

Private Client Trading Facility
Application Form and Terms & Conditions

Private Client Trading Facility for Foreign Exchange Services Application Form



This Application form is supplied with the above version of the Terms and Conditions for Foreign Exchange Services for Individuals ("Master Conditions") and the Terms and Conditions for Exchange Rate Guarantee ("ERG Conditions").

Client Particulars

Title: Mr / Mrs / Ms / Dr

Forename(s):

Surname:

Street address:

Postal address:

Telephone: (land)

(mobile)

Fax:

Email:

Person(s) Authorised by the Client to Give Instructions

The following persons (in addition to the Client) are authorised by the Client to give instructions for Services procured from HIFX on behalf of the Client. (Attach photo ID for each named person.) Each Authorised Person consents to the recording of all telephone conversations with HIFX as set out in the Master Conditions.

1. Full Name:

Signature:

2. Full Name:

Signature:

Client Agreement

- The abovenamed Client **requests** HIFX from time to time to provide Services pursuant to the Master Conditions and the ERG conditions.
- The Client acknowledges receipt of a copy of the Master Conditions and the ERG Conditions bearing the same Version reference as this Application Form. The Client has read and understood those conditions, and **agrees** to be bound by them.
- The Client **warrants** that the information in this Application Form is correct, and that any subsequent changes to such information will be notified to HIFX immediately in writing.
- The Client **consents** to the recording of all telephone conversations with HIFX as set out in the Master Conditions.

Client Signature

Signed:

/ / 200

In order to process your application promptly and to ensure that future transactions run smoothly, please read the following points.

If you require explanation or clarification of any item listed, or of anything in the Terms and Conditions, please contact an HIFX consultant.

Registration

- Attach:** a clear copy of either their passport, or their photo ID drivers licence.
- Attach:** Proof of address (bank statement, rates or utility bill) must be **less than 3 months** old.
- If you wish to authorise someone other than yourself to give HIFX instructions, you must complete their names on this Application Form, have them sign, and **also** provide photo ID for each person.
- HIFX can only accept payment from the client's own bank account and not from a third party (eg lawyer's account), unless prior arrangements have been agreed.
- HIFX transfers funds abroad free of charge*, however some banks may deduct a charge to receive currency.
*One free electronic transfer per currency transaction.

General

Buying currency

- HIFX's service is for non-speculative purposes.
- The dealers' telephone lines are digitally recorded at all times.
- HIFX dealers cannot predict future exchange rates.
- Having instructed an HIFX dealer to buy currency, you will be sent a contract note (invoice). If you do not receive the contract note you must inform your dealer within 48 hours.

Paying for your currency

- If you book a forward exchange contract, HIFX requires a part-payment of 10% initially, and the balance 90% on maturity of the contract.

- HIFX complies with current anti-money laundering legislation and guide lines.

- Please complete the following:

a) How did you hear of our service?

b) Reason for currency purchase?

Tick here if you do not want to receive marketing material or information from HIFX.

HIFX is committed to protecting your privacy. Your information will not be shared outside HIFX unless you give your consent. For more information, please ask for a copy of the HIFX Privacy Statement.

www.hifx.co.nz
HIFX Ltd
PO Box 7646, Wellesley Street, Auckland, New Zealand
Tel: +64 (0) 9 306 3700 Fax: +64 (0) 9 306 3701
ARBN 106 779 953 / AFSL No 240914

www.hifx.com.au
HIFX Australia Pty Ltd
Level 26, Maritime Trade Towers, 201 Kent Street, Sydney
Tel: +61 (0) 2 9251 2626 Fax: +61 (0) 2 9251 2625
ABN 78 105 106 045 / AFSL No 240917

Private Client Trading Facility for Foreign Exchange Services

Terms & Conditions



1. The Service

- 1.1** The client warrants that all Trades are for non-speculative purposes only and that they have full capacity to instruct HIFX to perform the service or place an Order and that, in doing so, they are acting as principal only and not as agent for any third party whose identity has not been disclosed to HIFX at the time of the service or Order. The Client further warrants that it is not acting as agent and that the Client will take physical delivery on the Value Date of the purchased currency after payment to HIFX of the full amount of the sold currency for each Trade as stipulated by HIFX. The Client agrees that nothing in the Consumer Guarantees Act 1993 shall apply to any transaction entered into under these Conditions.
- 1.2** In all matters relating to Trade, transactions or any information or advice obtained from HIFX in connection with or relating to this Agreement, the Client shall rely solely on its own skill and judgment in determining that the transaction is suitable for its purposes. Although HIFX may provide the Client with information concerning the foreign exchange markets, the Client shall not place any reliance on HIFX's opinion of the merits or otherwise of any currency transaction, taxation matters or comments made concerning any investment products or markets or other matters whatsoever. Once a Trade Confirmation has been given to the client by HIFX it cannot be altered or cancelled without the prior written consent of a HIFX director.
- 1.3** Notwithstanding clause 2.1, HIFX reserves the right to require written confirmation of any Trade, Order or Client Instruction.

