



# Terms of Business

## PARTIES:

A. MERCURY ASIA LIMITED (MFX) the registered address of which Room 910-912, Silvercord Tower 2, 30 Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong.  
B.

Name of Company or Individual	
Registered Address	
Individual's Trading Name & Address (if different from above)	
Telephone	
Mobile	
Facsimile	
e-Mail	
Authorised Person	
Authorised Signature	

## RECITALS:

MERCURY ASIA LIMITED, incorporated and organized under the laws of Hong Kong, is licensed (licence no.: 16-05-01852) in Hong Kong and regulated by Money Services Supervision Bureau, Anti-Money Laundering and Counter - Terrorist Financing Ordinance (Cap 615) ("AMLO"). MERCURY ASIA LIMITED provides facilities for the purchase or sale of currencies in connection with a trade or business for commercial purposes. The Client wishes to enter into contracts for the purchase of currency with MERCURY ASIA LIMITED under the terms and conditions (the "Terms") below.

**Definitions:**

In these Terms:

"Agreement" means this **Trading Agreement: Same Day, Spot and Forward Transactions**

"Account" means the bank account notified by you to us into which any sums due from us to you pursuant to any Order will be paid.

"Call" means request by us to you to provide additional amounts (not exceeding the full amount of the Sale Currency) as we may reasonably require on account to cover adverse exchange rate movements between the date of the Contract and the Value Date.

"Contract Note" means our written document setting out the details of an Order that will be sent to you following Order Confirmation.

"Forward Trade" means a transaction where the Value Date is later than two working days after the instruction.

"Good-Till-Cancelled" (GTC) specifies a limit order that stays on our books until executed.

"Margin" means the deposit or advance payment required by us from you in advance of each Forward Trade.

"Client Nominated Account" means the bank account nominated by us from time to time into which the Sale Currency will be paid.

"Margin Nominated Account" means the bank account nominated by us from time to time into which the Margin will be paid.

"One Cancels the Other" (OCO) A pair of orders, typically limit orders, whereby if one is filled, the other order will be automatically cancelled.

"Order" means the Client's oral, electronic, i.e. by e-mail or by fax or written instruction for us to perform a Trade on your behalf.

"Order Confirmation" occurs when we confirm the details of the Order to you by telephone or electronically or in writing.

"Sale Currency" means the sums in a designated currency payable by you to us in respect of a Trade including, without limitation, any Margin or Margin Call.

"Same Day Trade" means to sell Sale Currency for currency that differs from the Sale Currency by the end of the same Working Day.

"Spot Trade" means a transaction where the Value Date is two working days after the date of instruction.

"Trade" means each transaction to purchase and deliver currency for you including, without limitation, a Forward Trade, Same Day Trade or a Spot Trade.

"Stop Loss order" means an order that becomes a firm Order if and when a specified currency sells at or below the specified stop price.

"Value Date" means the date of delivery to you of the currency purchased by you.

"Working Day" means a day when the clearing banks in Hong Kong are open for business, excluding Saturday, Sunday and public holidays.

**1. Scope of this Agreement**

We will deal with you on:

- these Terms of Business;
- your completed Application Form;
- any additional terms and conditions issued by us, together referred to as this "Agreement". These Terms are the only ones on which we will rely in dealing with you and these Terms govern the conduct of the parties in relation to any Order you may place to the exclusion of all other terms and conditions.

**2. Instructions**

You may give us instructions orally, electronically, i.e. by e-mail and by fax or in writing. The only persons authorised to give us instructions on your behalf are those notified in writing by you to us, those specified on your Application Form or as varied by your written notice to us. We shall not be bound by any such variation until we have received it and reserve the right to seek confirmation of that order before being bound by it where we deem this appropriate.

In entering into this Agreement, you understand that:

- Late arrival of funds may result in next day delivery
- Any forward contracts will be subject to daily margin requirement
- We will execute GTC or OCO orders on your instructions
- We cannot predict future exchange rates
- We will only accept payment directly from client's authorised and approved bank accounts

**3. The Services**

3.1 We will provide facilities for you to buy and sell currency.

3.2 Once a Contract has been entered into, and whether or not a Contract Note has been issued, it cannot be altered, cancelled or rescinded except by mutual agreement between you and us.

3.3 When making an Order or entering into any Contract you rely solely on your own judgement. If we provide you with information concerning

any matter including (but not limited to) the foreign exchange markets, we do this on a voluntary basis and we do not accept responsibility for the accuracy or completeness of such information or assume in so doing any duty of care in relation to it. We do not offer advice under this Agreement on any matter including (but not limited to) the merits or otherwise of any currency transactions, on taxation, or markets.

3.4 We may at our absolute discretion refuse to accept any Order without giving any reason and without liability for any loss or damage incurred by you or any other party.

3.5 We will not transfer to you any funds representing the benefit of any fluctuation in currency arising after a Contract has been entered into as this may be outside commercial purposes and, if so, unlawful.

