

# Terms of Business

Effective date: September 2021



## RISK WARNING

LMAX Global's trading service carries a high level of risk and can result in losses that exceed the cash balance held on your Account at any given time. The high level of risk means our trading service is not suitable for everyone. You must satisfy yourself that it is suitable for you in the light of your circumstances, financial resources and investment objectives. If you are in any doubt you should seek independent advice.

You should be aware of the risks set out in the Risk Warning Notice. In summary, these include, but are not limited to, the following:

- (a) any losses may exceed the cash you have deposited with us;
- (b) profits or losses can be incurred very quickly and it is your responsibility to monitor your Account at all times;
- (c) historical performance is no indication as to future performance;
- (d) the price of Instruments are determined by fluctuations in the market outside our control;
- (e) you may be required to deposit additional funds at short notice and failure to do so may result in your open trades being closed and working orders cancelled without notice;
- (f) in certain circumstances, it may be difficult to close your open trades immediately, the value of your trades could fall and you will be liable for the full amount of any losses;
- (g) currency exchange fluctuations may impact your profits and losses;
- (h) an order to limit the loss on a trade is not guaranteed to limit your loss on that trade to a specific amount;
- (i) your rights to money held in our client bank account may be affected by (i) the insolvency of the relevant bank, or (ii) the insolvency of a clearing house where we have transferred money to them for the purposes of margin etc.
- (j) corporate action type events may impact your trade and it is your responsibility to determine whether your trade is likely to be subject to such action and what its effect may be;
- (k) Digital Currency Fork events are outside of our control and may result in a material change in the value of any trades referencing crypto-assets/digital assets.

We cannot purport to disclose all risks or other relevant considerations. By submitting an application to open an Account with us, you confirm that (a) you have read the Risk Warning Notice and all the documents supplied to you in connection with our trading service, and (b) that you understand and agree that our trading relationship will be governed by these documents, as amended from time to time. You must not apply to open an Account or commence trading with us if you are unsure as to how our trading service operates or the nature of the risks involved.

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## Terms of Business

Effective date: September 2021

This document forms part of the client agreement with LMAX New Zealand Limited.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms of Business, the following definitions apply.

**Account** has the meaning given to it in Term 5 (Your Account).

**Agreement** has the meaning given to it in Term 2.2 (Our Agreement).

**Approved Bank** means a central bank, a CRD credit institution or a bank authorised in a third country.

**Associated Companies** means any subsidiary company or holding company (as defined in the Companies Act 1993) of ours from time to time, and/or any subsidiary company of any such holding company.

**Available to Trade Balance** means the sum of:

- (a) your cash balance; plus
- (b) profits on your open trades; minus
- (c) losses on your open trades; minus
- (d) Total Margin Required.

**Back to Back Order** has the meaning in Term 4.2 (Execution Venues).

**Base Currency** means pounds sterling (£), unless otherwise agreed with you.

**Business Day** means any day other than a Saturday, Sunday or a public holiday in England.

**Buy** means a trade that is opened or closed by buying and may sometimes be referred to as a long trade.

**CFD Contract** means a contract for difference based on any pricing index whatsoever.

**Client Systems** are any interface or technological service you use to connect to, access or receive our services including over a public network such as the Internet other than LMAX Systems.

**Closing Price** means the price at which your trade is closed.

**Commodities Contract** means any contract referencing a commodity, such as bullion, base metals and energy, and includes rolling spot bullion contracts and CFD Contracts referencing a commodity pricing index.

**Confidential Information** means any information of whatever nature (whether commercial, financial, technical or otherwise) relating to you or us and which is designated as being confidential or is by its nature clearly confidential.

**Cookie Policy** means LMAX Exchange Group's cookie policy, as published on the Website.

**Data Protection Legislation** means the Privacy Act and all other applicable laws and regulations whatsoever relating, from time to time, to the processing of personal data and privacy.

**Default Interest Rate** means a rate of 4% per annum simple above the base rate of the Bank of England or, if the sums are due in a currency other than sterling, 4% per annum simple above the base rate of the central bank for that currency, provided that if the relevant base rate cannot be established for any reason, we shall acting reasonably at all times set the Default Interest Rate by reference to the base rate of an alternative central bank.

**Privacy Act** means the Privacy Act 1993 and the term **personal data** shall each have the meaning given to that term in the Privacy Act.

**Event of Default** has the meaning given to it in Term 23 (Events of Default).

**Financial Dispute Resolution Service** means the financial dispute resolution scheme in New Zealand established and approved by the Financial Service Providers (Registration and Dispute Resolution) Act 2008, owned and operated by FairWay Resolution, and with whom LMAX New Zealand Limited is a Member of.

**Force Majeure Event** means, in relation to LMAX Global, any event or circumstance beyond our reasonable control including:

- (a) any delay or defect in, or failure of the whole or any part of the Website, the LMAX Systems or our communications infrastructure;
- (b) any cause or circumstance including fire, flood and other acts of God, strikes, riot, disruptions to energy supplies, civil commotion, acts of terrorism or war, breakdown of equipment; and
- (c) the failure of LMAX Exchange or any relevant Liquidity Pool or other supplier or principal of ours, custodian, prime broker, exchange or clearing house for any reason,

to perform its obligations that prevents us from providing an orderly trading service to our clients.

**Fork** means a sudden change in operating rules which can result in the division or split of a digital currency into two or more non-fungible digital/crypto assets.

**FSPA** means the Financial Services Providers (Registration and Dispute Resolution) Act 2008 of New Zealand.

**FX Contract** means a cash settled spot, including rolling spot, or forward FX contract referencing particular currency pairs and an NDF Contract.

**GUI** means the graphical user interface as we make available to you from time to time.

**Helpdesk Hours** means the times we are open for receiving Orders on the telephone, as specified on our Website.

**Instrument** means an FX Contract, a CFD Contract or a Commodities Contract.

**Instrument Information** means the information provided for each Instrument on the GUI.

**Liquidity Pool** means any provider of trading liquidity in the Instruments available to us from time to time, including banks, broker dealers and other market makers, including our Associated Company, LMAX Broker Limited and/or LMAX Bullion Limited.

**LMAX Digital** means LMAX Digital Broker Limited, authorised and regulated by the Gibraltar Financial Services Commission under license number FSC1342B, and is a company registered in Gibraltar (number 117528). Its registered address is Office 208 Regus, World Trade Center, Bayside Road, Gibraltar and it is a member of the LMAX Exchange Group.

**LMAX Exchange** means each of the LMAX Exchange Services and the LMAX MTF Services.

**LMAX Exchange Services** means the all-to-all LMAX matching facilities and any successors or replacements hosted on London, New York or Tokyo servers made available to members to enter into certain deliverable spot FX and spot commodities trades with other members and which is not an MTF.

**LMAX Global** also means:

- a) LMAX Broker Europe Limited, a company registered in Cyprus with company registration number HE 346613 and who is authorised and regulated as a broker by

the Cyprus Securities and Exchange Commission under the license number 310/16. Its registered address is 16 Spyrou Kyprianou, Limassol, 3070, Cyprus and is part of the LMAX Group; and/or

- b) LMAX Broker Limited, registered under the laws of England and Wales with company number 10819525, and who is authorised and regulated by the Financial Conduct Authority with registration number 783200, whose registered address is Yellow Building, 1A Nicholas Road, London, W11 4AN,

as the case may be and as the context requires, each of which trades under the trading name of LMAX Global, and who are Associated Companies of LMAX New Zealand Limited and part of the LMAX Group.

**LMAX MTF Service** means the all-to-all LMAX matching facilities hosted on London and Tokyo servers made available to members to enter into contracts for differences and NDF trades with other members and which is an MTF.

**LMAX Rulebook** means the rules that apply to each LMAX Exchange Service and the LMAX MTF Service operated by LMAX Limited, as published on LMAX Limited's Website.

**LMAX Systems** means our Website at [www.LMAX.com](http://www.LMAX.com) and any subpages thereof, any GUI, an API or FIX protocol we make available to you for the purposes of accessing our services.

**Manifest Error** means an error that is obvious or easily demonstrable without extensive investigation.

**Margin Close Out Level** means the percentage of Total Margin Required you must maintain in your Account to prevent your working Order and/or open trades from being closed as set out in the Trading Manual.

**Margin Covered Percentage** means the percentage of Total Margin Required that is being covered by the cash and open trades in your Account at any given time and calculated as (a) the aggregate of your cash balance plus profits on your open trades, less the aggregate of the losses on your open trades expressed as a percentage of (b) the Total Margin Required on your open trades and working Orders.

**Margin Factor** means the relevant percentage set out on our Website.

**Margin Required** means the margin as calculated in accordance with Term 13 (Margin Required).



**Market Abuse** means any of the behaviours described in Term 26.1 (Market Abuse) in relation to any Instrument.

**Market Order** has the meaning given to it in the Trading Manual.

**Maximum Position Size** means a limit restricting the total size of position that you may hold in any Instrument at any given time which may be amended by us in our absolute discretion.

**MiFID2** means Directive 2014/65/EC of the European Parliament and of the Council on markets in financial instruments and Regulation No 600/2014 of the European Parliament and of the Council on markets in financial instruments and any delegated regulations, technical standards, guidelines, questions and answers made under or in relation to such directive and regulation.

**MTF** means a multi-lateral trading facility as defined in MiFID2.

**NDF Contract** means a non-deliverable forward FX contract referencing particular currency pairs.

**Opening Price** means the price at which your trade is opened.

**Order** means an order or instruction submitted to us.

**OTF** means an organised trading facility as defined in MiFID2.

**Privacy Policy** means LMAX Exchange's privacy policy, as published on the Website.

**Wholesale Client** has the meaning given to it as in the Financial Advisers Act 2008.

**Regulated Market** has the meaning given to it in MiFID2.

**Related Persons** means LMAX New Zealand Limited and any of our directors, employees or agents or any of the directors, employees or agents of LMAX Limited.

**Risk Warning Notice** means LMAX Global's risk warning, as published on the Website.

**Sell** means a trade that is opened or closed by selling and may sometimes be referred to as a short trade.

**Software Bridge** means a form of interaction between any Software Trading Tools and your Account (including API and/or FIX Interactions).

**Software Trading Tools** means a customised interface or third party equipment, hardware or software which processes and transmits market data and trades between it and us.

**Standard Position Size** has the meaning given to it in the Trading Manual.

**Summary Conflicts Policy** means LMAX Global's summary conflicts policy, as published on

the Website.

**Total Margin Required** means the aggregate of margin required for your open trades and on any working Orders.

**Trading App** means our trading application downloaded by you to supported mobile devices and which provides mobile access to our trading services.

**Trading Hours** means the hours that LMAX Global is open for business to accept Orders.

**Trading Manual** means LMAX Global's trading manual as published on our Website.

**Trading Venue** means a Regulated Market, MTF or OTF.

**Website** means our website at <https://www.lmax.com/global/nz>, the GUI we make available to you.

## 1.2 In these Terms of Business:

- (a) a Term is a reference to a term of these Terms of Business;
- (b) references to LMAX Global, we, us, our and ours (as appropriate) are references to us, LMAX New Zealand Limited;
- (c) references to you, your and yours (as appropriate) are references to you, our client;
- (d) any reference to a rule, enactment, statute or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced and to any statutory instruments, orders or regulations made thereunder or under any such re-enactment;
- (e) words or phrases importing the singular include the plural and vice versa;
- (f) words or phrases importing the masculine include the feminine and vice versa;
- (g) references to the words includes or including are to be construed without limitation; and
- (h) a word or expression related to a defined term has a consistent meaning to the defined term.

Unless otherwise stated, all dates and times stated in these Terms of Business are references to the date or time of New Zealand.

## 2. INTRODUCTION

2.1. **About us.** LMAX New Zealand Limited, trading as LMAX Global, is listed on the Financial Services Provider Register with the registration number FSP612509. Our company number

LMAX Global is a trading name of LMAX New Zealand Limited, a company incorporated in New Zealand (number 5626391) who is a registered Financial Service Provider (register number FSP612509). Our registered address is Quigg Partners, Level 7, 36 Brandon Street, Wellington, 6011, New Zealand. Our operating address is LMAX c/o Generator, Level 10-12, 11 Britomart Place, Britomart, Auckland 1143, New Zealand. LMAX Global is part of the LMAX Group, whose registered address is Yellow Building, 1A Nicholas Road, London W11 4AN.

is 5626391 and our registered address is QUIGG PARTNERS, Level 7, 36 Brandon Street, Wellington, 6011, New Zealand. You may communicate with us by email (info@lmax.nz), by telephone (+64-4-889-4510) or otherwise as set out in Term 19 (Communications and Notices) below.

2.2. **Our Agreement.** Our agreement with you (**Agreement**) is comprised of the following documents, as amended by us from time to time:

- (a) the completed account opening documentation you provided to us;
- (b) these Terms of Business;
- (c) Trading Manual;
- (d) Instrument Information;
- (e) Order Execution Policy;
- (f) Privacy Policy and Cookie Policy;
- (g) Summary Conflicts of Interest Policy; and
- (h) any further or separate arrangement that may be entered into between us, such as an API Agreement.

The latest published versions of these documents (excluding any further or separate arrangement that we may have entered into with you) are available from our Website.

2.3. These Terms of Business, together with the other documents referred to in Term 2.2 (Our Agreement) above, will govern all trading between us and you.

