



## Terms and Conditions of Business

# Foreign Exchange Services

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This Foreign Exchange Services Agreement (the 'Agreement') is an agreement between Hawk FX ('Service Provider') and you, a customer ('Customer') who has registered for payment services.

The payment services that are the subject of this Agreement will be provided by Supercapital Ltd ('Supercapital'), a company registered in England & Wales (no. 04306276). Supercapital is authorised and regulated as a Payments Institution under the Payment Services Regulations 2009 with the Financial Conduct Authority (reg. no. 621447) for the provision of foreign exchange and payment services and is registered with HM Revenue & Customs as a Money Services Business ('MSB') (reg. no. 12752676).

## 1. PREAMBLE

Service Provider provides facilities for the purchase or sale of currencies for commercial purposes only, not speculation. Service Provider's Contracts (see 2 THE TRADING AND PAYMENT SERVICES) with Customers are for settlement or delivery at maturity to a bank account and are subject to this Agreement.

Upon entering into a Contract, the customer must not treat any information or comments by Service Provider as advice.

All Transactions (see 2 THE TRADING AND PAYMENT SERVICES) shall be carried out pursuant to the Terms set out below. The Customer confirms that it is acting on its own account and not on behalf of any other person.

Service Provider provides access to a proprietary foreign exchange and payments platform (the 'Platform') and provides related foreign exchange and payment services (the 'Services') via the Platform.

The Customer wishes to be granted access to the Platform and to subscribe to the particular Services described herein, all pursuant to the terms and conditions (the 'Terms') of this Agreement.

Service Provider grants to the Customer during the Term and Customer agrees to accept a non-transferable and non-exclusive right to access and use the Platform for the management of foreign exchange and payments Transactions (the 'Permitted Purpose') via any supported web browser in a manner consistent with the Terms of this Agreement.

Service Provider shall have the right, at any time, to amend its operating procedures effective immediately, where appropriate in Service Provider's determination:

- (i) to permit the Platform and/or Service Provider to comply with applicable law; or
- (ii) to facilitate the continued and proper operation of the Platform without performance interruption or degradation.

Provided that, where possible, Service Provider will give the customer advance notice of such changes to its operating procedures to the extent that such changes will impact Customer's receipt of the Services subject to this Agreement. Foreign currency exchange rates are subject to fluctuations outside the control of Service Provider. Historical performance is no guarantee of future performance.

## 2. THE TRADING AND PAYMENT SERVICES

The Service Provider will, at its discretion, enter into contracts for the sale, purchase and delivery of currency ('Contracts') with the Customer for delivery on a specific date (a 'Transaction').

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Registered Address: 3 Beeston Place, London, SW1W 0JJ

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Supercapital Ltd is registered under Money Laundering Regulations 2007 with HMRC, no. 12752676.

The Service Provider will indicate the rate at which the currency can be bought and sold prior to execution of the Contract. However, the market rate could change in the time between obtaining the quote and converting the currency.

The Customer must take physical delivery of, and pay for, the currency on the date specified ('the Maturity Date') in the Contract Note (see 9 CUSTOMER INSTRUCTIONS).

Service Provider may use other third party service providers ("Agents") for the provision of regulated and non-regulated activities related to the Contract. Specifically, the Service Provider may use the Currency Cloud to provide liquidity and make onward payments using their payments infrastructure.

### 3. SERVICE PROVIDER WARRANTIES

Service Provider represents and warrants that

- (a) Service Provider has the right, power and authority to enter into this Agreement and to perform all of its obligations hereunder;
- (b) Service Provider has the valid right to grant to the Customer the rights as defined in this Agreement without violating any applicable law, rule or regulation or the proprietary rights of any third party.

Disclaimer. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE PLATFORM, THE SERVICES PROVIDED UNDER THIS AGREEMENT, AND AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM.

ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT ARE HEREBY DISCLAIMED.

### 4. LIMITATION OF LIABILITY.

In no event shall Service Provider be liable for any loss of data, loss of profits, cost of cover, or any other special, incidental, consequential, indirect or punitive damages, however caused and regardless of the theory of liability. This limitation will apply even if Service Provider has been advised of, or is aware of, the possibility of such damages.

Service Provider shall not be liable to the Customer for any delay or failure to perform its obligations under this Agreement or any Contract by reason of any cause beyond the reasonable control of Service Provider. However, Service Provider shall try to perform its obligations as soon as it reasonably can in any event.

