

## Xendpay Limited TERMS AND CONDITIONS

(Effective from and including 15 February 2018)

### 1. ABOUT THIS AGREEMENT

1.1 **About us:** this agreement is made by Rational Foreign Exchange Limited through its agent Xendpay Limited (“Xendpay”). Rational Foreign Exchange Limited is a company registered in England and Wales under 05385999 and whose registered and head office is at Level 32, One Canada Square, London, E14 5AB, United Kingdom (“Xendpay”, “we”, “us”, “our”).

1.2 **Regulatory information:** We have the following authorisations and registrations:

1.2.1 authorised by the Financial Conduct Authority as an Authorised Payment Institution under the Payment Services Regulations with FCA registration number 507958;

1.2.2 a registered money services business with HM Revenue and Customs No. 12206957.

1.3 **Our Services:** We provide foreign exchange and international payment services (“Services”) to our corporate and personal clients (“Client”, “you”, “your”).

1.4 **About these terms:** These terms and conditions (“Terms”) explain how you can place an Order for our Services and set out the terms and conditions which will apply to any Contract that is made between us as a result of our acceptance of your Order. Your attention is particularly drawn to the following:

- The key information and risks of using our Services (see clause 3).
- Cancellation rights (see clause 8).
- We have limitations on our liability to you (see clause 15).
- You are liable to us for any breach of these terms and conditions (see clause 16).
- Your right to take any complaint you may have to the Financial Ombudsman (see clause 18).

1.5 When you place an Order, you will be required to read, and accept these Terms. You agree that if you use our Services you will be taken to have agreed to these Terms. If you do not agree to these Terms, you should not place an Order with us. We recommend that you print a copy of them for your future reference.

1.6 These Terms will apply to all Contracts between you and us however you access our Services (including through our Website or through any mobile device application).

### 2. CHANGES TO THESE TERMS

2.1 **Changes to these Terms:** We may need to change these Terms from time to time to:

- 2.1.1 comply with law or regulations;
  - 2.1.2 reflect changing market conditions; or
  - 2.1.3 meet our changing business requirements.
- 2.2 **Changes to our Regular Payments Service** If your Contract is for our Regular Payments Service:
- 2.2.1 we will notify you in writing (either by email or post) of any proposed changes to these Terms and the Contract at least two months before the changes are to take effect. However, we may apply a change in exchange rate that is based on a change to a reference exchange rate or is more favourable to the customer immediately and without notice provided that this change is applied in a non-discriminatory manner;
  - 2.2.2 such changes will come into effect provided you do not notify us that you are opposed to the change before the date specified;
  - 2.2.3 you will be deemed to have accepted the changes, unless you notify us otherwise; and
  - 2.2.4 you and we have the right to terminate the Contract without charge, at any time before the proposed date of the change.
- 2.3 **Single Payment Service: Notice of changes:** We will give you advanced notice of such changes to a Single Payment Service and will post them on our Website so that you can view them when you next log in.
- 2.4 **Changes required by law:** We may make changes without your specific agreement only where those changes are required to comply with law or regulations.
- 2.5 **Single Payment Service Transactions: Date changes are effective:** Changes will only apply to Single Payment Service Transaction Contracts which are entered into on or after the date upon which the changes become effective. However, the changes will also apply to Contracts entered into before such date if required by law or regulatory requirements.
- 2.6 **Your agreement to the changes:** By placing an Order after the new terms are effective, you agree to be bound by the new terms. If you object to the changes, you should not place any further Orders with us.
- 2.7 **Changes requested by the Client:** Changes to these Terms requested by a Client will only be effective if agreed to by us in writing.

### 3. KEY INFORMATION AND RISKS

- 3.1 **No financial advice:** In providing our Services, we do not provide you with any investment advice including any guidance on the merits of a particular Order or its likely implications, nor can we advise on or recommend to the Client any investment products. To the extent that we provide you with any advice, it will relate only to the mechanics of the transaction you are proposing to enter into or to publicly available information.

