

# TERMS AND CONDITIONS

16 January 2018

## CUSTOMER AGREEMENT: PERSONAL AND BUSINESS CUSTOMERS

These terms and conditions apply from 25 July 2019.

### 1. This Agreement

These terms and conditions apply to personal and business customers who use our foreign exchange intermediary ("**FX**" & "**Currency Transfer**") services available through our telephone service, e-mail and our website. In this Agreement, "**we**", "**us**" or "**our**" means Domisa Financial Services (PTY) Ltd (trading as "Domisa Treasury").

Each FX transaction is a separate agreement which incorporates these terms and conditions. The specific details of each FX transaction, including the currencies and amounts to be exchanged and the recipient, will be agreed separately when you request a transaction. Other terms also apply, including our [Privacy Policy](#) and [Website Terms of Use](#).

These documents contain legal obligations for you and for us so you should read them carefully to make sure you understand them. If you have any questions, please contact us on +27 21 003 8070 or email us at [info@domisa.co.za](mailto:info@domisa.co.za).

You can get a copy of this Agreement at any time from our website at [www.domisa.co.za](http://www.domisa.co.za), or via the contact details above.

### 2. Our Services

We provide "**FX Intermediary Services**", that is intermediating an Authorised Dealer (with whom you hold an account directly) buying and selling currency from you, for personal or commercial purposes. There are three types:

- A "**Spot Contract**" is a contract under which we agree with Authorised Dealer to exchange money at an agreed rate, which for major currencies must be settled within two Business Days of the contract being entered into. This is international market convention and, unless a different value date is specifically requested, all transaction will be executed "Spot". It may take longer to settle exotic currencies. A "**Business Day**" is a day, other than a Saturday, Sunday or public holiday, on which banks are open for business in South Africa or, where relevant, in the country of the currency you are exchanging, and
- A "**Tom Contract**" is a contract under which we agree with Authorised Dealer to exchange money at an agreed rate, which for major currencies must be settled within one Business Day of the contract being entered into (next business day). It may take longer to settle exotic currencies, and
- A "**Forward Contract**" is a contract under which we agree with the Authorised Dealer to exchange money at an agreed rate at an agreed time, which is more than two Business Days in the future. This could be a one-off or a recurring transaction. The Forward Contract must be to facilitate payment for identifiable goods or services. We may ask you for evidence to support this.

Whilst placing your transaction request or after the order is executed, you can ask us to facilitate sending the funds to your account or to pay this on to someone else ("**3<sup>rd</sup> Party Payment**"). Under

South African regulation 3<sup>rd</sup> Party Payments are restricted to limited purposes and circumstances. We may request additional evidence to support this.

You must be the owner or trustee of the money you are intending to transfer.

We do not offer any form of speculative trading facilities. When you enter into a FX transaction, you must fund your account with the full amount of the funds you are transferring. No agreement will be made to enter into any kind of set-off arrangement that would allow you to receive or pay only the amount of any gain or loss that might be realised as the result of exchange rate movements on settlement of the FX transaction.

We do not take into account your specific financial circumstances or needs when we enter into a FX transaction with you. To the extent that we provide you with any advice, it will relate only to the mechanics of the transaction you are proposing to enter into or to publicly available information. You must obtain your own financial advice and make your own assessment as to whether our service is appropriate for your particular requirements. You must select the type and timing of each FX transaction you enter into yourself. You must also ensure all transactions are within South African regulatory limits ([www.resbank.co.za](http://www.resbank.co.za)).

### **3. Becoming a customer**

To provide you with FX Intermediary Services, we must collect certain information about you and any individuals you appoint to provide instructions on your behalf ("*Authorised Individual*"). These include details such as your name, contact details, date of birth, proof of your identity, address and/or financial affairs. If you are a business, this includes information about the way you are set up, your directors or management body, authorised individuals, the law you are subject to and ownership. This is to ensure compliance with FICA legislation.

We need this to verify your identity and ensure we meet our regulatory obligations. We may also need to update this information during the term of this Agreement. If you do not give us this information or we are not satisfied with it, we may not be able to provide any services to you.

We may also carry out electronic database searches and credit reference agencies searches to verify your identity and, if necessary, the identity and credit standing of your Directors, large Shareholders and Authorised Individuals.

You acknowledge and agree that we may use, store, retain and otherwise process information, including personal information, or data provided by you in connection with this Agreement. You may withdraw this agreement by terminating this Agreement. We may still need to use your information for other purposes, for example, to keep records for regulatory reasons. For more information about the personal information we collect, how we use it, and who we share it with please read our [Privacy Policy](#).