THE MAXIMUM LIABILITY OF SERVICE PROVIDER UNDER THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED 500,000 POUNDS STERLING.

### 5. AVAILABILITY OF THE PLATFORM

**Suspension of Access.** Service Provider may suspend or terminate the Customer's access to the Platform immediately, without prior notice to the Customer, if Service Provider believes, in good faith, that the Customer is utilizing the Platform for any illegal or disruptive purpose.

In addition, notwithstanding any other provision of this Agreement, the Customer acknowledges that Service Provider shall have the right to restrict the Customer's access to the Platform, or to discontinue transmitting any or all information, or to refuse to facilitate or process any or all Transactions, if in Service Provider's sole determination any of the following circumstances occurs:

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- (a) full or partial Platform failure, including failure of the technology constituting the Platform or of any interface or communications links within the Platform or between the Platform, or any other circumstance where it is not practicable for Service Provider to provide the Platform;
- (b) a breach in the security of the Platform;
- (c) a material breach by the Customer of its obligations under this Agreement; or
- (d) in order to comply with applicable law.

Service Provider will seek to reinstate the Customer's access to the Platform as soon as reasonably possible following the occurrence of any of (a) to (d) and will seek to rectify any Platform or other failure outlined in (a) as soon as reasonably possible upon becoming aware of such failure.

## 6. CUSTOMER'S REPRESENTATIONS, WARRANTIES, AND RESPONSIBILITIES

The Customer represents to Service Provider at all times that:

- (a) the Customer is acting as principal for its own account and has full power and authority to enter into and act according to these Terms;
- (b) all sums paid to Service Provider belong to the Customer and are not subject to any charge or other rights of any other third parties;
- (c) all information supplied to Service Provider by the Customer is accurate in all material respects, so far as the Customer is aware;
- (d) the Customer is not buying currency for the purposes of investment or speculation;
- (e) the Customer will provide to Service Provider, upon request, such information regarding its financial and business affairs and/or identity, as Service Provider may reasonably require (including without limitation any information required for Service Provider to be able to comply with its anti-money laundering obligations);
- (f) the Customer will comply with all applicable laws, rules and regulations regarding the Customer's data and will use the Platform only for lawful purposes;
- (g) the Customer's access and use of the Platform do not and shall not violate any applicable law or any agreement by which the Customer is bound;
- (h) the Customer is solely responsible for the content of any data or transmissions using the Platform, or any other use of the Platform by the Customer or by any person or entity the Customer permits to access the Platform. The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account;
- (i) the Customer is solely responsible for the quality, accuracy, and completeness of the Customer's data transmitted via the Platform. The Customer must provide and/or obtain any equipment or telecommunications lines and links that may be necessary for the Customer to use the Platform;
- (j) the customer acknowledges that the customer has not relied upon any representations or warranties made by Service Provider except as specifically set forth in this Agreement;
- (k) certain software and equipment used by the customer may not be capable of supporting certain features of the platform; and

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- (l) the Customer shall indemnify and, on demand, compensate Service Provider for losses and expenses from any action Service Provider takes to seek to cover or reduce its exposure under any Contracts as a result of:
  - i. Service Provider acting on a written, oral, telephone, fax or electronic Order which reasonably appeared to Service Provider to be from the Customer or an Authorised Person; or
  - ii. Service Provider exercising its rights under this Agreement to close out all or any part of any Contract before its applicable Maturity Date.

## 7. TERM AND TERMINATION

- (a) Term. This Agreement will come into force on the date the Customer registers for the Services and will continue in effect for an initial term of 1 year (the 'Initial Term'). Upon expiration of the Initial Term and each year thereafter, the term of the Agreement shall automatically renew for an additional 1 year.
- (b) Termination by the Customer – the Customer can terminate this Agreement at any time and with immediate effect in writing.
- (c) Termination for Cause. Either party may terminate this Agreement if:
  - i. the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) days after receipt of written notice from Service Provider;
  - ii. the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or
  - iii. the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.
- (d) Termination due to inactivity. After the Initial Term, Service Provider may terminate this Agreement if the Customer has not partaken of Service Provider's Services in the preceding six months provided that Service Provider will give Customer prior notice of such termination.
- (e) Additional Grounds for Termination. Service Provider may suspend Services and terminate this Agreement at any time without prior notice if:
  - i. a financial regulator, regulatory agency, or law enforcement agency posts a warning with regard to the Customer;
  - ii. any governmental, regulatory, or judicial authority directs Service Provider to suspend or terminate this Agreement;
  - iii. a banking or other financial service provider of Service Provider reasonably requests that Service Provider terminate this Agreement for reasons of regulatory compliance; or
  - iv. Service Provider has reason to believe that the Customer is engaged in fraud, money laundering, or terrorist financing.
- (f) No Liability for Termination. Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its Terms.