3.6 We may request from you, from time to time, and you will provide any information regarding you and your business and financial affairs, status and corporate identity including, but not limited to, any information required for compliance with legislation governing money laundering or other matters. Notwithstanding the fact that we are obliged to keep your information and your transactions with us confidential, we are nevertheless required to disclose information to the authorized officer in compliance with anti-money laundering legislation, namely Organized and Serious Crime Ordinance (Cap. 455), Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405), where it is suspicious that any Contract concluded with you or on your behalf may involve money laundering.

3.7 You are responsible for ensuring the accuracy of all information submitted to us by you and must not withhold or omit any information that would render those details false or inaccurate. You will notify us immediately if you become aware of any error or omission.

**4. Delivery and Payments**

4.1 In the event of a Spot Trade, you will pay the Sale Currency in full into the Client Nominated Account for value no later than the close of business the following business day or time specified by MFX before entering a transaction.

4.2 In the event of a Forward Trade, you will immediately (in the normal course of events within 24 hours after the Order is placed unless otherwise

agreed) pay into the Margin Nominated Account in cleared funds a Margin of 10% of the full amount of the Sold Currency, or such other percentage as we may specify at our sole discretion and will pay any outstanding balance of the Sale Currency into the Nominated Account not later than one Working Day before the Value Date of the particular Forward Trade. Any margin held by MERCURY ASIA LIMITED will be lodged against the forward position of the client and subjected to market condition.

4.3 MERCURY ASIA LIMITED accepts no responsibility in the event that the client sends currency to the incorrect client segregated designated currency account.

4.4 In the event of a Same Day Trade you will pay the Sale Currency into the Client Nominated Account by no later than 12.00pm on a Working Day, unless we stipulate otherwise.

4.5 All payments made by you under this Agreement shall be free from and without set-off, withholding, counterclaim or deduction whatsoever. We shall make all payments due to you under this Agreement in full unless required by law to make deductions including, but not limited to, deductions or withholdings in respect of any taxation liabilities.

4.6 Banks have specified cut off times for the receipt and dispatch of electronic payments. We accept no responsibility for any consequence attributable to the arrival of funds or instruction of payment after the relevant cut off times.

4.7 We reserve the right to make a Margin Call to re-establish the Margin to the original percentage level agreed for the particular Trade if the Margin subsequently falls below the applicable threshold for that Trade as set out below as a result of an adverse market movement:

(a) in the event an initial Margin of 10% falling to or below 7.5%

(b) in the event an initial Margin of 15% falling to or below 10%

(c) in the event an initial Margin of 20% falling to or below 15%.

4.8 All Margin Calls must be paid within twenty-four hours of our first communicating the Margin Call to you.

4.9 The Margin will vest automatically in us in any of the following circumstances:

4.9.1 on the Value Date;

4.9.2 if you are in breach of any material term of the Agreement;

4.9.3 in the circumstances set out in Clause 5.1.5.

4.10 All funds provided by you under a Contract (whether as security or otherwise) may be appropriated by us if we incur any liability-in respect of any Trade or in the event that you are unable to pay sums due to us or you are in breach of this Agreement.

4.11 If you fail to make any payments due to us then we may charge you interest at the rate of 5%.

4.12 Charges - we could charge a telegraphic transfer fee of HKD 400 per electronic transfer which is subjected to your approval before entering into the transaction.

4.13 MFX may, at its discretion, make payments to third party introducers.

## 5. Default and Termination

5.1 We may close out all or part of any Trade from the market and/or terminate this Agreement without notice if:

5.1.1 you fail to make any payment for a Service when it falls due in accordance with this Agreement;

5.1.2 you are in material breach of this Agreement or fail to comply with your obligations in respect of a Trade;

5.1.3 you are in breach of any relevant statute, regulation or regulatory regime which is in force in Hong Kong or in other applicable jurisdictions;

5.1.4 it becomes unlawful for us to perform this Agreement;

5.1.5 you become unable to pay your debts as they become due or have a bankruptcy/winding-up petition presented against you (if you are a corporate body) or you propose a form of composition or arrangement to your creditors or if you cease or threaten to cease to carry on all or a part of your business; or

5.1.6 any of the events specified above or anything analogous to them occurs under the laws of Hong Kong and/or any applicable jurisdiction.

5.2 If you become aware of the occurrence of any event referred to in this Clause 5, you must give us immediate written notice.

## 6. Limitation of Liability

6.1 The following provisions set out our entire liability to you for any losses, costs (including legal costs), damages, expenses, taxes, charges or any other liability whatsoever ("Claim") except for death or personal injury caused by our negligence or the negligence of those for whom we are legally responsible that causes death or personal injury or for our fraudulent misrepresentation for all of which liability is unlimited.

6.2 The limitation and exclusion of liability is set on the basis that you are aware of the volatility of the foreign currency market.

6.3 We are not liable for any Claim that arises as a result of currency fluctuation between the Order Confirmation and the Value Date, or as a result of your non-compliance with the terms of this Agreement or caused by the failure or delay of any third party in the transmission, provision or delivery of any Service.