2.4. These Terms of Business will come into effect on the date that we open your Account. Any new version of these Terms of Business will supersede any earlier versions and we will notify you of the date that any new version will come into effect. The new version will apply to all trades entered into with us after that new version comes into effect. By submitting Orders to us after the date of the new version, you agree to the terms of such new version.

2.5. In the event of a conflict between these Terms of Business and any of the documents or separate agreements set out in Term 2.2 (Our Agreement), the Terms of Business shall prevail, except that the Order Execution Policy shall prevail over the Terms of Business.

2.6. The Terms of Business are supplied to you in English and we will communicate with you in English for the duration of these Terms of Business. If there is any conflict between the English version of this document and any other language version, the English version will prevail.

### 3. OUR RELATIONSHIP

- 3.1. **Client category.** Unless otherwise confirmed to you in writing, we shall treat you as a Retail Client as opposed to a Wholesale Client.
- 3.2. **Your capacity.** You will trade with us as principal and not as agent for any person. You will be directly and personally responsible for performing your obligations under these Terms of Business, whether you are dealing with us directly or through an agent. Notwithstanding any assertion that you act in connection with or on behalf of any other person, we will not accept that person as a client of ours and neither we nor our Related Persons will accept any obligation or liability to them.
- 3.3. **Our capacity.** Subject to the terms and conditions of these Terms of Business, we will enter into trades with you as principal and not as agent on your behalf.

### 4. OUR SERVICES

- 4.1. **Trading services.** We provide trade execution services in respect of certain Instruments. When executing Orders, we will do so in accordance with our Order Execution Policy. Our Order Execution Policy is available on our Website. By commencing trading with us, you will be deemed to have consented to our Order Execution Policy.
- 4.2. **Execution venues.** We may execute Orders by placing an identical order (apart from settlement terms) (**Back to Back Order**) on LMAX Exchange or any other Liquidity Pool. LMAX Global trades with LMAX Broker Limited who is a member of LMAX MTF Services for the purposes of trading CFDs and accesses LMAX Exchange Services for spot FX and commodities as a client of a bank member.
- 4.3. **Execution only dealings.** Dealings with you will be carried out by us on an execution only basis.
- 4.4. **No personal recommendations or advice.** We do not make any personal recommendation to you nor advise you on the merits of any particular transaction or any aspect of your trading with us. We give you no warranty as to the suitability of any transactions or any aspect of your trading with us. We are under no obligation to monitor or inform you as to the performance of any trade. You trade entirely at your own risk.
- 4.5. **No tax advice.** We will not provide you with tax advice.
- 4.6. **Market commentary.** We may, in our absolute discretion, provide you with market commentary or other factual market information that is public knowledge. However, we will be under no obligation to disclose such information to you. In the event that we do so, it will not amount to a personal recommendation or advice. We shall not be liable for any investment

decision you make based on the information we provide to you.

- 4.7. **Third Party Technological Services.** Where we provide you access our trade execution services (including to execute orders) and/or other ancillary services using Third Party Technological Services, including the use of Software Trading Tool and/or Software Bridge, the terms of Schedule 2 (Third Party Technological Services) below shall apply in addition to these Terms of Business.
- 4.8. Market data services. We may also provide you with access to our live market data in certain instruments from time to time. You may use such market data to:
- a) utilize such data for research and analytical purposes;
  - b) publish, distribute or issue research reports, analyses or analytical products based thereon;
  - c) use such data to create and publish prices in one or more instruments that you may use to cross or execute orders placed on your currency trading platform; and/or
  - d) distribute such data to your clients in connection with such clients' use of your currency trading platform.

## 5. YOUR ACCOUNT

- 5.1. **Account information.** Upon an account being opened for you (your **Account**), you will be given a unique account number. We will ask you to choose a username, password and other security information for your Account. We will rely on this information to identify you and you agree that you will not disclose these details to any person not duly authorised by you.
- 5.2. **Username, etc.** When you deal with us or give us an instruction, we will require your username, account number, password and/or security information. If you suspect that this information has been obtained by any other person without your consent then you must notify us immediately. You are responsible for keeping your username, account number, password and/or security information safe and secure. You must not disclose these details to any person who is not authorised to access your account.
- 5.3. **Joint accounts.** Unless otherwise agreed by us in writing, the obligations on any joint account will be joint and several.

## 6. ORDER EXECUTION

- 6.1. **Order Execution.** As a Retail Client or a Professional Client, we will execute your orders in line with our Order Execution Policy (which applies as soon as you start trading with us). We will consider the continued placement of Orders by you to constitute your continued consent to our Order Execution Policy as in effect from time to time.

- 6.2. **Specific Instructions.** Where you provide us with specific instructions either relating to an Order or a particular aspect of an Order, we will execute the Order in accordance with those instructions. Accordingly, our Order Execution Policy will not apply. We will deem orders received via direct market access systems as specific instructions.

## 7. ORDERS

- 7.1. **How to open or close a trade.** To open or close a trade to buy or sell an Instrument, you must first submit an Order to us. You may submit an Order:

- (a) online via the GUI;
- (a) via a Software Bridge;
- (b) via the Software Trading Tools; or
- (c) by speaking to us on the telephone during our Helpdesk Hours.

You cannot submit an Order by leaving a message on any automated voicemail or answering service or through a live chat system service. We shall not accept and shall not be under any obligation to execute any Order submitted by these means.

- 7.2. **Accepting Orders.** We are under no obligation to accept or execute any Order you submit. However, we shall normally do so, provided:

- (a) your Account contains sufficient resources to cover any margin required for the Order;
- (b) you are not otherwise in breach of these Terms of Business; and
- (c) it is possible to execute such Order.

Factors such as the size of your Order and liquidity available in the Instrument you wish to trade will impact whether and when it is possible to execute your Order. It may not be possible to execute your Order immediately. Please see the Trading Manual for further details.

- 7.3. **Acknowledging receipt.** We shall acknowledge receipt of each Order we receive and accept from you via the methods listed in Term 7.1 (How to open or close a trade).
- 7.4. **Trading Hours.** We shall act on Orders only during Trading Hours and we shall deal with any Orders received outside Trading Hours as soon as reasonably practicable after Trading Hours resume.
- 7.5. **Maximum Position Size.** We have the right in our absolute discretion to set a Maximum Position Size.
- 7.6. **Cancelling or amending Orders.** You may, with our consent, cancel or amend all or any part

of your Order so long as we have not acted upon it or the relevant part. Notwithstanding this, if your Order is an opening order you may amend any related contingent Orders.

- 7.7. **Kill functionality.** We may, in an emergency, cancel or amend all or any part of your unexecuted Orders. We shall not be liable for any loss as a result.
- 7.8. **Monitoring your Account.** You must ensure that you monitor your Account at all times while you have any Order outstanding. You may contact us during Helpdesk Hours should you wish to check on the status of any Order.
- 7.9. **Types of Order.** The type of Orders that we offer, with worked examples of how these Orders operate, are set out in the Trading Manual. You must familiarize yourself with the meaning and effect of the different Orders that we offer before you commence trading with us and you should only commence trading with us if you fully understand how these different Orders work.

## 8. TRADING

- 8.1. **Multiple trades.** Your Order may result in a number of trades being executed to fill it in whole or in part. Where multiple trades are executed to fill your Order, the price for each such trade may be different.
- 8.2. **Closing trades.** Your trade will remain open until you close the trade or we take steps to close the trade in accordance with these Terms of Business.
- 8.3. **Net positions.** If and to the extent you submit an Order to buy or sell a specific Instrument and you already have an open trade in the same Instrument in the opposite direction to the Order, we will treat that Order as an Order to close the open trade in whole or in part. If the size of the subsequent Order to buy or sell a specific Instrument exceeds the size of the open position, we will treat the Order as an Order to close the original position and create an Order to open a trade equal to the amount of such excess.
- 8.4. If you submit an Order to close some or all of your trades but do not specify which particular trades you wish to close, we shall treat that Order as a request to close such trades in the sequence that they were opened.
- 8.5. **Trades binding.** Each trade opened on your Account will be binding on you notwithstanding that by opening that trade you may have exceeded any limit applicable to your trading with us.
- 8.6. **Trade reporting.** Under applicable laws and regulations, we may be obliged to make certain information about certain trades public and to report the transaction details to competent authorities. You agree and acknowledge that any and all proprietary rights in such trade and transaction information are owned by us and you waive any duty of confidentiality attaching



to the information which we reasonably disclose.

## 9. MOBILE TRADING

- 9.1. **Our Trading App.** We provide mobile access to our trading services via our Trading App. You can start trading on your Account via the Trading App once you have downloaded the Trading App. The Trading App offers limited functionality and information. The Trading App is available for our supported mobile devices only.
- 9.2. **At your risk.** You acknowledge that the Trading App is provided by us on an “as is” and “as available” basis without any representations or warranties (whether express or implied), to the extent permitted by law, as to its compatibility, security and accuracy. The use of the Trading App and/or any material downloaded or otherwise obtained by the use of the Trading App is done at your own discretion and risk.

## 10. API TRADING

Where we agree to provide you with access to LMAX Exchange or any other Trading Venue through our API, the terms upon which we agree to make that service available will be set out in our API Agreement.

## 11. AVAILABLE TO TRADE BALANCE

- 11.1. **Base Currency.** Your Available to Trade Balance will be displayed in your Base Currency. All payments due to us will be notified to you in your Base Currency. If you make a payment in a different currency to that of your Base Currency it shall be converted to your Base Currency by our third party payment provider at the time the payment is received.
- 11.2. Where you open a trade in an Instrument that is not in your Base Currency, we shall during Trading Hours notionally convert:
- (a) the Margin Required;
  - (b) the open profit/loss;
  - (c) any realised profit/loss for the period before it is converted back to your Base Currency; and
  - (d) any charges including commission and financing adjustments

for that trade to your Base Currency using our prevailing exchange rate for that purpose. Your Available to Trade Balance and its components will therefore be valued in your Base Currency at all times during Trading Hours. Your trade will not actually be converted into your Base Currency until after the trade is closed which means that you will continue to bear the risk of any changes in the exchange rate until the actual conversion takes place.



- 11.3. Unless we have specifically agreed otherwise, for all trades relating to CFD Contracts or Commodity Contracts, we will convert to your Base Currency:
- (a) the realised profit/loss for a trade in an Instrument that is not in your Base Currency on the next Business Day after the trade has been closed;
  - (b) any charges in respect of that trade on the next Business Day after such charges are incurred using our prevailing exchange rate for that purpose.
- 11.4. Unless we have specifically agreed otherwise, for trades relating to FX Contracts, we will convert to your Base Currency:
- (a) the realised profit/loss where such profit/loss is not denominated in your Base Currency on the next Business Day after your trade has been closed; and
  - (b) any charges in respect of that trade on the next Business Day after such charges are incurred using our prevailing exchange rate for that purpose.
- 11.5. **Deficit.** You must not allow your Available to Trade Balance to move into deficit. It will move into deficit if the sum of your cash balance plus profits on your open trades falls below the sum of the losses on your open trades and the Total Margin Required.
- 11.6. Your Available to Trade Balance may move into deficit at any time, including if:
- (a) you incur unrealised losses on one or more of your open trades;
  - (b) the Margin Factor relevant to one or more of your open trades increases;
  - (c) cash debits are applied to your Account (for example, in respect of realised losses, commission, financing charges or corporate action adjustments); or
  - (d) a foreign exchange rate moves against you.
- 11.7. It is your responsibility to monitor your Available to Trade Balance at all times in order to prevent it from moving into deficit. If you have any working Orders and/or open trades, and you are aware you will not be able to monitor these for any period of time, you may consider paying additional funds into your Account to counter any unfavourable Instrument movement so as to reduce the risk of your Available to Trade Balance moving into deficit.

## 12. PROFITS/LOSSES

- 12.1. **Calculation.** Upon closing your trade, the profit or loss for that trade will be the difference

between the Opening Price and the Closing Price multiplied (a) by the number of contracts traded and (b) by the contract size.

- 12.2. **Account credit.** Your Account will be credited with the difference if your trade is:
- (a) a Sell and the Closing Price of the trade is lower than the Opening Price of the trade; or
  - (b) a Buy and the Closing Price of the trade is higher than the Opening Price of the trade.
- 12.3. **Account debit.** Your Account will be debited with the difference if your trade is:
- (a) a Sell and the Closing Price of the trade is higher than the Opening Price of the trade; or
  - (b) a Buy and the Closing Price of the trade is lower than the Opening Price of the trade.
- 12.4. **Trade partially closed.** If a trade is partially closed, the above provisions shall apply to such part of the trade as may be closed on each occasion.

### 13. MARGIN REQUIRED

- 13.1. **Calculation.** For us to accept an opening Order from you, your Available to Trade Balance will normally be required to contain sufficient resources to cover the Margin Required. The Margin Required to place an Order to open a trade is calculated by multiplying the notional value of that trade with the Margin Factor for the relevant Instrument.
- 13.2. While a trade is open, the Margin Required will be calculated as described in [Term 13.1 \(Calculation\)](#) above, except that the notional value will be based on the prevailing bid price shown (Buy trades) or ask price shown (Sell trades) on LMAX Exchange to close such a trade. The Margin Required is therefore not a fixed figure and will move in step with the prevailing bid and ask prices shown to close the trade.
- 13.3. If you are working multiple Orders to open new trades in the same Instrument and/or if you have multiple open trades in that Instrument, the Margin Required will be the greater of the Margin Required on:
- (a) your total Orders to open Buys plus your total open Buys in that Instrument; and
  - (b) your total Orders to open Sells plus your total open Sells in that Instrument.