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(g) Effect of Termination. Upon the effective date of termination or expiration of this Agreement:

- i. The Customer will immediately cease all use of the Platform; and
- ii. any and all payment obligations of the Customer under this Agreement for Services provided through the effective date of termination will immediately become due.

## 8. PERSONAL DATA

The Customer permits Service Provider, during the Term, to store, copy and otherwise use the Customer's data ('Personal Data') on the Platform for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under this Agreement, and exercising its rights under this Agreement.

The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to Service Provider under or in connection with this Agreement. The Customer acknowledges and agrees that in the event Service Provider will be processing any Personal Data on behalf of the Customer, the Customer, if required by applicable data protection legislation or government guidelines, will inform the applicable third parties of any such processing and serving of Personal Data by Service Provider and will ensure that such third parties have given any required consents.

The Customer authorizes Service Provider to collect, use, store or otherwise process Personal Data to enable Service Provider and/or members of its group or associates to provide and/or improve the Services, including passing Personal Data to individuals or organizations that may be located in countries outside the European Economic Area ('EEA').

Service Provider will take steps to ensure that all Personal Data transferred outside the EEA is appropriately protected. Service Provider will treat all Personal Data as confidential to the Customer, and will handle all such information in accordance with the Data Protection Act 1998 and Service Provider's Privacy Policy, including taking all steps reasonably necessary to ensure that Personal Data is protected from unauthorised access and use.

Service Provider may use Personal Data to provide the Customer with news and other information on Service Provider's services and activities that may be useful to the Customer, unless the Customer notifies Service Provider in writing that Personal Data should not to be used for such purposes. The Customer may obtain a copy of the Personal Data collected by Service Provider by contacting Service Provider by email to [compliance@supercapital.uk](mailto:compliance@supercapital.uk).

## 9. CUSTOMER INSTRUCTIONS

The Customer shall give Service Provider electronic instructions relating to a Transaction for the purchase or sale and delivery of currency (the 'Order'). The Customer may authorise any other person (an 'Authorised Person') to give Orders on its behalf and Service Provider is entitled to act upon instructions which are, or appear to be, from the Customer or any Authorised Person.

Following receipt of an Order, Service Provider shall subsequently transmit electronically to the Customer a note which will confirm the details of the Order (the 'Contract Note'). Once Service Provider has transmitted a Contract Note confirming an Order, the Customer may only amend or cancel the Contract Note if Service Provider expressly agrees (and any such amendment or cancellation shall be on the conditions specified by Service Provider).

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Service Provider may require further confirmation or information from the Customer or Authorised Person of any Order. The Customer does not have any right under the Financial Services (Distance Marketing) Regulations 2004 to cancel any Contract. However, it may terminate a Contract entered into under these Terms prior to the Maturity Date of such Contract by giving written notice to Service Provider by email SUBJECT TO the following conditions:

- (a) each party will remain liable to perform accrued but unperformed obligations which have fallen due before termination, but all other rights will cease upon such termination;
- (b) The Customer will be liable for all of the costs, expenses and losses (and interest at the rate referred to in Clause 14 INTEREST on any such sums) that Service Provider may incur (including any action it may take to cover or reduce its exposure) as a result of Service Provider entering into such Contract with the Customer (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to such Contract).

Based on the sole discretion of Service Provider, any excess amount held by Service Provider in respect of the Contract may be returned to the Customer after deducting all other sums due to Service Provider.

#### 10. TYPES OF CONTRACT

Subject to the Terms of this Agreement, Service Provider, will enter into Contracts for the sale, purchase and delivery of currency with the Customer for:

- (a) spot settlement ('Spot Contracts'), with a Maturity Date of TWO business days;
- (b) forward settlement where the Maturity Date can be any date in the future after TWO business days ('Forward Contract'); and
- (c) an exchange rate and settlement date to be determined when the rate desired by the customer becomes available in the market (a 'Limit Order').

