

Account Holder ("Client"):

Account number:

(to be filled by Dukascopy)

V.05.08.2022

# Marketplace Trading Conditions

This document governs the access to and use of trading and mobile current accounts together with related Banking Services in the frame of a business relation between Dukascopy Bank SA ("**Dukascopy**") and the holder(s) (the "**Account Holder(s)**" or the "**Client**"). If the Client accepted both the "Marketplace Trading Conditions" and the "General Terms and Conditions for Current Accounts", the latter shall prevail regarding mobile current accounts.

## 1. Definitions and interpretation

1.1. In the present Marketplace Trading Conditions the following terms shall, unless the context otherwise requires, have the following meanings and may be used in the singular or plural as appropriate:

- (i) "**Access Codes**" shall mean the personal and unique login, password and PIN enabling the Client to access and use the Banking Services;
- (ii) "**API**" means an application program interface which allows the Client to access the Trading System;
- (iii) "**Banking Services**" shall mean any services offered by Dukascopy, including without limitation account maintenance services, payments and execution of transactions on any and all products available to the Client and at the conditions set forth at any time on Dukascopy's website and/or the Trading System, including in particular FOREX, CFDs, Binary Options, and other instruments;
- (iv) "**Basic currency**" shall be the reference currency agreed by the Client and Dukascopy before opening a particular account with Dukascopy;
- (v) "**Binary Options**" means a type of option offered over-the-counter (OTC) in which the payoff is structured to be either a fixed amount of compensation if the option expires in the money or nothing at all if the option expires out of the money. The success of a binary option is thus based on a yes/no proposition, hence "binary". A binary option automatically exercises, meaning the option holder does not have the choice to buy or sell the underlying asset;
- (vi) "**CFDs**" means Contracts For Difference offered over-the-counter (OTC), either leveraged or not, at the conditions available from time to time on the Trading System;
- (vii) "**Client**" shall mean the Account Holder referred to in the heading of these Conditions;
- (viii) "**Communication**" shall mean instructions, orders, documents, logs, trading activity and any other information intended to be addressed to a party by the other;
- (ix) "**Conditions**" shall mean the present Marketplace Trading Conditions and any appendices, related to the Banking Services, the use and access of the Trading System and any other website and/or interface provided by Dukascopy;
- (x) "**Confidential Information**" shall mean information or data which is not public and which is disclosed by one party to the other or discovered, even incidentally, by one party about the other, in the frame of the Banking Services. Among others, Confidential Information comprises non-public personal data of the Client including his business, investments, finances and the existence of a business relation between the Client and Dukascopy,
- (xi) "**Counterparties**" shall mean banks, brokers and/or marketplaces and/or any client or partner of Dukascopy or Dukascopy itself participating in the transactions executed on the Trading System;
- (xii) "**Force Majeure**" shall mean any event or situation beyond the control of Dukascopy including but not limited to natural disasters, acts of God, war, terrorism, actions or decisions of Swiss or foreign governmental and legislative bodies (e.g. revocation of authorization, suspension of obligations – moratorium, suspension of laws or of regulations governing the business relationship between Dukascopy and the client or between Dukascopy and its providers, decisions of a Central Bank, failures of third party/public technology, power supply or communication infrastructures rendering impossible for Dukascopy to fulfill its obligations under the Conditions, partially or fully;
- (xiii) "**FOREX**" or "**FX**" shall mean over-the-counter (OTC) foreign exchange transactions on currencies, either leveraged or not, at the conditions available from time to time on the Trading System;
- (xiv) "**Liquidity**" shall mean the ability to sell or buy any particular amount of currencies or any other instruments;
- (xv) "**Margin Call**" shall mean a fixation of situation when margin requirements do not allow the Client to increase the total open exposure on his account;

