

CMC Markets UK Plc

FX Give-Up Terms of Business

August 2022

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1. INTRODUCTION

1.1 Our agreement with you.

1.1.1 This document, including its Schedules (referred to as the "**Terms**") is an agreement between you (also referred to as "our client", "your" and "you") and CMC Markets UK Plc (also referred to as "CMC Markets", "we", "us" and "our") in relation to:

- (a) our provision of execution-only services in relation to Spot FX Contracts and Spot Precious Metals Contracts ("**Transactions**") which will be "given-up" to certain Prime Brokers for settlement;
- (b) your use of our Platform; and
- (c) your use of the services that we provide to you via an Application Programming Interface ("**API**") as specified in Schedule 3.

together the "**Services**".

1.1.2 Capitalised words in these Terms have a special meaning which are explained in the Definitions section in Schedule 4.

1.1.3 Our agreement to provide you with the Services consists of these Terms, any specific terms and conditions you accept on the Platform, and any additional supplementary terms offered by us in writing and agreed by you in writing (including any addendum). These documents are together referred to as the "**Agreement**". If there is a conflict between these Terms or any addendum, the addendum will take precedence.

1.1.4 There are additional documents and information available to you on our Website and through our Platform which contain useful information but are not part of the Agreement. These include our Summary Conflicts of Interest Policy, our Privacy Policy and the eFX and Precious Metals Disclosure Document.

1.1.5 This Agreement contains all the terms and conditions that govern the provision of the Services and supersedes any prior oral or written representations and/or agreements between you and us in relation to the Services.

2. REGULATORY MATTERS

2.1 Our regulatory status.

2.1.1 CMC Markets has its registered office at 133 Houndsditch, London, EC3A 7BX, United Kingdom, and is authorised and regulated by the Financial Conduct Authority ("**FCA**") (www.fca.org.uk), reference number 173730. The FCA's address is 12 Endeavour Square, London E20 1JN, United Kingdom.

2.1.2 The Trades executed between you and us in accordance with this Agreement do not constitute specified investments for the purposes of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 and as such we are not under a duty to afford you the regulatory protections that apply to our regulated business. Any business you conduct with us that does not involve the Transactions will not be governed by these Terms.

2.2 Non-advised dealing.

2.2.1 All Trades will be entered into on a principal to principal, non-advised and execution only basis. Other than an Authorised Person, you will not permit any person to deal with us on your behalf.

2.3 **Conflicts of interest**

- 2.3.1 We, or our Associates, may have an interest or relationship which conflicts with your interests or our duties to you. You should read our Summary Conflicts of Interest Policy as this sets out how we identify and prevent or manage all material conflicts of interest.

3. **ACCOUNTS**

3.1 **Account opening process.**

- 3.1.1 When we receive your completed application form, we may use your information to conduct any further enquiries about you as we (in our sole discretion) determine are necessary or appropriate in the circumstances. You should provide us with information about any relevant factor that could affect your trading activities with CMC Markets. We may also carry out any additional checks or periodic reviews that we (in our sole discretion) determine are necessary or appropriate in the circumstances. You will need to co-operate with us and promptly supply any information that we request.
- 3.1.2 The Agreement will become legally binding between you and us on the date that we confirm in writing that we have accepted your application to open an Account until terminated in accordance with the Terms.

3.2 **Authorised Persons.**

- 3.2.1 We shall be entitled to act upon any instructions of, or Orders transmitted by any Authorised Person, or any person who reasonably appears or purports to be an Authorised Person in relation to your Account. Any action taken by an Authorised Person shall be deemed to be an action by you. Any information provided by us to an Authorised Person will be deemed to have been provided by us to you
- 3.2.2 Notwithstanding clause 3.2.1, we will not be under any duty to accept any instructions or Orders from such Authorised Person if we reasonably believe that the Authorised Person may be acting in excess of their authority.

4. **TRADING WITH US**

4.1 **Prices.**

- 4.1.1 During the Trading Hours for any Product, we will generate Prices subject to clauses 4.1.2, 4.5, 8.2 and you acknowledge that Prices may differ at any time to those displayed on your device. Our Prices are not identical to prices for similar contracts offered by other providers.
- 4.1.2 Prices displayed on our Platform may differ at any time to those displayed via the API, and vice versa. Prices quoted by our client management team may differ at any time to those displayed on our Platform or via the API.
- 4.1.3 The Price at which an Order for a Trade may be executed may differ from the Price displayed on our Platform or via the API, or quoted by our client management team when you placed the Order.
- 4.1.4 You are responsible for checking the Price at which an Order may have been executed.

4.2 **Orders.**

- 4.2.1 You can enter into a Transaction with us by placing an Order on our Platform or via the API on any Product that we have made available to you.
- 4.2.2 You may only submit Orders during the Trading Hours as specified in the Product Library for the relevant Product and it is your responsibility to monitor the Trading Hours.
- 4.2.3 An Order will only be deemed to be received by us at the time at which we actually receive it, which may not be immediately after you submit that Order. Placing an Order does not guarantee that a Trade will be entered into as we reserve the right to reject your Order without any explanation.
- 4.2.4 In addition to our rights to modify, cancel and/or reject your Orders, we may, in our sole discretion, refuse to accept any instructions or set your Account to Unauthorised To Trade, for any reason whatsoever.
- 4.2.5 We shall provide confirmation of a Trade placed by you (each a "**Confirmation**"). A Trade shall only be entered into once you receive a Confirmation
- 4.2.6 You shall be deemed to have accepted a Confirmation as accurate and complete unless you notify us otherwise in writing by the end of the next Business Day following the day on which you received such Confirmation, and we agree with your notification.

