

## General terms and conditions

23-11-2016

### 1. Definitions

- a. In these General Terms and Conditions (hereinafter the “Terms”) the following terms shall, unless the context requires otherwise, have the meaning as explained below;
- i. Account: Is the transaction account for either settlement or trading purposes, which the Client has with NBWM.
  - ii. Account Value: Is the overall value of the Account, for example the difference between the value of open positions on the Account, any costs due to NBWM and the cash balance.
  - iii. AFM: Is the Stichting Autoriteit Financiële Markten (the Dutch Financial Markets Authority), a foundation incorporated under Dutch law, having its registered office at Vijzelgracht 50, 1017 HS Amsterdam and registered in the Commercial Register of the Chamber of Commerce in Amsterdam under number 41207759, responsible for market conduct supervision and the supervision of the investment services provided by NBWM.
  - iv. Agreement: Is a contract between the Client and NBWM, including but not limited to payment service and/or trading service agreements.
  - v. Business Day: Is any day where banks are normally open for business in the Netherlands.
  - vi. Client: Is the person or the legal entity entering into an Agreement with NBWM.
  - vii. Consumer: Is any Client who qualifies as a 'consumer' (consument) as defined in the Dutch financial supervision act (Wet op het financieel toezicht ("DFSA")).
  - viii. Counterparties: Is any bank and/or broker through whom NBWM has arrangements in relation to transactions of its Clients.
  - ix. Currency Exchange Transaction: Is any transaction executed by NBWM on the basis of an Agreement, involving the exchange of different currencies at a specific time or after a specific period, by way of a direct exchange of currencies or by means of a certain type of financial product(s), including but not limited to, FXproducts (such as FX Spot, Forwards and Options) offered by NBWM.
  - x. DNB: Is De Nederlandsche Bank N.V. (the Dutch Central Bank), a public limited liability company incorporated under Dutch law, having its registered office at Westeinde 1, 1017 ZN Amsterdam and registered in the Commercial Register of the Chamber of Commerce in Amsterdam under number 33003396, responsible for prudential supervision and the supervision of the payment services provided by NBWM.
  - xi. FIFO: Is the abbreviation of “First In – First Out” and this means that if a Client has more positions in the same instrument, which shall be closed, NBWM will close the oldest position first unless otherwise agreed.
  - xii. Margin Position: Is any position opened and maintained based on a margin deposit.
  - xiii. NBWM: Is the Nederlandsche Betaal&Wissel Maatschappij N.V. a public limited liability company incorporated under Dutch law, having its registered office at Beursplein 5, 1012 JW Amsterdam and registered in the Commercial Register of the Chamber of Commerce in Amsterdam under number 57674019 with email address [info@nbwm.nl](mailto:info@nbwm.nl), which provides payment and investment services and is licensed to do so by DNB and AFM. NBWM is listed in the AFM-register for investment firms (beleggingsondernemingen) and in the DNB-register for payment service providers (betaalinstellingen). NBWM operates under the following trade names: 'Dutch Payment & Exchange Company', 'NBWM', 'NBWM.nl', 'Nederlandsche Betaal & Wisselmaatschappij', 'Nederlandsche Betaal&Wissel Maatschappij'

N.V.', 'Niederländische Zahl & Wechselgesellschaft.'

xiv. Parties: Are the Client and NBWM jointly.

xv. Representative of the Client: In case of a legal entity opening the Account, the representative refers to the person(s) authorized by the legal entity to represent and act for them towards NBWM.

xvi. Stichting: Is the Stichting Derdengelden Nederlandsche Betaal&Wissel Maatschappij.