- (xvi) **“Margin Cut”** shall mean a fixation of situation when margin requirements force Dukascopy to close part of the Client’s positions or to execute a trade (margin cut trade) for the Client to reduce the account exposure;
- (xvii) **“Market Rules”** shall mean the rules, regulations, customs and practices of any exchange organisation, clearing house or market(place) involved in the conclusion, execution or settlement of a transaction ordered by, or to be carried out on behalf of, the Client and any exercise by any such exchange organisation, clearing house or market of any power or authority conferred to it;
- (xviii) **“Trading Line”** shall mean an overall exposure limit for the transactions to be executed for the account of the Client, where “exposure” shall mean the total amount in Basic Currency of underlying instruments held by the Client in its relation to Dukascopy, as determined by Dukascopy taking into account the funds prepaid by the Client in the Basic Currency and the leverage factor determined by Dukascopy, if any;
- (xix) **“Trading System”** shall refer to the software / hardware complex accessible through the website of Dukascopy, including all programs and access points enabling the Client to perform access to Banking Services (namely trading on FX, precious metals, CFDs, Binary Options or other instruments), such as the trading platform, API, etc.
- (xx) **“Social/Signal/Group trading”** shall refer to any trading activity based on: any type of external signals executed manually and/or by using an automated strategy/API interfaces; the use of the same automated strategy simultaneously by a group of Clients (more than one person); placing multiple simultaneous (within seconds) trading orders on the accounts of different Clients executed in the same instrument and in the same trade direction (buy/sell) and/or by using any other indication directly or indirectly confirming an organised usage of Dukascopy’s services by a group of Clients.

1.2. Terms defined herein shall have the same meaning in any and all other documents related to the opening of the Client’s account with Dukascopy and deemed to be part of the parties agreement, except if otherwise specified in the relevant document.

1.3. References to persons shall include individuals, corporate bodies, unincorporated associations, partnerships and any other entities. Words denoting a gender shall include all other genders. References to a Section or Sections shall be deemed references to the respective section(s) of these Conditions. Headings and notes herein are for reference only and shall not affect the construction and interpretation of the Conditions.

## 2. Scope of the Conditions

2.1. Dukascopy shall allow the Client to access to the Trading System either on a manual or on a semi or full automatic trading mode including API.

2.2. Regarding the price feed of the instruments (together with the underlying instruments) offered by Dukascopy and any data derived therefrom made available by Dukascopy via its Trading System, API or otherwise, the Client has no right – except where anything agreed to the contrary between the parties to:

(i) offer, give, sell, disclose or disseminate it in any manner to any third party;

(ii) make any other use of it than trading for his own account;

(iii) provide access directly or indirectly to the API to any third party;

(iv) allow access to the Trading System to any third party.

2.3. Specific conditions published on Dukascopy’s website and the Trading System, as amended from time to time and without prior notice to the Client, shall apply in addition to these Conditions. The Client undertakes to consult and review regularly Dukascopy’s website and the Trading System to be timely informed about any changes in respect of those conditions and the Banking Services in particular.

## 3. Specific conditions for joint accounts

3.1. In case of joint account, where the Client is more than one person (hereinafter, a “joint account”), the liabilities set forth under these Conditions shall be deemed to apply to each of such persons taken jointly and severally. However, Dukascopy may decide to act upon instructions from, or to enforce its rights against, one of such persons only.

3.2. These Conditions govern only the relations between the Account Holders and Dukascopy without regard to the relationship between the different Account Holders, in particular, without any concern with respect to their ownership rights or those of their heirs in respect of the assets deposited on the joint account.

3.3. The Account Holders of a joint account shall enjoy all rights accruing to them in respect of the joint account jointly and severally. Each Account Holder is authorised under his sole signature to dispose of the assets booked on the joint account without restriction at his own discretion, in particular, to manage, withdraw and transfer or assign the assets individually. Moreover, each Account Holder is authorised to grant a power of attorney in favor of a third party of his choice and to revoke a power of attorney in respect of the joint account, even if this power of attorney was granted by another Account Holder. Notwithstanding the foregoing, Dukascopy may request that several or all joint Account Holders consent to the closing of the joint account.

3.4. Each Account Holder shall be jointly and severally liable to Dukascopy in respect of all costs, commitments, obligations and debts arising out of any activities or transactions performed in connection with the joint account. Articles 143 and 150 of the Swiss Code of Obligations apply in this respect.

3.5. Unless one of the Account Holders instructs it otherwise, in writing and in advance, Dukascopy is authorised to credit the joint account with any funds or

securities that are received in the sole name of any Account Holder.

3.6. Upon the death of any of the Account Holders, these Conditions shall continue to apply between Dukascopy and the surviving Account Holder(s), who shall therefore continue to have all rights of disposal (including but not limited to withdrawing all funds and closing the account) over the joint account to the exclusion of the heirs of the deceased Account Holder.