With respect to all Contracts:

- (a) The Customer shall immediately pay a part payment as a deposit to secure the Trade ('Margin'), as specified below (see 11 MARGIN). Upon execution of the Transaction, the Customer shall subsequently pay any outstanding balance of the sold currency into a nominated account in cleared funds in accordance with the timescale specified below.

Margin calls will be made as specified below (see 11 MARGIN). The Customer will have the right to claw-back any Margin held by Service Provider in excess of the minimums specified below.

With respect to Forward Contracts:

- (b) the Customer will be required to notify Service Provider not less than 24 hours before the Maturity Date of any Forward Contract or any draw down, with the details of the beneficiary, the payment means and delivery instructions.
- (c) subject to any facility, Service Provider will require Margin as specified in the table below and Service Provider will be entitled to request from the Customer additional Margin in amounts notified by Service Provider to the Customer in the event of exchange rate fluctuations at any time prior to the Maturity Date.

All requests for additional Margin must be met within 24 hours of Service Provider's request or Service Provider reserves the right to close out all or any part of the original

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Transaction. Service Provider also reserves the right to change the Margin requirement from time-to-time upon notification to the Customer.

- (d) With Service Provider's agreement, the Customer may draw down against a Forward Contract at any time up until its Maturity Date.
- (e) Service Provider may agree with the Customer at any time prior to the Maturity Date to roll forward all or part of a Forward Contract until a later date upon agreement as to the terms and amounts payable by the Customer to Service Provider.

11. MARGIN

- (a) **IMPORTANT.** The Customer will be required to provide Margin at an amount to be agreed with Service Provider. All Margin liabilities for Transactions executed by the Customer will be applied against the Margin account.
- (b) Service Provider Services cannot be provided unless the Margin account is funded into an account designated by Service Provider. If Margin is not available in the Margin account to cover the Margin requirement, then the Transaction will not be executed.
- (c) Margin can be provided in a choice of currencies – GBP, EUR, CHF, SEK and USD.
- (d) Margin requirements can be varied by Service Provider at their discretion to reflect the risk of the Customer and market conditions.

12. POSITIONS

- (a) Netting. All open Transactions executed by the Customer will be netted to give the Net Open Position ('NOP') exposure per currency pair (resolved into GBP).
- (b) Position Mark to Market. Open positions will be marked to market giving rise to a Net Open Equity ('NOE') adjustment (resolved to GBP).
- (c) Pre-Trade Margin Requirements. At the time of a Transaction being executed by the Customer, the Margin requirement for the trade will be calculated as per below:

CONTRACT TYPE	MARGIN REQUIREMENT
<b>SPOT/LIMIT</b>	5.0% of Sell Currency
<b>FORWARD up to 1 MONTH</b>	5.0% of Sell Currency
<b>FORWARD 1 to 6 MONTH</b>	5.0% of Sell Currency
<b>FORWARD over 6 MONTHS</b>	10.0% of Sell Currency

- (d) Margin Calls. The Margin Ratio ('MR') is calculated as follows:  $MR = \text{Margin deposit} / (\text{NOP} + \text{NOE})$ .

In the event that The Customer's MR, inclusive of all Customer's Transactions) falls to 1%, Service Provider will call the Customer for additional Margin to take the MR back to a minimum of 5.0% and the Customer will have a maximum of 24 hours in which to increase their Margin collateral deposit.

If no funds are posted by The Customer within 24 hours (or proof of funds being sent is not provided), Service Provider will automatically close-out the Customer's open Transactions so as to return the MR to a minimum of 5.0%

If at any time, the MR diminishes to 0.1%, Service Provider will automatically close-out the Customer's open Transactions so as to return the MR to a minimum of 5.0%. Service

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Provider has total discretion on what Transactions are closed. However, Service Provider will make reasonable efforts to contact and discuss with the Customer before closing any Transactions.

### 13. SETTLEMENT & PAYMENT

The Customer must pay all funds for settlement, including Margin requests in FULL, including any applicable transfer charges, by electronic transmission in cleared funds into a segregated client account designated by Service Provider (the 'Transaction Account') on or before the Maturity Date) for the full value of the currency to be sold by the Customer under the Contract (the 'Sale Currency').