3.2 **No liability for currency fluctuation:** The foreign currency market is volatile and outside of our control. We will not be liable to you for any loss or damage which arises as a result of any currency fluctuation between the Deal Confirmation and the Value Date. You agree that in placing an Order, you have relied purely on your own judgement and you have not relied on anything not expressly contained within these Terms.

3.3 **Provision of Information:** We will provide certain information to you prior to entering into a Contract which we are required to provide under the Payment Services Regulations.

We will communicate this information either over the phone or in writing (through our online ordering process, by letter or by email). If we communicate this information over the phone, we will confirm it by email. We will also provide the information to you in paper or in a downloadable format, if you request it.

#### 4. PRIVACY POLICY

4.1 **Your information:** We understand that the privacy of your personal information (and that of your Authorised Persons) is important and we will not share it with anyone else for their use in any marketing or promotional campaign.

4.2 **Our privacy policy:** Any personal information you provide to us (in any capacity) via our Website, over the telephone or otherwise may be collected, stored, processed and used in accordance with our [Privacy Policy](#). By continuing to use our Services you consent to such use of your personal information.

#### 5. REGISTRATION AND ELIGIBILITY

5.1 **Registration:** Before Xendpay can provide any Services to you, you must register for an account on our Website or you can complete a paper registration form available from us on request. You are permitted to open one Personal and one Business account only.

5.2 **Proof of ID:** We may carry out an electronic verification of your identity. You may also need to provide us with evidence of your identity and proof of address so that we can complete our anti-money laundering process, together with any other information we may request.

5.3 **Re-registration:** If you do not use our Services for 12 months, you may need to re-register before we can perform any further Services for you.

5.4 **Eligibility:** To be eligible to register for and use our Services, you (or in the case of a corporate Client, your Authorised Persons) must:

5.4.1 be 18 years of age; and

5.4.2 not be suffering from any disability or impairment which may affect your capacity to enter into a Contract (or the Authorised Person's capacity to enter into a Contract on the Client's behalf).

5.5 **Accuracy of your information:** You are solely responsible for ensuring that the information you give to us is and remains true and accurate. You agree to inform us of any changes to such information either by changing your Client Profile online or by written notice to us.

5.6 **Password security:** It is your responsibility to keep safe and secure any passwords or other security devices used to access our Website or Services. You must notify us immediately of any actual or suspected loss or compromise of any of them.

## 6. PLACING AN ORDER

6.1 **Placing orders:** Once registered, you will be given a unique reference number. You can then place an Order by telephone, email, or through our Website. However, we may require written confirmation of any Order (or other Client instruction) at any time. An Order received from an email address in your Client Profile or through your account on our Website will be deemed to have been sent by you. The Contract will become binding in accordance with clause 7. By placing an Order through the order process described in these Terms, you acknowledge that you are authorising us to make the payment in accordance with the terms of the Contract that is formed

6.2 **Non-reliance:** You agree that in placing an Order, you have relied purely on your own judgement and you have not relied on anything not expressly contained within these Terms.

6.3 **Own account:** Orders will only be accepted from a Client acting on its own account and not from a person acting for or on behalf of, or as agent for, a third party (except Authorised Persons).

6.4 **Authorising payment:** By placing an Order through the order process described in these Terms, you acknowledge that you are authorising us to make the payment in accordance with the terms of the Contract that is formed.

6.5 **Using a Commercial Card:** If you place an Order using a Commercial Card, you agree that we may charge you the costs borne by us for the use of that specific Commercial Card in question. Charges will vary between issuers and will be disclosed prior to booking confirmation.

## 7. ACCEPTANCE OF AN ORDER

7.1 **Online:** If you place an Order through our Website, the following process applies:

**An acknowledgment** will appear on screen and sent via email at the time the order is placed online, which confirms that we have received your request to place an order.

**Deal confirmation** will be sent via email once the order has been processed. The Contract will be legally binding on you when we provide you with the Deal Confirmation.

