

FOREIGN EXCHANGE TRADING AGREEMENT TERMS AND CONDITIONS



Foreign Exchange Trading Agreement Between Mercantile Bank Limited, Registration 1965/006706/06 (“the Bank”) and
Registration Number (‘the Client’)

The Bank and the Client wish to enter into transactions in respect of the purchase and sale of Foreign Exchange, subject to the following terms and conditions.

1. TRANSACTIONS

- 1.1 Foreign Exchange can be bought and sold for delivery, either through:
 - 1.1.1 A Spot Foreign Exchange Transaction whereby delivery of foreign currency is made within two business days hence.
 - 1.1.2 A Forward Exchange Contract whereby foreign currency is delivered at an agreed future date and specified rate.
- 1.2 The Client will be entitled, on the terms and conditions recorded herein, to enter into Spot Foreign Exchange Transactions and/or Forward Exchange Contracts (hereinafter referred to as the “transaction”) with the Bank as counterparty.
- 1.3 The term of any Forward Exchange Contract shall be limited to 180 days. The term may be extended to 360 days in which event the margin required by the Bank will increase to a level to be determined by the Bank in its sole discretion.
- 1.4 The limits approved by the Bank for (a) transaction(s) shall be advised by the Bank to the Client in a separate letter. The terms and conditions of the said letter shall be deemed to be incorporated in this agreement and shall be construed as one agreement regulating the relationship between the parties.
- 1.5 The Bank shall be entitled, at any time, to impose restrictions or review any limit in respect of any single transaction.
- 1.6 Customer Foreign Currency Accounts (“CFC Accounts”) may be opened if the Client is a South African entity, who provides a service from the Republic, to non-residents and who receives payment in foreign currency in the Republic and only foreign exchange transactions concluded in the name of the Client and which qualifies as a permissible debit and/or credit, may be passed over CFC Accounts. CFC Accounts opened for Trusts require prior Exchange Control approval.
- 1.7 Foreign currency purchased in the spot market or the maturity proceeds of hedging contracts may only be credited to a CFC Account if the funds are to be transferred abroad by no later than the next business day;

2. EXCHANGE CONTROL

- 2.1 **In the absence of an Imports/Exports Undertaking, the Client confirms that each and every transaction is in respect of a firm underlying foreign currency commitment or a firm and ascertainable foreign currency receivable (as defined in the Exchange Control Regulations and Rulings) and that no other foreign exchange agreement has been entered into in respect thereof.**
- 2.2 **The Client agrees and undertakes to comply with Exchange Control Rulings and Regulations as determined by the Exchange Control Department of the South African Reserve Bank from time to time and to complete all necessary documentation required in compliance of the rulings and regulations.**

3. PAYMENT

- 3.1 **In respect of all transactions the Client shall furnish the Bank with the cash value of its payment obligation under the transaction by no later than two business days prior to the maturity date. The Bank will then meet its obligations under the transaction.**
- 3.2 Payments to the Bank shall only be deemed to have occurred once the funds have been credited and have been cleared for payment.
- 3.3 **The Client agrees and authorises the Bank to debit any of its accounts held at the Bank with the cash value of a transaction executed from time to time.**
- 3.4 The Bank shall only be obliged to return any funds held by Bank on the Client's behalf subject to the fulfilment of the condition that the Client has fulfilled all its settlement obligations to the Bank in respect of transactions traded between the parties from time to time.