A worked example of how Margin Required is calculated in these circumstances is set out in the Trading Manual.

- 13.4. **Standard Position Size.** The Margin Required for your open trades may increase if you open one or more trades in the same Instrument such that your total trade size is in excess of the

published Standard Position Size for that Instrument. Before you place an Order to open a trade that will exceed the Standard Position Size, you should ensure you understand how this will impact your Margin Factor. If you are in any doubt as to how the Margin Factor operates in this circumstance you should telephone us for an explanation.

13.5. **Increase in Margin Factor.** We may increase our Margin Factors in relation to one or more of your open trades without notice to you in the following circumstances:

- (a) at any time if you have no open trades or working Orders;
- (b) if the Margin Factor or its equivalent for our trade is increased;
- (c) in the circumstances set out in Term 13.4 (Standard Position Size) above;
- (d) if we reasonably anticipate, or if there actually occurs, excessive volatility in the currency of the relevant Instrument;
- (e) if trading is suspended in the Instrument in which you have an open trade;
- (f) if we reasonably believe, having regard to all the circumstances applicable to your trading with us (including circumstances where we become aware of adverse changes in your financial position) it is necessary to do so in order to give us an increased level of security against the possibility of losses being realised on the closure of your open trades; or
- (g) following a Force Majeure Event or any corporate action taken by the issuer of any security referenced in a CFD Contract.

13.6. Any increase in a Margin Factor will be effective immediately. Any such increase will apply to existing open trades on your Account as well as to any new trades. We shall notify you of any increase in a Margin Factor by changing the information on our Website as soon as reasonably practicable.

13.7. **Decrease in Margin Factor.** We may decrease our Margin Factors in relation to one or more of your open trades without notice to you at any time. We shall notify you of any decrease in a Margin Factor by changing the information on our Website as soon as is reasonably practicable.

## 14. MARGIN CLOSE OUT LEVEL

14.1. **Operation of Margin Close Out Level.** It is an Event of Default under Term 23 (Events of Default) below if your Margin Covered Percentage reaches or falls below your Margin Close Out Level at any given time. In these circumstances, we may, but are not obliged to, exercise our rights to (a) cancel any working Orders; and/or (b) to close any or all of your open trades

at any time thereafter without further notice to you. The Trading Manual has worked examples of the operation of the Margin Close Out Level.

- 14.2. **Timing.** It may not be possible to close your open trades immediately. It could take days or even weeks to do so. During this period the value of your open trades could fall further, possibly by a significant sum, and you will be liable for the full amount of the losses that arise which could exceed the amount of funds you have deposited in your Account.
- 14.3. **Requirement to monitor own Account.** We may but are under no obligation to notify you if your Account is approaching or has reached the Margin Close Out Level. The fact that we may have notified you previously is not an indication that we will do so in the future. You should not rely on notifications from us to monitor your Account. This is your sole responsibility.
- 14.4. **Amendments to Margin Close Out Level.** We may amend the Margin Close Out Level applicable to your Account upwards or downwards to a level that we reasonably believe is appropriate having regard to all the circumstances applicable to your trading with us (including circumstances where we become aware of adverse changes to your financial position). Any amendments to the Margin Close Out Level will be notified to you in accordance with Term 19 (Communications and notices) of these Terms of Business and will become effective on your Account after one Business Day following the notification.

## 15. SUSPENDING OR TERMINATING YOUR ACCOUNT

- 15.1. **Right to suspend your Account.** We may, acting reasonably, suspend your Account at any time and may, at any time and for any reason and without notice, suspend or change the username and/or password of any person authorised to trade on your Account.
- 15.2. If your Account is suspended you will be able to close any existing trades over the telephone during our Helpdesk Hours but will not be permitted to open any new trades on your Account. The circumstances where we may suspend your Account include, but are not limited to:
- (a) when we have not received information within 10 days of a request (or sooner if so reasonably required), when we believe that we require such information in connection with these Terms of Business;
  - (b) when we have reason to believe that there has been a breach in your Account security or that there is a threat to your Account security;
  - (c) when your trading activity or conduct is such that we believe acting reasonably at all times has or is likely to impair the integrity, functionality, speed or reliability of LMAX Exchange or compromise, impair, restrict or prevent the ability of LMAX Exchange to operate a fair and orderly market; and/or

(d) where Term 26 (Market Abuse) applies.

15.3. **Right to close your Account.** We may, acting reasonably, close your Account at any time. We shall normally notify you by email and such termination will take effect upon notice being sent to the email address we hold for you. If we elect to close your Account, where possible you will have 14 working days to close any open trades on your Account over the telephone with us during our Helpdesk Hours. During the 14 day period you will not be permitted to open any new trades on your Account. If you have not closed all open trades within the 14 days provided we shall be entitled to close all trades at the best available price on LMAX Exchange or any Liquidity Pool-from the next Business Day. The circumstances where we may close your Account include but are not limited to where:

- (a) you repeatedly fail to provide information requested, when we believe that we require such information in connection with these Terms of Business;
- (b) you have persistently acted in an abusive manner toward our staff (for example by performing what we consider to be a serious discourtesy or the use of offensive or insulting language);
- (c) your trading activity is deemed to be disruptive to the operation of LMAX Exchange as described in Term 15.2(c) (Suspending or terminating your Account) and you have failed to correct this behaviour following a notice from us;
- (d) Term 26 (Market Abuse) applies; or
- (e) the information you have provided to us as part of the application process to open your Account is demonstrably untrue. ; and/or
- (f) in our opinion, your trading is likely to have a negative impact on the quality of the liquidity on LMAX Exchange and, therefore, a potential detrimental effect on the members of LMAX Exchange and their clients.

## 16. COSTS, CHARGES AND TAXES

16.1. The charges we make are set out in this Term 16 (Costs, Charges and Taxes). Please familiarise yourself with our costs, charges and taxes before submitting Orders to us.

16.2. **Commission.** When you open and close a trade (or if we close a trade in accordance with our rights under these Terms of Business), you will pay us a commission. Our commission rates applicable from time to time are accessible on our Website. If the Website does not contain a commission rate for the Instrument you wish to trade, we shall charge you a fair and reasonable rate of commission based upon our commission rates for comparable Instruments.

- 16.3. The commission rates that we charge are subject to change. We shall give you 14 days' notice of any changes to the commission rates.
- 16.4. We shall debit your Account with the commission payable by you upon your opening or closing a trade as the case may be.
- 16.5. **Introducing brokers.** If your Account was introduced to us by an introducing broker, you acknowledge that we may from time to time share a proportion of the commission we charge you with that introducing broker as payment for services provided to us. We are not obligated to disclose the details of such arrangement to you, but may do so in our sole discretion.
- 16.6. **Financing charges.** Financing charges may apply to your trades. An explanation as to the circumstances when such financing charges may arise, together with worked examples, is set out in the Trading Manual. If applicable, these charges will result in a debit or credit being made to your Account at the time the charge becomes effective. Charges applicable to your account can be seen on the Instrument Information on our Website.
- 16.7. **Negative cash balances.** If the cash balance of your Account is a negative figure, we shall charge you interest on that negative figure at the Default Interest Rate.
- 16.8. **Currency conversion charges.** Our prevailing exchange rate for the purposes of currency conversion will be based upon the wholesale market exchange rate that is applicable on the day that the conversion is made and will include a reasonable charge in the spread above the wholesale market exchange rate.
- 16.9. **Interest rate charges.** If your Account is in a base currency whose interbank lending rate as determined by its central bank is a negative interest rate, we reserve the right to levy a reasonable charge to reflect the interest charges we incur from holding your deposit in a bank account of the same currency and our reasonable costs in making this facility available to you.
- 16.10. **Account funding charges.** We may permit you to make a payment to us by direct bank transfer, debit or credit card in your name, subject to our right to levy an administrative charge to reflect our reasonable costs in making this facility available to you.
- 16.11. **Data feed charge.** We reserve the right to levy a reasonable charge to reflect our intellectual property and costs in making real time prices available to you on your Account. Please click on the following URL for details <https://www.lmax.com/global/market-data-access>.
- 16.12. **Connectivity Charge.** We reserve the right to levy a reasonable charge to reflect our costs in providing connectivity to our infrastructure. Please click on the following URL for details <https://www.lmax.com/global/market-data-access>.

- 16.13. **Dormant Account Charge.** We reserve the right to levy a reasonable monthly charge where you have not traded for more than six months but continue to hold funds on your Account. Please click on the following URL for details <https://www.lmax.com/global/market-data-access>.
- 16.14. **Taxes.** You shall be responsible at all times for the payment of all taxes, stamp duties and other similar expenses due as a result of your trading with us. You shall be fully responsible for providing any relevant tax authority with all necessary information in relation to any trades between us or that is otherwise requested from you.
- 16.15. We reserve the right to require you to pay us, or to reimburse us for, stamp duty or any other amounts which become payable as a result of any changes in the law which directly affect your trading with us.
- 16.16. You may be subject to other taxes or costs that are not imposed by us or paid through us. The tax treatment of any profits resulting from your trading activity will depend on your individual circumstances. It is your responsibility to ensure the payment of all taxes as they fall due.

## 17. PAYMENT AND SET-OFF

- 17.1. **Payments:** You must pay to us any negative cash balance on your Account in full to arrive in our bank account (details of which are published on our Website) as follows:
- (a) in respect of any negative cash balance of £10,000 or less (or an equivalent amount in any other currency), by no later than 4.00 pm on the Business Day following the day upon which the negative cash balance arises; or
  - (b) in respect of any negative cash balance of more than £10,000 (or an equivalent amount in any other currency), on the same day or, in the event that the negative cash balance arises after 2 pm, by noon on the next Business Day following the day upon which the negative cash balance arises.
- 17.2. **No cheque or cash.** We do not accept any payment by cheque or cash.
- 17.3. **Source of funds.** We may require you to provide evidence of the source of any funds we receive from you. If we do ask you to provide such evidence, any funds received from you shall be held until appropriate documentation has been received and deemed satisfactory to us. You will not be permitted to trade with non- verified funds until source of funds evidence, satisfactory to us, has been received.
- 17.4. **Set-off.** We may set-off any sums due to us by you against any positive cash balance or digital currency in your Account or an account you hold with LMAX Digital and/or LMAX



Global, or any other sums due to you. If we exercise the right to set-off and this results in an amount due to us, we shall give you notice of this and you shall be required to pay any amount due in accordance with Term 17.1 (Payments). We may also set-off sums held by us for or to your credit in a joint account against losses incurred by the joint account holder.

- 17.5. **Remittance of cleared funds.** You may request that the whole or part of any cleared funds that form part of your positive cash balance be remitted to you. However, we will be under no obligation to pay any money to you if:
- (a) doing so would move your Available to Trade Balance into deficit;
  - (b) we believe that due to market conditions the cash that you are seeking to withdraw may be required in the immediate future to prevent your Available to Trade Balance moving into deficit;
  - (c) we are reasonably of the view that losses may occur upon the closing of any of your open trades and the cash you are requesting to be paid to you will be required to meet those losses; or
  - (d) doing so would infringe or contravene any legal or regulatory obligation upon us.
- 17.6. On occasions we may request documentation confirming your bank account details and the identity of the account holder in respect of a withdrawal request in order to verify the destination of funds. We will hold such requests until appropriate documentation has been provided and is deemed acceptable.
- 17.7. Subject to our rights of set-off and to withhold payments, money standing to the credit of your Account will be processed by us no later than the fifth Business Day after the date of a request from you.
- 17.8. **Interest.** You agree to pay interest to us on any sums due to us that you fail to pay when due. Interest will accrue on a daily basis from the due date until the date on which payment is received in full, at the Default Interest Rate.
- 17.9. **Payment by debit or credit card.** Subject to Term 17.3 (Source of funds) above, we shall credit your Account for any sums you pay to us by credit or debit card in your name upon such payment being authorised by your credit or debit card provider. However, we reserve the right to charge you interest at the Default Interest Rate on these sums from the date of authorisation to the date when we receive these sums as cleared funds from your credit or debit card provider.
- 17.10. **Errors.** If we credit or debit a payment to your Account in error, we shall immediately upon discovering the error, reverse any such credit or debit and your Available to Trade Balance will be adjusted accordingly. In the case of an incorrect credit on your Account, if there are



insufficient funds on the Account to enable us to recover the incorrect credit we may:

- (a) cancel any or all of your working Orders; and/or
- (b) take steps to close any or all of your open trades to free up the necessary cash to enable us to recover the incorrect credit.

We may also take steps to recover the sum due to us and until such time as the sum has been paid refuse to accept future Orders from you.

## 18. TREATMENT OF YOUR MONEY

18.1. **Approved Bank.** We will deposit money received from you with an Approved Bank.

18.2. **Title Transfer.** You agree that any money that:

- (a) you transfer or have transferred to us; or
- (b) which is transferred to us on your behalf by way of margin or otherwise,

will be treated as a transfer of full ownership of such money by you to us for the purpose of securing or covering your present, future, actual, contingent or prospective obligations. Accordingly, we will acquire full ownership of it and we will not hold such money in a bank account which is separate from our own money. Your money will not be separate from ours, and we will not have to account to you for any use we make of the money. You will not have any interest in or proprietary claim over such money transferred to us and we can deal with it as our own. In the event of our insolvency you rank as a general creditor of ours in relation to such money.