2. Instructions

- 2.1** The Client will instruct HIFX to perform the service orally or in writing. The service will be subject to these conditions. HIFX will not be obliged to perform the service and may refuse to do so without giving any reason. HIFX will have no liability to a Client for any resultant loss or damages suffered by the Client or any other party as a result of HIFX's refusal. No agreement for the Service will come into force until the Trade Confirmation. Each Trade, if accepted by HIFX, will constitute a separate severable agreement.
- 2.2** The Client acknowledges that HIFX may record and store all telephone conversations with or without an automatic warning tone. HIFX reserves the right to produce and store a transcript of the recorded telephone conversation and use either the transcript or the recording of the telephone conversation for the purposes of verifying the details of an Order or Trade or to resolve any disputes between the Client and HIFX in respect of the Service.
- 2.3** The Client will be solely responsible for ensuring that the details it supplies to HIFX to enable HIFX to perform the Service, including without limitation the Client's contact details, the details of any Order or Trade and the Account are true and accurate and will not withhold or omit any information that would render those details false or inaccurate. The Client agrees to notify HIFX immediately it becomes aware of any error or change in the details it has supplied to HIFX.
- 2.4** The Client warrants that they will, on request, supply HIFX with all the information and documentation necessary to enable HIFX to comply with relevant legislation pertinent to the Service.
- 2.5** The Client will supply to HIFX, on request, a specimen signature. A signature substantially resembling the specimen will be sufficient for HIFX to authenticate an instruction as being from the Client.

3. Financial provisions

- 3.1** In the event of a Spot Trade, the Client shall pay into a nominated account specified by HIFX on such date or dates as HIFX might direct, but no later than the Working Day immediately preceding the Value Date, the amount specified by HIFX as full payment for the Trade.
- 3.2** In the event of a Forward Trade the Client shall immediately pay a Margin of 10% of the full amount of the sold Currency, or such other percentage as HIFX may specify, into the Nominated Account in cleared funds. The client shall pay any outstanding balance of the sold currency into such Nominated Account not later than one working day before the Value Date of the particular Forward Trade.
- 3.3** In the event of a Same Day Trade the Client shall pay the sale currency into a nominated account specified by HIFX by no later than the relevant time stipulated by HIFX.

- 3.4** All payments due from the Client to HIFX pursuant to these Conditions shall be made without set-off, counterclaim or deduction whatsoever.
- 3.5** HIFX will make any payments to the Client under this Agreement in full unless required by law to deduct sums in respect of any taxation liabilities.
- 3.6** Banks have specified times of cut off for the receipt and dispatch of electronic payments. HIFX accepts no responsibility for and shall have no liability in respect of any delay in onward payment attributable to the late arrival of funds or instruction of payment relative to the cut off times of the designated bank.
- 3.7** HIFX reserves 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 5%
 - (b)** in the event an initial Margin of 15% falling to or below 10%
 - (c)** as follows "in the event an Initial Margin of 20% falling to or below 15%
- 3.8** In the Event of a Margin Call being made the Client shall pay all those monies required pursuant to the Margin Call in cleared funds into the Trust Account within twenty four hours of HIFX first communicating the Margin Call to the Client. The Client's failure to do so shall be a fundamental breach of the Conditions of the Trade in question and shall entitle HIFX, without prejudice to any other remedy available, to immediately and without notice to the Client terminate the Trade without liability.
- 3.9** The Client undertakes that the Margin or such other funds to be provided as security for the Client's obligations hereunder will be beneficially owned by the Client and will not be subject to any charge, lien or other encumbrance and the Client will not create any charge, lien or other encumbrance over any funds so provided.
- 3.10** The Margin will vest automatically in HIFX in any of the following circumstances;
- 3.10.1** on the value date;
 - 3.10.2** the Client is in breach of any of the conditions;
 - 3.10.3** in the circumstances set out in clause 4.1.3
- 3.11** All funds provided by the Client under an agreement (whether as security or otherwise) may be appropriated by HIFX in the event that HIFX incurs any liability, is exposed to increase market risk (as HIFX in its discretion may decide) in respect of any Trade or in the event that the Client is unable to pay its debts or fails to comply or breaches these conditions.
- 3.12** HIFX reserves the right to charge the Client interest in respect of the late payment of any sum due under this agreement at the rate of five percent per annum above the base rate ruling from time to time from the due date therefore until payment.