7.2 **Email:** If you place an Order by email, the Contract will be binding on you when we process your email. You acknowledge that, if you place an Order by email, it may not be processed immediately. When we process your Order, we will send you a Deal Confirmation by email.

7.3 **Telephone:** If you place an Order by telephone, the Contract will be legally binding at the conclusion of the telephone call. We will send you a Deal Confirmation by email. If there is any discrepancy between the Deal Confirmation and the details of the Contract that have already been agreed in the telephone conversation, you must contact us within 24 hours of receipt of the Deal Confirmation, failing which the details in the Deal Confirmation will be deemed to be correct. In the event of any dispute, the transcript of our telephone conversation may be used as evidence as to the terms of the Contract that was entered into.

- 7.4 **Separate Contracts:** Each Deal Confirmation issued by us to you will amount to a separate Contract for an individual payment transaction between us which is subject to these Terms.
- 7.5 **No obligation to accept Orders:** While we will endeavour to comply with your requests for Services, there may be circumstances in which we are unable to do so. Therefore, we always reserve the right to refuse to accept your Orders and to do so without giving you any reasons and without incurring any liability to you for any resulting loss or damages incurred by you or any other party.
- 7.6 **Out-of-Market Quotes:** If we quote you a rate or Purchase Price that is clearly a mistake on our part as the result of a technical or human error, it is not binding on us. You must notify us as soon as the mistake comes to your attention and we will re-quote as soon as possible
- 7.7 **Receipt of an Order and time for payment:** Pursuant to a Contract, we will agree with you that execution of the payment is to take place either:
  - 7.7.1 on a specific day;
  - 7.7.2 on the last day of a certain period; or
  - 7.7.3 the day on which the payer puts funds at your disposal,
 and the time of receipt of your payment order is deemed to be that day or the next Business Day if this falls on a non-Business Day. This date is referred to in these Terms as the Value Date.
- 7.8 Once an Order is completed, we will not retain the proceeds unduly and will send them to the Recipient, Your Nominated Account or otherwise return them to you.
- 7.9 The payment will be credited to the Recipient's bank account on or before:
  - 7.9.1 the end of the Business Day following the Value Date for payment transactions except those initiated on paper; and
  - 7.9.2 the end of the second Business Day following the Value Date for payment transactions initiated on paper.
- 7.10 For further protection, Xendpay may also take steps to safeguard Client monies consistent with our obligations under the Payment Services Regulations. Further information on the steps Xendpay take can be found by contacting us by email to [info@xendpay.com](mailto:info@xendpay.com) or writing to Chief Operating Officer at Xendpay.

## 8. CANCELLING AND REFUSING AN ORDER OR CONTRACT

- 8.1 **Cancellation before acceptance:** You are free to cancel an Order at any time before we have accepted it and it becomes legally binding.
- 8.2 **Cancellation after acceptance:** If you have placed an Order under a Spot Contract, Limit Order or our Regular Payments Service which has been accepted, you may cancel or terminate the Contract at any point up to the end of the Business Day preceding the Value Date by notifying us by telephone, post, email, or through our Website and no charges will apply. Cancellation of an Order may also be made in accordance with clause 8.3 below.

- 8.3 **Payment:** failure to make payment for an accepted Order within five working days could lead to a cancellation of the contract, potentially causing cancellation fees to be payable, and your account being Suspended until the cancellation fee is paid
- 8.4 **Cancellation at our discretion:** We may at our discretion accept cancellation requests. However, this may be subject to cancellation fees which will be communicated to you before cancellation is accepted.
- 8.5 **Refund:** If we accept your cancellation of an Order, we will refund you the funds transferred to us for the purposes of the Order less any applicable cancellation or administration fees applicable at the time the refund is made.
- 8.6 **Refusal to accept an Order:** If we refuse to accept an Order or to complete a payment under a Contract, we will notify you of the refusal and, if possible, the reasons for such refusal together with the procedure for rectifying any factual errors that led to the refusal by the end of the Business Day following the day that we received the Order.
- 8.7 **Regular Payments Service:** In a Contract for our Regular Payments Service unless it is otherwise unlawful, we can only refuse to make one or more of the payments required under such Contract where the following conditions are met:
  - 8.7.1 one of the grounds for terminating the Contract specified at clause 14.1 has arisen;  
or
  - 8.7.2 if there is a Disruption Event