18.3. **Payments.** Any monies sent by you to us by debit or credit card will be transmitted through a payment service provider. Accordingly, any online payment by you will result in your funds being transferred first to the payment service provider and subsequently to us. We will apply your funds to your Account only after such funds arrive in our accounts from the payment service provider.

18.4. **Overseas banks.** Where we hold money on your behalf in a client bank account located outside of New Zealand, the legal and regulatory regime applying to any such bank may be different from that of New Zealand and in the event of the insolvency or any other equivalent failure of that bank, your money may be treated differently from the treatment which would apply if the money was held with a bank in an account in New Zealand. We will not be liable for the solvency, acts or omissions of any such bank.

18.5. **Margin.** You acknowledge and confirm that we may transfer any amounts transferred to us by

you or credited to your Account to any clearing house, bank or broker for the purpose of meeting any obligation to provide any initial margin and intraday margin to such clearing house, bank or broker, in relation to our back to back trade with them.

- 18.6. **Settlements.** We may debit any amounts credited to your Account to settle any mark-to-market losses on daily settlement or close-out of your trades with us, financing charges or any fees outstanding in relation to such trades, whether or not such sums are required to be paid to a clearing house or prime broker. You acknowledge and confirm that any such debited amounts will cease to be segregated and you will have no rights, title or interest in any such amounts.
- 18.7. **Interest.** We shall not pay interest to you on any of your money that we hold and by entering into these Terms of Business you acknowledge that you are therefore waiving any entitlement you may have to interest. Should we offer to pay interest on any unencumbered balance on your Account at any time, we shall confirm the balance requirements and rate of interest at that time and from time to time thereafter.
- 18.8. **Limitation period.** You agree that, in the event that there has been no movement on your Account balance for a period of at least six years (notwithstanding any payments or receipts of charges, interest or similar items) and we are unable to trace you despite having taken reasonable steps to do so, we may release any balances from your account. In such circumstances, we or an Associated Company, will unconditionally undertake to pay you a sum equal to the relevant balance paid away in the event that you seek to claim the balance in future.

## 19. COMMUNICATIONS AND NOTICES

- 19.1. **Statements.** A statement detailing all of your trading activities and all cash movements in and out of your Account (including payments in respect of Margin Required) as well as aggregated costs and charges expressed as a cash amount will be available for you on the LMAX Systems. You can access this at any time. It is your responsibility to check your statement on the LMAX Systems against your own records regularly, and to notify us immediately if it contains any inaccuracies.
- 19.2. **Annual statements.** On the last Business Day of every calendar year, we will provide you with a statement of your aggregated costs and charges relating to your Account, expressed as a cash amount, and an illustration of the cumulative effect of costs and charges on your Account.
- 19.3. **Contract notes.** You consent to the delivery of contract notes in a durable medium as we deem appropriate. We may do so by making such contract notes available to you by using LMAX Systems, by email, or by a combination of both. You agree that any such documents

that are delivered to you electronically are deemed to be “in writing”, and if:

- (a) made available to you using LMAX Systems, deemed to have been delivered as soon as they are published in your account; or
- (b) if sent by email, deemed to have been delivered upon them being sent to the email address we hold for you, which will be the email address specified in your application form, unless you have notified us of an alternative email address, in which case it is that email address we shall use.

19.4. We shall make available a contract note to you reconfirming the details of your executed trade on the day your Order is filled via an LMAX System. The absence of a contract note does not affect the validity of any trade. Please check your contract notes. If you believe that any of the details of your contract note are inaccurate you should contact us immediately and in any event within 24 hours of the trade. We strongly recommend that you retain your confirmations and contract notes as part of your records.

19.5. **Other communications.** You consent to receiving any other required or optional communication or agreement under any applicable laws or regulations or pursuant to these Terms of Business on the Website. It is not our policy to routinely issue paper copies of our documents. You agree that any such documents that are delivered to you electronically through the Website are deemed to be “in writing” and to have been received upon them being posted on the Website. You confirm that you have regular access to the internet and have provided us with your email address. We will notify you when such information is accessible on the Website and when such information is revised.

19.6. You may withdraw your consent to the electronic delivery of documents at any time by giving us prior written notice. If you revoke your consent, we may levy a reasonable charge for sending documents to you in paper form. Specifically, you agree that we may provide the following information to you via our Website:

- (a) information about us;
- (b) terms and conditions in relation to trading;
- (c) our Summary of our Conflicts of Interest Policy and, upon request, further details of that policy;
- (d) a general description of the nature and risks of financial instruments;
- (e) the treatment of your money;
- (f) actual costs and charges;
- (g) details of our Order Execution Policy;

- (h) any changes to the methods of communication to be used between us, including but not limited to how we receive Orders; and
- (i) any material changes to any of the above.

19.7. **Notices.** We may contact you using your home telephone number, mobile telephone number or postal address specified on your application form or to such other address or number as you may subsequently notify to us and which notification we have acknowledged as having been received. Any correspondence, document, written notice, contract note or statement will be deemed to have been properly given:

- (a) if posted on the Website or on an LMAX System, immediately on being available online;
- (b) if sent by email, upon them being sent to the email address we hold for you;
- (c) if sent by fax or text message, as soon as we have transmitted it to your fax or mobile telephone;
- (d) if sent by post, on the fifth Business Day after being deposited in the post to any address; and
- (e) if delivered by hand, immediately on being deposited at your address.

19.8. You must communicate with us by email sent to the email address currently designated by us for that particular purpose, by telephone or in person. Any such communication will only be deemed to have been received by us upon our actual receipt thereof.

19.9. You authorise us to rely and act on, and treat as fully authorised and binding on you, any communication (whether or not in writing) that we reasonably believe to have been transmitted by you or on your behalf.

19.10. **Limitation of liability.** If at any time you are unable, for whatever reason, to communicate with us, we do not receive any communication sent by you, or you do not receive any communication properly sent by us under these Terms of Business, neither we nor any Related Person will:

- (a) be responsible for any loss, damage or cost caused to you by any act, error, delay or omission resulting therefrom where such loss, damage or cost is a result of your inability to open a trade; and
- (b) be responsible for any loss, damage or cost caused to you by any act, error, omission or delay resulting therefrom including without limitation, where such loss, damage or

cost is a result of your inability to close a trade, including if you are using LMAX Systems to communicate to us except where your inability to communicate with us results from our fraud or wilful default, or where our exclusion of liability in this regard is not permitted under applicable law.

- 19.11. **Recording of telephone conversations.** You agree that we may record our telephone conversations with you. We may record telephone conversations without use of a warning tone to ensure that the material terms of any Order or trade, and any other material information relating to the Order or trade is promptly and accurately recorded. Such records will be our sole property and you accept that they will constitute evidence of the communications made.
- 19.12. **Our records.** Our records, unless shown to be wrong, will be evidence of your dealings with us. You will not object to the admission of our records as evidence in any legal or regulatory proceedings on the grounds that such records are not originals, are not in writing or are documents produced by a computer. Our records may be made available to you on request at our absolute discretion and we reserve the right to make a reasonable charge for such records.
- 19.13. **Electronic communications.** You accept that emails, text messages and other electronic communications we send to you may not be encrypted and therefore may not be secure. Subject to applicable laws and regulations, any communications between us using electronic signatures shall be binding as if it were in writing. Orders or instructions given to you via email or other electronic means will constitute evidence of the orders or instructions given. Your communications with us will be recorded. A copy of the record will be available on request for a period of five years.
- 19.14. **Claim forms.** You agree that, in the event of a claim being started against you by us as a result of our trading relationship, the claim form may be served upon you by email by sending it to the email address we hold for you, which will be the email address specified in your application form, unless you have notified us of an alternative email address, in which case it is that email address we shall use. A claim form served upon you by email pursuant to this [Term 19.14 \(Claim forms\)](#) will be deemed to have been served upon you on the date of sending the email. We may, however, choose to serve the claim form upon you by any alternative method permitted by law.

## 20. LMAX AND CLIENT SYSTEMS

- 20.1. **Disruption.** We do not warrant or promise that the LMAX Systems will be uninterrupted or error free; for example, during periods where routine maintenance is being undertaken. There may therefore be occasions when you are unable to access the LMAX Systems. If that occurs, and you wish to trade, you should contact us by telephone during our Helpdesk Hours and

we shall (without prejudice to Term 7.2 (Accepting Orders)) implement your trading instructions where it is in our reasonable control to do so.

- 20.2. **Personal use.** LMAX Systems provided to you are provided to you for your personal use only and only for the purposes of your trading with us. We have no responsibility for verifying that you are the person accessing the LMAX Systems and will assume it's you unless you tell us otherwise. We provide LMAX Systems to you subject to these Terms of Business.
- 20.3. **Unauthorised receipt of data or information.** In the event that you receive any data or information from an LMAX System other than that which you are entitled to receive pursuant to these Terms of Business, you will immediately notify us and will not use, in any way whatsoever, such data or information.
- 20.4. **Client Systems.** When accessing and connecting to LMAX services through your own system ("Client Systems"), you acknowledge that:
- a. the internet is a public systems infrastructure comprising of interconnected autonomous networks underlying communications protocols, applications and services which are provided by third parties with no obligations to us and whose actions and omissions are beyond our reasonable control;
  - b. you are responsible for the installation and proper use of Client Systems and for the maintenance and support services required to ensure its proper operation;
  - c. the network infrastructure of the internet is not considered inherently reliable and is prone to fault conditions such packet loss beyond our reasonable control. Connectivity to our services using the Internet and the transmission of data over Internet is therefore on a best effort delivery basis only; and
  - d. we do not warrant or promise that your access and connection to our services will be uninterrupted or error free. There may therefore be occasions when you are unable to access our services, or when we are unable to communicate with you via LMAX Systems or via E-mail, SMS or other Instant Messaging carried across the internet; and
  - e. Traffic through the Internet may not take a path with deterministic latency due to factors outside of our control, and we may change transit provision without any notice to you, including where we are required to do so due to such factors, to carry out maintenance of our network infrastructure or improve our services generally. This may affect the path through the network, and we make no warranties or representations vis-à-vis the latency or reliability of traffic between the Client Systems and the LMAX Systems.

- 20.5. **Compliance with the Acceptable Use Policy.** When accessing and connecting to our services through LMAX Systems, you must comply with our Acceptable Use Policy at all times.
- 20.6. **Password and virus protection.** You should change your password on a regular basis. This will help to prevent the risk of unauthorised access to or use of your Account. We strongly recommend that you disable any automatic password memory in your internet browser prior to using the LMAX Systems and that you run appropriate anti-spyware, firewall and virus protection on your computer on a regular basis.
- 20.7. **Intellectual property rights and other property or rights in any information.** You acknowledge and agree that the copyrights, trademarks, database and other property or rights in any information distributed or made available to or received by you from us, brochures and other material connected with our trading service and in any database that contains or constitutes such information, will remain the sole and exclusive property of ours or any third party identified as being the owner of such rights.
- 20.8. You agree that you will not permit or facilitate, and will take reasonable steps to prevent, any sale, dissemination, re-distribution or re-publication of the information referred to in Term 20.8 (*Intellectual property rights and other property or rights in any information*) to any third party.
- 20.9. **Customised interface and interface protocol.** Where we permit electronic communications between you and us to be based on a customised interface using LMAX Systems such as the Financial Information Exchange protocol or Representational State Transfer (REST) protocols, those communications will be interpreted by and subject to any rules of engagement for such interface protocol that are provided to you.
- 20.10. You are required to test any customised interface prior to using it in a live environment and you agree you will be responsible for any errors or failure in your implementation of the interface protocol. You are responsible for the installation and proper use of any such interface and for the maintenance and support services required to ensure its proper operation.

## 21. ERRORS AND CANCELLATIONS

- 21.1. **Manifest Error.** If a Manifest Error affects any working Order or an open trade belonging to you, we shall upon identifying a Manifest Error make the correction that we reasonably determine to be fair and reasonable. In the absence of our fraud or negligence, we will not be liable to you for any loss, cost, claim, demand or expense following a Manifest Error.
- 21.2. **Cancellations.** We may cancel or re-rate any trade with you if: (i) our trade is terminated, cancelled, voided or re-rated by LMAX Global, LMAX Exchange or the Liquidity Pool or (ii) rejected for clearing by a clearing house or prime broker, or otherwise terminated, cancelled,



voided or re-rated by a clearing house or prime broker. If this occurs, we shall notify you within 3 hours of receiving notification of the action and may reverse your trade and no payments shall be due to or from us in relation to that trade. As such, any payments made by way of commission, interest, borrowing charges, Margin Required or otherwise in relation to that trade shall be refunded to you immediately and any amounts credited to your Account or paid to you in relation to that trade shall be debited by us or repaid to us by you immediately as the case may be.

## 22. CONFLICTS OF INTEREST

- 22.1. You acknowledge that we and our Associated Companies provide a diverse range of financial services to a broad range of clients and counterparties. As such, circumstances may arise in which we or our Associated Companies may have a material interest in a trade with or for you or where a conflict of interest may arise between your interests and those of other clients or counterparties of ours. We have in place organisational and administrative controls to manage any conflicts of interests that may arise and these are set out in our Summary Conflicts Policy.
- 22.2. We are not under any obligation to account to you for any profit, commission or remuneration made or received from or by reason of trades or circumstances in which we or our Associated Companies have a material interest or where in particular circumstances a conflict of interest may exist.

