



# Desk FX Terms

JUNE 2013

<http://www.bby.com.au>

These terms set out the agreement between you, the client, and BBY Limited (BBY, we, us) for trading in margin foreign exchange and commodities over the desk (Terms and Conditions). They do not apply to any online platform trading you may engage in with BBY – there are separate terms for this type of trading.

### RISK DISCLOSURE

Foreign exchange trading and commodity trading carries a high risk. Please note:

- (a) if the market moves against your position or margin levels are increased you may be called upon to pay substantial additional funds on short notice to maintain your positions;
- (b) if you fail to comply with a request for additional funds within the time prescribed, BBY, in its sole discretion, may liquidate any or all of your positions at a loss;
- (c) whether you make a profit or a loss will depend on fluctuations in the price of the underlying currency or commodity which is outside BBY's control;
- (d) Money you deposit with BBY, to the extent that it represents an amount necessary to secure your open positions or cover your actual or future contingent or prospective obligations (including any interest required) (which will be calculated daily in BBY's sole discretion based on your daily open positions and trading and which may be greater than the Margin required to maintain your open positions, as market conditions may dictate) will become BBY's money, such that you will not have a claim over that portion or any of your money deposited and BBY can deal with it in its own right. When money received by BBY from you is no longer required to secure your open positions or cover your actual or future contingent or prospective obligations to BBY, the money will be transferred back to you at your request.

You must make an independent decision as to whether or not to enter into Margined and non-Margined Transactions with BBY on these Terms and Conditions. Please note:

- (a) BBY does not provide personal financial advice. BBY will not advise on the merits or otherwise of your Transactions;
- (b) the decision to place a Transaction is yours alone. You (and not BBY) are responsible for the effect a Transaction might have, including the effect on any open positions; and
- (c) BBY deals with you on an execution only basis at all times.

### 1. RISK OF INVESTMENT

The BBY Desk FX and Commodities PDS sets out the particular investment risks of investing in complex financial instruments (namely, Margined Transactions). **Your acceptance of these Terms and Conditions will be treated as your acknowledgment that you have carefully read the PDS and that you are prepared to accept the risks outlined in the PDS.** If there is anything you do not understand it is recommended that you seek specialist independent financial and/or legal advice, in particular, regarding the suitability of Transactions.

## 2. APPLICABLE REGULATIONS AND MARKET REQUIREMENTS

### 2.1 Subject to Applicable Regulations

These Terms and Conditions and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between these Terms and Conditions and any Applicable Regulations, the latter will prevail; and (ii) BBY may take or omit to take any action it considers necessary to ensure compliance with any Applicable Regulations and whatever BBY does or omits to do in order to comply with them will be binding on you.

### 2.2 Market, Price Providing Bank, and Stock Exchange action

If a Market, price providing bank, or Stock Exchange (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a Market or Stock Exchange) takes any action which affects a Transaction, then BBY may take any action which it, in its absolute discretion, considers desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action will be binding on you.

## 3. OUR SERVICES

### 3.1. Account Opening

An Account must be opened prior to entering into any Transaction with BBY. No Orders can be placed until an Account has been opened and cleared funds received. Without prejudice to the foregoing, if BBY permits you to place an Order notwithstanding that an Account has not been opened, or cleared funds have not been received, this will not limit your liability to BBY pursuant to these Terms and Conditions in respect of the Order placed. BBY may, at its absolute discretion, refuse to accept you as a client for whatever reason but will notify you of any such refusal, without giving any reasons.

### 3.2 Credit

To assess your credit worthiness, manage credit risk and to prevent fraud you acknowledge and agree that BBY may:

- (a) make periodic searches and enquiries about you and any Related Party, including at credit reference agencies, and your employers, if applicable;
- (b) disclose information to organisations involved in fraud prevention; and
- (c) obtain information from and disclose information to other broker-dealers or investment managers which deal in or manage investments for you concerning any payment or security default or concerning any investment which is related to or connected with Transactions which you seek to open with us.

### 3.3 Account Limits

BBY may set and vary limits for your Account (including any credit limits) from time to time in its sole discretion. These limits may include the size of any Transaction or series of Transactions that you may enter into.

You may be required to close out open positions to adhere to changes in Credit Limits applied to your account.

Account limits do not limit your liability for losses to BBY. The funds you may have on deposit with BBY from time to time as Margin or otherwise do not represent any limit upon your financial liability to BBY.