## **2. Applicability**

a. These Terms are applicable to all services provided by or on behalf of NBWM and any legal relationship between NBWM and the Client, including but not limited to any tender offer, quote, Agreement, confirmation of assignment, transaction and equivalent and other legal acts between NBWM and the Client.

b. The Terms also apply to any activities carried out by the Stichting. The Client explicitly gives its consent to the Stichting to invoke these Terms.

c. The Terms are implemented by NBWM and are accepted by the Client. The applicability of articles 7:404, 7:407, 7:408 and 7:409 of the Dutch Civil Code is explicitly excluded or deviated from.

d. Any general terms and conditions of the Client are not applicable and not binding in any way on NBWM and are hereby explicitly rejected by NBWM.

e. In the event of any conflict between a written provision of the Terms and a written provision of an Agreement, the provision of the Agreement prevails.

f. From time to time, updates can be made to the Terms. The most recent version of the Terms supersedes any previous versions and is made available in the document center on NBWM's website: <https://www.nbwm.nl/en/document-centre/> in a form that can be stored by the Client on a durable medium. These Conditions are filed with the Commercial Register under number 57674019 and are also available for inspection at NBWM's main office at Beursplein 5, 1012 JW Amsterdam. NBWM will send the Client a copy of the Conditions on request. NBWM will announce changes to the Terms two months prior to the date of implementation. Changes will become applicable, unless the Client has informed NBWM that it does not accept the changes within ten (10) days after receipt of NBWM's announcement by the Client that it does not accept the changes, in which case NBWM has the right to terminate the Agreement(s) subject to a notice period of two (2) months, without any costs as a result of termination due by the Client, but subject to any costs, fees and expenses accrued prior to the date of termination and subject to the requirements of Section 9, Section 14 and Section 15.

g. If one or more provisions of the Terms are at any time (partially) invalid or void, the remaining provisions of the Terms will apply in full.

h. In case of discrepancies between the Dutch and the English versions of these Terms and/or any other document(s) provided by NBWM to the Client, the Dutch version prevails.

### **3. Conclusion of Agreements and information provision**

- a. An Agreement will only be concluded and binding upon NBWM having confirmed same in writing or either through a confirmation directly on the platform and/or an automated confirmation email.
- b. The Client shall ensure that all data which NBWM indicated necessary for entering into an Agreement will be submitted to NBWM, including but not limited to data required for identifying the Client and its ultimate beneficiary owner(s) and or Representative(s) under the relevant Anti-Money Laundering regulations. If the necessary data have not been provided timely to NBWM, NBWM has the right to suspend the execution of an Agreement. The Client will notify NBWM immediately in writing of any relevant changes in its identification data. The Client indemnifies and holds NBWM harmless from and against any claims, costs, damages and losses resulting from incorrect or incomplete data provided by the Client.
- c. In order to ensure transparency and that the Client can remain in full control of their own account, any Client whom NBWM has provided with direct access to its platform is encouraged to execute all trades and instructions through the platform. Any instruction and/or orders sent by the Client to NBWM either through the platform, per email or over the phone will only constitute a valid and/or binding instruction or order when confirmed by NBWM either through a confirmation directly on the platform and/or a confirmation email. Such confirmation will contain the detailed information or unique identifier(s). The Client must check such confirmation and immediately inform NBWM of any discrepancies. Should the Client fail to react within 15 minutes upon receipt of the confirmation all liability of any execution errors falls to the Client. An email from NBWM to the Client will be deemed to be received by the Client at the moment when the email is sent by NBWM to the email address provided by the Client to NBWM.
- d. The Client acknowledges and accepts that the Client is responsible for the accuracy of information and any instructions or orders submitted to NBWM using the contact details provided by the Client to NBWM or using the personal login details of the Client.
- e. All quotes and financial information on the platform are indicative. Only the rate that is explicitly agreed upon between the Client and NBWM in accordance with this Section 3 shall be binding.
- f. NBWM shall perform its services to its best ability. All obligations of NBWM shall be interpreted as obligations of effort and not as obligations of result.
- g. NBWM can allow the Client to request for a quote prior to setting the exchange rate. The Client acknowledges and accepts that any quote and/or service provided by NBWM does not constitute advice, and that any services rendered by NBWM are execution only.
- h. The Client acknowledges and accepts, that NBWM's service and assistance is only offered within the opening hours of NBWM. The opening hours can be found on the website of NBWM. The Client can only expect NBWM's service and assistance (not being advice) on normal Business Days.
- i. The Client acknowledges and accepts, that the primary languages of communication with NBWM are Dutch and English.
- j. As the primary way of communication for NBWM with its Clients, NBWM will use either a notification through the platform or an email as its preferred form of communication. An email sent to the Client is considered received by the Client when sent from NBWM to the contact email(s) provided by the Client to NBWM.
- k. The Client acknowledges and accepts that NBWM may use third parties to execute the Currency Exchange Transactions or any other transaction and that the third

parties may hold the Client's funds or financial instruments. If the third party becomes insolvent this may have consequences for the Client and its (use of) funds or financial instruments. Unless prescribed by law or otherwise indicated, NBWM does not accept liability for any acts or omissions of any third parties.