4. DEFAULT AND MARGINING REQUIREMENTS

- 4.1 The Client shall be deemed to be in default of its obligations in terms of this agreement if the Client fails to fulfil any of its respective obligations in terms of any transactions or any rule and/or regulation relating thereto.
- 4.2 **In the event of a default by the Client, the Bank shall be entitled, without notice to the Client, to :**
- 4.2.1 **close out any positions of the Client; and**
- 4.2.2 **exercise a right of retention over any or all of the assets of the Client in the Bank's possession, which assets shall be deemed to have been pledged to the Bank, who may exercise any legal rights it has pursuant to the pledge.**
- 4.3 The Client shall;
- 4.3.1 on demand, provide such minimum initial margin as the Bank, in its sole discretion, may require, in order to cover any exposure that the Bank may have arising from fluctuations in currency exchange rates or if a transaction exceeds the approved limits or whatever other reason with respect to any transaction/s contemplated herein ("*initial margin*");
- 4.3.2 top up the *initial margin* in order to fund any variation in such margin account as required by the Bank from time to time ("*variation margin*"). Funds in the margin account must at all times remain at least at the level of the *initial margin* or topped up to this level on demand;
- 4.3.3 the Bank may, entirely at its sole discretion, determine both the amounts of the *initial margin* and the *variation margin* as and when it may be required from the Client in respect of each transaction from time to time.
- 4.4 **The Client hereby agrees that, in the event of the Client failing and/or refusing to make payment of any *variation margin* top up called for by the Bank, then the Bank shall be entitled, without further notice, to terminate any transaction in respect of which the *variation margin* top up has been called for and not timeously provided ("close out") and apply the initial and variation margin towards settlement of any amount due to the Bank or any other party.**

5. RIGHTS OVER TRANSACTIONS

- 5.1 **The Bank reserves the right, at the Client's cost and expense, to process transactions and to cancel, close or hedge any outstanding transactions or positions without prior notice to the Client at whatever price and in whatever manner the Bank deems fit if;**
- 5.1.1 **the Client has failed for any reason to settle a transaction or is otherwise in breach of this agreement; or**

- 5.1.2 the Bank otherwise becomes entitled to terminate this agreement forthwith without notice; or
- 5.1.3 the Bank considers, in its sole discretion, that such action is reasonably necessary to protect its interests.
- 5.2 Any proceeds arising from any of the actions referred to above will be applied to reduce or discharge the liabilities or indebtedness of the Client to the Bank. The Client shall remain liable to the Bank for any outstanding balance after the proceeds have been applied.
- 5.3 The Client will be liable to the Bank for all liabilities, damages, losses, costs, claims and expenses incurred by the Bank in respect of any such action taken.
- 5.4 As continuing covering security for the due and punctual payment of every sum of money which may now or hereafter become owing by the Client to the Bank from whatsoever cause arising and for the performance of every obligation, howsoever arising which the Client now or in future become, bound to perform in favour of the Bank, the Client hereby pledge, cede and make over to the Bank the right title and interest in and to all funds and deposits held by the Bank on behalf of the Client.

6. CHARGES AND INTEREST

- 6.1 The Bank will impose fees and charges for services rendered and will be entitled to debit such fees and charges to the Client's account together any commissions, ledger fees, stamps, legal costs and other costs incidental to any transaction or arising from this agreement. All charges will be subject to Value Added Tax, if applicable. The Bank in its sole discretion may vary such fees and charges, by written notice to the Client.
- 6.2 The Bank may, at its discretion charge the Client interest at the prevailing prime overdraft rate charged by the Bank from time to time plus 5% (five percent), on any amounts not settled by the Client on the due date. The Bank shall be entitled, in its sole discretion, to impose a penalty interest at the maximum rate allowed by Law should any amounts due by the Client not be settled within 3 days from the due date.
- 6.3 Unless specifically agreed the Client will not be entitled to receive interest in respect of any amounts held by or due from the Bank unless the money is held in accordance with the Client's instructions in an interest bearing account with the Bank.