3.7. The Account Holders jointly and severally undertake to indemnify Dukascopy of any cost and damages it could suffer in case one or several Account Holders, their heirs or third parties would raise claims against Dukascopy because of the application of the present specific conditions for joint accounts.

3.8. In accordance with the applicable inheritance law, at the request of any legitimate heir of the deceased Account Holder, Dukascopy shall be entitled without further justification to disclose the balance of the joint account as per the day of the death of the Account Holder as well as the identity of the surviving Account Holder(s) and of the attorney(s) or other authorised representative(s). Dukascopy shall likewise be entitled to disclose information on account transactions prior to the Account Holder's death to any heir entitled to a compulsory portion of the estate.

3.9. If the consent of an Account Holder's spouse is required by law, Dukascopy shall be entitled to presume that such consent has been given.

#### **4. Client's obligations**

4.1. The Client shall be obliged:

(i) to provide Dukascopy with the necessary initial or subsequent assets for the granting of the Trading Line, either by prepayment of the amount agreed with Dukascopy and in a currency acceptable to it in the form of a "margin" deposit on the Client's account with Dukascopy, or by providing Dukascopy with a bank guarantee in a form acceptable to Dukascopy, any other assets which may at Dukascopy's discretion be deposited with third party custodians; the margin requirements as available on Dukascopy's website and as amended from time to time are binding on the parties and apply additionally to these Conditions;

(ii) to compensate Dukascopy for any and all fees, taxes, losses, expenses, disbursements and commissions incurred by Dukascopy in connection with the performance by Dukascopy of its duties under these Conditions;

(iii) to remunerate the Banking Services as further set out in Section (Remuneration, operational premiums, expenses and commissions) below; the commission policy as available on Dukascopy's website and as amended from time to time is binding on the parties and applies as an integral part of these Conditions;

(iv) to pay any banking or money transfer fees associated with any transfer, settlement or movement of funds or assets on the Client's behalf;

(v) to pay the necessary amounts if any, as requested by Dukascopy, to clear a negative balance of the Client's account;

(vi) to check on a regular basis his account statements and trading history and records, as available online, and immediately notify Dukascopy of any error or inconsistency he may discover; any failure to do so within 48 hours after execution of a transaction shall be considered as an irrevocable conclusive acceptance by the Client of such transaction and its conditions of execution.

(vii) to timely inform Dukascopy in case of changes in his address, tax residence, Tax Identification Number (TIN), declaration of beneficial owners/controlling persons and banking details provided to Dukascopy when opening the account.

4.2. The Client's liability shall not be limited by the amount of funds on his account or by the guaranties otherwise provided by the Client to Dukascopy. The Client is liable with all his assets.

#### **5. Dukascopy's obligations**

5.1. Dukascopy shall provide Banking Services by executing the Client's trading orders subject to the ability of Dukascopy to find appropriate Liquidity and to provide execution over the Trading System.

5.2. Dukascopy shall further:

(i) provide the Client with the agreed Trading Line upon receipt of the initial deposit of the funds;

(ii) make all possible endeavours to execute the Client's trading orders whereby the Client acknowledges, recognises and accepts that Dukascopy cannot and shall not guarantee the execution of the Client's orders and shall not be liable for any failure in the execution process.

(iii) provide the Client with the withdrawal of his funds upon first request, provided that all positions of the Client are closed;

(iv) provide the Client with online history of the transactions executed and with account statements showing the exposure maintained for each of the Client's accounts.

#### **6. Client's rights**

6.1. The Client shall have the right:

(i) to request from Dukascopy his trading history reports (which shall be available online on the Trading System and can be printed out, thanks to the Client's personal login and password, at any time);

(ii) to request full or partial withdrawal of funds, provided that all trading positions of the Client are closed and Dukascopy has deducted all amounts due under these Conditions; if some positions are still opened upon receipt of the Client's withdrawal order, Dukascopy shall be entitled to consider such withdrawal instruction as an instruction to close all positions either immediately or at such time Dukascopy deems acceptable;

(iii) to be provided by Dukascopy, upon written request, with information about payments of fees and retrocession by Dukascopy to the Client's attorneys (e.g. external managers) or to any third party, to the extent that such amount can be calculated and allotted to the Client's account with reasonable efforts.