#### **4. Classification of Clients**

- a. Unless stated otherwise the Client will be treated by NBWM as a non-professional investor in accordance with the DFSA.
- b. The Client shall fully cooperate with any suitability or appropriateness assessment and/or classification of the Client based on investment objectives, financial capacity, experience and knowledge to be carried out by NBWM in accordance with the European Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (MIFID) and/or any future rules or regulations. NBWM reserves the right to decide to its sole discretion not to provide services to the Client based on the outcome of such classification and/or assessment.

#### **5. Risk Acknowledgement**

- a. The Client acknowledges and agrees, that trading in leveraged and non-leveraged instrument(s);  
may involve an extreme degree of risks;  
may be highly speculative;  
is appropriate only for Clients, who can assume a risk of loss in excess of their deposit;  
can result in losses which can substantially exceed both the investments and deposits of the Client.
- b. The execution or performance of instructions, orders and Agreements by NBWM is for the Client's sole risk, account and liability.
- c. Unless it has otherwise been agreed in writing, NBWM will not conduct any monitoring of positions entered into by the Client nor of any Accounts. It is the sole responsibility of the Client to monitor any position(s) or Account(s). Consequently NBWM cannot be held liable for the development of a position or Account. NBWM will, and is explicitly allowed to, conduct monitoring on the Account in respect of margin obligations and will make margin calls if and when the Client is required to provide margin.
- d. The Client acknowledges and agrees that no guarantees of profit or prevention of loss have been or shall be provided by NBWM.
- e. The above risks are also applicable for Clients using the payment services of NBWM in the event that margin requirements or funding obligations are not met in accordance with Section 12 of the Terms on Margin and Margin Requirements.
- f. The Client acknowledges and agrees that NBWM does not provide for limitations on expenditure in respect of Currency Exchange Transactions.

## **6. Instructions and orders**

- a. The Client acknowledges and agrees that NBWM may refuse any instruction and/or order from the Client, which is found to be a violation of any legislation such as, but not limited to, money laundering, or if NBWM deems that acting on the instruction and/or order will put the economic solidity of the Client and/or NBWM at risk.
- b. The Client acknowledges and agrees that different order types can be placed when submitting instructions or entering orders. Market orders may be placed to buy or to sell at the price obtainable, however it is possible to place limit or stop orders to be triggered when predefined prices are obtainable. Such orders are not guaranteed executable at the predefined price or amount unless specifically and explicitly confirmed in writing by NBWM.
- c. The Client acknowledges and agrees that any quote provided by NBWM does not constitute advice.
- d. If an error occurs in the prices of transactions quoted by NBWM or any of NBWM's providers, NBWM will not be bound by any contract made at a price which can be evidenced by NBWM to be manifestly incorrect at the time of execution and/or where it was or ought to have been reasonably known by the Client that it was incorrect. NBWM reserves the right to either cancel the execution or correct the erroneous price.
- e. NBWM is not liable for any delays or costs due to transmission errors and/or inaccuracies made by the Client. The Client will inform NBWM immediately, if the Client has accidentally entered wrongful data through NBWM's systems or made any other kind of error.
- f. An order or instruction for a payment transaction placed by the Client in accordance with Section 3, and of which the Parties agree that the execution of the payment transaction shall start on a specific day or at the end of a certain period, or on the day on which the Client has provided funds at NBWM's disposal, the time of receipt of this order or instruction is deemed to be the agreed day, which shall be the day on which the order or instruction is deemed to be irrevocable. If the agreed day is not a business day, the payment order shall be deemed to be received on the following business day.
- g. Notwithstanding Section 6(f), instructions and orders placed by the Client are irrevocable.