## 9. AUTHORISED PERSONS

- 9.1 **Individual Clients:** For private individual Clients, we will only accept Orders placed or instructions given by the Client, unless the Client has a Joint Account with us, in which case the provisions relating to Joint Accounts at clause 10 will apply. The following provisions of this clause 9 will apply to corporate Clients only.
- 9.2 **Corporate Clients:** For corporate Clients, we will only accept Orders placed or instructions given by an Authorised Person.
- 9.3 **Authorised Persons:** At the time of registration, you are required to supply us with the name and contact details of all personnel within your business whom have authority to act on your behalf in connection with our Services. Such personnel will become Authorised Persons when they have been accepted as Authorised Persons by us.
- 9.4 **Authority of an Authorised Person:** We will treat each Authorised Person as having authority from the Client to instruct us in respect of all matters relating to the Services unless you notify us that an Authorised Person is to have a more limited scope of authority.
- 9.5 **Removal of an Authorised Person:** You may remove an Authorised Person or change the registered contact details or scope of authority of an existing Authorised Person by updating your Client Profile or sending written notice of the change to us.

## 10. JOINT ACCOUNTS

- 10.1 **Responsibility of joint account holders:** A registration may be made by two private individuals jointly (“**Joint Account**”). Each Joint Account holder will be (both together and separately)

responsible for the performance of all obligations of the Client under these Terms and each Contract.

10.2 **Joint account holders under these Terms:** All references in these Terms to “the Client”, “you” or “your” shall be to both Joint Account holders except that:

10.2.1 each individual Joint Account holder has authority to place Orders, enter into Contracts and provide instructions to us on behalf of both Joint Account holders; and

10.2.2 any notice or other communication which we are required to give pursuant to these Terms will be treated as properly given if it is given to only one of the Joint Account holders.

## 11. YOUR OBLIGATIONS

11.1 You agree to:

11.1.1 provide complete and accurate sort code and account number information or for international payments IBAN number for the Recipient of the funds and you acknowledge that the funds will be transmitted to the account details submitted by you;

11.1.2 examine all confirmations and communications sent by us within a reasonable time after receiving them and to promptly advise us of any mistake or discrepancy;

11.1.3 on request, supply us with all the information and documentation necessary to enable us to comply with all applicable laws and regulations, including the Money Laundering Regulations 2007. For corporate Clients, this might include proof of your registered office, principal business address, confirmation of beneficial ownership, access to corporate documentation (such as Memorandum and Articles of Association) and proof of identity of any director and/or Authorised Person. For private individuals this might include proof of identity and residential address;

11.1.4 on request, supply us with complete and accurate details about the Recipient (if different from the Client) including, as applicable, date of birth, name and address details, passport number and any other information required by our banking partners;

11.1.5 promptly update us about any changes to your details held by us;

11.1.6 not use, and to procure that your Authorised Persons do not use, our Services for any speculative purpose or to try to profit from exchange rate fluctuations; and

11.1.7 transfer the Purchase Price to Our Account promptly on or after receipt of the Deal Confirmation. We will send you one or more reminder emails if we have not received the Purchase Price to Our Account within two Business Days. If we receive no response or payment from you within five Business Days from the date the order was approved, then we may terminate the Contract in accordance with clause 14. If you fail to honour an order by not transferring your payment in full to our bank account, you could be charged a cancellation fee and your account will be locked until the cancellation fee is paid.

## 12. FEES

12.1 You may be required to pay service, transaction and/or administration fees for our Services (“Fee”). If a Fee is payable, we will notify you of the Fee as follows:

12.1.1 **Online:** if you place an Order through our Website, on the screen;

12.1.2 **Email Orders:** by email prior to us processing your Order;

12.1.3 **Telephone Orders:** during the telephone call.