### 3.4. Execution and Advice

BBY deals with you on an execution-only basis and will not make recommendations or provide personal advice on the merits of purchasing, selling or otherwise dealing in particular Investments or executing particular Transactions, their taxation consequences or the composition of any account or any other rights or obligations attaching to such Investments or Transactions. You should bear in mind that merely explaining the terms of a Transaction or Investment or its performance characteristics does not itself amount to the provision of personal advice.

### 3.5 Communication and acceptance of Orders

Orders may only be placed by telephone or email to the communication numbers and addresses advised by BBY from time to time. When you place an order by telephone, you can do so only by talking directly to a broker of BBY or a broker of BBY's agent. No messages may be left, and no orders may be placed using voicemail facilities or by facsimile. All telephone calls are recorded for the purposes of fraud prevention and quality control and by agreeing to these terms and conditions you agree to the recording of such telephone conversations. Orders may also be relayed via e-mail but are not taken to be received until confirmed by a representative of BBY. Any Order to execute a Transaction will not take effect unless actually received by BBY. BBY will be entitled to rely upon any instruction given or purporting to be given by you or any other person on your behalf without further enquiry as to the genuineness, authority or identity of any such person giving or purporting to give such instructions.

### 3.6 Right to refuse

BBY may, at its discretion refuse to accept any Order from you but will promptly notify you of any such refusal, without giving any reasons. BBY may cancel any instructions previously given by you provided that BBY has not acted on your instructions.

Acceptance of your Order will be evidenced by BBY's confirmation of that Order. The validity of any Order will not, however, be affected by you not receiving confirmation of an Order. Acceptance of any Order does not constitute any agreement or representation that your initial Margin or Margin requirement in respect of the Order or your existing Order is satisfied.

### 3.7 Confirmations

BBY will send confirmations to the most recent email address given by you. Confirmations will, in the absence of manifest error, be conclusive and binding on you, unless BBY receives from you an objection in writing within three (3) Business Days of dispatch of the Confirmation.

### 3.8. Account Payments

#### 3.8.1 Payment

BBY will only accept deposits from you by electronic funds transfer. You agree that payments made to BBY are in accordance with the following terms:

- (a) all electronic transfer or other bank fees in respect of payment by you will be your sole responsibility. Only funds received net of any bank charges, which relate to the transfer, will be credited to your Account;

- (b) if any payment is not received by BBY on the due date for payment then, without limitation of any other rights which BBY may have, it will be entitled to charge interest on the overdue amount (both before and after judgment) at the Interest Rate from the date payment was due until the actual date of payment;
- (c) you will pay to BBY on demand on a full indemnity basis all costs, charges, and expenses incurred by BBY in relation to any overdue payment (including any referral fees);
- (d) any payment made to BBY will only be deemed to have been received when it receives cleared funds; and
- (e) it is your responsibility to ensure that payments made to BBY are correctly designated in all respects.

#### 3.8.2 Client Money

Any money received by BBY in respect of your Account will be deposited and held by us on trust in a segregated trust account established, maintained and operated in accordance with the Corporations Act. The funds deposited into individual BBY client accounts are not separated from each other. All BBY clients' funds are commingled into one trust account. Client money provisions may not insulate any individual BBY client's funds from a default in BBY's segregated trust account. Such a default may arise from any BBY client's trading. Assets in BBY's segregated trust account that belong to non-defaulting BBY clients are potentially at risk, even though the non-defaulting BBY clients did not cause the default.

You acknowledge that BBY will retain the interest (if any) earned on monies held in its trust account from time to time. In the event that there has been no movement in your balance for a period of 12 months after the date you become entitled to a transfer of your money held by BBY in respect of your Account (notwithstanding any payments or receipts of interests or similar funds) and we are unable to trace you despite having taken reasonable steps to do so, such money will be treated by BBY as unclaimed money and dealt with in accordance with Applicable Regulations.

#### 3.8.3 Payment Withheld

If the statement of your Account shows a credit balance, you may request BBY to send you the funds in the Account to you by electronic transfer or by cheque or effect payment by alternative means for such amount. However, BBY may at its discretion elect to withhold (in whole or in part) any payment requested by you if:

- (a) open Margined Transactions on the Account show notional losses;
- (b) BBY reasonably considers that funds may be required to meet any current or future margin requirement on open Margined Transactions;
- (c) you have any contingent liability to BBY or to any of its affiliates in respect of any other account;

- (d) BBY reasonably determines that there is an unresolved dispute in connection with these Terms and Conditions or any related contract; and/or
- (e) an interest payment may be due on your account.