## **7. Netting**

- a. Whenever NBWM receives instructions from the Client to enter opposite positions to one or more of the open positions of the Client, NBWM has the right but not the obligation to close the directly opposite positions in accordance with the FIFO principle.
- b. Even if the Client has placed related orders to prevent positions from netting or has placed the positions in different sub-accounts, NBWM may net and close the directly opposite positions in accordance with the FIFO principle.
- c. In the event that the Client has negative cash balance in any Account, NBWM has the right but not the obligation to net between the cash balances of the Client's Accounts and that the Client is liable to cover any costs associated with this, including but not limited to interest.



## **8. Payment, Fees & Charges**

- a. NBWM is entitled to receive the difference between the rate agreed between NBWM and the Client and the rate NBWM receives from NBWM's counterpart. Prevailing Fees & Charges can be seen in the NBWM platform under My Info.
- b. NBWM's prices for its services may change periodically. NBWM informs the Client prior to the date of change. If this change exceeds 5%, then the Client can within one month after the publication of the amendment terminate the Agreement(s).
- c. The Client is liable for any expenses caused by non-performance of the Client for NBWM, such as debt collecting costs, forwarding reminders, phone calls, courier, postal expenses, legal assistance, etc.
- d. NBWM may charge additional fees for urgent transfers, auditor's reports or any additional services requested by the Client. NBWM will inform the Client of the additional costs prior to execution of the Client's request.
- e. If the value of the Account of the Client is negative or the Client fails to meet deadlines for deposits and/or margin requirements, NBWM is entitled to charge the Client interest in accordance with Section 13d of the Terms.

## **9. Termination**

- a. The Client is entitled to terminate an Agreement subject to one (1) month's notice. NBWM is entitled to terminate an Agreement subject to a two (2) months' notice period. NBWM or the Client must give a notice of termination in writing before the end of the month. The notice period of section 6:230x Dutch Civil Code (Burgerlijk Wetboek) does not apply.
- b. In the event the Client wishes to terminate an Agreement this should be done by registered letter to NBWM's address or as per scan via email to [info@nbwm.nl](mailto:info@nbwm.nl), stating clearly from which date the Client wishes to terminate as well as what is to be done with any existing open position(s) and cash balances. The Client may not open any new position(s) with settlement date after the day of termination of the Agreement unless agreed otherwise with NBWM.
- c. NBWM is entitled to suspend and/or terminate the Agreement(s) immediately, including closing any open position(s), if circumstances arise of such nature that fulfillment of the contract is no longer possible or if other circumstances arise of such nature that the unaltered execution of the Agreement cannot reasonably be expected.
- d. If NBWM suspends or terminates the Agreement, it is in no way liable for compensation or damages and costs incurred in any way, because of or resulting from the suspension or termination.
- e. If the Client has any open position(s) at the time of the termination and it is agreed with NBWM to keep the position(s) open, these Terms will remain in force until the date of settlement of your last position. If it has not been agreed with NBWM to keep the position(s) open, any open position(s) will be closed at the time of termination and the Client is liable for any costs related to this.

## **10. Access**

- a. At its sole discretion, NBWM may give the Client access to NBWM's platform to request for quotes, to monitor several exchange rates, to collect useful international trading information and to execute Currency Exchange Transactions based upon the given exchange rate. NBWM may deny the Client to access NBWM's platform, if the Client has not executed any transaction(s) for a consecutive period of twelve (12) months. NBWM may deny the Client immediate access to NBWM's platform, if the

Client fails to meet NBWM's instructions for the proper use of the system within the time frame set by NBWM.

b. The use of the platform is personal and the Client is obliged to keep any personal login details secure and confidential so that third parties cannot obtain access to the login details and the platform of the Client. If the Client is aware of third parties having unauthorized access to the platform and/or login details, or of loss, theft, misappropriation or of unauthorized use of the payment instrument the Client shall immediately contact NBWM via telephone to have the access blocked, notwithstanding the Client's own obligation to adopt effective measures to prevent any unauthorized access by itself. If NBWM can not be reached by telephone, the Client shall immediately contact NBWM via email at [info@nbwm.nl](mailto:info@nbwm.nl).