4.3 **Account Limits.**

- 4.3.1 We will set various trading and transaction limits and restrictions, including those set out in the relevant Give Up Agreement, in relation to your Account ("**Account Limits**").
- 4.3.2 Where the acceptance of an Order would result in a breach of an Account Limit, or further exceed an Account Limit, the relevant Order will be rejected by us, unless otherwise agreed by us in writing.

4.4 **Account Currency**

- 4.4.1 The currency of your Account will be shown on the Platform. Where required, the currency of a Trade will be converted to the currency of the Account at the current exchange rate at the relevant time as determined by us.

4.5 **Errors and technological errors**

- 4.5.1 From time to time, material errors and omissions may occur in respect of your Trades, your Account, our Platform, or any matching and settlement system (each an “**Error**”). Examples of Errors may include (without limitation): a Pricing Error, our Platform displaying incorrect Prices (whether caused by a third party supplier or due to a problem with our systems), an Order being handled incorrectly (including execution at an incorrect Price or contrary to underlying market conditions).
- 4.5.2 If you or we, know or suspect, or are aware of circumstances in which you or we, ought reasonably to know or suspect, that an Error has occurred:
- (a) as applicable, you must notify us immediately or we will notify you as soon as reasonably practicable, which for the avoidance of doubt, may be after an Error has occurred; and
 - (b) we will then investigate, as appropriate, whether there has, in fact, been an Error.
- 4.5.3 If it is determined by us that an Error has occurred, this constitutes a Specified Event and the provisions of clause 8.2.1 will apply. We will inform you of any Reserved Actions we may take, or may have taken, in accordance with clause 8.2.2.

5. FINANCIAL MATTERS

5.1 **Your money.**

- 5.1.1 We will not hold any money on your behalf under the terms of this Agreement.

5.2 **Costs.**

- 5.2.1 We may impose and/or vary costs from time to time. We will give you notice of any introduction of any costs or change to costs in accordance with clause 9.

6. COMMUNICATIONS

6.1 **Communications between you and us.**

- 6.1.1 We may communicate with you through our Platform or any of CMC Markets’ operated systems that we make available to you from time to time, by e-mail, by placing such information on our Website and/or by any other method agreed in writing. We may also communicate with you by letter, telephone, SMS or e-mail, to discuss matters in relation to Services, including operational changes to the Services. We may record all such communications (see clause 10.1.3).

- 6.1.2 Where the Agreement requires you to communicate with us in writing, you can send an e-mail to any current and functioning CMC Markets e-mail address provided by us to you for that purpose, or you can send us a letter by post.

6.2 **Deemed timing for communications.**

- 6.2.1 Subject to clause 6.2.2, any communication between us and you that is required to be made in writing under the Agreement will be deemed (in the absence of evidence to the contrary) to have been received:

- (a) if made by us to you via our Platform, one (1) hour after such communication is made available on our Platform;
- (b) if made by you to us via our Platform, one (1) hour after such communication is received on our Platform;
- (c) if sent by e-mail by you to us or by us to you, one (1) hour after sending;
- (d) if sent by first class post by you to us or by us to you, three (3) Business Days after posting; and
- (e) if delivered personally or by hand by you to us or by us to you, at the time of delivery.

- 6.2.2 Any changes to Prices, Attributes or Account Limits will be deemed to have been received immediately.

7. REPRESENTATIONS AND LIABILITY

7.1 **Your declarations and assurances.**

- 7.1.1 Where you trade with us under this Agreement, we are entitled to rely on the following declarations and assurances as having been confirmed by you to be true and accurate (and you must notify us immediately in writing if this is not the case):

- (a) your use of our Platform and/or Services is not for any Improper Use;
- (b) you have obtained all necessary consents and authorisations under your constitutional or organisational documents to enter into this Agreement;
- (c) except where we have agreed otherwise in writing, you act on your own behalf;
- (d) you are not located in (whether temporarily or permanently) any jurisdiction where it may be unlawful or enter into Trades or to receive the Services;
- (e) you will at all times comply in full with the terms applicable to you in any relevant Give-Up Agreement; and
- (f) you have not received from us any assurance or guarantee as to the expected results of the Transactions, and we are not acting as a fiduciary or an adviser for you in respect of your Account.