4. Duration, termination

- 4.1** HIFX shall have the right to close out all or part of any Trade from the market without notice to the Client of the Client's liability upon or at any time after the happening of any of the following events:
- 4.1.1** the Client materially breaches any of the Conditions or fails to comply with its obligations to HIFX in respect of a Trade or is materially in breach of any statute or regulation;
 - 4.1.2** it becomes or may become unlawful for HIFX to maintain or give effect to all or any of the obligations under the Conditions or otherwise to carry on its business, or if HIFX is requested to close out a Trade (or any part thereof) by any regulatory authority whether or not the request is legally binding, or if HIFX in its absolute discretion considers it desirable or necessary to do so for its own protection;
 - 4.1.3** the Client becomes unable to pay its debts as they become due or has a bankruptcy petitioned against them or the Client proposes a form of composition or arrangement to its creditors or if the Client ceases or threatens to cease to carry on all or a part of its business; The Client commits an "act of bankruptcy" (as defined in the Insolvency Act 1967), becomes insolvent, or is placed in receivership, or goes into liquidation (other than for the purposes of a solvent amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement), or any step is taken with a view to the appointment of a statutory manager in respect of the Client or the Client is declared to be a "corporation at risk"

under the Corporations (Investigation and Management) Act 1989;

- 4.1.4** any of the events specified above or anything analogous thereto occurs under the laws of any applicable jurisdiction.
- 4.2** If the Client becomes aware of the occurrence of any event referred to in this clause 4.1, they shall give HIFX notice of such event forthwith.

5. Limitation of Liability

- 5.1** This clause 5 sets out HIFX's entire liability to the Client for any losses, costs (including legal costs), damages, expenses, taxes, charges or any other liability whatsoever ("Claim").
- 5.2** The limitation and exclusion of Liability is set on the basis that the Client is aware of the volatile nature of the foreign exchange market.
- 5.3** HIFX will not be liable to the Client for any claim which arises as a result of currency fluctuation between the Trade confirmation and the value date, or as a result of the client's non-compliance with Clause 2.3 above.
- 5.4** HIFX shall not be liable to the Client for any Liability arising out of any Trade or Agreement pursuant to these Conditions by reason of any cause including contract, tort or otherwise save for direct damages caused by the negligence of HIFX in the performance of a Trade.
- 5.5** Without prejudice to clause 5.4 and subject to the provisions of this clause 5, HIFX's total aggregate liability to the Client for any Liability incurred in connection with this Agreement will not exceed the lesser of (a) the total amount paid by the Client to HIFX in respect of the Trade giving rise to the claim or (b) \$500,000.
- 5.6** Notwithstanding anything in this Agreement, in no event shall HIFX be liable for any loss of profits, goodwill, anticipated savings, loss caused by the failure or delay of any third party in the transmission, provision or delivery of any Service or any special, indirect, incidental or consequential loss whether resulting from currency speculation, from purposes associated with the client's business or from any other cause whatsoever regardless of the form of action (including loss or damage suffered by the client as a result of an action brought by a third party) and even if such loss was reasonably foreseeable or HIFX was advised as to the possibility thereof.
- 5.7** The Client hereby indemnifies and will keep HIFX indemnified against any and all Liabilities incurred by HIFX in the proper performance of the Services and the enforcement of its rights hereunder and in particular, without prejudice to the generality of the foregoing, in respect of all amounts necessary to compensate HIFX for any and all Liabilities sustained or incurred by HIFX (including but not limited to HIFX's loss of profits) as a result of or in connection with:
- 5.7.1** any default in payment by the Client of any sum under the Conditions when due;
- 5.7.2** any breach by Client of clauses 1.1.
- 5.7.3** HIFX doing and taking all and any actions and steps whatsoever to carry out the terms of any Client instructions or orders, whether oral or written, from or purporting to be from Authorised Personnel pursuant to and in accordance with clause 1 above; or
- 5.7.4** HIFX exercising its right under clauses 4.1.1, 4.1.3 or where appropriate - 4.1.4 to close out all or any part of any Trade and in such event HIFX shall have the right, as an alternative to its right to seek an indemnity from the Client, to set-off against any Client monies held by HIFX any amounts owed by the Client to HIFX in respect of any Service.
- 5.8** HIFX shall not be liable to the Client for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, any of the

following: act of God, governmental act, war, fire, flood, explosion, civil commotion, failure of computer equipment or communications systems or industrial dispute of a third party.