c. NBWM will block the Client's access to the platform if it has reasonable grounds to suspect that: (a) the security or integrity of either the login details or the login procedure is or might be breached or compromised, or (b) the login details or the login procedures are misused, such misuse including but not limited to fraud and fraudulent behavior.

d. The Client will refrain, directly and indirectly, from uploading software, malware, spy-ware or any files, information and data on NBWM's platform for other purposes than to execute transactions in accordance with NBWM's instructions to the proper use of the platform.

e. The Client may only use the information, data and systems for its own trading business. The Client may not use NBWM's information, data or systems for its own business, if that business competes directly with NBWM's activities and services. The Client is not allowed to sell the information, data or systems to a third party.

f. The Client indemnifies and holds NBWM harmless from and against any claims, costs, damages and losses resulting from any breach by the Client of the obligations set out under (a) through (e) of this Section 10, notwithstanding any losses covered by Section 11(j) of these Terms.

g. NBWM is not responsible for information on third party websites or electronic systems that NBWM may refer to, whether it is by referral or by a direct link to that website of electronic systems. These referrals are only for the Client's convenience. The Client also accepts that NBWM is not responsible for inaccessibility of third parties' websites or electronic systems, including – but not limited to – the websites of banks that NBWM uses for its services.

h. Restrictions or non-accessibility of the platform may occur during any necessary or regular servicing or updating activities whereby such activities may be undertaken by NBWM at any time as necessary for reasonable periods. The Client agrees to such restrictions of use.

i. NBWM cannot warrant the continuous availability of the platform. NBWM accepts no liability nor provides any guarantee that the platform shall be available without interruptions and without flaws. NBWM's liability is excluded for any damages or losses arising from such non-functionality/non-availability unless such damages or losses occurred as a consequence of NBWM's wilful misconduct or gross negligence.

j. The Client undertakes (a) not to reproduce, duplicate, copy or re-sell any part of the platform, (b) not to send automated queries of any sort via the platform, (c) not to access without authority, interfere with, damage or disrupt (i) any part of the platform, (ii) any network on which the platform is stored, (iii) any software used in the provision of the platform or (iv) any equipment or network or software owned or used by any third party, (d) to use the platform only for lawful purposes (e) not to use the platform (i) in any way that breaches any applicable local, national or international law or regulation, (ii) in any way that is unlawful or fraudulent, or has any unlawful or

fraudulent purpose or effect, or (iii) to transmit or introduce any viruses, Trojans, worms, logic-bombs, keystroke loggers, spyware, adware, denial of service attacks or any other harmful programs, or similar computer code which is malicious or technologically harmful and is designed to damage or adversely affect the content, software or performance of the platform or the operation of any other computer software or hardware and (f) not to modify, develop, repair or maintain the platform.

k. The Client shall only obtain rectification of the transaction from NBWM if the Client notifies NBWM without undue delay on becoming aware of any unauthorized or incorrectly executed (payment) transactions giving rise to a claim and no later than:

- i. thirteen (13) months after the relevant debit date if the Client is a Consumer and both the payment service provider of the payer and the payment service provider of the payee involved in the transaction are located in the European Union;
- ii. one (1) month after the relevant debit date for all transactions other than those mentioned under Section 10(k)(i) of these Terms, unless, where applicable, NBWM has failed to provide or make available the information on that payment transaction in accordance with the provisions of these Terms.

## **11. Liability**

a. NBWM cannot be held liable for damages or losses occurred to the Client by using its services and/or its platform, unless the damages or losses occurred by NBWM's wilful misconduct or gross negligence.

b. The Client acknowledges and agrees to, financially and otherwise, assume the risk of trading in speculative investments and that NBWM cannot be held liable for any losses incurred acting on instructions of the Client, unless NBWM has exercised gross negligence or wilful misconduct.

c. NBWM is not liable for damages of any kind, when NBWM bases its actions on incorrect or incomplete information provided by the Client.

d. Unless NBWM is liable due to wilful misconduct or gross negligence, any liability for NBWM is limited to the amount that in each case is payable under its professional liability insurance. If no payment is made under said insurance for whatever reason, the liability of NBWM is limited to twice the amount of NBWM's fees regarding the specific transaction.

