

KAPITAL FX
ACN: 611 822 390

TERMS AND CONDITIONS

Preparation Date: 9th November 2018

Version: 3.1

DEFINITIONS

Whenever used in this Agreement, unless inconsistent with the subject matter or context, the following words shall have the following meanings:

“Agreement” means these general terms and conditions, together with all schedules, attachments or other documents attached or referred to herein;

“Authorities” includes any judicial, administrative, public or regulatory body, any government, any Tax Authority, court, central bank or law enforcement body, or any of their agents with jurisdiction over Kapital FX;

“Compliance Obligations” means Kapital FX’s obligations to comply with: Laws, international guidance, internal policies or procedures, requests and/or demands from Authorities such as reporting and/or disclosure obligations and laws requiring us to verify the identity of our customers;

“Day” means a day on which commercial banks are open for business (including dealings in foreign exchange) in the place specified by us for that purpose;

“Financial Crime” means money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, evasion of sanctions (economic or trade), and/ or any acts or attempts to circumvent or break any Laws relating to the services provided under this Agreement;

“Force Majeure” means events or causes including, but not limited to, the following: an act of God, peril of the sea, unavoidable accident of navigation, war (whether declared or not), sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, flood, cyclone, earthquake, landslide, explosion, power or water shortage, failure of a transmission or communication network, epidemic, quarantine, strike or other labour difficulty or expropriation, restriction, prohibition, law, regulation, decree or other legally enforceable order of a government agency, breakage or accident, change of International, State or Commonwealth law or regulation or any damage of Kapital FX’s machinery or systems, unless occurring as a result of an act, omission, default or negligence of you or us;

“Instruction” means any instruction or request given by you to Kapital FX in relation to the services we provide;

“Intellectual Property” means the trade marks, designs, patents and copyrights of the parties to this Agreement;

“Internet” means the interconnected system of networks that connects computers around the world;

“Law” or “Laws” means any local or foreign law, regulation or judgment, court order or sanctions regimes which Kapital FX is subject to;

“Kapital FX” means Kapital FX Pty Ltd;

“Personal information” is as defined in the *Privacy Act 1988 (Cth)* as it may vary from time to time;

“Receiver” means the person to whom you instruct us to make payment;

“Registered Office” means the registered office of Kapital FX Pty Ltd as notified to the Australian Securities and Investments Commission;

“Tax Authority” means Australian or foreign tax, revenue or monetary authorities (e.g. the ATO);

“Transfer” means the service of converting your money into foreign currency and sending it to your designated receiver;

“We, us, our” means Kapital FX Pty Ltd, its subsidiaries, holding companies, successors and/or assigns, as well as its officers, directors, employees and agents;

“Website” means kapitalfx.com.au;

“You, your, yours” means the person identified in the customer application form.

1. THIS AGREEMENT

1.1 This Agreement sets out the terms on which you will access remittance services offered by Kapital FX.

1.2 You acknowledge and agree that we have not made any recommendation or statement of opinion regarding the suitability of our service to your needs, and we have not assessed your needs prior to offering you our services.

2. CLIENT REPRESENTATIONS AND WARRANTIES

2.1 You agree and warrant that, if you are an individual, you are of full age and capacity and in the case of a firm or corporation, it is duly constituted and incorporated and possesses the requisite power to enter into this Agreement and this Agreement will constitute legally binding and enforceable obligations on You.