- 7.2 Your obligations if you breach the Agreement.**
- 7.2.1 If you believe or have reason to believe that you have breached any term of the Agreement or the relevant Give-Up Agreement, then you must inform us immediately in writing.
- 7.2.2 You will be responsible for any losses and/or expenses that we suffer which are the result, or which we consider to be the probable result, of you or an Authorised Person being negligent, acting fraudulently or breaching the Agreement or Applicable Law.
- 7.3 Our liability towards you, and limitations of that liability.**
- 7.3.1 Nothing in the Agreement excludes or limits our liability for any matter that cannot be excluded or limited under Applicable Law.
- 7.3.2 Subject to clause 7.3.1, we will not be liable to you for any loss:
- (a) which arises as a result of:
 - (i) our compliance with, or our exercising of any of our rights in accordance with, Applicable Law the Agreement or the relevant Give-Up Agreement;
 - (ii) your use of any technological system or software, including but not limited to, any matching and settlement system;
 - (iii) your negligence, fraud or breach of the Agreement, the relevant Give-Up Agreement or Applicable Law;
 - (iv) rejection of any Order under clause 4.2.4;
 - (v) your Trade being cancelled for any reason including as a result of its rejection by the Prime Broker(s);
 - (vi) any Specified Event or Circumstance Outside Our Control; or
 - (vii) any Error arising from unclear or ambiguous instructions from you or an Authorised Person when placing an Order;
 - (b) except to the extent that such loss has resulted from our fraud, negligence or material breach of the Agreement, provided that such loss is direct and actual loss as a result of our fraud, negligence or material breach of the Agreement. For the avoidance of doubt, we will not be liable for any loss of profit or opportunity howsoever arising.
- 7.3.3 We are not responsible for any delays, delivery failures, or failures in transmission of any Order, Trade or any other communication or any other loss or damage resulting from the transfer of data over mobile or other communications networks and facilities outside of our control.
- 7.3.4 Any features (including charts), market data or third party content available on our Website, Platform, or e-mails are provided on an "as is" and "if available" basis. We and our third party providers have taken steps to ensure their accuracy and completeness but exclude any warranties, undertakings or representations (either express or implied) related to them to the full extent permitted under Applicable Law, including but not limited to:
- (a) with respect to any third party market data or similar information or any features and information provided to you in connection with your use of our Website, our Platform and/or our Services:
 - (i) we and our third party providers are not providing trading or investment advice;
 - (ii) we and our third party providers are not responsible or liable if any market data, feature or information is inadequate, inaccurate or incomplete in any respect;
 - (iii) we and our third party providers do not guarantee the timeliness of market data or similar information;
 - (iv) we and our third party providers are not responsible or liable for any actions that you take or do not take based on any market data, feature or information;
 - (v) you will use market data, features or information solely for the purposes set out in the Agreement;
 - (vi) we provide market data or similar information for general purposes only and market data or similar information should not be used as the sole basis for any investment decision; and
 - (vii) you will use market data, features or information solely in compliance with Applicable Law; and
 - (b) the information contained in the features or third party content is indicative and may be out of date at any given time. Any analysis, where provided, resulting conclusions and observations are based upon past performance, patterns and data and will not necessarily reflect future performance.
- 7.3.5 For the avoidance of doubt, our third party providers are not responsible for and have not participated in the determination of our Prices and they exclude all warranties, undertakings or representations (either express or implied) relating to your use of the Services, our Website or the Elements. Without limiting the foregoing, in no event whatsoever shall our third party providers be liable for any loss, regardless of whether they are aware of such loss and whether such liability is based on breach of contract, tort or otherwise.

- 7.3.6 Save in the event of our negligence, wilful default or fraud, we will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Services or Website or to your downloading of any material posted on it, or on any website (including our Website) linked to it.
- 7.3.7 Where our Platform, Website, e-mails or any other content generated by us contains links to other websites and resources provided by third parties, these links are provided for your information only and we accept no responsibility for them or for any loss or damage that may arise from your use of them.
- 7.3.8 We will do our best to make our Platform and our client management team available when required by you, but we cannot guarantee that our Platform or our client management team will be available continuously. Subject to clause 7.3.2(b), we will not be liable to you for any loss which arises as a result of our Platform and/or our client management team being unavailable.

8. OUR RIGHTS IN CERTAIN CIRCUMSTANCES

8.1 Circumstances Outside Our Control.

- 8.1.1 Any failure by us to perform our obligations under the Agreement caused by a Circumstance Outside Our Control will not be a breach of the Agreement.
- 8.1.2 If we determine that there is a Circumstance Outside Our Control, we will give you notice of this as soon as it is reasonably practicable and in accordance with Applicable Law. We will endeavour to resume the provision of our Services and/or performance of our obligations under the Agreement as soon as reasonably possible. We may take a Reserved Action and/or take any action in relation to any Pricing Error.
- 8.1.3 Where we are able to resume provision of the Services and/or performance of our other obligations under the Agreement following a Circumstance Outside Our Control:
- (a) we may execute any Order received immediately before the Circumstance Outside Our Control, provided it is possible to do so at our discretion; and
 - (b) you are responsible for re-instating or cancelling any Orders affected by a Circumstance Outside Our Control.

8.2 Reserved Actions.

- 8.2.1 If we are required to do so under Applicable Law, or a Specified Event or Circumstance Outside Our Control occurs or is likely to occur or when we become aware of a Specified Event or Circumstance Outside Our Control, or we have valid reasons for doing so, we may in our sole discretion take any action, including any Reserved Action.
- 8.2.2 If we have taken or decide to take any Reserved Action then we will attempt to notify you of this as soon as reasonably practicable, unless Applicable Law prevents us from doing so. When taking any Reserved Action, we may, in our sole discretion, take into account any execution request you have made to our client management team.

9. AMENDMENTS AND TERMINATION

9.1 Amendments to the Agreement in general.

- 9.1.1 We may amend any part of the Agreement at any time by giving you notice, subject to clause 9.1.2.
- 9.1.2 Subject to any agreement we have made with you, any amendments to the Agreement will take effect on the date specified in our notice to you, which will be at least ten (10) Business Days after we send our notice to you. We may give you less than ten (10) Business Days' notice if the amendments to the Agreement are required in order to comply with Applicable Law, if you agree in writing or where we have valid reasons to do so. If you do not accept the amendment, you will be free to close your Account and/or terminate the Agreement in accordance with clause 9.4.