6. General

- 6.1** Nothing in this Agreement is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce any provision of the Agreement or these Conditions and accordingly the Contracts (Privity) Act 1982 shall not apply to any provisions of this Agreement or these Conditions.
- 6.2** The parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.
- 6.3** The provisions of Clause 5 shall survive termination of any Instruction, completion of any Trade or termination of this Agreement.
- 6.4** This Agreement, including these Conditions, constitute the entire agreement and understanding of the parties and supersede all oral communications and prior writing relating to it; provided that neither party shall benefit from excluding liability for fraudulent misrepresentation or fraud.
- 6.5** HIFX may amend these Conditions by notice in writing to the Client at any time and such amendment shall be binding with the agreement of the Client from the date of such notice. Any such amendment shall not be retrospective or affect any rights or obligations that may already exist in respect of any Instructions.
- 6.6** Should any provisions of these Conditions be deemed unenforceable or illegal, the remaining provisions and the remainder of the provision in question will nevertheless continue in full force and effect.
- 6.7** The Client may not assign or otherwise transfer the benefit of any Agreement without the express written consent of HIFX. HIFX may without notice to the client assign and/or novate its rights and obligations under the Conditions to any third party and the Client hereby consents without reservation to any such assignment or novation.
- 6.8** Any failure by either party to exercise, and any delay, forbearance or indulgence by either party in exercising, any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time.
- 6.9** In the event of any of the provisions of these Conditions being in conflict with other documentation produced pursuant to an Agreement then the Conditions shall prevail.
- 6.10** This Agreement and these Conditions shall be governed by and construed in accordance with the laws of New Zealand, and each party hereby submits to the exclusive jurisdiction of the New Zealand Courts. These Conditions and all Agreements and Trades made under these conditions shall for all purposes be made and shall be deemed to be made, in New Zealand.
- 6.11** The Client agrees that any disclosure statement or other document required to be given to the client by law, including any product disclosure statement or financial services guide or supplementary product disclosure statement or supplementary financial services guide, may be given to the client by being placed in either case on an identified website of HIFX.

7. Authorised Persons

- 7.1** The Authorised Persons named on the Application Form supplied with these conditions are authorised by the Client to give instructions for the Services procured from HIFX on behalf of the Client.

A. Interpretation

In these terms and conditions, unless the context otherwise requires:

"Account" means the bank account notified by the Client to HIFX into which any sums due from HIFX to the Client pursuant to any Trade will be paid.

"Agreement" means any agreement between HIFX and the Client incorporating the Conditions.

"Client" means the person who, as Client, duly completes, signs, and delivers to HIFX the Application Form supplied with these conditions.

"Conditions" means these terms and conditions.

"Contract Note" means HIFX's written document setting out the details of the Trade which will be sent to the Client following the Trade Confirmation.

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

"HIFX" means HIFX Ltd whose registered office is at Level 15 gen-i Tower, 66 Wyndham St, Auckland, New Zealand.

"Margin" means the deposit or advance payment required by HIFX from the Client in advance of each Trade with the exception of a Spot Trade.

"Margin Call" means request by HIFX to the Client to provide such additional amounts (not exceeding the full amount of the Sale Currency) as it may reasonably require on account of an adverse exchange rate movement between the date of contract and the Value Date.

"Nominated Account" means the bank account nominated by HIFX from time to time into which the Sale Currency and/or Margin will be paid.

"Order" means the Client's oral or written request for HIFX to purchase currency at predetermined levels on the Client's behalf if and when reached.

"Trade Confirmation" means when HIFX confirms the details of the Trade to the Client by telephone.

"Sale Currency" means the sums payable by the Client to HIFX in consideration of the Trade including, without limitation, any Margin or Margin Call.

"Same Day Trade" means to sell a Sale Currency for purchase currency by the end of the same Working Day subject to clause 3.3.

"Service" means any foreign exchange service provided by HIFX to the Client pursuant to these conditions, and includes execution of a Trade on the Client's behalf, and provision of an Exchange Rate Guarantee, and provision of any regular payments abroad service.

"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 the Client including, without limitation, a Forward Trade, Same Day Trade or a Spot Trade.

"Value Date" means the date specified by HIFX for each Trade on which the currency transaction matures.

"Working Day" means 09.00 to 17.30 on any day when the clearing banks are open for business in New Zealand.

Exchange Rate Guarantee (ERG) Terms & Conditions



These **Exchange Rate Guarantee** terms and conditions are additional to and supplement the Private Client Trading Facility for Foreign Exchange Services Terms and Conditions (“Master Conditions”) for as they may be amended from time to time, and address additional matters specific to and necessary for the provision of an Exchange Rate Guarantee service by HIFX to the Client.