## 23. EVENTS OF DEFAULT

- 23.1. **Event of Default.** Each of the following constitutes an **Event of Default**:
- (a) if the Margin Covered Percentage for your Account reaches or falls below your Margin Close Out Level;
  - (b) you fail to pay us any amount in the time and manner provided for in these Terms of Business;
  - (c) if you are an individual, your death or your becoming a mental patient within the meaning of any mental health legislation;
  - (d) if you are an individual, the initiation by a third party of proceedings for your bankruptcy;
  - (e) if you are a company or a limited liability partnership, the initiation by a third party of proceedings for your winding-up or for the appointment of an administrator or receiver in respect of you or any of your assets;
  - (f) you are or become unable to pay your debts as and when they fall due or you make



an arrangement or composition with your creditors or any other similar or analogous procedure is commenced in respect of you;

- (g) we are served with a freezing order that has been made against you;
- (h) any circumstance analogous or similar to those set out in Terms 23.1(d), (e), (f) or (g) above occurs in relation to you in any jurisdiction;
- (i) where any representation or warranty made by you in these Terms of Business, or any other material statement made by you to us, is or becomes untrue or you fail to notify us if a representation, warranty or statements is or becomes untrue;
- (j) where we suspect or have any reason to suspect that you may be involved in criminal or fraudulent activity or Market Abuse or the subject of adverse media;
- (k) you fail to provide satisfactory source of funds evidence to us on request;
- (l) any regulatory body under whose jurisdiction we operate instructs us to close one or more of your open trades;
- (m) you have or we consider it likely that you will violate any applicable laws or regulations or good standard of market practice;
- (n) there has been a deterioration in your financial circumstances and we reasonably consider that such deterioration is material in the context of the size of the trades open on your Account; or
- (o) we reasonably believe that any one or more of the circumstances set out in Terms 23.1 (a) to (o) above is likely to happen or in any other circumstance where we reasonably believe that it is necessary or desirable to protect us or all or any of our other clients.

23.2. **Consequences.** If an Event of Default occurs then, without prejudice to any other rights we may have against you, we shall be entitled, but not obliged, and without prior notice to you, to do any one or more of the following:

- (a) cancel any or all of your working Orders and/or close any or all of your open trades in whole or in part. The closure of your open trades will be done by starting to work Orders to close our trades. Your attention is drawn to Term 7.2 (Accepting Orders) concerning delays;
- (b) exercise our rights of set-off under these Terms of Business, retain any funds, investments (including any interest or other return due thereon) or other assets due to you, and sell them without notice to you at such price and in such manner as we,

acting reasonably, decide. We may apply the proceeds of such sale to discharge the costs of sale and the sums owing to us, including any other liability or obligation you may have to us (including any contingent or prospective liability);

- (c) close all or any of your Accounts held with us, and/or refuse to accept any further Orders from you or otherwise undertake any trading with you and/or disable your access to the Software Trading Tools.

23.3. We are under no obligation to draw your attention to the fact that an Event of Default has occurred or give you any opportunity to remedy it.

## 24. INDEMNITY AND LIABILITY

24.1. **Death, personal injury or fraud.** We do not seek to exclude our liability to you for death or personal injury. for any losses caused by our fraud or any other where such exclusion of liability is not permitted under applicable law.

24.2. **Indemnity.** You will indemnify us, and keep us indemnified on demand, in respect of all liabilities, losses or costs of any kind or nature whatsoever that may be incurred by us as a result of any failure by you to perform any of your obligations under these Terms of Business. This includes our reasonable legal costs in seeking to enforce our rights under these Terms of Business.

24.3. **Losses on your Account.** You will be responsible for all losses on your Account if you act fraudulently or if you allow another person to use your Account, whether you allowed that person to use your Account expressly or whether they were able to do so as a result of your negligence.

24.4. **LMAX and Client Systems.** As set out in Term 20, our LMAX Systems are generally accessible through a public network such as the Internet. Your use of such LMAX Systems is therefore not immune to failure and may from time to time fail to operate satisfactorily or at all as a result of issues occurring to the systems infrastructure of such networks beyond our reasonable control. We make no warranty, representation or guarantee with respect to the quality, suitability, availability or reliability of any LMAX Systems or Client Systems you use to connect and access our services. All warranties, conditions, terms and undertakings, express or implied, statutory or otherwise, in relation to the provision of the LMAX Systems or the use of the Client Systems are hereby excluded to the maximum extent permitted by law.

24.5. We hereby expressly exclude all liability in respect of loss or damage arising from, or in connection with, your inability to connect to and access our services using an LMAX System, except to the extent such loss or damage is caused by our wilful misconduct or fraud or where such exclusion of liability is not permitted under applicable law. Furthermore, we are not liable

to you for any (a) loss of profit (or expectation of profit), business revenue or anticipated savings; (b) loss of information, interruption to business or damage to goodwill; or (c) indirect, consequential or special loss, howsoever arising.

- 24.6. In the event of a delay or defect in or failure of the whole or any part of an LMAX System or Customer System used to access our services, please immediately contact us to report such delay, defect or failure. In these circumstances, we shall carry out your trading instructions where it is in our reasonable control to do so.
- 24.7. Provided, in all cases, that we have taken reasonable care and skill in the performance of our services and in carrying out our obligations under these Terms of Business, and subject to Term 24.1, neither we nor any Related Person will have any liability to you in relation to any loss you may have suffered caused by:
- (a) any act or omission of ours under these Terms of Business;
  - (b) any inaccuracy or error in any information given to you, (including without limitation, information relating to any of your working Orders or trades with us); or
  - (c) any computer viruses, worms, software bombs or similar items which are introduced into your computer hardware or software via the LMAX Systems .
- 24.8. **No limit on losses.** You acknowledge that neither any limit set on your Account nor any amount of margin you have paid to us or which is payable by you to us puts a limit on your potential losses in respect of any trade or series of trades you enter into with us.
- 24.9. **Digital Currency Forks.** In relation to Digital Currency CFDs, you agree that underlying protocols and software for blockchain networks are not in our control and are subject to sudden changes in operating rules which can result in the division or split of a digital currency into two or more non-fungible digital/crypto assets (“Fork”). In the event of a Fork, you agree that we shall have the sole discretion to take any action with or without any advance notice to you, notwithstanding that we are under no obligation to take such action.

## 25. REPRESENTATIONS AND WARRANTIES

- 25.1. **Representations and warranties.** You represent and warrant to us that:
- (a) the information provided to us as part of the application process for your Account and at any time thereafter is true and accurate in all respects;
  - (b) you are over 18 years of age;
  - (c) you have read and understood these Terms of Business, together with the other

documents that comprise our agreement with you, and appreciate the nature of the risks involved;

- (d) you will immediately inform us in writing if there are any changes to the information provided in your application form, particularly if there is a deterioration in your financial circumstances or a change in your contact details;
- (e) you will immediately inform us if you become aware of any circumstance that, if we were to know it, may reasonably be expected to affect (a) your open trades with us (b) the size of our trading with you, or (c) our decision to trade with you at all;
- (f) you are not an undischarged bankrupt or in a voluntary arrangement with your creditors;
- (g) you are duly authorised to enter into these Terms of Business;
- (h) you will enter into these Terms of Business and open and close each trade as principal;
- (i) if you are a company, a limited liability company or body corporate, you have the right to enter into these Terms of Business and by doing so you do not contravene any statutory, contractual or other arrangements binding upon you and the persons nominated to deal with us on your behalf have been properly authorised to do so and their actions are binding upon you;
- (j) you have obtained all governmental or other authorisations and consents required by you in connection with these Terms of Business and in connection with opening or closing trades and such authorisations and consents are in full force and effect and all of their conditions have been and will be complied with and any person who provides services to you in connection with these Terms of Business (including any person acting under a power of attorney or providing Software Trading Tools and/or Software Bridges), have obtained all governmental or other authorisations and consents they require to do so and such authorisations and consents are in full force and effect and all of their conditions have been and will be complied with;
- (k) execution, delivery and performance of these Terms of Business and each Order and trade will not violate any law, ordinance, charter, by-law or rule applicable to you, the jurisdiction in which you are resident or from which you are placing an Order, or any agreement by which you are bound or by which any of your assets are affected; and
- (l) you will provide any regulatory body, any relevant tax authority or LMAX Exchange or any Liquidity Pool with information that is reasonably requested from you in relation to your trading with us.

25.2. **Repetition and Event of Default.** You agree that each of the representations and warranties in Term 25.1 (Representations and Warranties) shall be deemed repeated each time you submit an Order to us. **You must advise us immediately if you cannot give such representations and warranties at any time.** A failure to so advise us and breach of any one or more of the representations and warranties set out above is an Event of Default under Term 23.1(i) (Event of Default).

## 26. MARKET ABUSE

26.1. **Obligation.** You agree not to:

- (a) submit an Order to open, and warrant and represent that you have not opened, a trade with us in connection with a placing, issue, distribution or other analogous event, or an offer, take-over, merger or other analogous event, in which you are involved or otherwise interested;
- (b) submit an Order, and warrant and represent that you have not submitted an Order, to open or close a trade that contravenes any primary or secondary legislation or other law against insider dealing, market manipulation, market conduct or any behaviour deemed to be market abuse;
- (c) trade with us to deliberately transfer money from one account to another by attempting to match Orders or trades with another client through collusion;
- (d) submit any Order that is artificial or fictitious or place an Order that is designed to give the market a false or misleading impression as to the supply or demand, value or price of an Instrument; and
- (e) act or engage in any conduct which is likely to damage the fairness, integrity, proper functioning or orderliness of LMAX Exchange, another trading venue or a liquidity provider.

26.2. **Repetition.** You agree that each of the representations and warranties set out in Term 26.1 (Obligation) shall be deemed repeated each time you submit an Order to us or open or close a trade with us. **You must advise us immediately if you cannot give such representations and warranties at any time.** A breach of any one or more of the representations and warranties set out above is an Event of Default under Term 22.1(i) (Event of Default).

26.3. **Consequences of breach or suspected breach.** If (a) you open any trade in breach of the representations and warranties given in this Term 26 (Market Abuse), or (b) we have reasonable grounds for suspecting that you have done so, we may in our absolute discretion and without being under any obligation to inform you of our reason for doing so, close that trade and any other trades that you may have open at that time and prevent you from opening

further Orders on your Account. The following will apply to any trade closed for such breach or suspected breach:

- (a) you shall remain liable for any loss on such trade; and
- (b) we may withhold any payment that may have otherwise been due to you in respect of a profit on such trade unless and until you produce such evidence as we may reasonably require to establish that you have not committed the breach of warranty and/or misrepresentation the suspicion of which was the ground for closing your trade. If you do not produce such evidence within the period of six months from the date on which such trade was opened, you shall not be entitled to any profit from any such trades.

26.4. **Speculative instruments.** You acknowledge that the trades in which you deal with us are speculative instruments and you agree that you will not submit any Orders to us nor open any trades with us in connection with any corporate finance style activity.

26.5. **Surveillance and cooperation with the regulator.** We may, and in some cases we are obliged to, monitor all trading activity that takes place through our systems and report to any relevant regulatory authority details of any Order submitted by you or trade entered into by you.

26.6. **Rights and remedies.** The exercise of any of our rights under this Term 26 (Market Abuse), shall not affect any of our other rights under these Terms of Business.

## 27. FORCE MAJEURE EVENTS

27.1. **Determination.** If we determine that a Force Majeure Event has occurred, we may, without notice, acting reasonably at all times,

- (a) suspend or modify the application of all or any of the Terms of these Terms of Business to the extent that the Force Majeure Event makes it impossible or impracticable for us to comply with the Term or Terms in question; and/or
- (b) close any or all of your working Orders and close all or any of your open trades in whole or in part.

## 28. SUSPENSION

28.1. **Calculation of Margin Required.** If at any time trading on LMAX Exchange is suspended in any Instrument in which you have an open trade, you will not be able to close that trade on LMAX Exchange and unless we are able to obtain a reasonable price from another Liquidity Pool at which to close your trade, the prevailing price for the purposes of calculating the Margin Required for that open trade shall be:

- (a) in the case of a Buy trade, the bid price on the LMAX Exchange shown prior to the time of suspension;
  - (b) in the case of a Sell trade, the ask price shown prior to the time of suspension; or
  - (c) the price, if different to the above, that LMAX Exchange uses from time to time for the purposes of calculating the Margin Required in respect of our trade.
- 28.2. **Increase in Margin Factor.** We may at any time increase the Margin Factor applicable to your open trade if the Instrument in which you have an open trade is suspended.
- 28.3. **Closing of open trades.** If at any time during the period of suspension our trade is closed on LMAX Exchange or using a Liquidity Pool, we shall close your open trade at the same price.
- 28.4. **Dealing with Orders post suspension.** If you have a trade that is affected by the suspension open at the time that suspension is lifted, which for the avoidance of doubt, can occur without warning or notice to us (and thereby you), any Orders that you may have given us with respect to that trade will be executed upon the termination of the suspension in accordance with the provisions of these Terms of Business. We cannot guarantee that Orders will be executed at the first available price upon the termination of the suspension.
- 28.5. **Charges.** Notwithstanding the suspension of trading in any Instrument, all commission, funding, borrowing and other charges which may be due in relation to your trade shall continue to be due and payable in accordance with the provisions of these Terms of Business.
- 28.6. **CFDs – issuer insolvency.** If a company, whose securities represent part of the subject matter of the Instrument you are trading, goes into insolvency, is otherwise dissolved or is delisted by any relevant Trading Venue by reason of the length of its suspension, your trade with us will be closed at the same time and at the same price that our trade is closed on the relevant Trading Venue.