9.2 Amendments to Prices, Attributes and Account Limits

- 9.2.1 We will amend Prices and Attributes in real time and such amendments will take effect immediately as and when they are made, even if they are not displayed on the device that you use to enter into Trades. We may make changes to the way the Price of a Product is calculated and such amendments will take effect immediately as and when they are made.
- 9.2.2 Where we set or amend an Account Limit, such amendments will take effect immediately as and when they are made. These amendments may apply to any existing Orders and Trades.

9.3 Removal of Products.

- 9.3.1 We may, at any time and in our sole discretion, remove any Products from the Services and/or remove your ability to place Orders on a particular Product, with immediate effect.

9.4 Closing your Account or terminating the Agreement.

- 9.4.1 Either party may close the Account on not less than ten (10) Business Days' notice in writing. Unless the notice of termination specifies otherwise and/or we have set your Account to Unauthorised to Trade, termination in accordance with this clause 9.4.1 will not affect the validity of any Trades entered into prior to the date of termination. We will cancel any Orders and/or Trades not given-up prior to the date of termination.

- 9.4.2 If we have valid reasons for doing so, we may terminate the Agreement with less than ten (10) Business Days' notice, including immediately. We may set an Account to Unauthorised To Trade and cancel any Orders and/or Trades on the Account at the time and in the manner specified in the notice.
- 9.4.3 Unless otherwise agreed, the Agreement will automatically terminate following the closure of all of your Accounts by you or us.

10. GENERAL PROVISIONS

10.1 Data protection.

10.1.1 This Agreement (together with our Privacy Policy available on our Website) sets out the basis on which any Personal Data you provide us with will be processed by us. We recognise the need to treat the Personal Data in an appropriate and lawful manner and will comply with all applicable requirements of the Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace our obligations under the Data Protection Laws. For the purpose of the Data Protection Laws, it is our intention and understanding that we are acting as a Data Controller in the performance of our rights and obligations under this Agreement.

10.1.2 For the purpose of this Agreement:

- (a) **"Data Controller"** will have the meaning given to it by the Data Protection Laws.
- (b) **"Personal Data"** means recorded information we hold about an individual from which they can be identified, such as your name, address, e-mail address, phone number, financial information, personal description and other personal information.
- (c) **"Process"** and cognates thereof means doing anything with the personal data, including accessing, disclosing, destroying or using the personal data in any way.

10.1.3 You agree that we may record all telephone conversations and/or any communications by other means between you and us. We may use such recordings, or transcripts of such recordings, as well as any e-mails, recorded chat messages or other communications you send to us through our Platform or otherwise for the purposes of investigating any complaint you may make, or for any other legal or regulatory purposes including as evidence in any dispute or anticipated dispute between you and us. We shall retain records of all telephone conversations for the duration required by Applicable Law.

10.1.4 You agree that we may disclose any information we hold about you or your Account (including any personal information that is subject to Data Protection Laws) to any official body if required by that official body or Applicable Law.

10.1.5 You agree to keep all information that you hold relating to your Account, including any e-mails and letters and any promotions that we send to you, confidential at all times.

10.1.6 We will retain certain information in relation to your Account including to the extent and for the duration required by Applicable Law (usually six (6) years from the date of the relevant Order or Trade).

10.1.7 Subject to clause 10.1.6, after your Account has been closed or the Agreement has been terminated, we may destroy your Account information or retain it for such further duration as we see fit in our sole discretion and without notice to you.

10.2 Intellectual Property.

10.2.1 We or our licensors own all Elements. Except as expressly granted in the Agreement, you do not acquire any rights, title or interest in or to our Platform, our Website or the Elements.

10.2.2 We hereby grant you a personal, non-exclusive, royalty-free, revocable and non-transferable licence, to access and make use of our Platform and our Website for the limited purpose of trading in accordance with the Agreement. No other rights are granted in respect of our Platform or Website. In the event you do or attempt to do any of the prohibited matters set out in clause 10.2.3 or we reasonably suspect that you have done or attempted to do any of these prohibited matters, this licence and the Agreement shall be immediately revoked without further notice to you and you shall have no further rights in or to our Platform, our Website or any of the Elements.

10.2.3 You must not:

- (a) copy, reproduce, translate, duplicate, use, modify, adapt, alter, enhance, reverse engineer, decompile, decode, disassemble or reverse assemble the operation of, or create derivative works of, our Platform, Website or any of the Elements (or cause or permit any other person to do any of the foregoing) except as expressly provided for in the Agreement;
- (b) create or develop any hyperlink or other form of internet weblink to our Platform or Website except with our express prior written consent;
- (c) distribute, re-distribute, sell, re-sell, transmit, re-transmit, publish, make available, sub-licence, transfer, rent, lend, re-circulate, repackage, disclose, display or make commercial use of our Platform, our Website, any of the Elements or any of the materials provided by us in relation to the Agreement (either in whole or in part);