- 2.2 You warrant that:
- 2.2.1 Performance of your obligations under this Agreement does not violate any Law;
 - 2.2.2 When you use our money transfer service, payment of money to the Receiver will not breach any Law;
 - 2.2.3 All information you have provided us is true, correct and complete, and you will notify us within 2 days of any changes to such information;
 - 2.2.4 All information you have provided is true in all material respects as at the date of this Agreement or, if later, when the information is provided.
- 2.3 You agree and acknowledge that we will enter into transactions contemplated by this Agreement in reliance on the representations and warranties made by you.
- 2.4 You authorise us to deduct our fees from the money you have paid us before we transfer the money to the Receiver.
- 2.5 If you enter into this Agreement as a Trustee of a Trust:
- 2.5.1 The Trust has been duly constituted, is valid and complies with all applicable laws;
 - 2.5.2 The Trust Deed has been executed and stamped, in accordance with the laws of the relevant State or Territory of Australia;
 - 2.5.3 You are the only Trustee of the Trust;
 - 2.5.4 The property of the Trust has not been resettled, set aside or transferred to any other trust or settlement and the Trust Deed has not been terminated and the date or any event for the vesting of the Trust's property has not occurred;
 - 2.5.5 All obligations under, and transactions contemplated by, this Agreement constitute binding obligations and are lawfully enforceable against the Trust and its property in accordance with their terms;
 - 2.5.6 You have an unrestricted right to be fully indemnified or exonerated out of the Trust's property in respect of any losses or liabilities incurred by it in its dealings with us, and the Trust's property is sufficient to satisfy that right of indemnity or exoneration;
 - 2.5.7 You have complied with your obligations in connection with the Trust;
 - 2.5.8 There is no conflict of interest on your part in entering into this Agreement and performing your obligations under it or the transactions contemplated by it.

3. CONFIDENTIALITY

- 3.1 You acknowledge that we will collect, hold, use and disclose personal information about you in accordance with our Privacy Policy, which can be found on the Website.
- 3.2 By agreeing to these terms and conditions, you consent to your personal information being disclosed to Credit Rating Bodies to obtain your credit report for identity verification purposes. You acknowledge that if you do not agree to your information being used in this way then you will not be able to use our services.

4. ANTI MONEY LAUNDERING

- 4.1 Due to the inherent risks in transferring currency between parties located in different countries, Kapital FX has adopted programs to ensure that it is not participating or assisting in money laundering or terrorist financing. Law enforcement agencies and regulatory Authorities may periodically inspect and require copies of client information and business records held by Kapital FX, to ensure compliance with all applicable anti-money laundering and counter terrorism financing laws.
- 4.2 By agreeing to these terms, you acknowledge that you are fully aware that in appropriate cases all communications and information concerning your activities with us that we hold, may be disclosed to and reviewed by law enforcement agencies and regulatory Authorities.
- 4.3 You agree that you will comply with all applicable anti-money laundering and counter terrorism financing laws, including, but not limited to, the requirement to obtain satisfactory evidence of your identity.

5. GENERAL

5.1 Indemnity

- 5.1.1 You agree that you will hold us harmless from any and all liabilities, claims, costs, expenses and damages of any nature, including, but not limited to, reasonable legal fees and any fees and expenses incurred in connection with litigation, arising out of or relating to your negligence or wilful misconduct, the violation of any Law by you, or the breach by you of any provision of this Agreement.
- 5.1.2 You agree to promptly pay upon demand any and all damages, costs and expenses, including reasonable legal fees and expenses, incurred by us in the enforcement of any of the provisions of this Agreement. Your obligations under this Clause shall survive the termination of this Agreement.
- 5.1.3 You acknowledge that we will treat the Receiver's information provided by you as correct. We will not be liable to you for the non-execution of your payment or for the defective execution of your payment or for any delay in making your payment if the information you provide or select is incorrect.

5.2 Compliance with Law

5.2.1 This Agreement shall be governed by and construed in accordance with Australian Law. The parties agree to irrevocably submit to the exclusive jurisdiction of the Courts of New South Wales.

5.3 Intellectual Property

5.3.1 At no time shall either party enter into commitments for or in the name of the other party or use their Intellectual Property for any purpose whatsoever. Except as specifically provided for in this Agreement, neither party will: (a) use the other party's name or Intellectual Property without the prior written approval of the other party; or (b) represent itself as being affiliated with, or authorized to act for, the other party.

5.4 Assignment

5.4.1 Any rights or obligations that you may have pursuant to this Agreement shall not be assigned, transferred, sold, or otherwise conveyed, except with our prior written consent which may be withheld.

5.4.2 You acknowledge that we may transfer any rights or obligations we may have pursuant to this Agreement to another party without your consent, and you will execute any documents (including a deed of novation) we may reasonably require to effect such a transfer.

5.5 Amending this Agreement

5.5.1 We may amend the terms of this Agreement at any time. We will provide you with notice of any such amendment. You agree that you will be bound by the terms of such an amendment either by using the Kapital FX Website or ten (10) Days after we have posted notice of the amendment on the Website. Any other amendments must be agreed to in writing between us.