1. Instructions

- 1.1 HIFX may at its absolute discretion provide the Client with an Exchange Rate Guarantee (ERG) quotation from time to time.
- 1.2 The quotation will give details as mentioned in section 3.
- 1.3 HIFX reserves the right to change the Premium stated in the quotation prior to the client confirming agreement of the ERG and subsequent issuance of a contract note.
- 1.4 The client will instruct HIFX to confirm the details of the quotation or revise the quotation verbally before acceptance.
- 1.5 Once the quotation has been verbally agreed, a contract note will be issued to the client.

2. Details to be included in the ERG Contract Note

- 2.1 Quotation/Contract Note Date and time of transaction
- 2.2 The currency and amount sold to HIFX
- 2.3 The currency and amount bought from HIFX
- 2.4 Expiration Date
- 2.5 Expiration Time
- 2.6 Settlement Date
- 2.7 FX Guaranteed Rate
- 2.8 Premium Payable/Due
- 2.9 Premium Payment Date.

3. Financial provisions

- 3.1 An ERG transaction between HIFX and the Client is subject to payment of the Premium by the Premium Payment Date by the Client to HIFX.
- 3.2 The Client shall pay the Premium into a bank account specified by HIFX no later than the Premium Payment Date.
- 3.3 The Premium shall be paid in the agreed currency and amount.
- 3.4 The Premium is not refundable under any circumstances in whole or in part.

- 3.5 Failure by the Client to pay the Premium by the Premium Payment Date shall be a fundamental breach of the conditions of the ERG transaction and shall entitle HIFX without prejudice to any other remedy available to it to immediately and, without notice to the Client, terminate the ERG without liability.
- 3.6 If HIFX terminates the Exchange Rate Guarantee under 3.5 above the Client shall be liable for all direct and indirect costs and losses incurred by HIFX as a result of the termination of the ERG.

4. Process of Exercise

- 4.1 The ERG shall be deemed to be exercised when the Client gives notice to exercise the ERG agreement.
- 4.2 A notice to Exercise shall only be valid if completed on the Expiration Date before the Expiration Time.
- 4.3 If valid exercise of the ERG is completed then the specified payment obligations between HIFX and the Client will arise whereby a foreign exchange Spot Trade will be created where the exchange rate will be the FX Guaranteed Rate of the ERG that has been exercised.
- 4.4 Upon exercise of the ERG, the Client will sell and make delivery of the specified amount of the Sale Currency to HIFX, and the Client will buy and take delivery of the specified amount of the Bought Currency from HIFX on the Settlement date.

5. General

- 5.1 HIFX may from time to time amend these ERG conditions in the same manner as it may from time to time amend the Master Conditions.
- 5.2 The Master Conditions apply generally to all ERG transactions, but if there should be any inconsistency between the Master Conditions and the ERG conditions, the ERG conditions will prevail.

A. Interpretation

“**Exchange Rate Guarantee**” (ERG) means an agreement whereby the Client has the right but not the obligation to enter into a foreign exchange transaction with HIFX as specified in the contract note.

“**Contract Note**” confirms the details of a future foreign exchange transaction that the client may exercise on the Expiration date.

“**ERG conditions**” means these terms and conditions for Exchange Rate Guarantee, as amended from time to time.

“**Exercise**” means the process whereby the Client gives notice to HIFX on the Expiration Date that the ERG’s underlying foreign exchange transaction is required, and the consequent creation of the appropriate transaction as provided in clause 5.

“**Expiration Date**” means the day on which the Client may elect to exercise the ERG always providing that such exercise is effective only if completed before the Expiration Time.

“**Expiration Time**” means the time on the Expiration Date at which all rights granted under the ERG irrevocably cease and expire.

“**FX Guaranteed Rate**” means the fixed exchange rate between the amounts of the sale Currency and the bought Currency, agreed at the time the ERG Contract note is issued, or is confirmed/issued.

“**Master Conditions**” means the version of the Private Client Trading Facility for Foreign Exchange Services Terms and Conditions with which this version of the ERG conditions is issued, as amended from time to time.

“**Notice to Exercise**” shall only be completed when the Client has notified (in the first instance by telephone followed by an email, fax or letter) HIFX of their wish to exercise the ERG and HIFX has responded to and acknowledged receipt of such notification.

“**Premium**” means the consideration payable to HIFX by the Client for the rights provided by the contract note.

“**Premium Payment Date**” means the value date by which the full amount of the Premium must be paid in cleared funds by the Client to the nominated bank account of HIFX.