- (d) download or copy your Account information other than if required to do so by an official body or for personal use in accordance with the provisions of the Agreement;
- (e) download or copy account information relating to any other client;
- (f) carry out any data collection, or use data mining, screen-scraping, optical recognition software, image makers, robots or any other similar or like data gathering and extraction tools on our Platform or the Elements;
- (g) with the exception of application programming interfaces (APIs) which are not used for any Improper Use:
 - (i) use any software, algorithm, robot, applications, tools, codes, computer, electronic devices or equipment on our Platform for non-human and/or high frequency trading; or
 - (ii) make use of our Platform or any of the Elements for automated purposes;
- (h) knowingly introduce any software viruses, trojans, worms, logic bombs, time bombs, “back doors” or back door devices, “drop dead devices”, malware, or any other material, software or code which:
 - (i) is or is likely to be malicious or technologically harmful, destructive, or disabling or anything analogous to the foregoing to our Platform or any of the Elements;
 - (ii) damages, disrupts, impairs, erases or adversely affects the normal operation of our Platform or any of the Elements;
 - (iii) assists in or enables theft or alteration of data or content from our Platform or any of the Elements; or
 - (iv) provides unauthorised access to our Platform or any of the Elements;
- (i) permit or cause unauthorised access or attempt to gain unauthorised access to our Platform or any of the Elements, including the servers on which our Platform or any of the Elements is stored or any servers, computer or database connected to our Platform or any of the Elements;
- (j) attack our Platform via a denial-of-service attack or a distributed denial-of-service attack;
- (k) use our Platform, our Website, any of the Elements or any of the materials provided by us in relation to the Agreement (either whole or in part) in any way which would constitute (in our reasonable opinion) Improper Use; or
- (l) do, or permit, any act or thing (or omit to do any act or thing) analogous to any of the foregoing, and any of the above acts may be a Specified Event that entitles us to take a Reserved Action (see clause 8.2).

10.2.4 We may, upon prior written notice, audit your use of market data or similar information made available to you on the Platform to ensure compliance with this Agreement. You agree to fully cooperate with us in connection with any audit and to promptly supply any information that we request.

10.3 **Outsourcing.**

10.3.1 We may use external service providers in relation to any of our operations in accordance with Applicable Law, who may include Associates or other third parties.

10.4 **Provisions becoming illegal, invalid, or incapable of application.**

10.4.1 If, at any time, any provision of the Agreement is or becomes illegal, invalid, or incapable of being applied in any respect under the law of any jurisdiction, all other provisions of the Agreement will remain legal, valid and capable of being applied under the law of that jurisdiction as well as under any other Applicable Law.

10.5 **Transfer or delegation of rights and obligations.**

10.5.1 You may not transfer any of your rights or delegate any of your obligations under the Agreement or grant any use or benefit of any right to any person (including an Authorised Person) without our prior written consent.

10.5.2 We may transfer or delegate any of our rights and/or obligations under the Agreement, to any person, provided we act in accordance with Applicable Law. We shall use reasonable endeavours to provide you with not less than thirty (30) calendar days’ notice of such transfer or delegation, although we reserve the right to do this with immediate effect in which case we will inform you about the transfer or delegation as soon as reasonably practicable. Where we transfer or delegate any of our rights or obligations under the Agreement to any person, we may provide that person with any information relating to you that they may reasonably require.

10.6 **Rights and remedies.**

10.6.1 The rights and remedies available to you or us under the Agreement do not exclude, and are in addition to, the rights and remedies provided to you or us in accordance with Applicable Law.

10.7 **Delay or inaction in exercising rights under the Agreement.**

10.7.1 Any delay or failure on your or our behalf to exercise a particular right or take a particular action under Applicable Law or under the Agreement, does not mean that you or we will be unable to exercise that right or take any such action at a later stage.

- 10.8 **Rights of Third Parties.**
- 10.8.1 Subject to clause 8.1, save for our Associates, no persons (including an Authorised Person) that are not a party to this Agreement shall have any right to enforce any term of the Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 10.8.2 Our claims against you under the Agreement may be assigned to third parties that may independently assert these claims against you.
- 10.9 **Governing Law and Jurisdiction.**
- 10.9.1 This Agreement and any non-contractual obligations arising out of or in connection with the Agreement are governed by, and interpreted in accordance with, the laws of England and Wales.
- 10.9.2 The courts of England and Wales have exclusive jurisdiction to hear all and any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with the Agreement.
- 10.10 **The meaning of certain other words in the Agreement.**
- 10.10.1 Any reference in the Agreement to a particular provision of Applicable Law is deemed to include a reference to that provision as amended from time to time, and any equivalent, similar or analogous provision under Applicable Law.
- 10.10.2 Any reference to a document (including information provided on our Website and/or our Platform) in the Agreement is deemed to be a reference to that document as modified from time to time.
- 10.10.3 Any reference to 'including' or 'includes' in the Agreement is deemed to be a reference to 'including but not limited to'.
- 10.10.4 Unless otherwise stated, references in these Terms to clauses, paragraphs or schedules are to clauses, paragraphs and schedules in these Terms.
- 10.10.5 Any heading in the Agreement will not affect the interpretation of the Agreement.
- 10.10.6 Any reference to a person in these Terms shall include bodies corporate, unincorporated associations, trusts, partnerships and individuals.
- 10.10.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 10.11 **Survival of terms in the Agreement.**
- 10.11.1 Clauses 7.3, 10, paragraph 2.4 of Schedule 1, paragraphs 3.4 and 5.5 of Schedule 3, and Schedule 4 will continue to apply after the closure of your Account and/or termination of the Agreement.

SCHEDULE 1 - GIVE-UP OF TRADES

This Schedule 1 sets out terms that apply to the give-up of a Trade.

1. Trades

- 1.1 All Trades entered into under this Agreement will be “**Spot FX Contracts**” or “**Spot Precious Metal Contracts**” which are ‘over-the-counter’ contracts that settle on the spot value date, that is, within two trading days.
- 1.2 All Trades entered into between you and us under this Agreement will be given up to the Prime Broker(s) in accordance with the terms of the relevant Give-Up Agreement.
- 1.3 You are responsible for checking the status of any Orders and Trades. You should contact your Prime Broker for definitive confirmation that a Trade has been given up for settlement.