### **4. How we communicate with you**

Where we need to contact you under this Agreement, we will do so by email, text or telephone, using the details you most recently gave us. We may also contact you through our secure website available through [domisa.co.za](http://domisa.co.za). We will tell you if there are any technical requirements you need to receive these messages.

We may record telephone calls to record your instructions, and for training and quality purposes.

In the event of any dispute, the recording or transcript of our telephone conversation may be used as evidence as to the terms of the agreement that was entered into.

You must ensure that all information provided to us is accurate and up-to-date at all times. You must tell us of any changes by calling us, updating your details in our Secure Website, or emailing us (where we have agreed this with you), as soon as practicable, and in any event within 14 days of the change. If you do not, this may impact the services that we can offer you, for example, we will continue to send messages to the email address we have for you so you may miss out on notifications.

Where notice in writing is required under this Agreement, it may be sent by email. Email is deemed to be received when it was sent provided no message of non-delivery was received by the sender.

### **5. Making changes to this agreement**

We may make changes to this Agreement by telling you, either by email or posting new terms on our website ([domisa.co.za](http://domisa.co.za)).

We can make changes:

- Because we're changing a service we offer or introducing a new service,
- To take account of developments or expected changes in technology, the banking system or industry,
- Due to a change or expected change of law or regulation,
- Due to changes in our costs necessitating changes to commission or fee structures,
- To manage our business sustainably over the long term.

The amount of notice will depend on the type of changes we are making. This will not affect any rights or obligations you already have, but you will be bound by the new terms when you enter into subsequent FX transactions.

If you don't tell us you want to terminate this Agreement before the change happens, then we'll treat you as having accepted the change. If you wish to terminate this Agreement, you can do so without charge but you will need to complete any FX Transactions that have been requested.

### **6. Giving us instructions**

If you appoint an Authorised Individual, they may have unlimited authority to give us instructions on your behalf. This Agreement will also apply to them but you remain responsible – any references to 'you' will also include Authorised Individuals where applicable.

We will rely on instructions from Authorised Individuals until such time as you revoke or vary that authority by giving us 48 hours' notice in writing or by calling us. If you wish to appoint or change an Authorised Individual, please contact us for more information.

We will issue, or you can choose, a username and personalised security credentials (such as a password) so that you can give us instructions. We may accept any instructions received using the security procedures without further checking the identity of the user.

You must take all reasonable steps to keep your security procedures secret and safe, and you must take all reasonable steps to prevent loss, theft or fraudulent misuse of them, for example,

you should not write them down in a format that is recognisable, save them electronically, choose simple passwords, or let someone else use them.

If you know or suspect that your security procedures have been lost, stolen or misappropriated, or that there have been unauthorised transactions or other security breach, you must notify us immediately by calling us on the numbers above or emailing us at [info@domisa.co.za](mailto:info@domisa.co.za).

We will prevent the use of your security procedures if we reasonably believe that:

- It is appropriate to protect the security of your security procedures or access,
- Their use is or may be unauthorised or fraudulent,
- It may otherwise compromise our security measures, or
- We have to do so under an applicable law or regulation or order of a court or other regulatory body.

We will tell you if we need to stop or suspend the use of your security procedures, using the contact details you have provided to us, unless that would break the law. If we cannot contact you in advance, we will attempt to contact you as soon as possible afterwards. Unless we have terminated the Agreement as a result, we will allow you to use your security procedures again once the reasons for taking such action no longer apply.

We will also tell you if we become aware of a security breach that could impact you and let you know any steps you should take to reduce any risk to you.

We may apply limits to the number of transactions that you can make each day. We may also apply limits to the amount of money that you can transfer each day. Where this is the case, we will notify you separately and let you know if there is another way you can give us your instructions.

#### **7. When we or the Authorised Dealer don't need to follow your instructions**

We may refuse to offer you FX Intermediary Services at any time for any reason. However, once we accept an FX instruction, we'll provide you with FX Intermediary Services or facilitate payment instructions you give us unless:

- They are not complete or you have not provided us with information we have asked for,
- We do not think they came from you,
- You have not funded your account appropriately,
- You are located in certain countries where we do not do business,
- It would mean we may break the law, regulation, code, or other duty that applies to us or may expose us to claims by third parties,
- We reasonably think a payment is connected to fraud, money laundering, terrorist financing, tax evasion, or other criminal activity,
- We believe it could expose us, another group company or the Authorised Dealer to legal or regulatory action.