You will be given the opportunity to confirm your Order after we have notified you of the Fee and prior to the Contract becoming binding on you.

## 13. PAYMENT

13.1 **Spot Contracts:** You will pay the Purchase Price under a Spot Contract in full into Our Account on such date or dates as we may direct, but no later than by 12 midnight on the second Business Day after the date of the Deal Confirmation.

13.2 **Payments:** All payments due from you to us pursuant to a Contract must be made into Our Account in the currency specified in the Deal Confirmation without set-off, counterclaim or deduction whatsoever. We will not accept cash or cheques.

13.3 **Cut-off times:** Banks have specified cut-off times for the receipt and dispatch of electronic payments. You acknowledge and agree that any delay in onward payment attributable to the cut-off times of the designated bank shall be a Disruption Event.

13.4 **Use of funds:** All funds provided by you (whether as security or otherwise) to us may be used by us to settle any liability incurred on your behalf or exposure to an increased market risk (as we may decide in our sole discretion in respect of any Contract) or in the event that you are unable to pay your debts or you fail to comply with these Terms or any provision of a Contract.

13.5 **Dishonoured payments:** If your payment is dishonoured or stopped for whatever reason, we shall charge an administration fee. The administration fee will be payable by the Client in addition to the amount due under the Contract. The administration fee will reflect any additional costs or fees incurred by Xendpay.

13.6 **Bank charges:** You will be solely responsible for any charges applied by your bank or the Recipient’s bank resulting from the receipt of funds into Your Nominated Bank Account.

13.7 **Interest on outstanding balance:** If you fail to make a payment in full or in part, the outstanding balance shall bear interest from the Value Date at the rate of 4 per cent per annum above the base rate of the Bank of England. Such interest / charges will accrue from the due date until Xendpay are in receipt of settlement in full, in clear funds by the Client.

13.8 **No interest payable on funds held by us:** You acknowledge and agree that we will not pay to you any interest on any funds held by us whether by way of deposit or otherwise.

## 14. TERMINATION OF THESE TERMS OR A CONTRACT

14.1 **Our right to terminate:** We may terminate all or part of any Contract without giving prior notice or any liability to you at any time after the occurrence of any of the following events:



- 14.1.1 the Client fails to comply with any of its obligations under these Terms or a Contract (including its obligation to pay the Purchase Price, Margin or any other sums to us);
  - 14.1.2 the Client fails to provide any information or documentation requested by us as part of our regulatory obligations;
  - 14.1.3 where the Client is an individual, the death of the Client;
  - 14.1.4 it becomes or may become unlawful for us to provide our Services to you under the Contract;
  - 14.1.5 we are requested to terminate the Contract (or any part thereof) by any regulatory authority, whether or not the request is legally binding;
  - 14.1.6 you are unable to pay your debts as they become due or you have a bankruptcy position presented against you, or you propose a form of composition or arrangement to your creditors, or if you cease or threaten to cease to carry on all or a part of your business; or
  - 14.1.7 where any of the events specified above, or anything analogous thereto, occurs under the laws of any applicable jurisdiction.
- 14.2 **Notice of an event:** If you become aware of the occurrence of any event referred to in this clause 14, you must give us immediate written notice of such event.
- 14.3 **No Payment of Profit:** We will not pay you any profit arising from terminating a Contract in any circumstances.
- 14.4 **Your right to terminate** You will have the right to terminate all or part of any Contract without giving prior notice or any liability to us at any time if we commit a serious breach of our obligations under these Terms or a Contract or we are unable to pay our debts as they become due or we have a bankruptcy position presented against us, or we propose a form of composition or arrangement to our creditors, or if we cease or threaten to cease to carry on all or a part of our business.
- 14.5 If your Contract is for our Regular Payments Service:
- 14.5.1 you may terminate these Terms and any Contract made under these Terms by giving one month's notice to us provided that you will be liable to pay and costs incurred by us which result from your termination; and
  - 14.5.2 we may terminate the Contract by giving two months' notice to you.