BBY will not be obliged to make any payment to you unless your cash balance remaining after making the payment would be sufficient to cover your Margin and any unrealised losses in relation to your open Margined Transactions.

### 3.8.4 Base currency for payments etc

You will designate a base currency of your Account which will either be Australian Dollar (AUD), New Zealand Dollar (NZD), or United State Dollar (USD) or any other currency agreed in advance with BBY (the Base Currency). Any sums deposited in your Account, if in a Currency other than the Base Currency of the Account, may be converted to that Base Currency at the prevailing conversion rate as designated on your instruction. If any interest costs, commission and other charges to be debited to your Account are in a currency other than the Base Currency they may be converted to that Base Currency at the prevailing conversion rate as designated by BBY.

All payments from your Account will be made in the Base Currency of that Account unless another Currency is agreed in advance.

## 4. MARGIN

### 4.1 Margin Arrangements

As a condition of entering into a Margined Transaction, BBY may in its sole discretion require the deposit of funds to BBY as security for payment as margin incurred by you in respect of the Transaction (**Initial Margin**). Initial Margin is due and payable immediately as a condition to opening the relevant Margined Transaction and BBY may decline to open any Margined Transaction if you do not have sufficient available cash in your Account to satisfy the Initial Margin at the time the relevant Order is placed.

### 4.2 Variation of Margin

BBY may determine and vary margin requirements without prior notice from time to time at its discretion including, without limitation, variation of any Initial Margin (**Variation Margin**); and together with Initial Margin, **Margin**).

### 4.3 Form of Margin

Unless otherwise agreed by BBY, Margin must be provided in the form of cleared funds. You must inform BBY immediately if you cannot, or believe you will not be able to, meet a Margin Call when due. You must maintain in your account, at all times, sufficient funds to meet all Margin requirements. BBY is not obliged to make Margin Calls to you at all or within any specific time period. BBY is entitled to require payment of Margin of you by electronic transfer or any other method of immediate funds transfer acceptable to it.

### 4.4 Close-out

In the event that there is insufficient Margin in your Account BBY may in its sole discretion choose to close or terminate all your Margined Transaction immediately, without notice to you. If BBY chooses not to close or terminate your Margined Transaction, it may make a Margin Call in accordance with clause 4.5 of these Terms and Conditions.

Any Transaction entered into by you or on your behalf which results in there being insufficient Margin to cover

any actual or anticipated losses or liabilities in connection with your Account will constitute a Default Event and BBY may in its discretion exercise its rights in clause 9 of these Terms and Conditions, whether there has been a Margin Call or not.

### 4.5 Margin Calls

If you fail to maintain sufficient funds to meet the Margin requirements, BBY may, but is not obliged to, make a Margin Call. Margin Calls may be made at any time by telephone, fax, e-mail or any other means of communication. If your contact details change, (whether permanently or temporarily, e.g. when you are travelling or on holiday) you must notify BBY immediately and provide alternative contact details to ensure Margin Calls can be made. BBY is not obliged to make Margin Calls and will not be liable for any failure by it to contact you or to attempt to contact you. Should BBY decide to make a Margin Call, the terms and conditions of the Margin Call will be detailed within the Margin Call. BBY reserves the right to change the terms and conditions of any Margin Call based on market conditions. Making a Margin Call does not waive BBY's right to liquidate your Margined Transactions as detailed in clause 9.

### 4.6 Timing of payment

Any payment made by or on your behalf in satisfaction of a Margin Call must be received by BBY within the time specified within the Margin Call. BBY may in its sole discretion close or terminate your Margined Transactions without notice to you immediately and decline to enter into any further Margined Transactions with you if you fail to honour any Margin Call. Failure to pay a Margin Call in accordance with its terms will constitute a Default Event and BBY may exercise its rights in clause 9 of these Terms and Conditions.