## 29. COMPLAINTS PROCEDURE

- 29.1. **How to make a complaint.** If you wish to make a complaint against us, you should advise us of the complaint immediately. In order to allow us to investigate your complaint promptly and effectively, please provide us with full details of the circumstances giving rise to your complaint including, if applicable, details of the time and date of any relevant actual or purported trade. We reserve the right not to commence investigations until such details are provided. We will investigate the complaint promptly and fully in accordance with our complaints handling procedure.



29.2. **Financial Dispute Resolution Service.** If you are dissatisfied with our resolution of your complaint you have the right to refer the matter to the Financial Dispute Resolution Service.

**Address:** Level 4, 142 Lambton Quay, Wellington Central, Wellington 6011, New Zealand

**Telephone:** +64 4910 9952

**Email:** [enquiries@fdrs.org.nz](mailto:enquiries@fdrs.org.nz)

**Website:** [www.fdrs.org.nz](http://www.fdrs.org.nz)

29.3. **Right to cancel or close trade.** If your complaint relates to a working Order or open trade we reserve the right to cancel the Order or close the trade if we believe, acting reasonably at all times, this is desirable in order to limit the loss that potentially could arise if the working Order or trade is filled or closed out at a future date. We shall not be liable to you for any loss you may suffer as a result of us taking such action. Any working Orders or open trades that are closed by us in an attempt to mitigate future loss will not affect your rights to pursue your complaint and to claim for any loss suffered prior to cancellation or closure.

29.4. You will be liable for any loss that may occur in the future relating to the working Order or open trade that is the subject of your complaint, unless we or the court determine otherwise, and to this end you are strongly recommended to give consideration to cancelling or closing yourself any working Orders or open trades to which your complaint is directed in order to limit the loss that potentially could arise if the working Order or open trade is filled or closed out at a later date.

### 30. DATA PROTECTION AND PRIVACY

30.1. **Personal Information** Personal Information collected by us is treated as confidential and is protected by the Privacy Act. We collect, hold, use and disclose your personal information in accordance with our Privacy Policy.

30.2. **Privacy Policy and Cookie Policy.** Our [Privacy Policy](#) sets out the terms on which we process any personal data we collect from you, or that you provide to us, and our [Cookie Policy](#) provides information on the cookies we use and the purposes for which we use them. Our [Privacy Policy](#) and [Cookie Policy](#) are available on our Website. By using our Website you consent to such processing of personal data and use of cookies, and you warrant that all data provided by you is accurate.

30.3. **Contact.** You authorise us to contact you by email, telephone or post in order to discuss any aspect of our business. If you do not wish us to so contact you for any direct marketing activities, you must inform in writing either by email or post. Our email address and postal address (which is also our registered address) is at the back of these Terms of Business.



## 31. CONFIDENTIALITY

31.1. **Obligation.** If either you or us (including any of our Associated Companies) receive Confidential Information, that recipient agrees with the other party:

- (a) to treat such information as confidential;
- (b) not, without the disclosing party's prior written consent, which is not to be unreasonably withheld, to communicate or disclose any part of such information to any person except to: (i) its representatives, any prime broker, any Liquidity Pool or clearing house and other suppliers who are directly involved in trading with you or us; or (ii) the recipient's auditors, professional advisors and any other persons or bodies having a legal right or duty to have access to, or knowledge of, the Confidential Information in connection with the business of the recipient;
- (c) to ensure that all recipients mentioned above are made aware, before disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing party and to ensure that such recipients comply with this Term 31 (Confidentiality); and
- (d) not to use or circulate such information within its own organisation except to the extent necessary for the purposes of, and in compliance with, the restrictions in this Term.

31.2. **Exceptions.** The obligations in Term 31.1 (Obligation) will not apply to any Confidential Information which is:

- (a) in the recipient's possession (with full right to disclose) before receiving it; or
- (b) becomes public knowledge other than by breach of this Term 31 (Confidentiality); or
- (c) independently developed by the recipient without access to or use of the Confidential Information; or
- (d) lawfully received from a third party (with full right to disclose); or
- (e) trade data which has to be disclosed to any relevant regulators or government authorities.

31.3. Either party may disclose any Confidential Information if obliged to do so in order to comply with applicable laws or regulations, including following a request from any competent court, regulator or similar governmental authority. To the extent it is legally permissible to do so, such party will promptly notify the other party in writing of such obligation on request.

## 32. MISCELLANEOUS

- 32.1. **Rights and remedies.** Our rights and remedies under these Terms of Business will be cumulative, and our exercise or waiver of any right or remedy will not preclude or inhibit the exercise of that or any other or additional right or remedy in the future. Our failure to enforce or exercise any right under these Terms of Business will not amount to a waiver or bar to enforcement of that right in the future. Our failure on one or more occasions to enforce or exercise our right to insist on any payment strictly in accordance with the provisions of these Terms of Business will not amount to a waiver or bar to enforcement of such provisions.
- 32.2. **Transfer.** You agree that we may transfer by novation all our rights, liabilities and obligations under these Terms of Business (including all trades governed by it) to any Associated Company. We will notify you of such transfer at least 10 Business Days before it is due to come into effect. Neither of us may transfer, novate nor assign any rights, liabilities and obligations under these Terms of Business (including all trades governed by it), whether in whole or in part, other than as set out in this Term without the other's prior consent, whether expressed or implied.
- 32.3. **Invalid or unenforceable provisions.** If any provision or part of any provision in these Terms of Business should be found by any court or other body to be invalid or unenforceable, that finding shall not affect the validity of any other part of these Terms of Business. If any provision is found to be invalid or unenforceable, but can be rendered valid and enforceable by the deletion of any part of it, you agree with us that the provision will apply subject to such part or parts of it as may be necessary being deleted so as to make it valid and enforceable.
- 32.4. **Third party rights.** Unless expressly provided in these Terms of Business, none of the terms of it are enforceable pursuant to the Contracts (Privity) Act 1982 by any person who is not a party to it.

## 33. AMENDMENTS

- 33.1. **These Terms of Business.** The version of these Terms of Business posted on the Website is the version in force at any given time. We may amend any of the terms of these Terms of Business at any time. Any amendment will be made by posting the amended version of these Terms of Business on the Website. Any amendment will be effective as from the effective date as published on the Website and it will apply to all working Orders and all new and existing trades as from the effective date. The effective date will, where reasonably practicable, be at least 10 Business Days after the date of posting. We will inform you of the posting on the Website of any amended version of these Terms of Business, and the date upon which it becomes effective. We will not send you a paper copy of any new version unless you request that we do so. You must make sure that, before submitting an Order, you are happy for such Order and any subsequent trade to be governed by the latest version of these

Terms of Business.

- 33.2. **Risk Warning Notice, Trading Manual and Order Execution Policy.** Save as where otherwise provided for in these Terms of Business, we may amend the Risk Warning Notice, Trading Manual and Order Execution Policy at any time. Any such amendment will be operative immediately and will apply to all Orders and all new and existing trades thereafter. We shall endeavour to give you notice of amendments to our Risk Warning Notice and Trading Manual prior to them becoming operative by posting the amended version of the affected document on the Website but this may not always be possible. We will notify you of any material changes to our Order Execution Policy. We will not notify you of non-material changes.

### **34. TERMINATION**

- 34.1. These Terms of Business may be terminated by either party upon giving the other party written notice of termination, which will take effect immediately, unless otherwise specified in the notice. Any such termination will not affect any obligation that may already have been incurred by either party in respect of any outstanding trade or any legal rights or obligations that may already have arisen under these Terms of Business or any dealings made thereunder. Upon termination, all open trades will be closed unless otherwise agreed by us. All sums due from you to us will become immediately payable.
- 34.2. Whether or not you have entered into these Terms of Business by distance means, you are not entitled to cancel these Terms of Business (but you can terminate it in accordance with the provisions set out in this Term).
- 34.3. LMAX Global is likely to terminate these Terms of Business immediately by written notice where:
- (a) you are subject to any financial sanctions under any applicable laws or regulations;
  - (b) we are required to terminate these Terms of Business under any applicable laws or regulations;
  - (c) we have reasonable grounds to suspect you are or have engaged in any fraud or financial crime or market abuse, or are otherwise using any service or facility provided under these Terms of Business to pursue or further any crime or breach any regulatory requirements imposed on you or us;
  - (d) you have materially and seriously breached any term of these Terms of Business.

### **35. GOVERNING LAW**

LMAX Global is a trading name of LMAX New Zealand Limited, a company incorporated in New Zealand (number 5626391) who is a registered Financial Service Provider (register number FSP612509). Our registered address is Quigg Partners, Level 7, 36 Brandon Street, Wellington, 6011, New Zealand. Our operating address is LMAX c/o Generator, Level 10-12, 11 Britomart Place, Britomart, Auckland 1143, New Zealand. LMAX Global is part of the LMAX Group, whose registered address is Yellow Building, 1A Nicholas Road, London W11 4AN.

These Terms of Business and each trade entered into with you is in all respects governed by New Zealand law and the courts of New Zealand will have the non-exclusive jurisdiction to settle any disputes arising out of or in connection with these Terms of Business (including a dispute or claim relating to any non-contractual obligation arising out of or in connection with these Terms of Business). Each party agrees to waive any objection to the New Zealand courts, whether on the grounds of venue or that the forum is not appropriate. Nothing in this Term will prevent us from bringing proceedings against you in any other jurisdiction.

## **Schedule 1 - MT4 Platform Schedule**

This MT4 Platform Schedule (**MT4 Schedule**) forms part of our Agreement and amends and supplements our Terms of Business in the event you choose to trade by using the MT4 software trading tool. All terms used herein and in the Terms of Business shall have the same meaning as in the Terms

of Business unless otherwise defined herein. If there is an inconsistency between the Terms of Business and the MT4 Schedule, the terms of the MT4 Schedule will prevail in respect of any trades carried out using the MT4 software trading tool (**MT4 trades**).

The terms and conditions of the MT4 Schedule will apply once you open an account to trade by using the MT4 software trading tool (**MT4 Account**).

## 1. DEFINITIONS

The following words and expressions shall be defined as follows:

**Available Margin Balance** has a similar meaning as Available to Trade Balance for trades executed outside of the MT4 software trading tool except for the definition of Total Margin Required. In the MT4 software trading tool, it is referred to as **Available Margin** or **Free Margin**.

**Daily Statement** means a contract note which we will send to you confirming the details of all the trades open and closed on your MT4 Account on a Business Day.

**Margin Close Out Level** means the percentage of Total Margin Required you must maintain in your MT4 Account to prevent your open trades from being closed.

**Margin Covered Percentage** means the percentage of Total Margin Required that is being covered by the cash and open trades in your MT4 Account at any given time and calculated as (a) the aggregate of your cash balance, less commission and swap charges on any open trades, plus profits on your open trades, less the aggregate of the losses on your open trades expressed as a percentage of (b) the Total Margin Required.

**Margin Requirement** for MT4 trades means the margin as calculated in accordance with the MT4 Schedule.

**Maximum Trade Size** means a limit restricting the maximum size of an individual Order for a particular asset class of an Instrument traded on the MT4 Client Terminal, which may be amended by us in our absolute discretion and is published in the MT4 Trading Manual.

**MT4 Client Terminal** means the interface which allows you to transact on your MT4 Account.

**MT4 Server** means a third party hardware managed by us, which processes and transmits all market data and trades between the MT4 Client Terminal and LMAX Exchange.

**MT4 Trading Manual** means the trading manual that provides more information and worked examples on our trading services when using the MT4 software trading tool to trade.

**Third Party Equipment** means the MT4 Client Terminal, the MT4 Server, any other hardware, software and/or customised interface which enable or are linked to your MT4

Account.

**Total Margin Required** for MT4 trades, means just the margin required for your open trades and does not include any margin for working Orders as for trades executed other than through MT4.

## 2. TRADING MANUAL

All references in the Agreement to the Trading Manual shall, for MT4 trades, be read as if they were references to the **MT4 Trading Manual**.

## 3. PRICES

Where we have filled your Order by executing a number of trades, the MT4 Server will report a weighted average fill price for the opening or closing trade on your MT4 Account.

## 4. ORDERS

**4.1 How to submit an Order.** The first paragraph of Term 7.1 of the Terms of Business does not apply to MT4 trades. You may submit an Order for a MT4 trade:

- (a) online via the MT4 Client Terminal; or
- (b) via other MT4 Software Trading Tools (such as MT4 supported mobile applications); or
- (c) by speaking to us on the telephone during our Helpdesk Hours.

**4.2 Acknowledging receipt.** Term 7.3 of the Terms of Business does not apply to MT4 trades. We shall acknowledge receipt of each Order we receive and accept from you via the MT4 Server. This will show on the MT4 Client Terminal.

**4.3 Trading Hours.** If we receive an Order from the MT4 Server outside of Trading Hours, that Order will be rejected. Trading Hours for each Instrument that we offer to trade can be found in the MT4 Trading Manual.