7. TERMINATION

- 7.1 This agreement may be terminated by either party, by giving 7 (seven) days written notice to that effect
- 7.2 This agreement may be terminated forthwith by the Bank;
 - 7.2.1 if the Client is unable to pay its debts or enters into any scheme or compromise with its creditors or is placed under judicial management, curatorship or receivership or action is taken for the winding up of the Client or to place the Client under business rescue (including the passing of a resolution) or any action is taken by a creditor against the Client to collect any indebtedness due by the Client; or
 - 7.2.2 if, in the case of a company or other juristic person, the Client is deregistered or applies to be deregistered; or
 - 7.2.3 if the Client, in the opinion of the Bank, commits a material breach of its obligations arising under this agreement or the applicable legislation.
- 7.3 The termination of this agreement shall not affect any liability of the Client, under this agreement, which arose prior to such termination and shall not prejudice any rights the Bank may have pursuant to this agreement.
- 7.4 Should it be necessary for the Bank to institute legal action to enforce its rights, the Client shall be liable for legal costs on attorney and own client scale which costs shall be payable on demand.

8. **LIABILITY**

- 8.1 **The Bank shall not be liable to the Client or any of its clients in respect of any action or omission by the Bank arising wholly or partly as a result of an event or state of affairs which was reasonably beyond its power to prevent and the effect of which was beyond its power to avoid (including, without limitation, failure of transmission, communication facilities and error or default of the Client, any exchange, market or clearing house).**
- 8.2 **Neither the Bank nor its employees, servants, representatives or agents shall be liable for any loss, liability or expense suffered or incurred by the Client arising directly or indirectly out of or in connection with any transaction, instruction or investment unless such loss, liability or expense arises from gross negligence or fraud by the Bank.**

9. **GENERAL**

- 9.1 The Client agrees that:
- 9.1.1 the ISDA 2002 Master Agreement (“ISDA”); and
- 9.1.2 the Bank’s standard Schedule to ISDA referred to in 9.3 below (“the Schedule”),
- are incorporated into and form a material part of this Agreement, subject to the following provisions
- (a) notwithstanding any provision to the contrary in ISDA, section 6(b)(ii)(iii) &(iv), but only in so far as it relates to an illegality and section 10(a) of the ISDA shall not apply in respect of the transactions contemplated herein.
- (b) the Client agrees that any amount due by it to the Bank will be reduced, at the election of the Bank, by its set off against any amount/s payable by the Bank to the Client (irrespective of the currency, place of payment, or booking office of the obligation) under any other agreements, instruments or undertakings issued or executed between the Bank and the Client relating to any transaction contemplated herein. The Bank will give notice to the Client of any set-off elected in terms hereof.
- 9.2 **The Client by its signature hereto declares that it is fully acquainted with the meanings and effects of the standard printed terms of the ISDA as well as the terms of the Schedule and expressly agrees that the standard printed terms of the ISDA in conjunction with the terms of the Schedule, shall apply to each and every transaction effected in terms of this agreement.**
- 9.3 **The Schedule shall contain such terms and conditions as determined by the Bank from time to time. The Bank shall provide the Client with a copy of the Schedule on request.**
- 9.4 The parties hereby agree that the following shall be applicable in respect of the Schedule:
- 9.4.1 The date of the Schedule at the top of page 1 thereof shall be the same date as the date of signature of this agreement by the party signing it last;
- 9.4.2 The Bank shall be Party A and the Client shall be Party B for the purpose of the Schedule;
- 9.4.3 For the purpose of paragraph (a)(i)(1) and paragraph (a)(ii)(1) of Part 4 of the Schedule, the Bank’s particulars shall be 142 West Street, Sandown, Johannesburg, for attention: The Head of Treasury, who shall be the Bank’s Designated responsible employee or such other person as the Bank may notify the Client of in writing from time to time.
- 9.4.4 For the purpose of paragraph (a)(i)(2) and paragraph (a)(ii)(2) of Part 4 of the Schedule, the Client’s particulars shall be as set out in the Bank’s Application to Open Treasury Trading Account and notices shall be marked for the attention of the Preferred Contact Name as set out in such Application to Open Treasury Trading Account or otherwise indicated by the Client in writing;
- 9.5 **The Client hereby consents and authorises the Bank to disclose any personal information relating to the Client to any other company affiliated to the Bank or in an event of the Client breaching the terms and conditions of this agreement, to any credit bureau or other person and the Client hereby waives any claims which it may have or obtain against the Bank and indemnifies and hold the Bank harmless against any claim, loss, damage, costs or expense, as a result of the Bank disclosing such information.**

- 9.6 The Client acknowledges that the Bank has policies regarding dormant accounts and which provides for accounts to be closed should the account be inactive for a pre-determined period as stipulated in these policies.