e. NBWM is in no event liable for any consequential, immaterial and punitive damage, loss of business profits, missed investment opportunities, business interruption or other indirect damage.

f. The Client is obliged to notify NBWM of damages and/or losses, as referred to in this Section 11, as soon as reasonably possible, but in any event within fourteen (14) days after occurrence of the damage and/or loss. Damages and/or losses which are not reported to NBWM within this period shall not be eligible for compensation.

g. Any claims asserted by the Client shall lapse if they have not been submitted to NBWM in writing and accompanied by reasons, within one year of the date on which the Client became aware, or could reasonably have become aware, of the facts on which its claim is based.

h. The Client will indemnify NBWM against any liability occurred with the Client's counterparties, including – but not limited to – all legal costs, claims, losses, damages occurred by a third party related to NBWM's payment, hedging and/or trading services or performance of the Agreement.

i. Without prejudice to Section 10(k) and 11(b), in the case of an unauthorized payment transaction, NBWM shall refund to the Client immediately the amount of the



unauthorized payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorized payment transaction not taken place, but only if both the payment service provider of the payer and the payment service provider of the payee involved in the transaction are located in the European Union.

j. The Client shall bear the losses relating to any unauthorized payment transactions resulting from the use of a lost or stolen payment instrument or, if the Client has failed to keep the personalized security features safe, from the misappropriation of a payment instrument. Without prejudice to Section 10(k) of these Terms, if the Client is a Consumer this Consumer will bear the losses relating to any unauthorized payment transactions, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment instrument or, if the Consumer has failed to keep the personalized security features safe, from the misappropriation of a payment instrument. The Consumer shall bear all the losses relating to any unauthorized payment transactions if the Consumer incurred them by acting fraudulently or by failing to fulfill one or more of its obligations under Section 10 as a consequence of intent or gross negligence. In such cases, the maximum amount for Consumers referred to above in this Section 11(j) shall not apply.

k. The Client shall not bear any financial consequences resulting from the use of the lost, stolen or misappropriated payment instrument after notification in accordance with Section 10(b), except where the Client has acted fraudulently. If NBWM does not provide appropriate means for the notification at all times, of a lost, stolen or misappropriated payment instrument, the Client shall not be liable for the financial consequences resulting from the use of that payment instrument, except where the Client has acted fraudulently.

## **12. Margin, requirements and obligations**

a. It is the responsibility of the Client to ensure that any margin requirements set by NBWM are met, and any Client with a platform can see the prevailing margin requirements on NBWM's platform under the section 'trading conditions'. Any Client without a platform can see their margin utilization when logging into their Account.

NBWM may set additional margin requirements if the price of the underlying asset changes.

b. The Client accepts, acknowledges and understands that when trading in margin products any change in the price of the underlying asset may result in losses, which may exceed the value of the deposited cash available for margin trading.

c. The Client accepts that if at any time there is insufficient margin on the Account to meet the margin requirements of NBWM, it is the responsibility of the Client to reduce the open Margin Position(s) and/or transfer funds to the NBWM in order to ensure that the margin requirements are met.

d. The Client accepts that if the Client fails to meet these requirements, NBWM may immediately close one and/or several and/or all of the open Margin Positions of the Client without prior notification to the Client.

e. The Client accepts that NBWM may perform a closure of open Margin Positions even if the Client has initiated steps to reduce the margin utilization, such as closing open position(s) and/or transferring further funds to NBWM.

f. Unless the margin requirements are related to payment services NBWM may increase the margin requirements without prior notification to the Client, but NBWM will always endeavour to notify the Client when possible. The Client accepts and acknowledges that this may not always be possible due to relevant (market) circumstances

or the time of day. If the margin requirements are related to payment services, NBWM will notify the Client prior to increasing the margin requirements.

g. NBWM cannot be held responsible, nor liable for damages or losses occurred by NBWM's actions regarding any necessary closing of Margin Positions.

h. Any Client who chooses to use more than one service of NBWM which entails different Accounts, accepts and acknowledges that in the event of a margin requirement each Account may be treated as a separate entity and consequently one Account can be closed (for example a trading account) although there are sufficient funds on another Account (for example a settlement account).