If paying by SWIFT, the customer must ensure they elect "OUR" ("Payer to pay ALL") charges when instructing their bank. Failure to select this option will result in deductions being made by the banks in the SWIFT network and incomplete funds being credited to your account. This will cause delays in settlement of your transaction, incurring interest costs in accordance with clause 14 below.

Service Provider may also deduct from any payment any fees, costs, taxation liabilities, or charges incurred by Service Provider in respect of any Transaction. Where the Transaction Account is held in any bank, Service Provider or its Agent will hold and operate the account as a segregated client account.

Funds must come from an account in the name of the account holder. Funds may only be accepted from third parties subject to prior notice and agreement from the Service Provider entirely at our sole discretion and will be charged a fee of £5.00. Retrospective acceptance of funds from a 3<sup>rd</sup> party will be subject to a fee of £10.00.

Customers should be aware that receipt of funds ('Buy Currency') from the Service Provider into the Customer's nominated/beneficiary bank account may result in charges being applied by the beneficiary/receiving bank which are the responsibility of the Customer.

### 14. INTEREST

If The Customer fails to settle a Contract when it falls due, interest will be charged on the GBP equivalent of the Sale Currency, or some other currency equivalent as agreed by prior arrangement with the Service Provider, at a rate determined as a function of the difference between the funding and deposit rates of the Buy and Sell Currencies ('Net Funding Rate').

The Net Funding Rates for each currency will be displayed on the Platform. Interest will be calculated on a daily basis by the Service Provider and debited (or credited if the Buy Currency deposit rate is higher than the Sell Currency funding rate) to the Customer's account on the next day.

If The Customer fails to make any other payment required under these Terms when it falls due, interest will be charged on the outstanding sum at a rate of five per cent (5%) per annum applied on a daily basis over the base rate of the Bank of England.

### 15. DISPUTES

If a dispute arises between Service Provider and the Customer, relating to the existence or Terms of any Contract (a 'Disputed Contract'), Service Provider may close out or take any other action it reasonably considers appropriate in relation to the Disputed Contract, pending settlement of the dispute, without previously notifying and/or without having received instruction from the Customer.

Service Provider will notify The Customer (orally or in writing) of what action it has taken as soon afterwards as is practical but if it does not, the validity of its action shall not be affected.

16. DEFAULT, CLOSE OUT & REFUSAL TO PERFORM

Service Provider may refuse to perform or may close out all or any part of any Contract, with no liability for any losses that may be sustained as a result and without giving prior notice to the Customer or receiving any instructions from the Customer, upon or at any time after any of the following events:

- (a) the Customer fails to make any payment when due;
- (b) the Customer takes step to or suspends payment of its debts;
- (c) the Customer fails in any respect fully and promptly to comply with any obligations to Service Provider or information or representations supplied by the Customer are or become materially inaccurate;
- (d) it becomes or may become unlawful for Service Provider to maintain or give effect to all or any of the obligations under these Terms or if Service Provider or the Customer is requested not to perform or to close out a Contract (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding; or
- (e) Service Provider considers it necessary to do so for its own protection including (without limitation) in the following circumstances:
  - i. protection from fraud;
  - ii. protection from Customer default; and
  - iii. protection from broad-based market failure.

If The Customer becomes aware of the occurrence of any event referred to in this clause, it shall notify Service Provider immediately.

If any event referred to above takes place, Service Provider shall, at its discretion, be entitled to cancel any Contract then outstanding and charge the Customer with associated losses. In addition, except in the case of 16(d) Service Provider shall also be entitled to recover other expenses and costs. Any excess amount held by Service Provider in respect of Contracts shall be returned to the Customer after deducting all other sums due to Service Provider.

17. ELECTRONIC IDENTIFICATION CHECKS

The Customer acknowledges and agrees that Service Provider is permitted to carry out an electronic database search and search credit reference agencies in order to verify the identity of the Customer or any material shareholder or member of the Customer if the Customer is not an individual. If such searches are carried out, Service Provider may keep records of the contents and results of such searches in accordance with all current and applicable laws.

18. MONEY TRANSFER AND THE PAYMENT SERVICES REGULATIONS

This clause (and its sub-clauses) explains certain important rights and obligations, including our liability to you, under the Payment Services Regulations 2009 (SI 2009 No. 209) ('Regulations').