**4.4 Position and Size Limits.** In addition to our discretion to set a Maximum Position Size, we may in our absolute discretion set Maximum Trade Sizes for your MT4 Account.

**4.5 Order routing.**

- a) When trading via the MT4 Client Terminal, all Orders submitted by you are immediately sent to the MT4 Server. If you submit a Market Order, then upon receipt of your Order, the MT4 Server transmits the Order request to LMAX Exchange as a Market Order.

- b) If the Order is sent as a working Order, then after receiving your Order, the MT4 Server will wait until such time that the Order is triggered and submit the Order request to LMAX Exchange as a Market Order. If you choose to cancel a working Order prior to it being filled, it will be deleted from the MT4 Server.

## 5. TRADING

- 5.1 **Gross positions.** Term 8.3 of the Terms of Business does not apply to MT4 trades. If and to the extent you submit an Order to buy or sell a specific Instrument and you already have an open trade in the same size and Instrument, and you have no other trades open at the time, both buy and sell MT4 trades will stay open and, although you will continue to have an exposure to price movement on both legs, you will have a hedged position. The margin on your MT4 Account will be zero. If, however, the size of the subsequent Order to buy or sell a specific Instrument is less than or exceeds the size of the original Order, a partly hedged position will be created on your MT4 Account. The margin on your MT4 Account will reflect the part of the trade that is not hedged.
- 5.2 **Closing MT4 trades.** In order to close an open trade on your MT4 Account, you will need to select and individually close each of the trades that have been originally opened on your MT4 Account. The Orders to close the trades will be sent to the MT4 Server in the order you chose to close them. The MT4 Server will send these Orders to LMAX Exchange. Failure to select an open trade to close may result in a hedged position being created on your MT4 Account.

## 6. AVAILABLE TO TRADE BALANCE

- 6.1 All references in the Terms of Business to **Available to Trade Balance** shall, for the MT4 Platform, be read as if they were references to **Available Margin Balance** or **Free Margin**.
- 6.2 **Deficit.** You must not allow your Available Margin Balance to move into deficit. It will move into deficit if the sum of your cash balance plus profits on your open trades falls below the sum of the losses on your open trades and the Total Margin Required.
- 6.3 Your Available Margin Balance may move into deficit at any time, including if:
- (a) you incur unrealised losses on one or more of your open trades;
  - (b) the Margin Factor relevant to one or more of your open trades increases;
  - (c) cash debits are applied to your MT4 Account (for example, in respect of realised losses, commission, financing charges or corporate action adjustments).
- 6.4 It is your responsibility to monitor your Available Margin Balance at all times in order to prevent it from moving into deficit. You may monitor your Available Margin Balance online through the



MT4 Client Terminal. If you have any working Orders and/or open trades, and you are aware you will not have access to your MT4 Account for any period of time, you may consider paying additional funds into your MT4 Account to counter any unfavourable instrument movement so as to reduce the risk of your Available Margin Balance moving into deficit.

## 7. MARGIN REQUIRED

7.1 **Calculation.** Whilst a trade is open, the Margin Requirement will be calculated by multiplying (a) the number of contracts requested (b) by the contract size (c) by the Opening Price (d) by the Margin Factor for the Instrument. Unless the Margin Factor changes, the Margin Requirement remains fixed throughout the life of each individual trade. Where you have a partly hedged open position the Margin Requirement will be based on the residual unhedged position.

7.2 **Increase in Margin Factor.** We may increase our Margin Factors in relation to one or more of your open trades without notice to you in any of the circumstances set out in Term 13.5 above

## 8. MARGIN CLOSE OUT LEVEL

If your Margin Covered Percentage reaches or falls below your Margin Close Out Level we may but are not obliged to exercise our rights to close any or all of your open trades at any time thereafter without further notice to you. The MT4 Trading Manual has worked examples of the operation of the Margin Close Out Level.

## 9. YOUR ACCOUNT

9.1 Our Terms of Business regarding:

- (a) username, password and other security information (Term 5.1);
- (b) monitoring (Term 7.8); and
- (c) the binding nature of trades (Term 8.5);

apply also to your MT4 Account and references to your Account shall include your MT4 Account.

9.2 **Base Currency.** Terms 11.2 to 11.4 of the Terms of Business shall not apply to MT4 trades. Instead, the following provisions shall apply:

- a) Where you open a trade in an Instrument that is not in your Base Currency, we shall during Trading Hours notionally convert the open profit/loss for that trade to your Base Currency using our prevailing exchange rate for that purpose. Your Available Margin Balance and its components will therefore be valued in your Base Currency at all times during Trading Hours. The value of your trade is being converted into your Base Currency at our prevailing exchange rate for that purpose.

- b) For all trades, we will convert any of the following at our prevailing exchange rate for that purpose:
- (i) realised profit/loss where such profit/loss is not denominated in your Base Currency;
  - (ii) any commission charges in respect of that trade; and
  - (iii) any financing charges in respect of that trade.

## 10. SUSPENDING YOUR MT4 ACCOUNT.

Terms 15.1 to 15.2 of the Terms of Business shall not apply to MT4 trades. Instead the following provisions shall apply:

**Right to suspend your MT4 Account.** We may acting reasonably suspend your MT4 Account at any time and for any reason and without notice, suspend or change the username and/or password of any person authorised to trade on your MT4 Account. If your MT4 Account is suspended you will be able to close any existing trades over the telephone during our Helpdesk Hours but will not be permitted to open any new trades on your MT4 Account. The circumstances where we may suspend your MT4 Account include but are not limited to:

- (a) when we have not received information within 10 days of a request (or sooner if so reasonably required), which we believe that we require in connection with these Terms of Business;
- (b) when we have reason to believe that there has been a breach in your MT4 Account security or that there is a threat to your MT4 Account security;
- (c) when your trading activity or conduct is such that we believe acting reasonably at all times has or is likely to impair the integrity, functionality, speed or reliability of LMAX Exchange or compromise, impair, restrict or prevent the ability of LMAX Exchange to operate a fair and orderly market;
- (d) when your trading activity or conduct is such that we believe acting reasonably at all times has or is likely to impair the integrity, functionality, speed or reliability of the MT4 Client Terminal and/or MT4 Server; and/or
- (e) where Term 26 (Market Abuse) applies.

## 11. OUR CHARGES AND TAXES

Unrealised commission for MT4 trades will be shown on your open trade as a total amount for both opening and closing legs of the trade. The commission will be realised and taken from your MT4 Account balance after the trade is closed.

## 12. COMMUNICATIONS AND NOTICES

LMAX Global is a trading name of LMAX New Zealand Limited, a company incorporated in New Zealand (number 5626391) who is a registered Financial Service Provider (register number FSP612509). Our registered address is Quigg Partners, Level 7, 36 Brandon Street, Wellington, 6011, New Zealand. Our operating address is LMAX c/o Generator, Level 10-12, 11 Britomart Place, Britomart, Auckland 1143, New Zealand. LMAX Global is part of the LMAX Group, whose registered address is Yellow Building, 1A Nicholas Road, London W11 4AN.

- 12.1. **Daily statement.** Rather than contract notes, on each Business Day, we will send you a Daily Statement for that Business Day, to you by email usually at the end of that day. The absence of a Daily Statement does not affect the validity of any trade. Please check your Daily Statements. If you believe that any of the details of your Daily Statements are inaccurate you should contact us immediately and in any event within 24 hours of the trade. We reserve the right to make a reasonable charge for a Daily Statement requested to be sent to you in paper form. **We strongly recommend that you print your Daily Statements and retain them as part of your records.**
- 12.2. **Confirmation on MT4 Account.** As soon as we have filled your Order and entered into a trade with you, a confirmation of the executed trade will show on your MT4 Account.

### 13. SUSPENSION

Term 28.1 of the Terms of Business shall not apply to MT4 trades. Instead the following shall apply:

**Calculation of Margin Required.** If at any time trading on LMAX Exchange is suspended in any Instrument in which you have an open trade, you will not be able to close that trade on LMAX Exchange via your MT4 Account and the valuation of your Margin Required for the open trade will stay the same as at the time the trade was opened.

### 14. THIRD PARTY EQUIPMENT - LIABILITY AND INDEMNITY

- 14.1. We are not responsible for ensuring compatibility with any Third Party Equipment. Neither we nor any Related Person will have any liability to you or any other person for any direct or indirect loss, liability, cost, claim, expense or damage of any kind, whether in contract or in tort, including negligence, or otherwise, arising out of or related to your use of any Third Party Equipment.
- 14.2. You accept and acknowledge that when you are using any Third Party Equipment you must comply at all times with all applicable laws or regulations. In the event you fail to comply with any such applicable laws or regulations which may affect a Third Party Equipment provider, you shall indemnify them for any losses, damages, expenses or cost such Third Party Equipment provider would have incurred as a result of your actions or omission.

## Schedule 2 – Third Party Technological Services

This *Schedule 2 (Third Party Technological Services)* forms part of our Agreement and amends and supplements our Terms of Business in the event you choose to access our trade execution services (including to execute orders) and/or other ancillary services using Third Party Technological Services. All terms used herein and in the Terms of Business shall have the same meaning as in the Terms of Business unless otherwise defined herein. If there is an inconsistency between the Terms of Business and this Schedule 2, the terms of this Schedule will prevail in respect of any trades or services carried out using a Third-Party Technological Service.

This Agreement will come into effect on the date that you gain access to our services using Third Party Technological Services. We may amend any of the terms of this Agreement from time to time. Any new version of this Schedule published on our Website will supersede any earlier versions and will be effective on the date of publication. Where we have made material amendments to this Schedule, we shall notify you in advance of such date of publication as is reasonably practicable. In the absence of any material changes to this Schedule, we may but are not obligated to notify you in advance of the date on which a new version shall come into effect.

### 1. DEFINITIONS

Unless the context required otherwise, capitalised terms have the following definitions in this Agreement:

**Intellectual Property Rights** means any and all design rights, trademarks (whether registered or not), patents, inventions (whether patentable or not), patentable material, registered designs, trade secrets, copyrights (whether registered or not) including trade data, settlement prices, data files and any part of the data thereof, moral rights, rights in databases, utility models, and all other intellectual property rights, whether registrable or not, including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, know-how, improvements, business or brand names, domain names, database rights, metatags, goodwill or the style of presentation of goods or services, including applications for the protection of any such rights and all other intellectual property rights of any kind that may be available in any jurisdiction, whether arising under legislation, common law or otherwise.

**Loss** or **Losses** means all losses, liabilities, judgments, suits, actions, proceedings, claims, penalties, injuries, delays, damages, costs and expenses (including legal and other professional fees and disbursements).

**LMAX Proximity Network** means the circuits and devices network engineered and managed by LMAX Global and Associate Companies, where clients can, for the purpose of this Schedule, connect for trading via Proximity Services of Third-Party Technological Service Providers.

**Proximity Services** has the meaning given to it in Term 2 herein.

**Security Breach** has the meaning given in Term 4.2 below.

**Service Provider** means any person who provides a Third-Party Technological Service to LMAX Global or a Customer of LMAX Global.

**Schedule** means this Schedule 3 (Third Party Technological Services).

**Third Party Technological Services** has the meaning given to it in Term 2 below.

**Third Party Service Integration** has the meaning given to it in Term 2 below.

**Website** means our website such as <https://www.lmax.com/global/nz>.

**White Label Service Integration** has the meaning given to it in Term 2 herein.

## 2. THIRD PARTY TECHNOLOGICAL SERVICES

2.1 We may, if you so choose to access our trade execution services and/or other ancillary services using Third Party Technological Services, provide you access via such Third Party Services in accordance with your instructions on the terms of this Schedule.

2.2 For the purpose of this Schedule and our trading services generally, Third Party Technological Services are:

- a) Proximity Services operated by Third Party Service Providers, for which LMAX Global has provided connectivity to the LMAX Proximity Network, such as extranets, co-location and network services, through which clients who are users of such Proximity Services can access our trade execution and other ancillary services;
- b) Software Trading Tools and any other third-party customised interface or equipment, hardware or software which processes and transmits market data and trades between it and us;
- c) Software Bridge means a form of interaction between any Software Trading Tools and your Account (including API and/or FIX Interactions); and
- d) Any other Third-Party Technological Services not mentioned above.

2.3 We may provide you access to our trade execution services and/or other ancillary services using Third Party Technological Services on the following basis:

- a) Third Party Service Integration – where we have integrated with and provided access to a Third Party Technological Services Provider, such as a Proximity Services Provider, with whom you have directly entered into a service agreement

and whose Technological Services you use to access our trade execution services and/or other ancillary services; or

- b) White Label Service Integration - where we have entered into contracts with Third Party Technological Services Providers to sub-license the use of such services (including Software Trading Tools and Software Bridge) to our Customers, and where such services form one or more components of the White Label Technological Trading Services you use to access our trade execution services and/or other ancillary services.