2. Rejection of an Order or cancellation of a Trade

- 2.1 In addition to our rights in clause 4.2.4, an Order may be rejected by us where:
 - (a) a fully executed and enforceable written Give-Up Agreement is not in place;
 - (b) where the Order will breach an Account Limit or the terms of the Give-Up Agreement including any limit or restriction provided for in or under the provisions of the Give-Up Agreement.
- 2.2 Where a Trade is accepted by the Prime Broker(s) in accordance with terms of the Give-Up Agreement, we shall cease to be a party to the Trade and shall have no obligation to you for its performance.
- 2.3 If, for any reason whatsoever, a Prime Broker refuses to accept the give-up of a Trade, including, without limitation, where you have failed to notify a Prime Broker of the Trade or where a Trade will breach the terms of the Give-Up Agreement, we will be entitled to cancel the Trade and, in accordance with clause 7.3.2, we will not be responsible for any loss incurred by you resulting from such cancellation.
- 2.4 Save in the event of our negligence, fraud, breach of this Agreement or Applicable Law, you will be responsible for any losses and/or expenses that we suffer which are the result, or which we consider to be the probable result, of the failure of a give-up of a Trade.

SCHEDULE 2 - PLATFORM

This Schedule 2 sets out the additional terms that apply to your use of our Platform.

1. Accessing our Platform.

- 1.1. You are responsible for making sure that you are able to access our Platform when you need to. This includes having access to a device that can connect to our Platform, maintaining the device so that it functions properly, safely and securely and having adequate internet connectivity.
- 1.2. If you cannot access our Platform directly, then you should try to contact our client management team by telephone or e-mail to request assistance. However, this is likely to be much slower than accessing our Platform directly and we cannot guarantee the availability of our client management team.

2. Security and Account authentication.

- 2.1. You are responsible for setting your own password in accordance with the instructions that we will provide to you, as well as keeping all information you hold in your Account confidential. You must notify us immediately if you know or suspect that any person has accessed or may access your Account, or any information you hold in your Account, without your permission. Unless you notify us otherwise under this clause 2.1 we will treat any activity on or communication made from your Account as having been authorised by you and you may be liable for such activity up to the point of notification. We may need to change or reset your password and we will notify you if we do this.

3. Information about your trading activity and your Account.

- 3.1. We provide certain information relating to your Account on and through our Platform. However, from time to time this information may not be available due to a Circumstance Outside Our Control (see clause 8.1).
- 3.2. It is your responsibility to regularly access and review the information set out in paragraph 3.1 of this Schedule to ensure that it corresponds with your own records.

SCHEDULE 3 – API

This Schedule 3 sets out the additional terms that apply to your use of the services that we provide to you via an API. In case of conflict between any term of the Terms and this Schedule 3, Schedule 3 shall prevail.

1. Introduction

- 1.1 We may, at our discretion, provide any of the services set out in paragraphs 2 to 4 of this Schedule 3 via an API (each an “API Service”, together the “API Services”).

2. Data licence.

- 2.1 We may provide you with pricing data and/or other information relating to Products (“Product Data”).
- 2.2 We may amend the Products in respect of which we will provide you with Product Data at any time, for any reason, in our sole and absolute discretion, and without notice to you. We will endeavour to notify you in advance if we are making the aforementioned changes but we are under no obligation to do so.
- 2.3 The intellectual property rights in the Product Data belong to CMC Markets. Except as provided in paragraph 2.1 of this Schedule 3, you shall have no right to the Product Data.
- 2.4 You shall not onward distribute the Product Data to any other third party without our written permission.
- 2.5 You shall also adopt adequate security measures to ensure that the Product Data cannot be used in a way which breaches paragraphs 2.3 or 2.4 of this Schedule 3.

3. Trading via the API.

- 3.1 Where we provide you with this service, you shall be able to place Trades via an API (“API Trades”).
- 3.2 You acknowledge that certain information and features which are available on the web-based Platforms will not be available when placing API Trades.
- 3.3 You are responsible for all API Trades placed directly via the API or indirectly via a third party platform or third party software. We will not be liable for any losses resulting from executing any API Trades placed directly via the API or indirectly via a third party platform or third party software.
- 3.4 We will not be responsible for any losses you incur from your use of a third party platform and third party software for any reason whatsoever.
- 3.5 We may, in our sole discretion, refuse to execute an Order or cancel an API Trade including where we have grounds for suspecting that: (i) you have breached or will breach this Agreement; or (ii) such Orders or API Trades are considered to be creating an unfair trading advantage, unfair trading conditions or constitute abusive trading practices.

4. Audit

- 4.1 We may, upon prior written notice to you, audit your use of Product Data to ensure compliance with this Agreement. We shall endeavour to ensure that the conduct of any audit does not cause you unreasonable disruption.
- 4.2 If we require assistance from you in connection with an audit carried out by a third party that provides data to us, you shall provide assistance to us in this respect.
- 4.3 We shall each bear our own respective costs and expenses incurred in respect of compliance with our obligations under paragraphs 4.1 and 4.2 of this Schedule 3, unless the audit in question identifies a breach of the Agreement by you, in which case you shall reimburse us for all costs and expenses incurred in the course of such audit.
- 4.4 If an audit identifies that you have breached any of your obligations under this Schedule 3, we shall be entitled to close your Account and terminate this Agreement with immediate effect.