Any notice of termination given pursuant to this clause shall be subject to any Contract which has not been settled, closed or terminated prior to the termination date specified in the notice of termination.

## 15. OUR LIABILITY TO YOU

- 15.1 **No liability for delays:** You acknowledge that delays in the transmission and receipt of payments may occur. In particular, you acknowledge that we operate an online dealing platform that could be subject to technical, or other, problems, the nature and duration of

which may be beyond our control. Our Services also involve the use of intermediaries who are outside our control. Accordingly, while we do everything in our power to ensure the timely transmission of funds, we cannot guarantee that transfers of funds will always be made on time and cannot accept any liability to you for any loss suffered by you or any other person as a result of any delays in the transmission of funds.

- 15.2 **Exclusions of certain types of loss:** We are not liable, whether in contract, tort (including negligence) or otherwise in connection with these Terms or any Contract for any:
- 15.2.1 indirect or consequential loss or damage;
  - 15.2.2 loss of business, loss of opportunity, loss of profits or contracts or loss of interest on funds;
  - 15.2.3 loss of damage caused as a result of inaccurate or misleading information provided to us by the Client or an Authorised Person;
  - 15.2.4 loss or damage caused by an Authorised Person providing us with instructions which are against the Client's interests or outside of the scope of the Client's actual authority; or
  - 15.2.5 loss or damage caused by our refusal to accept an Order.
- 15.3 **Maximum liability:** Subject to clause 15.10, our total liability in connection with our performance or contemplated performance of the Contract is limited to the amount of the Purchase Price.
- 15.4 **Liability not excluded:** Nothing in these Terms shall exclude or limit our liability for death or personal injury or fraud or fraudulent misrepresentation.
- 15.5 **Our liability for incorrect, unauthorised or defective payments:** You must notify us without undue delay (and in any event within 13 months of the payment date) if we make any unauthorised or incorrect payment of your funds.
- 15.6 We will then immediately investigate your claim and notify you of the outcome. If, following our investigation, we reasonably consider that the payment was in fact authorised and made correctly, we will provide evidence of this to you.
- 15.7 However, if we discover that the payment was not authorised and/or was made incorrectly, we will immediately refund the amount of the unauthorised or incorrect payment to you and reimburse you for any charges or interest for which you become liable as a result of the unauthorised or incorrect payment provided that we will not be liable if you notify us of the error more than 13 months of the payment date.
- 15.8 If you notify us that a payment which is due has not been correctly made, we will make immediate efforts to trace the payment transaction and notify you of the outcome. If we are unable to prove that the payment has been made to the Recipient within the timeframe specified in the Contract, we will repay you the Purchase Price (or the part of the Purchase Price if the payment is only partially defective) and reimburse you for any charges or interest for which you become liable as a result of the defective payment.
- 15.9 We will not be liable to you for an allegedly incorrect, unauthorised or defective payment if you provide us with incorrect or incomplete:

15.9.1 Sort code and/or account number for payments to a UK bank account; or

15.9.2 The IBAN number for international payments,

however, we will make reasonable efforts to recover the funds provided that you pay any costs we reasonably incur in doing so.

15.10 We will not be liable to you for any (allegedly or actual) incorrect, unauthorised or defective payment or for any other failure under Part 7 of the Payment Services Regulations where this is attributable to:

15.10.1 abnormal and unforeseeable circumstances beyond our control, the consequences of which would have been unavoidable despite all efforts to the contrary; or

15.10.2 our other legal obligations imposed by national or EU law,

and clause 17 shall not apply to such failure.

## 16. YOUR LIABILITY TO US

16.1 Subject to clause 16.2, you shall be liable to us and repay us for any loss or damage suffered by us as a result of your (or an Authorised Person's) breach of these Terms or any Contract, or fraudulent use of our Services. This includes any legal costs that we may incur in order to enforce our rights or recover any amounts you owe us.