5.6 Survival

5.6.1 This Clause 5 shall survive termination of the Agreement.

6. INSTRUCTIONS

6.1 Offer and Acceptance

6.1.1 You agree that you are making an offer to transact through our services, at a price quoted by us.

6.1.2 Our acceptance of the offer occurs when we conduct the transaction in accordance with your instructions, and issue a confirmation notice.

6.1.3 Once we have issued you with a transaction notice, you need to inform us immediately should the information contained on the confirmation notice be incorrect.

6.2 Instructions

6.2.1 You agree that you will provide us Instructions in person, in writing or through our website.

6.2.2 We retain the authority to refuse to act on your Instructions without providing any reason to you for doing so.

6.3 Payment

6.3.1 We only accept payment by you in the form of electronic deposit into one of our Australian bank accounts.

6.3.2 We will transfer your money to the Receiver nominated by you within 24 hours of receiving the money from you.

6.3.3 Once the identity of the Receiver is identified, we will pay the money to the Receiver. On your request, we will notify you when the Receiver collects the money.

6.3.4 We take no responsibility for the money after it has been transferred into the account specified by you.

6.3.5 Any request for payment to be made to the Receiver in a currency other than their local currency is subject to our consent.

6.4 Cancellation of an Order

6.4.1 If, after an order has been placed, you inform us that you wish to cancel the order, we may at our discretion either terminate the order or insist on its performance. We reserve the right to charge administration and cancellation fees in the event of cancellation of an order.

6.5 Alteration of an Order

6.5.1 If, after an order has been placed, you inform us that you wish to alter the order, we may at our discretion either alter the order or insist on its performance. We reserve the right to charge administration and cancellation fees in the event of alteration of an order.

6.6 Delay

- 6.6.1 Although we will use all reasonable efforts to process your order on the same Day that it is submitted to us (provided that the order is entered into before the close of business on that Day), we are not responsible or liable for the time it may take financial institutions to settle accounts. We shall not, in the absence of gross negligence or wilful misconduct, be liable for delays, damages, failures or errors in the completion of your instructions.

7. Online Transactions

- 7.1 By using the Website to conduct transactions, you accept the following provisions of this Clause 7:
- 7.2 Before being granted access, you will be asked to set up your security details. Security details will include: a username, password, any item of memorable information which we ask you to confirm and any other security requirements we may notify to you from time to time. We reserve the right to change the security details without prior notice to you.
- 7.3 We may change the minimum specification required to access our services and also may make operational changes to and alter the services currently available at any time. We will always notify you of such changes by placing a message on the Website, or by emailing you.
- 7.4 You are responsible for obtaining, maintaining and ensuring compatibility with your equipment. We will not be responsible for any loss of or damage to your data, software, computer, telecommunications or other equipment caused by your use of any of our services, unless such loss or damage is directly and solely caused by our negligence or deliberate default.
- 7.5 You must not misuse any of our services by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to any of our services or any server, computer or database connected to any of our services. You must not attack any of our services via a denial-of-service attack or a distributed denial-of service attack. We may report any breach to the relevant Authorities and we will co-operate with those Authorities by disclosing your identity to them.
- 7.6 For security purposes, when accessing any of our services it is a condition that we are satisfied of your identity. Accordingly we may be entitled not to act on your Instructions received or given through our service if we are in doubt as to your identity. You must take all reasonable precautions to keep safe and prevent fraudulent use of the services account you have enabled and any associated security details.
- 7.7 You must inform us immediately if you suspect or discover that someone else knows your security details or you believe that your security details may have been misused.