## 7. Dukascopy's rights

7.1. Dukascopy shall have the right at its discretion:

(i) to reject any order or instruction of the Client or his authorised representative(s) namely – without limitation – if the balance on the Client's account is not sufficient to ensure, in Dukascopy's sole appreciation, the execution of the respective transaction(s);

(ii) to reject any trading order of the Client or to adjust the execution price (within set slippage tolerance) of an order if, in Dukascopy's sole appreciation, the execution of the respective transaction is not possible and/or if the hedging of such transaction is not possible at conditions given by the Client;

(iii) to cancel or adjust any transaction of the Client;

(iv) to close any open positions or cancel contracts (e.g. Binary Options) relative to the Client account upon the reception of a withdrawal request;

(v) to close any open position or cancel contracts (e.g. Binary Options) if the Client has granted a limited power of attorney to a third party to trade on his behalf (e.g. to an External Manager) and if, whenever, for any reasons, Dukascopy ceases to accept instructions from this third party;

(vi) to convert any monies deposited by the Client or held by Dukascopy for the Client into such other currency at such exchange rate it freely selects, as often as Dukascopy may deem necessary or desirable to cover any of the Client's obligations and liabilities, to comply with the Client's instructions or to deliver the Banking Services. Alternatively, depending on used Banking Services, Dukascopy may automatically open a new subaccount under the Client account in any currency acquired by the Client via Banking Services or deposited by the Client with Dukascopy. The Client undertakes to refer to contractual terms, service descriptions and fees related to money conversions as per Dukascopy's websites [www.dukascopy.com](http://www.dukascopy.com), [www.dukascopy.bank](http://www.dukascopy.bank) and/or to consult Dukascopy in this respect prior to use Banking Services;

(vii) to impose limits or pre-conditions to certain transactions or Banking Services. For instance, Dukascopy may ask clarification of the origin of funds or the economic background of transactions prior to proceed with transactions including Client deposits and transfers;

(viii) to offset at any time against each other the balances of all accounts and subaccounts of the Client regardless of the respective Basic Currency or to offset each balance individually or to combine or consolidate all or any accounts and subaccounts to set off any amount due by the Client against any amount due to him by Dukascopy, at any time and irrespective whether the

amounts due by the Client are executable or not and irrespective of the currency in which the respective claims are denominated;

(ix) to charge fees in accordance with the remuneration scales published on Dukascopy's website and as amended from time to time without prior notice to the Client;

(x) to hedge Client trades partially, fully or not, at its sole discretion;

(xi) to transfer to debt collection agencies any monetary claims it may have against the Client. THE CLIENT HEREBY AGREES TO RELEASE DUKASCOPY FROM ALL ITS CONFIDENTIALITY OBLIGATIONS IN RESPECT OF SUCH DEBT COLLECTION AGENCY;

(xii) in case the Client gives no instructions for the transfer of remaining funds, if any, at termination of the business relationship, to transfer such funds to any bank account or credit card account of the Client known to Dukascopy.

7.2. Notwithstanding any other provision of these Conditions, Dukascopy shall be entitled to restrict access to, or to impose limits, suspend, stop or cancel trading on the Trading System or the use of other Banking Services (including, without limitation, discontinuing the Client's use of the API), either generally or in respect of particular currency pairs, instruments, transactions or customers, or to discontinue transmitting any or all information, or to refuse facilitating or proceeding any or all transactions including transfers, or to refuse allowing access to and use of the Trading System and other Banking Services, in the event that, at Dukascopy's sole discretion, any of the following circumstances occur:

(i) The Client's margin account balance is insufficient to keep open positions. In such case, Dukascopy has the right, at its own discretion and without limitation or notice to the Client, to decrease exposure by applying its Margin Call and Margin Cut policies which involve closing of exposures/positions and/or opening/cutting of positions;

(ii) Full or partial failure of the Trading System, including failure of the technology constituting the Trading System or any of the Communications linked to the Trading System or between the Trading System and the Client and/or any of the Counterparties, or any other circumstance as a result of which it is not practicable for Dukascopy to use the Trading System;

(iii) Breach of security of the Trading System;