### **3. OUR OBLIGATIONS**

- 3.1 LMAX Global warrants that it has all rights, authority and licences necessary to enable its Customers to access its services via Third Party Technological Services, including any prerequisite right to sub-license any White Label Services.
- 3.2 In providing you access to our Proximity Network via a Proximity Service provided by a third party, we undertake to exercise reasonable care and skill, in accordance with this Agreement and in all material aspects in accordance with all Applicable Laws and Regulations. Notwithstanding, we do not warrant that the operation of the Proximity Network will be uninterrupted or entirely error free, and do not guarantee the performance or latency of traffic transiting, accuracy, suitability, reliability or completeness of the Proximity Network.
- 3.3 Except as otherwise expressly provided in this Agreement, we do not make, and hereby disclaim, any warranties or conditions, express or implied, including any warranties or conditions:
  - a) as to satisfactory quality or fitness for a particular purpose of the Proximity Network or the Proximity Services;
  - b) that the Proximity Network or the Proximity Services are to be continuously available, properly transmit data or are free from errors, inaccuracies or delays in transmission; or
  - c) that the Proximity Network is free from unauthorised intrusions.
- 3.4 You acknowledge and agree that any Third Party Technological Service are provided AS IS, without warranties of any kind, specifically:
  - a) We are not responsible for ensuring compatibility with any Third Party Technological Service, including any such White Labelled service which we sub-license to you;

- b) We do not guarantee the quality, availability or functionality of the Third Party Technological Services at any given time. Any performance test we perform on Third Party Technological Services is for our own assessment only, and you must not rely on the results of such tests as guarantee of their quality, availability, functionality or suitability;
- c) We owe no fiduciary or equitable duties to you in relation to your use of Third Party Technological Services, and nothing in our Terms of Business, including in this Schedule shall give rise to such duties; and
- d) The quality, availability or functionality of the Third Party Technological Services may be matters beyond our reasonable control, and any defect in or the failure of such Services, whether in whole or in part, may be Force Majeure Events as such.

You are therefore agreeing to the use of Third Party Technological Services at your own risk.

#### **4. YOUR OBLIGATIONS**

- 4.1 You should carry out your own test of any Third Party Technological Service before using such Services to ensure that you are satisfied with their functionality, suitability and quality. We may, acting reasonably, at our direction require both you and your Third Party Technological Services Provider to carry out performance tests against our services to assess functionality, compatibility and quality. We may cease to provide support for Proximity Services at any point without cause being given, particularly where we have data that indicates that any fault does not lie with LMAX 's systems.
- 4.2 You represent that you will not use a Third Party Technological Service in a way which:
  - a) Breaches or is likely to breach any applicable laws and regulations;
  - b) breaches or infringes, or is likely to breach or infringe any Intellectual Property Rights of LMAX Global or a third party; or
  - c) proves or is likely to prove detrimental to LMAX Global and/or our Associate Companies or the services provided by us and our Associate Companies. You must ensure that your use of any Third Party Technological Service to access our services does not violate any third party's Intellectual Property Rights.
- 4.3 If you are using a Third Party Technological Service to connect to our Proximity Network, you agree that:



- a) You will use your best endeavor to avoid any security breaches, including anything that compromises the confidentiality, availability and integrity of the information on the Proximity Network (a **Security Breach**);
  - b) You are responsible for ensuring that during your use of a Third Party Technological Service to access our services, no action or omission of your Service Provider can result in any security breaches, including anything that is capable of compromising the confidentiality, availability and integrity of the information on the Proximity Network;
  - c) Your Service Provider will not access or attempt to access any users' data, including trading patterns, except as directed by you for the diagnosis of technical or performance faults;
  - d) You must have taken all reasonable steps to ensure that during your use of a Third Party Technological Service to access our services, your Service Provider does not act in a way that is capable of violating LMAX Global's or any other third party's Intellectual Property Rights;
  - e) You are solely responsible for monitoring your connections to the Proximity Network for performance and notify us of any issues you experience;
  - f) You must notify LMAX if there is a Security Breach (by a third party or otherwise) of the Proximity Service you use; and
  - g) You must notify us if you cancel your Proximity Service with a Third Party Service Provider, or your use of such Proximity Service has been terminated by the Service Provider, together with the reasons for such cancellation or termination.
- 4.4 Performing a test(s) will not exclude, negate, diminish or in any way mitigate your liability, direct or indirect, for any direct, indirect, incidental or consequential losses, or special or punitive damages arising from or relating to your use of Third Party Technological Services to access our services.
- 4.5 This Schedule does not affect the operations of Margin Requirement and Margin Close Out Level on any LMAX Global Account belonging to you and shall be without prejudice to any rights we have against you and your Account vis-à-vis such operations, the details of which are set out in Terms 13 and 14 of the Terms of Business and in our Trading Manual, and in particular where we have provided you access to our trade execution services and/or other ancillary services on a LMAX Global Account via a Third Party Technological Service which consists of a Software Trading Tool. You acknowledge and agree that it is your sole responsibility to:

- a) Monitor your LMAX Global Account and any Third Party Technological Service (such as a Software Trading Tool) connected to such Account at all times, including to perform periodic reconciliations to prevent the occurrence of any unexpected discrepancy between your Account and a relevant Software Trading Tool; and
- b) To ensure that the Margin Covered Percentage for such Account sufficiently supports any open trades and enables the execution of Orders as may be required for the operations of the Third Party Technological Service, and that the Margin Covered Percentage for such Account does not deteriorate to the extent which results in an Event of Default.

If in exercising a right under Terms 13 and/or 14 of our Terms of Business, we have not accepted an order from you, have cancelled any working Orders and/or have closed your open trades, we shall not be liable for any losses you incur in relation to any trades on a Software Trading Tool as a result.

## **5. PRIVACY AND DATA PROTECTION**

- 5.1 You acknowledge and agree that in providing White Label Third Party Technological Services to you and performing our obligations under this Schedule, we may be required to act as a Data Controller and a Data Processor of the personal data you provide to us. We shall do so in accordance with our Privacy Policy and our legal obligations to safeguard personal data. Our Privacy Policy sets out the terms on which we process any personal data we collect from you, or that you provide to us.
- 5.2 You acknowledge and agree that you may act as a Data Controller (in respect of your clients) and be subject to applicable data protection laws and regulations when using a Third Party Technological Service Provider. You are solely liable and responsible for ensuring your compliance with such applicable laws and regulations and discharging your legal obligation for the protection of personal data. Nothing in this Schedule must be construed as a delegation of your data protection obligations to LMAX Global.

## **6. INDEMNITY AND LIABILITY**

- 6.1 We and our Related Persons expressly exclude all liability (including in respect of negligence) in respect of Loss arising from, or in connection with, your use of a Third Party Technological Service, except to the extent such loss or damage is caused by an action or omission deliberately undertaken by LMAX Global with the primary intention of breaching these Terms of Business or fraud on the part of LMAX Global.
- 6.2 Neither LMAX Global nor our Related Person shall be liable for any:
  - a) loss of profit (or expectation of profit), business revenue or anticipated savings;

- b) loss of information, interruption to business or damage to goodwill; or
  - c) indirect, consequential or special loss, howsoever arising.
- 6.3 You must indemnify and hold harmless LMAX Global and our Related Person against any and all Losses incurred or suffered by any of them arising out of, or in connection with:
- a) a breach by you of any of your obligations under this Schedule;
  - b) a breach by you of any applicable laws and regulations; and
  - c) a breach or infringement by you of any Intellectual Property Rights of LMAX Global or a third party.
- 6.4 You must indemnify, protect and hold harmless LMAX Global, our Associated Companies, and their respective Representatives from and against any and all Losses resulting from or arising out of any claim asserted against us by any party for whom you act or purport to act (including any asserted breach of fiduciary duty) in respect of your use of Third Party Technological Services to access our services.
- 6.5 Nothing in this Agreement excludes or limits liability on the part of either party in respect of death or personal injury resulting from negligence or any liability which cannot be excluded or limited under applicable laws and regulations.
- 6.6 Each party represents and warrants to the other that this Schedule is legal, valid and binding on such party.

## **7. TERMINATION AND SUSPENSION**

- 7.1 This Schedule shall not prejudice any rights and obligations each Party has in relation to the other as set out in our Terms of Business above. Unless expressly specified in writing between you and us, nothing herein shall be construed as having the effect of waiving, varying, amending, cancelling or terminating such rights and obligations.
- 7.2 Without limiting our other rights or remedies, we have the right and sole discretion to suspend or terminate, with immediate effect, your use of a Third Party Technological Service or access to our Proximity Network using a Third Party Technological Service if:
- a) We identify a security threat or attack (including but not limited to hacking attempts and denial of service attacks) as originating from a Third Party Technological Service you are using;
  - b) We reasonably believe that your conduct or the conduct of a Third Party Service Provider whose Technological Service you are using is such that it has or is likely to impair the security, integrity, functionality, speed or reliability of our services or

compromise, impair, restrict or prevent the ability of LMAX Global to operate a fair and orderly market;

- c) An Event of Default has occurred in relation to you, or one or more LMAX Global accounts belonging to you, or if you have breached the terms of this Schedule; or
- d) We reasonably believe that a Third Party Technological Service is being used by you for purposes other than those set out in an agreement between us and you.

We are not obligated to give you advance written notice before exercising our right to suspend or terminate but shall endeavor to do so if reasonably practicable.

- 7.3 Additionally, we may be required to suspend or terminate your use of a Third Party Technological Service or access to our Proximity Network using a Third Party Technological Service following a request from the Service Provider. If reasonably practicable, we shall give you advance written notice before such suspension or termination.
- 7.4 We may cease to support all or part of our Proximity Network at any time. We will not be liable to you or any other person if any, or all, of our Proximity Network is modified or terminated.
- 7.5 You may terminate this Agreement in your sole discretion, with or without cause, upon prior written notice to us.

## **Schedule 3 –Acceptable Use Policy**

This Schedule 3 (the “AUP”) forms part of our Agreement and amends and supplements our Terms of Business when you use LMAX Systems to access and receive our services, including our trading and market data services. All terms used herein and in the Terms of Business shall have the same meaning as in the Terms of Business unless otherwise defined herein and the same rules of interpretation shall apply. If there is an inconsistency between the Terms of Business and this AUP, the terms of this AUP will prevail.

This AUP will come into effect on the date that an LMAX System is made available to you. We may amend any of the terms of this AUP from time to time. Any new version of this AUP published on our Website will supersede any earlier versions and will be effective on the date of publication. Where we have made material amendments to this Schedule, we shall notify you in advance of such date of publication as is reasonably practicable. In the absence of any material changes to this Schedule, we may but are not obligated to notify you in advance of the date on which a new version shall come into effect.

### **1. GENERAL TERMS**

- 1.1 You should read this AUP carefully before using the LMAX Systems.
- 1.2 By using the LMAX Systems or otherwise indicating your consent, you agree to be bound by this AUP, which supplements our Terms of Business.

### **2. UNACCEPTABLE USE**

- 2.1 As a condition of your use of the LMAX Systems, you agree not to:
  - a) probe, scan or test the vulnerability of the LMAX Systems or any network connected to the LMAX Systems, nor breach the security or authentication measures or any network connected to the LMAX Systems. You may not reverse look-up, reverse engineer, trace or seek to trace any information on any other user of or visitor to our services, including any account not owned by you, to its source, or exploit our services or information made available or offered by or through the LMAX Systems, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than your own information;
  - b) take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the LMAX Systems, or any other systems or networks connected to our services;

- c) use any device, software or routine to interfere or attempt to interfere with the proper working of our services or any transaction being conducted on our services, or with any other person's use of our services;
- d) not upload or introduce malicious code, viruses, trojans, worms, logic bombs or any other material which is malicious or technologically harmful;
- e) not allow third parties external to your organisation to use the LMAX Systems without our prior written consent or authorisation;
- f) support in any way illegal activities or introduce encryption software in violation of applicable law;
- g) not attempt to hack, make unauthorised alterations to the LMAX Systems by any means;
- h) reverse engineer or decompile (whether in whole or part) any software available through the Access Services; or
- i) make copies of, modify, reproduce, transmit, alter or distribute all or any part of the Access Services or any material or information contained on them.

2.2 You will not disguise or interfere in any way with the IP address of the computer you are using to connect to the LMAX systems or otherwise take steps to prevent us from correctly identifying the actual IP address of the computer you are using whilst connecting to the LMAX Systems.

2.3 More generally, you agree that you will not use the LMAX Systems:

- a) for any purpose that is unlawful under any applicable law or prohibited by this AUP or our Terms of Business;
- b) to commit any act of fraud;
- c) for purposes of promoting unsolicited advertising or sending spam;
- d) to simulate communications from us or another service or entity in order to collect identity information, authentication credentials, or other information ('phishing');
- e) in any manner that disrupts the operation of the LMAX Systems or services generally or the website or business of any other entity;
- f) in any manner that harms minors;
- g) to promote any unlawful activity;

- h) to gain unauthorised access to or use of computers, data, systems, accounts or networks;  
or
- i) to attempt to circumvent password or user authentication methods.

2.4 You agree to;

- a) adopt secure ID, passwords and any other multi factor authentication in relation to the Client Systems to connect to the LMAX Systems in line with any possible instructions provided by us;
- b) inform us in case of loss of the ID, passwords or multi factor authentication devices for connecting to the LMAX Systems, not later than 3 Business Days from the discovery; and
- c) inform all of your users (employees, officers, consultants) of the terms and conditions of the AUP.

### **3 CONSEQUENCE OF BREACH**

If you breach of this AUP, we may terminate or suspend your use of the LMAX Systems. We shall have no liability to you for any inability to execute an order or access the LMAX Systems as a result of such termination or suspension. Furthermore, a breach by you of this AUP will constitute an Event of Default under the Terms of Business.