After a foreign exchange trade is completed, we cannot hold onto the proceeds of the foreign exchange trade ('Traded Funds') to which our client is entitled indefinitely and must send them either to the account where our client has directed us to send them or back to

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our client ('Money Transfer'). The Regulations set down some rules that we must follow to protect our client where they ask us to send on or transfer these proceeds for them.

This clause (and its sub-clauses) applies to any Money Transfer governed by the Regulations which you ask us to perform for you once the Transaction has been completed. A Money Transfer will be governed by the Regulations where the recipient of the Traded Funds is located within the European Economic Area ('EEA') and it is carried out in either euro, sterling or a currency of another EEA state that has not adopted the euro as its currency. The EEA comprises all member states of the European Union, together with Norway, Iceland and Lichtenstein.

This clause (and its sub-clauses) does not apply to the Transaction or to any payment you make to us for the Transaction, or to any payment we make to any person, or any person makes to us, in order to perform the Transaction.

(a) Information and notifications concerning a Money Transfer:

- i. The Regulations require us to provide certain information and notifications to you concerning any Money Transfer we perform for you.
- ii. We will communicate such information and provide you with such notifications using a method of communication which we reasonably consider appropriate, taking into account the nature of the information or subject matter of the notification, the contact details you have given us and how you are doing business with us or have done business with us in the past.

This means that, save as otherwise expressly provided for in this clause and save for notices in writing required to be given by us referred to in this clause, we may do so over the phone, by sending you an email or by writing to you.

We may also direct you to particular pages or sections of our website and may provide you with or make available to you a copy of any brochures, leaflets or other documentation which we produce which we reasonably consider may be helpful.

We will provide you with any information that we are required by the Regulations to provide to you concerning any Money Transfer we perform for you in such manner and form and as often as we reasonably consider necessary to properly comply with our obligations.

- (b) Consent to carry out a Money Transfer. We will only accept an instruction to perform a Money Transfer which is given to us in writing or conveyed to us using our Platform. Your instruction so delivered, including all the details we require to perform a Money Transfer will be treated by us as your consent to us to go ahead with and our authorisation to perform that Money Transfer.

Further information and explanation about the steps you need to take to authorise us to perform a Money Transfer for you will be given to you when you ask us to perform a Money Transfer for you.

- (c) Withdrawal of consent to carry out a Money Transfer. Where you have authorised us to perform a Money Transfer, we will go ahead with that Money Transfer unless:
- i. you provide us with clear instructions no longer to proceed with that Money Transfer by notice in writing received by us not later than the end of the last business day (4.30pm local time) before the day that the Money Transfer was due to take place; or

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ii. we agree in writing with you that we will not do so.

For the avoidance of doubt, if the instructions in your notice are unclear we will not treat your consent to the Money Transfer as being withdrawn and we will proceed with the Money Transfer.

Where you instruct us in writing that you no longer wish us to carry out a Money Transfer or we agree in writing with you that we will not do so (each a 'Cancellation'), and you do not give us instructions in writing to carry out an alternative Money Transfer for you within 10 (ten) days of a Cancellation, we reserve the right to treat the Contract as terminated by you.

- (d) **Unauthorised Money Transfer.** We may be liable to you under the Regulations where we perform a Money Transfer for you that you did not authorise us to perform. Where you believe we may have performed such a Money Transfer, you should let us know as soon as possible. We will then investigate the matter.

Where we have performed such a Money Transfer, we will immediately refund to you in full the amount of that Money Transfer. You will not be entitled to any such refund:

- i. if you do not inform us by notice in writing without undue delay (and in any event not later than 13 months after the date on which the unauthorised Money Transfer was made) on your becoming aware that an unauthorised Money Transfer may have occurred; or
  - ii. if the Money Transfer was authorised by you.
- (e) **Failure to perform or incorrect performance of a Money Transfer.** We may be liable to you under the Regulations where we fail to perform or incorrectly perform any Money Transfer that you authorised us to perform. Where you believe we may have failed to perform or incorrectly performed such a Money Transfer, you should let us know as soon as possible and, if you request, we will make immediate efforts to investigate the matter and let you know the outcome of our investigation.

Where we have failed to perform or incorrectly performed such a Money Transfer, we will without undue delay make good and correct the error and deliver the amount of the unperformed or incorrectly performed Money Transfer to your nominated account as originally instructed.