(iv) Material breach by the Client of his obligations under these Conditions or any other agreement with Dukascopy (including, without limitation, the Account Opening Documentation) including if the Client fails to provide Dukascopy with requested information;

(v) The information provided by the Client e.g. place of residence, beneficial owner(s) of the funds or persons having access to the account reveals to be untrue;

(vi) Dukascopy suspects the Client uses Banking Services in connection with illegal activities including but

not limited for money laundering, terrorism financing or tax evasion;

(vii) Non-compliance by the Client with any applicable laws;

(viii) Market conditions generally or conditions with respect to a particular currency pair, instrument or a single currency rendering it necessary or desirable, at Dukascopy's sole discretion, to do so;

(ix) Absence of Liquidity or insufficient Liquidity on the market.

7.3. Any actions taken by Dukascopy pursuant to this Section shall continue for such a time period as Dukascopy reasonably determines it to be necessary or desirable.

7.4. In order for Dukascopy to quote prices with the swiftness normally associated with speculative trading, Dukascopy may have to rely on available price or other information that may occasionally later prove to be faulty. In such case, Dukascopy may cancel or adjust the trade with the Client, but shall do so within reasonable time and shall provide the Client with a full explanation for the reason for such cancellation or adjustment.

7.5. If Dukascopy price feed due to any technical (software, hardware, network etc) reason is considered as erroneous, the Client authorises Dukascopy to adjust retroactively and unilaterally the rates of affected trades relying on indicative rates published by an independent reference information system for the relevant trading period. For this purpose, Dukascopy may use the indicative rates provided by *Bloomberg*.

7.6. Dukascopy shall have its sole discretion and control over, and the right to modify at any time the functionality of the Trading System (including, without limitation, the price feeds thereon), configuration and content, including without limitation: (i) the parameters and protocols by which the trading orders are placed, routed, matched or otherwise processed by the Trading System; and (ii) the availability of the Trading System with respect to particular instruments or transactions at any particular time or location.

## 8. Trading Line

8.1. The legal and economic status of the funds on the Client's trading account shall be considered as the prepayment for the Trading Line granted to the Client by Dukascopy.

8.2. The amount of the Trading Line shall be calculated by Dukascopy in the Basic Currency, by multiplying the equity on the Client's account by the leverage granted (if any) to the Client as determined by Dukascopy.

8.3. The leverage provided to the Client by Dukascopy shall be subject to changes at the sole discretion of Dukascopy, according to the usual practice of Dukascopy considering market circumstances, the equity on the Client's account, the type of trading activity of the Client, the day of the week, the holiday's calendar and other factors.

8.4. Dukascopy shall be entitled to use and operate with the equity on Clients' account to obtain from third parties such trading lines that are necessary to provide the Trading Line to the Client.

8.5. The Client shall be solely responsible for monitoring and ensuring sufficiency of the prepaid collateral amount on his account. The total balance of the Client's account must at all times be in compliance with the minimal levels published on Dukascopy's website with relation to different types of accounts.

8.6. The Client agrees that the withdrawal of funds from the account where there are exposures (i.e., while he uses the Trading Line) may result in full or partial closure and settlement of certain and/or all positions in different currencies or instruments. Therefore, the Client authorises Dukascopy to partially or fully close at its full discretion any and all exposures or active contracts (i.e. Binary Option) of the Client in order to proceed to instructed withdrawal.

## 9. Remuneration, operational premiums, expenses and commissions

9.1. For the execution of the trading orders of the Client and the maintaining of the Client's exposures and margin account(s), Dukascopy shall directly debit a commission from the Client's account(s). The commission varies according to the type of operations performed by Dukascopy. Additional mark-up may be charged to clients having access to third party software or trading systems.

9.2. If commissions charged to the Client are not included in the price of Banking Services, Dukascopy shall provide online trading history statements mentioning details of the trading operations, account balances and commissions charged. Upon written Client's request, Dukascopy shall provide online account statements where commissions are included in the execution price of each transaction.

## 10. Use of the Banking Services and Client's instructions

10.1. Trading orders shall normally be passed by using the facilities available on the respective interface of the Trading System. Alternatively, the Client may give trading instructions to Dukascopy by phone namely if for any reason he is not able to get access to the Trading System. Dukascopy does not accept trading instructions sent by e-mail. The Client may request further technical assistance by contacting [support@dukascopy.com](mailto:support@dukascopy.com).