5. General

- 5.1 In the event that:

- (a) you cease to use any or all of the API Services;
- (b) we cease to provide any, or all of, the API Services to you; or
- (c) we make a written request for you to do so;

subject to Applicable Law, you will destroy or permanently erase or procure the destruction of any and all Product Data and/or Product information that we have provided to you in relation to the affected Product(s), including but not limited to any copies, analysis, memoranda, webpages or other documents in which the information is incorporated or that is otherwise derived from such data. Upon request, you shall deliver to us a confirmation to be signed under oath by or on your behalf that the provisions of this clause 5.1 have been complied with.

- 5.2 Each party shall be responsible for its own expenses in establishing and maintaining the API connection.
- 5.3 In the event of interruption with the API (including the loss of connection), we shall not be responsible for non-performance of the API Service(s). For the avoidance of doubt, we shall not be required to execute any Orders for API Trades which have not been received us for any reason.
- 5.4 We make no representations and/or warranties in respect of the API connection or the API Service(s), which are provided on an “as is” basis and you use the API Services at your sole risk.

- 5.5 You shall indemnify CMC Markets on a full indemnity basis from and against all losses and damages, including reasonable legal costs, suffered by CMC Markets relating to any claim arising out of or in connection with access to, use of, or reliance placed on, the Product Data by you or any third party.
- 5.6 We may, at any time and at sole discretion, remove the API Service(s) from your Account by giving you notice in writing. Subject to paragraph 5.7 of this Schedule 3, this will take effect on the date specified in such notice being no less than ten (10) Business Days after the date of the notice.
- 5.7 If we have valid reasons for doing so, we may remove the API Service(s) from your Account by giving you less than ten (10) Business Days' notice, including immediately.

SCHEDULE 4 - DEFINITIONS

Unless otherwise stated, words and expressions that begin with a capital letter in the Terms have the meaning set out below:

Account	Any account that you hold with us for the execution and give-up of a Transaction in accordance with the relevant Give-Up Agreement.
Account Limit(s)	Any trading or transaction limits and restrictions that applies to your Account.
Agreement	Has the meaning set out in clause 1.1.3.
API	Has the meaning set out in clause 1.1.1.
API Service(s)	Has the meaning set out in paragraph 1.1 of Schedule 3.
API Trades	Has the meaning set out in paragraph 3.1 of Schedule 3.
Applicable Law	Any laws, statutes, orders, rules, decisions, provisions, directives, regulations, requirements, conditions, standards, sanctions, guidelines and industry codes having legal effect in any jurisdiction, provided that such laws, statutes, orders, rules, decisions, provisions, directives, regulations, requirements, conditions, standards, sanctions, guidelines or industry codes are existing and in force from time to time and (where relevant in the context) are directly or indirectly applicable to us, you, the Agreement, the Services, our Website, or our Platform.
Associate	CMC Markets Plc and any body corporate associated with CMC Markets Plc within the meaning of section 256 of the Companies Act 2006.
Attributes	The various limitations, restrictions and other features that apply in respect of each Product, which we may amend from time to time in accordance with clause 9.3 for example, Trading Hours, spreads etc.
Authorised Person	Means any person who acts or gives us instructions on your behalf in respect of the Agreement and the Account notwithstanding that the person is not, in fact, so authorised to do so.
Business Day	Means any day (other than a Saturday or Sunday) on which banks are open for business in London.
Circumstance Outside Our Control	Is the actual existence of, or our belief of the existence or imminence of, any circumstance that is beyond our control which prevents us from performing any of our obligations under the Agreement and includes: <ul style="list-style-type: none"> (i) changes in Applicable Law or any action taken by an appropriate authority; (ii) events or circumstances that impair or remove the ability of our Platform to operate on a normal and orderly basis, including any errors, failures or disruptions in our systems or any other infrastructure (including infrastructure controlled by third parties and, any matching and settlement system); (iii) acts or omissions of any third party for whatever reason, including where we are unable or it is impractical for us to acquire, establish, re-establish, substitute, maintain, unwind or dispose of any trade or asset we deem necessary or appropriate to hedge our price risk relating to Trades; (iv) natural disasters, war, emergencies (natural and man-made), and acts of God; or (v) any other exceptional event or circumstance over which we have no control.
Confirmation	Has the meaning set out in clause 4.2.5.
Data Controller	Has the meaning set out in clause 10.1.2.
Data Protection Laws	Means (i) the General Data Protection Regulations (EU 2016/679) regulations and secondary legislation, as amended or updated from time to time (ii) the Data Protection Act 2018, regulations and secondary legislation, as amended or updated from time to time and then (iii) any successor legislation to the General Data Protection Regulations or Data Protection Act 2018.
eFX and Precious Metals Disclosure Document	Means our eFX and Precious Metals Disclosure Document available on our Website as amended from time to time.
Elements	Means all Intellectual Property Rights in our Platform, our Website and all of its software, algorithms, design, text, content, data (including market data, which is