You will not be entitled to the remedy mentioned above:

- i. if you do not inform us by notice in writing without undue delay (and in any event not later than 13 months after the date on which the incorrect Money Transfer was performed) on your becoming aware that failure by us to perform a Money Transfer authorised by you or incorrect performance by us of a Money Transfer authorised by you may have occurred; or
- ii. where we are able to show that the authorised amount was received at the appropriate time by the person to whom you instructed us to send the Traded Funds; or
- iii. if the failure to perform or incorrect performance was due to you or any Authorised Person providing us with incomplete or incorrect information; or
- iv. was otherwise due to your fault or the fault of any Authorised Person.

We will have no liability to you for failure to perform or incorrect performance of a Money Transfer where the reason for this was our refusal to proceed with that Money Transfer or any part of it as set out below:

Hawk FX is a trading name of Supercapital Ltd, incorporated in England and Wales no. 04306276.

Registered Address: 3 Beeston Place, London, SW1W 0JJ

Supercapital Ltd is authorised & regulated by the Financial Conduct Authority (FCA) under the Payment Services Regulations 2009 for the provision of payment services, no. 662541.

Supercapital Ltd is registered under Money Laundering Regulations 2007 with HMRC, no. 12752676.

- (f) Refusal to perform a Money Transfer. We may refuse to perform a Money Transfer at any time for any reason. Where we refuse to perform a Money Transfer:
  - i. unless it is unlawful for us to do so, we will tell you;
  - ii. if possible, we will let you know our reasons for our refusal; and
  - iii. if the refusal is due to any factual errors, we will tell you what these are and how to correct them.
- (g) Limitation of liability for a Money Transfer. Subject to Section 4, our total liability to you in connection with a Money Transfer is limited to the full amount of the Money Transfer together with any charges for which you may be responsible and any interest which you may be required to pay as a consequence of any non-performance or incorrect performance by us of the Money Transfer.

If we contravene any requirements imposed on us under Part 6 of the Regulations (which sets out certain obligations on us as a payment service provider, including relating to unauthorised, unperformed and incorrectly performed Money Transfers), we will not be liable to you where this is due to abnormal and unforeseeable consequences beyond our control, the consequences of which would have been unavoidable despite all efforts by us to the contrary or where this is due to other obligations imposed on us under other provisions of community or national law.

- (h) Additional Information relating to a Money Transfer. If you ask us to provide you with any information or materials which we are not required to provide under the Regulations, we may ask you to pay us a fee to cover our costs of providing them to you. If you do ask us to do this, then we will advise you of any fee that may apply.

#### 19. MISCELLANEOUS

- (a) Notices. Any notice hereunder shall be in writing and shall be given by regular mail, addressed to the registered addresses of the parties to this Agreement, or by email to the registered email address of the Customer or to [compliance@supercapital.uk](mailto:compliance@supercapital.uk) in the case of Service Provider.

Notice shall be deemed to be given upon the earlier of actual receipt or three (3) days after it has been sent by mail or the equivalent, properly addressed and with postage prepaid. Either party may change its address for notice by means of notice to the other party given in accordance with this Section.

- (b) Assignment. The Customer may not assign this Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be void and a default of this Agreement.
- (c) Complaints. A copy of the Company complaints policy is available upon request. Customers based in the EU that have contracted with us through electronic means may be eligible to use the European Online Dispute Resolution Platform, accessed via the following link - <http://ec.europa.eu/odr>.
- (d) Governing Law and Forum. This Agreement is made under and will be governed by and construed in accordance with the laws of England and Wales (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods.

Any dispute arising out of or relating to this Agreement, or the interpretation, making, performance, breach or termination thereof, shall be settled by a court of competent

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jurisdiction in London, England. The Customer's address for purposes of service of process shall be the address designated for notices in this Agreement.

- (e) Entire Agreement and Waiver. This Agreement constitutes the entire agreement between Service Provider and the Customer with respect to the subject matter hereof. All prior agreements, representations, and statements with respect to such subject matter are superseded. Any failure of either party to exercise or enforce its rights under this Agreement shall not act as a waiver of subsequent breaches.
- (f) Severability. In the event any provision of this Agreement is determined to be unenforceable by a court of law, such provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect.
- (g) Amendment. This Agreement may be modified at any time by Service Provider. Any such amendments will not be notified to the Customer but will be published immediately on Service Provider's website.
- (h) Third Party Rights. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

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