There may be a delay in the services we provide while we check that none of the above reasons apply. We'll tell you if we are unable to provide you with FX Intermediary Services or facilitate a payment and what you need to do to correct any errors in the instruction.

## FX INTERMEDIARY SERVICES

### 8. Giving us FX Instructions (Order placement)

If you wish to enter into a Tom, Spot or Forward Contract, you may do so by giving us instructions online, by calling us, or by email.

We will require the following from you when you place an FX Instruction:

- *"Currency Pair"*, the currencies being exchanged
- *"Specified Currency Quantity"*, the quantity of one of the currencies exchanged
- *"Value Date"*, that is, the date on which the currency exchange is to be instructed by us and by which you must have provided cleared funds in your bank account with the Authorised Dealer, and

On receipt of your FX Instruction, we will provide the following Quote details:

- *"% Mark-up Quote"*, the total mark-up % from benchmark rate
- Value Date
- Currency Pair
- Specified Currency Quantity
- *"Indicative Client Rate"*, an indication rate calculated with Benchmark Rate and % Mark-up
- *"Indicative Proceeds"*, an indication of the proceeds using the Indicative Client Rate
- The terms for an initial deposit (if applicable).

When you accept the Quote the FX instruction it is directed to our dealers for execution at the Authorised Dealer. The table below sets out when the transaction becomes legally binding:

#### When the FX Instruction legally binding

**Secure Website:** When your FX Instruction is executed, typically but not necessarily within 5 minutes of accepting the quote. In some circumstances, for extra security, we may try to call you prior to execution. If we can't contact you, we may cancel or delay execution of the instruction but we are not obliged to do so.

**Telephone:** When you accept the Quote details during the call. We will send you a deal confirmation by email.

**Email:** If we agree to accept instructions by email, the FX transaction will be binding when we process it. You acknowledge that if you choose to book a FX transaction by email, it may not be processed immediately. We will send you a deal confirmation by email once we have processed the FX transaction.

You may only take action to correct any of the FX transaction details set out in the deal confirmation if it has not yet been executed by the Authorised Dealer. We intermediate the transaction as soon as we have instructions from you, so you must tell us straight away if there is an error between the deal confirmation and your instructions.

If we quote you a rate that is clearly a mistake on our part as the result of a technical or human error, it is not binding on us. You must notify us as soon as the mistake comes to your attention and we will requote the rate as soon as possible.

You acknowledge that exchange rates can fluctuate rapidly, so the rate we quote you depends on you promptly performing your obligations. However our % Mark-up Quote will not change.

#### 9. Further requirements for forward contracts

We, on behalf of the Authorised Dealer, may ask you to pay a deposit in part payment of the Forward Contract, both at the time you book it and at any time prior to the Value Date. We will tell you whether a deposit is payable before you confirm the Forward Contract. We will determine the amount of any deposit/s that must be paid and tell you of the amount and date by which this must be paid.

If you do not pay a deposit required of you by the date required, the Authorised Dealer may Close Out the Forward Contract.

You may ask us to facilitate bringing forward (pre-deliver) the Value Date or to extend (roll over) the Value Date in relation to the whole or only part of your Forward Contract. This is entirely at the Authorised Dealer's discretion. If they agree, you acknowledge that the rate may be adjusted to account for the timing of the new Value Date.

#### 10. Further details for limit orders

**"Limit Orders"** are an instruction to enter into a Tom, Spot or Forward Contract at a rate you have nominated (**"Target Rate"**). You may give us instructions for a Limit Order by telephone, or through our Secure Websites, or by email.

Subject to your right to cancel the Limit Order set out below, the Limit Order will become binding as and from the time we process your instructions. After we process your Instructions, we will send you an email headed "Order Confirmation". You must tell us if there are any errors in the Order Confirmation within 24 hours of receipt.

You may cancel a Limit Order at any time before the Target Rate is reached by giving us notice by telephone. You may not cancel a Limit Order after the Target Rate has been reached, whether or not we have notified you that the Target Rate has been reached.

We will notify you by telephone or email as soon as possible after the Target Rate has been reached. As soon as you receive our notification, you must take action to ensure that the required funds reach your account by the Value Date. If required funds are not on your account in time your Limit Order may not be actioned.

#### 11. Payment to your account with the Authorised Dealer

**Tom & Spot Contract Payments** - You must fund your account the full amount of a Tom or Spot Contract on the day the FX transaction becomes legally binding. If not funded by Value Date, the Authorised Dealer may Close Out the transaction.