## 5. FEES, CHARGES AND COMMISSIONS

You must pay BBY's fees, charges and commissions as advised by BBY from time to time. BBY may deduct such fees, charges and commissions from any funds held by it on your behalf. The charges are described in the PDS and will be discussed with your adviser before Orders are executed. You agree to BBY paying its representatives, authorised representatives and licensee partners (as the case may be) a set portion of the fees, charges and commissions or other amounts payable (not exceeding 55%) that you pay to BBY as either their remuneration or as a referral fee. BBY confirms that neither BBY nor its representatives, authorised representatives nor licensee partners have discretion over the portion of fees to be paid in each instance. You agree that you give your clear and express consent to BBY making such payments and to BBY's representatives, authorised representatives and licensee partners (as the case may be) receiving such payments.

## 6. OUR RELATIONSHIP WITH YOU

### 6.1 Market Abuse

By entering into any Transaction you represent and warrant that:

- i. you will act in accordance with the Corporations Act and any Applicable Regulations;
- ii. you are not acting in any way which is intended to be, or may be considered to be, market abuse or manipulation; and,
- iii. you are not acting with the intention of contravening any other provision of the Corporations Act or any other Applicable Regulation.

### 6.2 No Best Execution

BBY will deal with you as principal in relation to any Orders and we will not act as your agent or act on your behalf in relation to any Orders. Rather, we will provide you with a price quote and you may place an Order on the basis of that price quote. Accordingly, we do not owe you any obligation of best execution and do not agree to obtain the best possible price for you.

### 6.3 Errors in Order transmitted by you

If you incorrectly or erroneously submit an Order, which is executed, you will notify BBY of the error immediately upon becoming aware of the error. You will also notify BBY at the same time whether you wish BBY in respect of the error trade to either:

- (a) maintain the contract in your name with BBY in the same size and at the same price as the executed order; or
- (b) reverse the executed order.

## 7. REPRESENTATIONS AND UNDERTAKINGS

You represent and warrant to BBY that on the date these Terms and Conditions come into effect and as at the date of each Transaction that:

- (a) you are suitable to trade in Transactions and that you are aware of the risks involved with such Transactions;
- (b) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform these Terms and Conditions and each Transaction and to grant the security interests and powers referred to in these Terms and Conditions;
- (c) the details supplied on your account opening forms are correct, complete and not misleading and any changes have been notified to BBY in writing (including by email);
- (d) the persons entering into these Terms and Conditions and each Transaction on your behalf have been duly authorised to do so;
- (e) these Terms and Conditions, each Transaction and the obligations created under them are binding upon you and enforceable against you in accordance with their terms and do not and will not violate the terms of any regulation;
- (f) no Default Event or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Default Event (a **Potential Event of Default**) has occurred and is continuing with respect to you or any Credit Support Provider;
- (g) any information which you provide or have provided to BBY in respect of your financial position or other matters is accurate and not misleading in any material respect;
- (h) you are willing and financially able to sustain a total loss of funds resulting from Transactions;
- (i) you have consistent and uninterrupted access to internet service and the e-mail address provided on your account opening forms in order to receive confirmations by email;
- (j) except as otherwise agreed by BBY, you are the sole beneficial owner of all Margin you transfer under

these Terms and Conditions, free and clear of any security interest;

- (k) if you are not a resident in Australia, you are solely responsible for ascertaining whether any Transaction entered into under these Terms and Conditions is lawful under applicable laws of the jurisdiction of your residence;
- (l) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause;
- (m) you will promptly notify BBY of the occurrence of any Default Event or Potential Default Event with respect to yourself or any Credit Support Provider;
- (n) you will use all reasonable steps to comply with all Applicable Regulations in relation to these Terms and Conditions and any Transaction, so far as they are applicable to you or BBY;
- (o) upon demand, you will provide BBY with such information as it may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Regulations.

## 8. DEFAULT EVENTS

It is a Default Event, whether or not it is within your control, if:

- (a) any moneys owing by you to BBY under these Terms and Conditions are not fully and punctually paid to BBY or satisfied as and when they become due (including in respect of any Margin requirement) or you fail to provide security for payment obligations and liabilities in the manner required by BBY;
- (b) you fail to discharge fully and punctually all of the obligations you owe to BBY under a Transaction or which were incurred by BBY on behalf of you in respect of a Transaction;
- (c) the value of your open Transactions exceeds any limit imposed by BBY from time to time;
- (d) any guarantee or other security lodged by you (where allowed by BBY) is withdrawn or becomes ineffective (and other replacement security acceptable to BBY is not provided);
- (e) you fail to duly and punctually perform and observe any other obligation under these Terms and Conditions or any other agreement with BBY;
- (f) any representation made by you or on your behalf is incorrect or misleading in any material particular;
- (g) you stop payment of your debts or cease or threaten to cease carrying on business;
- (h) you enter or propose to enter into any scheme of arrangement or compromise with your creditors or call a meeting to discuss a contemplated scheme of arrangement or compromise;
- (i) a receiver or receiver and manager or administrator is appointed to you or any of your assets;
- (j) if you are a body corporate, a resolution is passed or a petition is presented or an order is made for your winding-up or liquidation or an administrator is appointed;