10. **DOCUMENTATION**

The Client undertakes to ensure that all documents required for a transaction are correct and comply with Exchange Control Rulings and Regulations. and to promptly sign and return such documents to the Bank in respect to each transaction entered into.

11. **CERTIFICATE**

Any amount owing in terms of this agreement and the fact that such amount is due and owing may be proved by a certificate signed by a manager of the Bank whose appointment and authority need not be proved. Such certificate shall be sufficient ("prima facie") proof of the facts stated therein.

12. **ALTERATIONS**

The Bank may amend this agreement by giving the Client reasonable notice of such amendment. Should the Client fail to lodge a written objection to the proposed amendment with the Bank within 5 (five) days of the date of the Bank's notice of amendment, the amendment shall be deemed to be accepted with effect from the date of the Bank's notice of amendment. The Client may not amend this agreement without the prior written consent of the Bank.

13. **RECORDINGS**

The Client consents to the recording of telephone conversations between the Bank and the Client, and that the information contained in the recordings may be used by the Bank as evidence in the event of a dispute. Any such recordings and the information contained therein shall be the sole property of the Bank. Notwithstanding the aforesaid the Bank shall not be obliged to keep or store such recordings or copies thereof for the benefit of the Client.

14. **FACSIMILE/ELECTRONIC MAIL/TELEPHONIC/ELECTRONIC INSTRUCTIONS**

The Client having requested the Bank to accept and act on facsimile and/or e-mail and/or telephonic instructions, information and/or documentation and/or instructions, information and/or documentation transmitted to the Bank by way of any electronic means provided, used, approved of and/or accepted by the Bank from time to time (hereinafter referred to as "Electronic Instructions") and/or having agreed to exchange information and/or documentation by way of facsimile and/or e-mail and/or telephone and/or by way of any electronic means provided, used, approved of and/or accepted by the Bank from time to time ("hereinafter referred to as "Electronic Communications"):

- 14.1 acknowledges that it is aware of the risks associated with Electronic Instructions and Electronic Communications, and is prepared to accept such risks;
- 14.2 acknowledges that it is not practical for the Bank to establish the authenticity of all Electronic Instructions and/or Electronic Communications given to or exchanged with the Bank which purport to emanate from the Client or its intermediary (if applicable);
- 14.3 agrees that all Electronic Instructions and/or Electronic Communications which purport to emanate from the Client or its intermediary (if applicable) and/or other telefaxed/e-mailed, telephonic and/or other electronically transmitted mandates, consents, commitments, information, communications and the like which purport to emanate from the Client or its intermediary (if applicable) ("purported faxed/e-mailed/telephonic/electronic instructions") shall be deemed to have been given by the Client and the Client shall be bound thereby;
- 14.4 releases the Bank from all claims, demands, actions, losses and damages of whatsoever nature which may be brought against the Client or which the Client may suffer or incur as a result of the Bank acting or, for reasonable cause, not acting on any Electronic Instructions and/or Electronic Communications purportedly emanating from the Client or its intermediary (if applicable) and/or purported faxed/e-mailed/telephonic/electronic instructions;