### **13. Conduct of business**

a. NBWM has a conflict of interest policy which aims to prevent any conflicts of interests between members of the board of directors and employees on the one hand and the interests of NBWM and/or its Clients on the other hand. NBWM will provide the Client with a more detailed overview of its policy regarding conflicts of interests upon request from the Client.

b. Unless otherwise agreed, NBWM is committed to and will commit its counterparts to settle each transaction within 48 hours after NBWM has confirmed the order or instruction from the Client in accordance with Section 3(c) of these Terms. NBWM cannot guarantee the settlement of transactions on the same day, unless explicitly agreed between the parties.

c. The Client must immediately supplement any shortcomings due to the negative performance of its transactions, including covering any negative Account Values. The Client accepts, acknowledges and understands that NBWM is entitled to charge the Client fees and/or interest and/or any costs if the Client fails to meet this requirement.

d. All data and information submitted by NBWM shall be treated personally and confidentially by the Client.

e. The Client confirms that the Client is the beneficial owner of any funds transferred to the Account(s) held with NBWM and furthermore acknowledges that the Client understands and accepts that they may not use the Account(s) to hold third party funds without explicit agreement in writing with NBWM.

### **14. Data, Confidentiality & Disclosure of Information**

a. NBWM has the right to remove and destroy files and their content, including content belonging to the Client and/or third parties without further notice from its archives, if five (5) or more years have lapsed after the date on which the Agreement was terminated.

b. The Client acknowledges and accepts that NBWM may use third parties to provide its services and that these third parties may require information regarding the Client.

Through acceptance of the Terms, the Client accepts and authorizes NBWM to, at NBWM's sole discretion, disclose information regarding the Client if this is, directly or indirectly, necessary or beneficial for the provision of the services offered by NBWM without prior notification to the Client.

c. Through acceptance of the Terms, the Client accepts and authorizes NBWM, and/or any third party engaged by NBWM to provide its services, to disclose information regarding the Client as can be required by or under any regulatory authority, law or rule, without prior notification to the Client.

d. The Client accepts that NBWM may record all contact with the Client, including but not limited to, phone calls, emails and meetings. However, technical reasons may prevent NBWM from recording e.g. a phone call and phone calls and transcripts may also be destroyed in accordance with NBWM's normal practice and consequently the Client should not rely on such recordings to be available.

## **15. Governing Law & Dispute Settlement**

a. The laws of the Netherlands govern the Agreement, the Terms and any other documents between the Parties. The Client must give NBWM the opportunity to settle a dispute amicably. The Client can request the complaints handling procedure of NBWM, which is also accessible at <https://www.nbwm.nl/en/complaints>

b. If the Consumer is not satisfied with the response of NBWM to a complaint, the Consumer may file a complaint with het Klachteninstituut Financiële Dienstverlening.

c. Disputes, which could not be resolved through NBWM's complaints handling procedure, shall be settled by the competent court in Amsterdam. However, NBWM reserves the right to commence proceedings in any competent court and jurisdiction which NBWM deems appropriate, for example but not limited to jurisdictions in which the Client is a citizen, resident or possesses assets.

d. The Client accepts and acknowledges that in the event of a dispute, any open market risk on any account of the Client remains the responsibility of the Client to monitor and manage. Consequently, the Client is still obligated to ensure that all margin requirements are met, that any negative Account Value is covered and that all the provisions of Sections 12 (regarding margin and margin requirements) and 13 of the Terms (regarding covering negative Account Values) are still in place. Furthermore any profit or losses are and remain the Client's liability.

## **16. Force Majeure**

a. NBWM shall not be liable for any failure or delay in performance if such failure or delay is caused by Force Majeure as defined below.

b. "Force Majeure" is in these Terms in addition to its effect in the law and jurisprudence, all external causes, foreseen or unforeseen, that NBWM cannot influence, but which prevent NBWM to fulfill its obligations, including but not limited to regulations by any government authority, fire, flood, power outage, interruption, failure or defects in internet, telephone or other interconnection service or in electronic or mechanical equipment, staff illness of NBWM exceeding ten (10) working days, strikes, the failure by third parties engaged by NBWM to fulfill their obligations and/or default by one of the suppliers of NBWM.