- (k) if you are a body corporate, a director has not given a valid deed of guarantee and indemnity (in respect of your obligations under this agreement) in favour of BBY in the form required by BBY.
  - (l) if you are a body corporate, you have not given notice to BBY of a change in the directors of you within seven (7) days of that change taking effect (regardless of if or when notice of that change has been given to any regulatory authority);
  - (m) if you are a natural person, you die or become of unsound mind or a bankruptcy notice is issued against you;
  - (n) any security created by any mortgage or charge binding upon you or your assets becomes enforceable and the mortgagee or the charge takes steps to enforce the security;
  - (o) your indebtedness becomes immediately due and payable, or capable of being declared due and payable, prior to its stated maturity, by reason of your or any other persons default;
  - (p) in the absence of you making alternative arrangements, you or your Authorised Person is not contactable by telephone by BBY within 12 hours, in order for BBY to obtain instructions with respect to an open Transaction;
  - (q) you are presumed to be insolvent under the Corporations Act or equivalent legislation for a natural person or other legal entity to the extent your insolvency is regulated other than under the Corporations Act;
  - (r) if you are a trustee, the Trust is terminated or vests or a distribution of capital of the Trust is made which would result in there being insufficient assets of the Trust to meet your liabilities under any Transaction or this agreement.
- (after deduction of costs associated with any sale) to satisfy any amounts due to BBY;
- (g) combine, consolidate, merge or apply all or any part of any credit balance standing to any account of you with BBY or BBY Limited or their related bodies corporate or any amount available to BBY or BBY Limited or their related bodies corporate by way of set-off, lien or counterclaim in or towards satisfaction of any money due and payable by you to BBY or by BBY to you under this agreement;
  - (h) realise any guarantees or securities lodged by you or on its behalf;
  - (i) calculate the aggregate amount owed by you to BBY (after allowing any aggregate amount owed by BBY to you) and any such amount is immediately due and payable; and
  - (j) exercise any other power or right which BBY has under this agreement, at law or in equity.

### 9. ACTION FOLLOWING A DEFAULT EVENT

- 9.1 Upon or at any time after a Default Event occurs, BBY, without prejudice to any other rights it may have, has the right and power (but not the obligation), in its absolute discretion and without notice to you, to do anyone or more of the following:
- (a) immediately terminate these Terms and Conditions;
  - (b) close out or attempt to close out all or any open Transactions (even though the settlement date has not arrived);
  - (c) adjust the value date of a closed out forward Transaction by bringing such date back to a current date or such other date determined by BBY in its discretion;
  - (d) enter into other agreements, including foreign exchange transactions, options, forward agreements, swaps or other arrangements to obtain equivalent or similar rights to those closed out or terminated;
  - (e) take action as BBY considers reasonably appropriate to mitigate or limit its potential loss arising from your default, including by entering into transactions for itself or as your agent and without any obligation to reinstate your Transactions or equivalent positions;
  - (f) sell any of your property held by BBY or BBY Limited or their related bodies corporate (including selling any derivative whether or not linked in any way to any other Transaction) or apply a trading account
- 9.2 BBY will not lose any of its rights under this clause by reason of any delay in the exercise of the right and if BBY does exercise any right under this clause it may do so at any time and in any manner. It is expressly acknowledged by you that any delay or forbearance by BBY in closing out a Transaction or terminating your Account or these Terms and Conditions is not a waiver of its rights unless expressly stated to be so by written notice signed by a director of BBY.
- 9.3 If BBY exercises its rights under this clause to close out an open Transaction, the closing out will be effected on your authority (which you hereby authorise) and at your risk and expense and in your name as if you had given notice on the date that BBY exercises its right (and without limitation, BBY may waive any notice period otherwise required).
- 9.4 BBY may elect:
- (a) to convert your account into Australian currency as at times chosen by it; and
  - (b) to convert any amount owed by you to BBY into Australian currency at the date of your default, and BBY is entitled to retain any benefit in respect of the conversion rate provided that it is determined by BBY at exchange rates reasonably determined by BBY in accordance with published exchange rates available from financial institutions. You are bound by any such conversion and must pay the amount so converted in Australian currency.
- 9.5 The rights of BBY and obligations and liabilities of you in respect of your obligation to discharge fully and punctually obligations in connection with Transactions and the rights to indemnification and limitation of liability of BBY, survive termination of this agreement.