	owned by third parties and used by us to create Prices), arrangement, organisation, graphics, compilation, magnetic translation, digital conversion, equipment, and any and all other electronic, computer, technical and information communications technology devices and equipment, networks, servers, applications, codes (including source and object codes) and data centres which are contained in or relate to our Platform, together with all technical documentation and information necessary for the use of any of the above.
Error	Has the meaning set out in clause 4.5.1.
Give-Up Agreement	Means the trading agreement between CMC, you and the Prime Broker(s).
Improper Use	Any use of the Services, our Website or activity in relation to an Order or a Trade that amounts to: (i) an unlawful act or a breach of Applicable Law, whether directly or indirectly; (ii) a breach of the Agreement; (iii) a failure to observe reasonable commercial standards of fair dealing; or (iv) dishonesty or malice.
Insolvency Event	Means: (i) the appointment of a receiver, administrator, manager, administrative receiver or similar officer in relation to you; (ii) if any encumbrancer takes possession of or sells, all or any part of your assets or business; (iiii) you are deemed unable to pay your debts as they become due; (iv) an application is made for an interim order, or a proposal is made for you to enter into a voluntary arrangement, or you enter into a deed of arrangement, or a bankruptcy petition is presented to the Court in respect of you; (v) if you are a body corporate, a resolution is passed or an order is made for your winding up, dissolution or administration; or (vi) if you become bankrupt or insolvent or any event that is analogous to those set out in paragraph (i), (ii), (iii), (iv) or (v) of this definition applies to you. If you are a partnership, the occurrence of any of the events listed in (i) to (vi) above in relation to any one partner shall constitute an Insolvency Event.
Intellectual Property Rights	Any and all: (i) intellectual property rights, including copyright and related rights, patents, utility models, trademarks, service marks, trade names, domain names, moral rights, trade secrets, rights to inventions, logos, rights in get-up, goodwill and the right to sue for passing off and unfair competition, rights in computer software (including to the source code and object code), inventions, semiconductor topography rights, database rights, rights in databases, rights in designs, design rights, know-how and confidential information whether in software or otherwise and whether registered or unregistered; (ii) applications for registration, the right to apply for registration, renewal or extension of any of these rights, and the rights to claim priority from any such rights; and (iiii) any and all other intellectual property and proprietary rights and equivalent forms of protection or of similar effect existing, now or in the future, anywhere in the world.
Order	An offer submitted by you or on your behalf to enter into a Transaction to be given up to a Prime Broker for settlement.
Personal Data	Has the meaning set out in clause 10.1.2.
Platform	Our electronic trading platform, as updated from time to time.
Price	The buy price or sell price of a Product, which is generated by us and/or provided by our client management team (and may be indicated as "Price", "CMC Price" or other similar variations) from time to time.
Pricing Error	An event in relation to a Product which prevents us from determining a Price.

Prime Broker	Means the financial institution(s) appointed by us and you to clear and settle Spot FX Contracts and Spot Precious Metals Contracts initially entered into between you and us.
Privacy Policy	Means our privacy policy as detailed on our Website and/or through our Platform from time to time.
Process	Has the meaning set out in clause 10.1.2.
Product	An instrument generated by us upon which or in relation to which you enter into Trades.
Product Data	Has the meaning set out in paragraph 2.1 of Schedule 3.
Product Library	The section of our Platform that contains the list of Products.
Reserved Action	includes: <ul style="list-style-type: none"> (i) combining or suspending any Orders or Trades on an Account; (ii) prohibiting you from accessing or using an Account; (iii) suspending or in any way limiting or restricting your ability to place any Order or Trade or declining to action any instruction received from you in relation to an Account; (iv) amending Prices, including those relevant to your Trades and/or Orders; (v) cancelling any Trades (as if they had never been entered into in the first place) and the effect of such Trades on your Account; (vi) imposing special terms in relation to any Order; (vii) closing any Account, or making an Account Unauthorised To Trade; (viii) suspending the generation and/or quotation of Prices and/or the execution of Orders on our Platform in respect of any Product; (ix) removing any Product from our Platform and/or removing your ability to place Trades on a particular Product from an Account; (x) restricting or removing any Service from your Account entirely, whether temporarily or permanently; and/or (xi) utilising manual processes to ensure the provision of Order and/or Trade matching and settlement.
Services	Has the meaning set out in clause 1.1.1.
Specified Event	An event which includes, but is not limited to, if: <ul style="list-style-type: none"> (i) you, or any Authorised Person appointed by you, are the subject of or have been found guilty or at fault in any criminal proceedings or relevant investigation carried out by the appropriate authorities in any jurisdiction of any offence involving dishonesty, financial crime, terrorist financing or a similar offence; (ii) you are the subject of an Insolvency Event; (iii) you are an individual and you die or become of unsound mind or your capacity, as far as it is relevant to the Agreement, is otherwise impaired; (iv) you breach any of the terms of this Agreement; (v) you are not subject to a Give-Up Agreement that is in full effect; (vi) an Error occurs; or (vii) any other circumstance exists where we believe that it is necessary or desirable to protect you or us, including any breach or potential breach by you of Applicable Law or the Agreement or where you do not respond as required to any notice, communication or request for further information from us in relation to your Account.
Spot FX Contracts	Has the meaning given to it in paragraph 1.1 of Schedule 1.
Spot Precious Metal Contracts	Has the meaning given to it in paragraph 1.1 of Schedule 1.
Summary Conflicts of Interest Policy	Means our procedures for identifying and managing conflicts of interest as detailed on our Website and/or through our Platform from time to time.

Terms or Terms of Business	Has the meaning given in clause 1.1.1.
Trade	An executed Order for a Transaction entered into between you and us on an Account.
Trading Hours	In respect of a Product, the times during which we generate and/or our client management team provides Prices and during which you may give instructions or place Orders for Trades on that Product, as specified in the Product Library and amended from time to time.
Transaction	Has the meaning set out in clause 1.1.1.
Unauthorised To Trade	A restriction placed on an Account which suspends your ability to place any Order or Trade or to give any instruction in relation to that Account.
Website	www.cmcmarkets.com/en-gb/ .