**Forward Contract Payments** - You must fund your account the full amount of a Forward Contract prior to the Value Date of the Forward Contract (less any deposit/s paid). If not funded by Value Date, the Authorised Dealer may Close Out the transaction.

You must make all payments to your account with the Authorised Dealer electronically from a bank account in your name. If you want to make the payment from someone else's account, the Authorised Dealer may require evidence that you are entitled to the funds. Please tell us if you'd

like to do this so there is not a delay in your transaction.

## 12. Closing out

The Authorised Dealer may Close Out, that is cancel, a particular FX transaction or transactions that you executed via us, without notice to you:

- For any of the reasons set out in 'When we do not have to follow instructions' above,
- Any information or warranty you have given us is or becomes, in our opinion, inaccurate, incorrect or misleading,
- In the event of your death or loss of mental capacity,
- In the event that bankruptcy proceedings are commenced against you or the occurrence of an Insolvency Event,
- If you breach a material term of this Agreement or of any FX transaction, or
- If you terminate this Agreement.

When an FX Transaction is Closed Out, it is reversed at prevailing market rates. If the value of the currency you exchanged has strengthened, a loss will be incurred on the FX transaction and you will be liable for the amount of that loss, together with any reasonable expenses or other costs the Authorised Dealer may incur as a result.

Typically Authorised Dealers will not pay you any profit arising from Closing Out a FX transaction.

You must notify us immediately if you become aware of any event referred to above happening or being likely to happen.

## PAYMENT INSTRUCTIONS

### 13. Paying out the funds

Once the FX Service has been concluded and performed and provided that no amounts are owed, the Purchased Currency the Authorised Dealer is holding will be available for onward payment based on your payment instructions either to return the funds to you or pay them on to someone else.

All payments must be received by the Authorised Dealer as cleared funds and for the full amount being transferred, including any fees that may be payable, before they will pay out the funds.

It is your responsibility to ensure that accurate and complete payment instructions for the recipient of the payment are provided to us before the Value Date, or for Spot Contracts, the date we receive cleared funds if earlier. You must provide us with full details of your recipient account, including the account number (which we rely on to make the payment), their full name and address and the full name and address of the Recipient bank. If you fail to do so, we reserve the right to Close Out the FX transaction.

Funds will be paid by electronic means only.

Interest on funds held by the Authorised Dealer will be paid at their disclosed rate and credited to your account with them on a monthly basis. We earn no revenue from client interest.

#### 14. Giving us payment instructions

You or an Authorised Individual can give us payment instructions and consent to a payment confirming the payment to the recipient in our Secure Websites, verbally by telephone, or by email where we agree. This may be using the security procedures provided to you.

We rely solely on the account number you give us for your recipient account and will not check to ensure that the name provided by you accords with the account number you have given us.

#### 15. Execution times

We are available to facilitate execution of transactions from 7:30am until 5:30pm on all South African business days.

A payment instruction cannot generally be withdrawn or changed once you have given it to us. In exceptional circumstances, we may agree to change an instruction after it has been received.

We will notify you once the payment has been made which will include a reference, amount of the payment in currency used, any charges and the date the order was received. This information is also available on our Secure Websites. If you decide to turn off e-mail notifications, it is your responsibility to check these regularly and print or save a copy of this information for your records.

#### 16. How long the payment takes

The time it takes to reach the recipient's bank depends on the currency of the payment and where your recipient's account is located. A Business Day will not include any public holidays in the country of the recipient's account.

#### *Type of payment:* How long it takes after we process your payment instruction

All foreign currency payments are made via the SWIFT network. Typically, the recipient's bank will receive the funds on Value Date, there may however be a delay in the bank crediting the recipient's account. You can ask us when we expect the recipient's bank to receive the payment

### OTHER TERMS

#### 17. If something goes wrong

If you believe there has been a mistake or unauthorised payment, you must tell us as soon as possible. You should check deal confirmations and other information we provide you and contact us straight away if there is anything you are unsure of.

#### 18. Mistaken or incorrectly executed payments

If you make a mistake (for example, you give us the wrong account details) and your funds are sent to the wrong account as the result, we will not be liable to you for any loss but we will make reasonable efforts, along with the Authorised Dealer, to trace and recover your money. Whether the funds can be recovered will depend on the local law that applies.

#### 19. Unauthorised payments

If there has been an unauthorised payment, we will make all reasonable efforts, along with the Authorised Dealer, to trace and recover the funds.