- 14.5 indemnifies the Bank, its directors, officers and employees and holds them harmless from all claims, demands, actions, losses, costs, expenses and damages of whatsoever nature which may be brought against them or which they may suffer or incur arising from their action or, for reasonable cause, not acting on any Electronic Instructions, Electronic Communications purportedly emanating from the Client or its intermediary (if applicable) and/or any purported faxed/e-mailed/telephonic/electronic instructions or arising from or out of the malfunction, failure or unavailability of any facsimile transceiver/electronic equipment/telephone system, the loss or destruction of any data, the failure, interruption or distortion of communication links, or the reliance by any person on any incorrect, incomplete or inaccurate information or data contained in any Electronic Instructions and/or Electronic Communications purportedly emanating from the Client or its intermediary (if applicable) and/or any purported faxed/e-mailed/telephonic/electronic instructions received by the Bank; a certificate issued by a manager of the Bank, whose appointment and authority need not be proved, shall be sufficient (“prima facie”) proof of such claims, losses, costs, expenses and damages;
- 14.6 agrees that in respect of Electronic Instructions and/or Electronic Communications purportedly emanating from the Client or its intermediary (if applicable) and/or purported faxed/e-mailed/telephonic/electronic instructions regarding the transfer of money, “same day” value may only be given if the message/instruction is received by the Bank a reasonable time before the close of its business to the public.

15. **STATUTORY DISCLOSURES IN TERMS OF THE FINANCIAL ADVISORY & INTERMEDIARY SERVICES ACT, 2002 (THE FAIS ACT)**

As a client, the Client has the right to the following information:

- 15.1 The Client’s financial services provider
- 15.1.1 Name MERCANTILE BANK LIMITED
Physical Address 142 West Street, Sandown, 2196
Postal Address PO Box 782699, Sandton, 2146
Telephone Number 011 302 0300
Facsimile Number 011 302 0700
Website Address www.mercantile.co.za
- 15.1.2 Legal Status
a. A public company
b. A registered bank in terms of the Banks Act, 1990
- 15.1.3 Undertaking
As an authorised financial services provider, the Bank will always strive to serve and protect the Client’s best interests. This includes ensuring that the Bank’s staff meets the requirements stipulated by law, including the FAIS Act, to assist the Client with its financial requirements in a professional manner.
- 15.1.4 The Bank has professional indemnity as well as fidelity insurance cover.
- 15.1.5 Although the Bank’s representatives may change from time to time, the Bank will always ensure there is a qualified representative to serve the Client’s needs.
- 15.1.6 Complaints / Compliance
A copy of our complaints handling process is available on request. The Client is welcome to contact the Bank’s Complaints Office on 0860 119 9121/23 or complaints@mercantile.co.za.
The Bank’s Compliance Officer is Heidi Stoffberg and can be contacted on 011 302 0554/ hstoffberg@mercantile.co.za.

15.2 Details of FAIS Ombud

Name of Ombudsman	Ms Noluntu Bam
Physical Address	Sussex Office Park Ground Floor, Block B 473 Lynnwood Road Cnr Lynnwood Road & Sussex Ave. Lynnwood, 0081
Postal Address	PO Box 74571, LYNWOOD RIDGE 0040
Telephone Number	+2712 762 5000/ +27 12 470 9080
Facsimile Number	+27 12 86 764 1422 / +27 12 348 3447
Email	info@faisombud.co.za

- 15.3 Other matters of importance
- Do not sign any blank or partially completed application form.
 - Complete all forms in ink
 - Keep all documents handed to the Client
 - It is important that the Client is absolutely sure that the product or transaction meets its needs and that the Client feels it has all the information it needs before making a decision.

16. **REPRESENTATION**

16.1 If the Client is represented by an Intermediary the Client is obliged to provide the Intermediary with a copy of this agreement to enable the Intermediary to acquaint itself with the terms and conditions of this agreement, and to accept and agree to it

16.2 If the Client is represented by an Intermediary the Client is obliged to obtain a copy of the Intermediary Agreement concluded between the Bank and the Intermediary and agrees that the Client is bound by the terms and conditions of the Intermediary Agreement as far as they may apply to the Client.

17. **This Agreement shall become effective on the date of signing by the Client or its representative.**