### 10. INDEMNITIES FROM CLIENT

- 10.1 You indemnify BBY, its officers, agents and employees (**Indemnified Persons**), and agree to keep the Indemnified Persons indemnified, against all losses, damages, costs, charges, taxes and expenses (including administrative and legal costs on a full indemnity basis) which BBY or any other Indemnified Person may sustain or incur in respect of or consequent upon:
- (a) any breach by you of any obligation under this agreement;
  - (b) BBY entering into a Transaction on your behalf;
  - (c) the close out of any Transaction;
  - (d) any Transaction becoming due for settlement;
  - (e) any representation or warranty given or deemed to be given by you being or becoming untrue;
  - (f) any attorney appointed by you pursuant to these Terms and Conditions taking any action (including closing out any Open Transaction) as attorney of you;
  - (g) any Transaction, or any obligation to BBY under these terms and Conditions, being or becoming illegal or otherwise void or voidable;
  - (h) the occurrence of any Default Event or BBY exercising any of its rights or powers upon such occurrence; and
  - (i) any amount payable by you under these Terms and Conditions.
- 10.2 BBY is not responsible for any loss or damage arising or incurred directly or indirectly from any statement, opinion, representation or advice given by BBY or any of its officers, employees or agents to you in connection with any Transaction, any foreign exchange rate of exchange or price or market (whether relating to historical, present or future circumstances).

### 11. LIMITATION OF LIABILITY

- 11.1 You acknowledge and agree that you:
- (a) have read, understood and accept all of these Terms and Conditions; and
  - (b) in entering into each Transaction you will rely only upon your judgment and BBY, its related bodies corporate, employees or agents will have no responsibility or liability of any kind in respect of any information or advice given or views expressed to you, whether or not the advice is given or views are expressed at their volition or upon your request, nor will they be liable in respect of any loss incurred by you in connection with any Transaction.
- 11.2 BBY will be under no liability arising in respect of any private dealing, contract, transaction or relationship between you and any of BBY's related bodies corporate, employees or agents.
- 11.3 BBY has no responsibility or liability of any kind for any loss whatever incurred by you as a result of:
- (a) any failure, default, action or omission by any Market Participant or their agents or counterparts;
  - (b) any delay in transmitting or failure to transmit funds caused by reasons beyond BBY's control; or
  - (c) BBY's failure to timely execute Orders placed with it or to transact business or otherwise administer these Terms and Conditions in the manner contemplated by this agreement for reasons beyond its control

(including, without limitation, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication or computer failure, strikes or war).

- 11.4 BBY is not liable in any manner to you for any loss arising from or in connection with any Transaction as the result of any moratorium, change in exchange rates or currency restrictions.
- 11.5 Nothing in these Terms and Conditions applies to the extent of any law prohibiting any exclusion or limitation of liability. If by law liability may not be excluded, then to the extent permitted by law BBY's liability arising out of any action or omission by it will be limited to an amount equal to the amount of fees paid to BBY by you in respect of the act or omission giving rise to the liability, or to the re-supply of the service, at BBY's discretion.

### 12. TERMINATION

- 12.1 You may terminate these Terms and Conditions immediately by giving written notice to us.
- 12.2 BBY may terminate these Terms and Conditions with you by giving you ten (10) Business Days notice, except that BBY may terminate these Terms and Conditions immediately if you fail to observe or perform any provision of these Terms and Conditions, or upon the occurrence of any Default Event, or if you have no open Transactions in your Account at the time when the notice of termination is sent. At any time after the termination of these Terms and Conditions, BBY may, without notice, close out any of your open Transactions at the prevailing market price with no liability to BBY.
- 12.3 Termination will be without prejudice to accrued rights and remedies and the existence and enforceability of any open Transaction, which will continue until close in accordance with these Terms and Conditions, unless otherwise specified.
- 12.4 Upon terminating these Terms and Conditions, all amounts payable by you to BBY will become immediately due and payable including (but without limitation):
- (a) all outstanding fees, charges and commissions;
  - (b) any dealing expenses incurred by terminating these Terms and Conditions; and
  - (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.
- 12.5 Termination will not affect then outstanding rights and obligations (in particular those in clauses 10 and 11) and Transactions which will continue to be governed by these Terms and Conditions and the particular clauses agreed in relation to such Transactions until all obligations have been fully performed.