16.2 You are liable to us:

16.2.1 up to a maximum of £35 for each instance of fraud; and

16.2.2 for all unauthorised transactions if you act fraudulently.

## 17. DISRUPTION EVENT

17.1 **No liability in case of the Disruption Event:** Neither party will breach these Terms or any Contract nor be liable for delay in performing or failure to perform any of its obligations under any Contract if such delay or failure results from a Disruption Event for the period of time during which the Disruption Event continues. We will if necessary contact you as soon as reasonably possible to notify you of a Disruption Event which has resulted in our delay or failure to perform any of our obligations under a Contract.

17.2 **Right of termination for long term Disruption Event:** If the period of delay or non-performance continues for twenty-eight Business Days then you or we may terminate any Contract made between us by giving five Business Days written notice to the other party.

## 18. COMPLAINTS

18.1 We aim to provide the highest level of customer service possible. If you do experience a problem, we will always seek to resolve this as quickly and efficiently as possible. You can request a copy of our complaints procedure by emailing [complaints@xendpay.com](mailto:complaints@xendpay.com) or by writing to Xendpay at Level 32, One Canada Square, London, E14 5AB.

- 18.2 In the unlikely event that you are dissatisfied with any of our Services, in the first instance, in accordance with our complaint procedures, you should inform us of the complaint as soon as you can in writing. Where the initial complaint is verbal it must be followed up immediately with a written complaint to the Complaints Manager at Level 32, One Canada Square, London, E14 5AB.
- 18.3 If you are dissatisfied with our response you may refer the matter to the Financial Ombudsman Service situated at South Quay, 183 Marsh Wall, London, E14 9SR.

## 19. NOTICES

- 19.1 Where any notice is required by our Terms to be given in writing, it must be written in the English language and:
- 19.1.1 where it is to be given by the Client, it must be sent by email to [info@xendpay.com](mailto:info@xendpay.com) or by post to Level 32, One Canada Square, London, E14 5AB; or
  - 19.1.2 where it is to be given by Xendpay, it must be sent by email to your registered email address or by post to your registered postal address.
- 19.2 Any notice sent by email will be treated as being received on the first Business Day after the day on which it was sent and any notice sent by post will be treated as being received on the second Business Day after the day on which it was posted.
- 19.3 In the event that we suspect any fraudulent activity in relation to any of your Orders, we will attempt to contact you using a secure method in order to discuss such suspicious or fraudulent activity.

## 20. GENERAL

- 20.1 **Interpretation:** Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 20.2 **Third party rights:** No third party has the right to any benefit under or to enforce any Contract. The Contract (Rights of Third Parties) Act 1999 shall not apply to the agreement.
- 20.3 **Relationship:** Nothing in these Terms and no Contract will create a partnership, joint venture or agency relationship between the parties.
- 20.4 **Continuance after termination:** Clauses 15 (Our Liability to You), 16 (Your Liability to Us), and 20 (General) will continue to be valid upon termination of any Order or Contract.
- 20.5 **Entire agreement:** The Deal Confirmation of a Contract and these Terms form the entire agreement and understanding between us and you concerning that Contract. No other discussions, telephone conversations, email communications, documents or materials form part of the Contract.

- 20.6 **Severance:** Should any of our Terms be deemed unenforceable or illegal, the remaining terms and conditions will nevertheless continue in full force and effect.
- 20.7 **Assignment:** You may not assign or otherwise transfer the benefit of any Contract without our express written consent. We may assign our rights and obligations under any Contract to any third party.
- 20.8 **Conflict:** Should any of our Terms conflict with the Deal Confirmation, the Deal Confirmation will take precedence and apply.
- 20.9 **Language:** These Terms, and any Contract between us, are only in the English language.
- 20.10 **Governing law:** These Terms and the Contract will be governed and construed in accordance with English Law and the courts of England and Wales will have exclusive jurisdiction to determine any dispute arising in relation to them.