- 7.8 Whenever you use our services the use of your security details authorises us to act on any Instruction we receive. We will treat your use of your security details as your consent to conduct any Instructions you give using our services.
- 7.9 We can delay, decline or reverse any Instruction if we reasonably suspect that the transaction might be unlawful or might be associated with Financial Crime or if we reasonably believe that by carrying out the transaction we might breach our Compliance Obligations or if you are in breach of this Agreement. Under such circumstances we will not be liable to you if we delay or refuse to carry out your Instruction.
- 7.10 It is important that you take care when issuing any Instructions to us. You will be liable for all Instructions made when using any of our services including instances of any misuse, fraud or abuse by you or where you have disclosed security details to a third party.
- 7.11 If you dispute that you have carried out a transaction using any of our services we will investigate and shall expect you to co-operate with us and relevant Authorities in any investigations.
- 7.12 We can withdraw or suspend your security details with immediate effect if we believe that this is necessary to prevent suspected unauthorised or fraudulent use of any of our services or where there is a significantly increased risk that you will not be able to repay any money you owe us.

8. DEDUCTION OF INTERMEDIARY/RECEIVING BANK FEES

- 8.1 In some circumstances a number of intermediaries may be involved in an international payment and may deduct fees or charges. The receiving bank may also take fees or charges. These charges cannot always be calculated in advance, and you agree that you will be liable for these fees or charges.
- 8.2 We will not be liable for any losses you may incur as a result of these fees or charges being levied. We will use our best endeavours to ensure that all fees associated with a transaction are disclosed to you. However, due to the complexity of the international foreign exchange markets this may not always be possible.

9. FORCE MAJEURE

- 9.1 If we are unable to perform our obligations under this Agreement because of factors beyond our control or because of a Force Majeure Event, we will notify you as soon as is reasonably practicable and will use reasonable endeavours to secure the return of any money paid by you in respect of which we have been unable to discharge our obligations under this Agreement.

10. TERMINATION

- 10.1 This Agreement may be terminated immediately by either party by the giving of notice. However, termination by either party shall not affect any other

transaction previously entered into and shall not relieve either party of any outstanding obligations arising out of this Agreement, nor shall it relieve you of any obligations arising out of any transaction entered into prior to such termination.

10.2 In the event that we are made aware of, or given any reason to believe any of the following:

10.2.1 that you have provided false or misleading information to us; or

10.2.2 that you have participated or are participating or have assisted or are assisting in money laundering or terrorist financing; or

10.2.3 that you are being officially investigated by law enforcement and/or regulatory agencies;

then we may at our sole discretion terminate this Agreement immediately by notice to you, and Kapital FX shall be relieved of any obligations set out in this Agreement or arising out of the transactions contemplated by this Agreement.

11. LIMITATION OF LIABILITY

11.1 Kapital FX will use all reasonable endeavours to make payments to the Receiver or to any third party specified by you, in accordance with the timing specified in your Instructions. However, Kapital FX shall not be liable under any circumstances for any direct, indirect or consequential loss (including any loss of profits) incurred as a result of a delay in funds reaching your nominated account.

11.2 Kapital FX will not be liable if a payee/beneficiary bank fails to process the payment correctly.

11.3 You agree that we are not responsible for any delays, charges or loss incurred due to errors in the payment or Receiver information supplied by you or where you have failed to confirm. You agree to indemnify us and be liable for any losses or charges incurred by Kapital FX arising from such an error.

11.4 Nothing in this Agreement is intended to limit or exclude any liability we may have to you under any statutory rights you may have.

11.5 This Clause 11 survives termination of the Agreement.

12. DISPUTE RESOLUTION

12.1 Except to the extent that this Clause 12 is inconsistent with the requirements of any legislative or regulatory regime, the dispute resolution process set out in this Clause 12 shall apply. The parties must use reasonable endeavours to resolve any dispute arising in connection with this Agreement or any transactions under it.

- 12.2 If the parties fail to resolve the dispute within 10 days of the dispute being referred to them, the parties must, at the written request of either party and within 10 days of receipt of the request, refer the dispute to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Rules for the Mediation of Commercial Disputes. The costs of the mediator shall be met equally by the parties. If the dispute or difference is not settled within 30 days of the submission to mediation (unless such period is extended by agreement of the parties), it shall be submitted to arbitration in accordance with, and subject to, the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations.
- 12.3 This Clause 12 does not limit your right (if applicable) to take any dispute to the Australian Financial Complaints Authority, or an equivalent external dispute resolution scheme of which we are a member.

By proceeding to use our services, you agree that you fully understand and accept these terms and conditions. If you would like to clarify anything, please contact us, or consult an adviser.