and conditions and the client application form, if any, attached to these terms and conditions.

“authorised person” means one person who is authorised to give instructions as referred to in clause 3.1.

“business day” means a day on which registered commercial banks are open for business in Auckland, New Zealand.

“currency transaction” means any agreement or arrangement between you and us to effect a foreign exchange transaction in accordance with any instruction, including under a forward exchange contract or option.

“foreign exchange advisory services” means advisory services provided by us to you in relation to your business and your foreign exchange requirements and exposures.

“forward exchange contract” means any agreement or arrangement between you and us to effect a forward exchange transaction (which includes an optional period forward exchange contract) in accordance with any instruction.

“instruction” means any instruction or request by way of telephone, facsimile, or email or other method as may be approved by us.

“margin call” means a request at any time and from time to time by us to you for the payment of an amount of money by you to us under this agreement, including for a

variation in the valuation of outstanding forward exchange contracts at the time of the request as compared to the specified contractual rate.

“maturity or value date” means the date on which the last payment obligation under a forward exchange contract is due to be performed.

“option” means the grant of the right, but not the obligation, to buy or sell a specified amount of one currency against another currency at a fixed rate.

“person” includes an individual, company, trust, partnership or other legal entity.

“transaction” means a forward exchange contract or currency transaction or other foreign exchange related transaction including an option effected by us for you pursuant to an instruction.

“transaction confirmation” means a written confirmation from us to you confirming details of an instruction and a transaction.