6.4 We are not liable for indirect loss, or for loss of profits, management time, contracts, goodwill, anticipated savings, even if such loss was reasonably foreseeable.

6.5 Subject to provisions of this Clause 6, our total aggregate liability to you for any Claim will not exceed the total Sale Currency paid by you in respect of the Order giving rise to the Claim.

6.6 You will indemnify and keep us indemnified against all losses (including legal costs on a solicitor and own client basis) and liabilities incurred by us in the proper performance of services for you or in the enforcement of our rights hereunder and, in particular, losses and liabilities incurred as a result of:

6.6.1 any default in payment by you of any sum due under a contract or any other breach of this Agreement;

6.6.2 our carrying out your instructions: or

6.6.3 our exercising our rights under Clause 5.1, but in such event we will have the right, as an alternative to our right to an indemnity, to set-off against any monies held by us on your account any amounts owed by you to us.

## 7. General

7.1 Nothing in this Agreement confers any benefit or any right to enforce this Agreement on any third party.

7.2 Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties.

7.3 Clauses 6 and 7 will survive termination of any Order or termination of this Agreement.

7.4 These Conditions constitute the entire agreement and understanding of us and you and supersede all oral communications and prior writing relating to it.

7.5 We may amend these Conditions by notice in writing to you at any time and such amendment will be binding on you from the date of such notice. Any such amendment will not have retrospective effect or affect any rights or obligations that may already exist in respect of any Order or contract.

7.6 Should any part of this Agreement be found by a court of law to be unenforceable or illegal, the remaining terms will continue in full force and effect.

7.7 You may not assign or transfer your rights or obligations under this Agreement without our express written consent. We may assign, transfer and/or novate our rights and obligations under the Agreement to any third party.

7.8 Any failure by either party to exercise and any delay, forbearance or indulgence by any party in exercising any right, power or remedy under this agreement will not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time.

7.9 If any of the terms of this Agreement conflict with those of a Contract, the terms of the Contract will prevail.

7.10 Other than an obligation to make payment, a party shall not be liable to the other for failure to perform its obligations under this Agreement or any Order if that failure was caused by events beyond its reasonable control. These events include, but are not limited to fire, flood, failure of third party systems, terrorist attack and war.

7.11 These Terms and Conditions will be governed and construed in accordance with the laws of Hong Kong and the parties to this Agreement submit to the non-exclusive jurisdiction of the Courts of Hong Kong.

## 8. Warranties and representations

You warrant and represent to us on a continuing basis that:

8.1 all information that you supply to us is complete, true, accurate and not misleading in any material respect;

8.2 you are obligated to inform us with immediate effect if there is any change in direct or indirect beneficial ownership which is equal to or more than 10%.

8.3 you are acting as principal and not as another party's agent or representative;

8.4 you are not prevented by any legal disability or subject to any law or regulation that prevents you from performing this Agreement and any related transactions contemplated by it.

8.5 you have obtained the necessary consent and have the authority to enter into this Agreement and subsequent Orders or other transaction contemplated by this Agreement (and if you are a body corporate, you are properly empowered and have obtained all necessary corporate or other approval(s) pursuant to your constitutional and organisational documents);

8.6 you comply with all relevant laws, regulations, exchange control requirements and registration requirements;

8.7 all Orders are placed in the course of your usual trade or business and will be for commercial or investment purposes only and not for currency speculation; and

8.8 you will take risk in and ownership of the purchased currency upon payment of the full amount of the sold currency as directed by you orally or as per your instructions contained in the relevant order.

## 9. Tape recording of conversations and record keeping

You agree that we may:

a. record telephone conversations;

b. archive email and text message between you and us; and

c. use such recordings, or transcripts from such recordings, as evidence in any dispute or anticipated dispute.

## 10. Data protection

In entering into this Agreement, you will be providing us with personal data information within the meaning of the Personal Data (Privacy) Ordinance (Cap 486). You consent to our processing all such information for the purposes of performing this Agreement and also for the purposes of administering the relationship between you and us. We may use and/or disclose such information to any of our Associates for sales and marketing purposes unless you notify us of your objection to this in writing.

## CLIENT MONEY

1. Money relating to Same Day and Spot transactions held by MFX on your behalf will be held in a segregated Designated Client account.

2. Your money will be segregated from MFX's money and will not be used by MFX in the course of its business.

3. We will hold the Margin on trust for you in a designated Client account. This means that you are still the beneficial owner of this money until such point in time as we incur any costs, losses or liabilities in connection with or arising out of your Contract(s) including, but not limited to, liabilities we incur with third party currency dealers, exchanges, brokers, banks or similar entities. Then we will become the beneficial owner of that proportion of the money, held as a Margin, equal to our costs, losses, or liabilities, without notice to you or demand by us. We may also offset any Margin(s) or other monies we are holding in respect of any one of your Contracts, against any costs, losses and/or liabilities that we incur in connection with or arising out of any other contract you have with us.