10.2. Dukascopy shall provide the Client with personal and unique Access Codes. They allow the Client to communicate with and give instructions to Dukascopy.

10.3. The Client shall keep those Access Codes secret and protect them against misuse. **In no case the Client can communicate his Access Codes to any third party. Only Dukascopy is entitled to set up any form of access to the Client account by third parties (view only, passing of instructions, etc.), upon Client's request.** The Client is required to change his password regularly. He shall be responsible for the loss or misuse

of such Access Codes and shall bear exclusive liability for any consequence of their use by unauthorised persons.

10.4. Anyone accessing the Banking Services or instructing Dukascopy by electronic means or by phone and identifying himself through such Access Codes shall be deemed to be the Client or his authorised representative, without any further clarification from Dukascopy. Dukascopy remains however free to request additional identification elements at any time to verify the Client's identity.

10.5. The Client may request Dukascopy to block his Access Codes. Such blockage may be revoked by the Client only.

10.6. The Client acknowledges the electronic nature of the Trading System which shall be provided strictly on "AS IS" and "WITH ALL ITS FAULTS" basis.

10.7. Dukascopy may provide the Client with or allow the Client to make use of certain programming tools to facilitate the planning/triggering of the trading activity of the Client. Such tools shall be provided on "AS IS" and "WITH ALL ITS FAULTS" basis. All technical facilities of planning/triggering the trading orders shall be provided exclusively for the convenience of the Client at the sole discretion of Dukascopy and shall be used by the Client at its own risk and costs.

10.8. The Client acknowledges that there are risks associated to the use of the Trading System, programming tools and of other electronic communication tools, has read and accepted the document entitled "**Release in Respect of the Use of Means of Telecommunication**" and releases Dukascopy from any liability on whatsoever ground in that respect.

10.9. To be considered as valid, each trading order has to be both received and confirmed by Dukascopy. Dukascopy shall, as applicable, confirm orders received electronically via the Trading System, in writing, by e-mail or by phone. The execution of an order means confirmation of it. Any unconfirmed orders are considered as null and void.

10.10. Upon receipt and confirmation of a trading order, Dukascopy shall make all possible endeavours to execute it in accordance with the terms set out herein. Dukascopy will further endeavour to execute Client's instructions received during regular office business opening hours and within reasonable delays.

10.11. Dukascopy reserves its discretionary right not to execute Client's instructions and to request a written confirmation in original prior to proceeding. Dukascopy shall have no liability whatsoever towards the Client or any person arising from such refusal to execute the Client's instructions.

10.12. Without so being obliged, Dukascopy may request the Client or the Client's authorised attorney, if any, to give such indications which will allow Dukascopy to establish the latter's' identity. Except in cases of gross negligence or wilful default Dukascopy shall bear no liability on whatsoever ground in case of abuse or

falsification by non-authorised third parties of the Client's name, signature, e-mail address or other designation or of the name or signature of any person(s) having signature authority and/or limited or general power of attorney over the Client's account(s).

10.13. Should the Client wish to withdraw all or part of his funds deposited with Dukascopy and/or close his account(s), he shall give his instructions in a form accepted by Dukascopy. The Client shall further be responsible for ensuring that Dukascopy has received such instruction, by contacting Dukascopy (e.g. by phone).

## **11. Third party platforms and third party trading software**

11.1. Dukascopy is not liable for any third party trading and advisory software and/or solutions or systems by which the Client can trade and/or can be assisted in making trading decisions. Nor is Dukascopy liable for the application, implementation and correct functioning of any third party algorithms available on the market and strategy programming services available to automate or to help the Client's trading activity.