### 13. GUARANTEE AND INDEMNITY

- 13.1 The terms of this clause 13 are the terms which are incorporated into the Deed of Guarantee and Indemnity made by the person who executes as "guarantor" Guarantor that part of an application form which expressly refers to and incorporates by reference these terms into that deed.

- 13.2 The Guarantor guarantees to BBY the performance by Client of its obligations under the Facility and agrees to indemnify and to keep indemnified BBY and its employees, agents and representatives against any and all liability or loss (including any consequential loss or damage suffered by BBY) arising from, and any reasonable costs (including any reasonable legal costs and expenses on a solicitor and own client basis), damages, charges and expenses incurred by BBY arising out of any default, whether by act or omission, of you:
- (a) to pay BBY any moneys which are due and payable by you pursuant to the Facility; or
  - (b) to fulfil its obligations to BBY under the Facility.
- 13.3 This guarantee and indemnity are principal and continuing several obligations of each person who signs this document as Guarantor notwithstanding termination of all or any part of the Facility, or the Terms of dealing and will not be affected in any way by:
- (a) any indulgence, delay or period of grace allowed by BBY to you or a Guarantor;
  - (b) any modification or variation of the Facility or the Terms of dealing between Client and BBY;
  - (c) whether any other person has signed this document as a "Guarantor" or given any other credit support to BBY regarding your obligations to BBY;
  - (d) any other thing that would otherwise affect the obligations of a Guarantor; or
  - (e) any change in the constitution of BBY, you or the Guarantor.
- 13.4 To the extent permitted by law, this guarantee and indemnity are in addition to and will not merge with, or be affected by, any other security held by BBY in respect of the obligations of you or the Guarantor, now or in the future, notwithstanding any rule of law or equity, or any statutory provision to the contrary.
- 13.5. The Guarantor acknowledges that:
- (a) BBY may in its sole discretion choose to enforce this document against any one or more persons who have signed this or another document as "Guarantor" or other provider of credit support to BBY regarding your obligations to BBY;
  - (b) this guarantee and indemnity applies to the Facility from the time of commencement of the Facility even if before the date of this document;
  - (c) it will do everything to discharge its obligations under this guarantee and indemnity;
  - (d) whoever executes this document on behalf of the Guarantor has the power and authority to do so;
  - (e) it has read the terms of the Facility; and
  - (f) it will pay on demand of BBY a sum equal to all moneys due and payable by you to BBY under the Facility and the amount of BBY's loss suffered or liability incurred in relation to that without set-off or counter claim.
- 13.6 This guarantee and indemnity are governed by the laws in force in New South Wales and the Guarantor submits to the non-exclusive jurisdiction of the Courts of that State.

## 14. INFORMATION

You warrant that all information provided by you to BBY (including in your Application) is, or will be when given, accurate, true and correct and further agree to immediately notify BBY in writing upon becoming aware that such information is no longer accurate, true and correct including any change in address, telephone number or email address. You agree that BBY may share such information, as well as your account details and information regarding your Transactions with each other and with BBY's related bodies corporate on a confidential basis as BBY considers appropriate. You also consent to BBY disclosing such information and your account details to any regulatory authority, and consent to each of them using such information and your account details for the purposes of monitoring compliance by you, or any of them with their respective regulatory and contractual obligations, and resolving disputes.

## 15. AMENDMENT

BBY may amend these Terms and Conditions from time to time. BBY will give you 10 days notice of any amendment, after which time, the amendment will become effective.