#### 20. Loss that you want to claim from us

If you have a loss or damage because of something we have done or failed to do, you may be



able to claim back the loss from us. However, we will not be liable to you:

- For indirect losses, loss of business, loss of opportunity or loss of profit,
- Where you have acted fraudulently or with gross negligence,
- Where you are in breach of this Agreement,
- Where we have acted consistently with our obligations under this Agreement,
- Where we could not have predicted your loss when you gave us the instruction, or
- For any failure or delay on our part where this was due to unavoidable, abnormal and unforeseen circumstances beyond our control, or such failure arose as a result of applicable laws and regulations.

These exceptions will not apply if we acted fraudulently, with gross negligence or we are at fault and the law doesn't allow us to exclude or limit liability.

## **21. Duration and termination of this Agreement**

This Agreement will remain in force until terminated by you or us.

You may terminate this Agreement at any time without charge by notifying us in writing or telling us (we may ask you to confirm this in writing).

We may terminate this Agreement at any time by giving you two calendar months' notice in writing. We may also terminate this Agreement immediately or on less notice, if we reasonably believe:

- You have seriously or repeatedly broken the terms of this Agreement,
- You give us false information,
- You are no longer eligible for a service,
- A service you have requested is connected to fraud, money laundering, terrorist financing, tax evasion, or other criminal activity,
- It would mean we may otherwise break the law, regulation, code, or other duty that applies to us or may expose us to claims by third parties,
- You threaten or are abusive to our staff,
- You have not used a service in 24 months,
- It could otherwise expose us or another Group Company to legal or regulatory action, or
- You become bankrupt or insolvent or appear to be subject to an Insolvency Event.

You must still complete any outstanding FX transactions and payment instructions.

## **22. Warranties and indemnities**

You agree that the following statements are true and accurate, and you acknowledge that we may refuse to process, or Close Out, any or all FX transactions, if we find at any stage that they are not true and accurate:

- You are over the age of 18,
- You have full authority to enter into this Agreement and services under it;
- You are the beneficial owner of the money being transferred;
- You are not acting on behalf of another person other than as an Authorised Individual
- You have a valid reason for entering into each transaction and will not enter into any FX transaction for speculative purposes;

If you are acting as a trustee of a trust, this Agreement binds you in your personal capacity and in your capacity as trustee of the trust.

You agree to pay us any costs, expenses or fees we may reasonably incur as a result of your failure to perform your obligations under this Agreement. This includes any legal costs, on a solicitor and own client basis, that we may incur in order to enforce our rights or recover any amounts you owe us. You also agree to pay us any fees, costs, duties and taxes validly charged by third parties in relation to the services you enter into, including fees charged by your recipient bank.

### 23. Our contact details

Our head office is at Unit B13, Westlake Square, Westlake, Cape Town 7945.

You can contact us by:

- Calling us if you are:
  - a customer, on +27 (21) 205 1980,
- Sending us an email at [info@domisa.co.za](mailto:info@domisa.co.za).

This Agreement and all other documents we make available to you are written and available only in English and we will only communicate with you in English.

### 24. Complaints and disputes

If you are not satisfied with any aspect of our service, please contact us in any of the ways set out in the '*Our contact details*' section above.

For details of our internal complaint handling procedures please refer to our [Complaints Policy](#) which can be found on our website. Alternatively, you can ask us to send you a copy.

If we are unable to resolve your complaint and it relates to a Foreign Exchange Intermediary service, you may be entitled to refer it to the FAIS Ombudsman by emailing [info@faisombud.co.za](mailto:info@faisombud.co.za). You can find further information and eligibility on [www.faisombud.co.za](http://www.faisombud.co.za)

### 25. Governing law

This Agreement shall be interpreted in accordance with the laws of South Africa. Both parties submit to the exclusive jurisdiction of the courts of South Africa.

### 26. Some definitions

*"Group Companies"* means any of our parent, affiliated or subsidiary companies.

*"Insolvency Event"* means:

- a meeting has been convened, resolution proposed, petition presented or order made for the winding up of the company,
- a receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to the company over all or any asset the company,
- a mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security under which the company is the mortgage or charger,
- the company has become insolvent,
- the company has stopped paying its debts as and when they fall due, or
- the company is subject to voluntary administration.



*“Domisa Treasury”* and *“Domisa Financial Services (PTY) Ltd”* means us and/or any of our Group Companies.

Domisa Financial Services (PTY) Ltd (trading as “Domisa Treasury”) is: registered in South Africa (Company No. 2016/331128/07). Our registered office is at Unit B13, Westlake Square, Westlake, Cape Town 7945. We are authorised by the Financial Sector Conduct Authority as a Financial Intermediary (FSP No. 47661). <http://www.fsca.co.za>