## 21. DEFINITIONS

**Authorised Person** means an individual who is authorised by you and accepted by us to place Orders and provide instructions on your behalf.

**Business Day** means 8am to 6pm Monday to Friday excluding Bank Holidays and Public Holidays in England (please note that this is different to our office hours, details of which are published on our Website).

**Client** means the customer, being the private individual or company, which registers for our Services and/or with whom we enter a Contract.

**Client Profile** means the personal and other information provided by you when registering for an account with us, including your contact details which may be updated by logging in to your account through our Website.

**Commercial Card** means any card-based payment instrument issued to undertakings or public sector entities or self-employed natural persons which is limited in use for business expenses where the payments made with such cards are charged directly to the account of the undertaking or public sector entity or self-employed natural person;

**Contract** means the contract between the Client and Xendpay for the performance of an Order in relation to an Unregulated Foreign Exchange Contract and which will either be a Single Payment Service Transaction or part of a Regular Payments Service.

**Deal Confirmation** means a written document which sets out the details of the contract between Xendpay and the Client.

**Disruption Event** means any circumstances outside of a party's control including any interruptions or failures relating to Service Providers or other third parties, internet service providers, internet signal, connections, electricity providers, failure of banks or banking systems, configurations of computers, any acts of god, flood, drought, earthquake or other natural disaster, any collapse of buildings, fire, explosion or accident, any act of terrorism, civil war or commotion, riots or any law or any action taken by a government or public authority, including failing to grant a necessary licence or consent.

**Joint Account** means a registration made by two private individuals jointly.

**Limit Order** means a Contract comprising the buying or selling of a currency at a predetermined exchange rate which is above or below the current currency exchange rate.

**Major Currency** means the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.

**Order** means your verbal or written request for us to perform Services on your behalf.

**Our Account** means the bank account specified in the Deal Confirmation into which you must pay any sums due to us under a Contract.

**Payment Services Regulations** means the Payment Services Regulations 2009 (SI 2009/209) and from 13 January 2018, means the Payment Services Regulations 2017 (SI 2017/252), which repeals and replaces the Payment Services Regulations 2009.

**Purchase Price** means the sums payable by you to us for the currency purchased under a Contract together with any fees and costs payable under the Contract.

**Recipient** means the beneficiary of the money transfer specified in the Deal Confirmation, which may be the Client or a third party.

**Regular Payments Service** means an arrangement where the Client instructs us to carry out a series of separate Spot Contracts on their behalf, for example where the Client wishes to set up regular monthly payments.

**Services** means our services which comprise of (i) entering into contracts for the purchase and sale of currency on behalf of our Clients; and (ii) our money transmission service and which will be either a Single Payment Service or a Regular Payments Service.

**Service Provider** means a bank, cash pick up office, money exchange house or other third party providing cash or electronic funds transfer or electronic payment to a Recipient.

**Single Payment Service Transaction** means a single Spot Contract which is not part of a Regular Payments Service

**Spot Contract** means a Contract for a currency transaction where the Value Date is one of the following:

- two Business Days after the date of the Deal Confirmation for a Major Currency
- where one of the currencies involved in a transaction is not a Major Currency, the longer of 2 Business Days and the period generally accepted in the market for that currency pair as the standard delivery period.

**Terms** means these terms and conditions which set out the framework for a Regular Payments Service and which also set out the terms and conditions for a Single Payment Service Transaction. Unless a particular clause or sub-clause provides otherwise, the terms and conditions apply to both a Regular Payments Service and a Single Payment Service transaction.

**Value Date** means the date on which the currency is due to be transferred to the Recipient.

**Website** means Xendpay's website at [www.xendpay.com](http://www.xendpay.com).

Xendpay, **we, us, our** means Xendpay Limited, an agent of Rational Foreign Exchange Limited, a company registered in England and Wales under 05385999 and whose registered office is at Level 32, One Canada Square, London, E14 5AB, United Kingdom.

**Your Nominated Account** means the Recipient's bank account details as specified in your Order and confirmed in the Deal Confirmation.