## 16. ASSIGNMENT

You agree that BBY may assign any or all of its rights and / or novate, transfer, sub-contract or delegate any or all of its obligations under these terms and conditions to any third party. Further, BBY may without prior notice to you assign its rights and obligations arising under this agreement, including Transactions, to a related body corporate of BBY provided the assignee is a financial services licensee and assumes all liabilities of BBY arising under this agreement. BBY must give notice of any such assignment within a reasonable time after it takes effect. Such notice can be given to you electronically by email and/or on BBY's website. These terms and conditions are personal to you and are agreed to by you for your own benefit and not for the benefit of any other third party.

## 17. NOTICES

Notices given by BBY must be in writing and may be sent to the address, fax number or email address specified in your Application or later notified by you, or by posting the notice on its website. Any notice or Confirmation given by BBY is taken to have been received on the business day following the transmission or posting of the notice, demand or Confirmation.

Where a Client Account is opened in the joint names of more than one Client, each of you agrees that BBY may discharge any obligation it has to give a notice or a document to you under these Terms and Conditions or the Corporations Act by giving notice to any one of you.

## 18. GOVERNING LAW

These Terms and Conditions are governed by the law in force in New South Wales and you and BBY submit to the non exclusive jurisdiction of the court of New South Wales and courts which may hear appeals from those courts.

### 19. INTERPRETATION

In these Terms and Conditions the following words and phrases have the following meanings:

**Account** means an account of yours opened with BBY Limited;

**Applicable Regulations** means the Corporations Act, the *Corporations Regulations 2001* (Cth), or any other rules of a relevant regulatory authority, including ASIC or any other Rules of a relevant Market and all other applicable laws, acts, rules and regulations as in force from time to time;

**Business Day** means a day (other than a Saturday or Sunday) on which the banks are open in Sydney, Australia.

**commission** means the commission, charges or other remuneration for the conduct of the business by BBY as disclosed and as notified to you from time to time;

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Credit Support Provider** means any person who has entered into any guarantee, hypothecation agreement, margin or security agreement in our favour in respect of your obligations under these Terms and Conditions;

**Currency** will be construed so as to include any unit of account;

**Default Event** means any of the events of default as listed in clause 8 of these Terms and Conditions;

**Interest Rate** means LIBOR (the London Interbank Offered Rate) plus a mark up not to exceed 4%, or such other benchmark interest rate as may be applicable and as selected by BBY depending upon the currency of a contract, plus a mark up not to exceed 4%;

**Investment** means an investment in any asset or commodity or other investment;

**Margin Call** means a demand for such sums by way of Margin as BBY may reasonably require for the purpose of protecting itself against loss or risk of loss on present, future or contemplated Transactions under these Terms and Conditions;

**Margined Transaction** means any Rolling Spot Forex Contract, precious metals contract or any other Transaction liable to Margin;

**Market** means any market or multilateral trading facility subject to government or state regulation with established trading rules and trading hours

**Order** means an instruction to purchase or sell an Investment, open a Rolling Spot Forex Contract, precious metals contract or other Margined Transaction at a price quoted by BBY as appropriate;

**PDS** means a product disclosure statement issued by BBY as amended from time to time, in relation to Margined Transactions.

**Rules** means articles, rules, regulations, procedures and customs, as in force from time to time.

**Security** has the meaning given in section 92(3) of the Corporations Act.

**Stock Exchange** means any financial market where a Security has its primary listing.

**Transaction** means a contract in an Investment or any other contractual arrangement entered into between you and us including a Margined Transaction as defined in these Terms and Conditions.

**General interpretation:** Words expressed in the singular include the plural and vice versa. A reference to a document or agreement includes any variation or replacement of it.

## DESK FX TERMS

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### IF THE CLIENT IS A NATURAL PERSON:

**SIGNED** by the Client named above in the presence of:

Name of Witness

SIGNATURE OF WITNESS

DD / MM / YY

SIGNATURE OF CLIENT

### IF THE CLIENT CONSISTS OF 2 NATURAL PERSONS, THE SECOND PERSON IS TO SIGN HERE:

**SIGNED** by the Client named above in the presence of:

Name of Witness

SIGNATURE OF WITNESS

DD / MM / YY

SIGNATURE OF CLIENT

### IF THE CLIENT IS A CORPORATION:

**EXECUTED** by the Client named above:

Name

SIGN HERE

Signature of director/\*\*sole director and secretary (Cross out whichever option is not applicable)

DD / MM / YY

Name

SIGN HERE

Signature of second director or secretary

\*\*This option should only be selected if the company is an Australian proprietary company which has only one director that person is also the only secretary.

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