c. If NBWM determines that in its reasonable professional opinion, an emergency or exceptional market condition(s) exists, NBWM shall be entitled to increase its margin requirement and/or close out any or all of the Client's open Agreements, instructions or orders. Such conditions include the suspension or closure of any market, the abandonment or failure of any event to which NBWM relates its quotes or the occurrence of an excessive movement in the level of any trade and/or underlying market or NBWM's reasonable anticipation of the occurrence of such movement.

d. If NBWM is unable to meet its obligations due to Force Majeure, it will not be liable. Insofar as compliance is not permanently unfeasible, its obligations will be

suspended for the period such failure continues, without NBWM being responsible or liable to the Client for any damage resulting there from.

### **17. Transferability**

a. The Client cannot pledge or transfer any rights or obligations ensuing from an Agreement, the Terms or otherwise under property law (goederenrechtelijke werking) or contractually unless with NBWM's prior consent. NBWM may transfer or pledge its rights or obligations ensuing from an Agreement, the Terms or otherwise to third parties.

b. Insofar consent from the Client is necessary for the transfer or assignment under Section 17(a), the Client gives an irrevocable power of attorney to NBWM to transfer or pledge its rights or obligations ensuing from an Agreement, the Terms or otherwise to third parties.

### **GENERAL RISK WARNING CONCERNING CURRENCY TRANSACTIONS**

This documents objective is to give basic information and to warn clients about the risks inherent in currency transactions. The client should not enter into any transaction before being sure that he has fully understood the nature of the transaction and the risks involved.

#### **Exchange rate risk**

Since foreign exchange rates fluctuate, exchange rate risk exists whenever assets or liabilities are held in a foreign currency. The essential factors affecting a country's foreign exchange rate are a country's inflation rate, the gap between domestic and foreign interest rates, and the assessment of economic trends, the political situation and safety of the investment. Additionally, psychological factors, such as internal political crises, may weaken a domestic currency's exchange rate.

#### **Risks specific to margin products**

Due to the level of the margin required by NBWM, any change in the price of the underlying asset may result in losses that can exceed the value of the deposited margin.

Any profit or loss following a fluctuation of the underlying asset will be added to or deducted from the account at the client's risk. If the usage of the deposited margin is exceeded, the NBWM may immediately close one or several of the client's open positions, in whole or in part without advising the client beforehand. NBWM may increase the margin requirements without informing the client in advance.

#### **Forex**

"Forex transaction" denotes one of the following contracts: (i) a foreign exchange spot contract ("Spot") is a contract according to which the parties agree to exchange given volumes of currency within a payment period that corresponds to the delivery period; (ii) an OTC currency forward contract ("Forward Outright") is a contract according to which the parties agree to exchange given volumes of currency within an agreed term generally exceeding two working days; (iii) a foreign exchange option is a contract which grants the right, through a premium paid, but not the obligation, to buy or sell currency at a specified exchange rate during a pre-defined period of time; (iv) a foreign exchange future is a contract which specifies the price at which a currency can be bought or sold at a predefined future date.

### **Characteristics**

These contracts are traded on the OTC (over-the-counter) market. The client needs to deposit a guarantee in order to create the required initial margin. The purpose of this margin is to hedge against the potential losses which may result from the transaction. As these contracts are considered high risk instruments, there is a risk of losses higher than the investment or deposit.

### **Risks**

1. Foreign exchange risk: pertaining to the foreign currency fluctuations over a period. The value of unhedged exposure or positions may fluctuate rapidly, possibly resulting in substantial losses.
2. Interest rate risk: this risk may result in distortions between the interest rates of the two currencies.
3. Credit risk: the possibility that one of the parties involved in a Forex transaction does not honor its debt at the end of the contract. This may occur when a financial institution is insolvent.
4. Country risk: relates to governments and/or central banks which may intervene in the foreign-exchange markets to limit the selling of their currency. There is more country risk with "exotic" currencies than with the principal currencies which allow free trading in their currency.
5. Leverage effect risk: in this area, the transactions may be linked to high levels of risk. For example, by making use of leverage effects, a small movement in the exchange rate may result in significant gains or substantial losses.