## **12. Client's warranties and representations**

12.1. The Client warrants and represents that he:

(i) is carrying out and will at any time carry out all transactions on the Trading System on a well-thought-out basis and not as gambling or a wager under the provisions of articles 513 and 514 CO (Swiss Code of Obligations) (being aware of the content thereof);

(ii) has adequate and sufficient knowledge and understanding of the instruments and transactions to be carried on and is familiar with the regulations of the relevant markets, transactions and products;

(iii) will not engage in trading with funds which were borrowed or that he cannot afford to lose;

(iv) understands and agrees that the present Conditions do not describe the Banking Services in details and that before using Banking Services, he will make sure associated fees and functionalities as described on [www.dukascopy.com](http://www.dukascopy.com) meet his requirements;

(v) has decided to use the Banking Services based on its own testing, verifications and information found on Dukascopy's website and not in reliance upon any representation or warranties whether written or oral express or implied made by Dukascopy's representatives. Any such warranty or representation are not binding Dukascopy in any manner and only reflects the personal understanding and opinion of the concerned employees unless it was issued in writing and signed by two authorised signatories (as per the Swiss Register of Commerce) of Dukascopy acting jointly;

(vi) is aware that his deposits with Dukascopy are insured up to CHF 100'000 by the Swiss deposit insurance scheme as detailed at [www.esisuisse.ch](http://www.esisuisse.ch).

### **Dukascopy Bank SA**

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(vii) understands and agrees that Dukascopy is the legal counterparty of all his trades, does not guarantee the absence of any conflict of interest between him and Dukascopy and that all Client trades will not necessarily be hedged in part or in full with external counterparties;

(viii) understands and agrees that Dukascopy may obtain trading income in excess of the trading volume commissions charged to him;

(ix) has thoroughly tested any API, trading strategy, tool, function, programming code, specific order, setting or combination thereof as well as any third party software on the demo account, and found such any API, trading strategy, tool, function, programming code, specific order, setting or combination thereof as well as any third party software compatible and satisfactory before use of any such API, trading strategy, tool, function, programming code, specific order, setting or combination thereof as well as any third party software on his live account.

(x) is in compliance with all laws to which he is subject, including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements and has obtained all necessary consents, licenses, etc. from competent authorities to enter into and perform all his obligations under the Conditions or any provisions thereof;

(xi) is not under any legal disability and is not subject to any law or regulation which would prevent him to enter into and perform all his obligations under the Conditions or any provisions thereof. In case the Client is under age of majority, he is authorised to open and to use an account with Dukascopy by his legal representatives;

(xii) does not open the account for tax evasion purposes and duly fulfils all tax duties to all competent authorities as they relate to this account, and;

(xiii) The information provided by the Client to Dukascopy is complete, accurate and not misleading in any material respect.

12.2. The Client acknowledges, recognises and understands that trading certain instruments may be either prohibited or strictly regulated in certain jurisdictions. The Client shall inform Dukascopy of any restrictions applicable to him. The Client acknowledges, recognises and understands that he alone shall be liable for any consequences that may result from failing to provide Dukascopy with such information.

12.3. The above warranties and representations shall be deemed to be repeated in the future, for the duration of the Client's relationship with Dukascopy, each time the Client and/or his authorised representative(s) accesses to the Banking Services.

12.4. Should the Client fail to adhere to its warranties and representations, Dukascopy is entitled to withhold any funds still on the Client's account as to satisfy Dukascopy's claims, including but not limited to indemnity claims for taxes, fines incurred by Dukascopy as result of actions of the Client or charges for services rendered.

12.5. In addition to the Client's funds in the Client's account at Dukascopy, the Client expressly agrees to be held liable with the entirety of the Client's assets for his liabilities deriving from these Conditions.

### 13. Risk disclosure and acknowledgement

13.1. The Client acknowledges, recognises and understands that trading on margin:

(i) is highly speculative;

(ii) exposes the financial situation of the Client to a very high degree of volatility which may cause very substantial movements in the level of the account balance;

(iii) may involve an extremely high degree of financial risk which may cause losses in excess of the amount of equity prepaid by the Client;

(iv) is appropriate only for persons who, if using a Trading Line or trade on a NOP (Net Open Position) limit or using any form of leverage, can assume a risk of loss exceeding the prepaid equity.

13.2. The Client acknowledges, recognises and understands that this Section does not describe all risks relating to the execution and holding of transactions, and confirms that he has the capacity to assess and understand (either by himself or with the advice of his own financial, legal and/or tax advisors) the risks associated with such transactions. The brochure "**Risks in Margin Trading**" has been provided to the Client.

13.3. The Client acknowledges, recognises and accepts that:

(i) He is willing and able, financially and otherwise, to assume the risk of trading in speculative instruments;

(ii) When the Client enters into any transaction related to Banking Services, any profit or loss arising as a result of a fluctuation on market will be entirely for the Client's account and risk;

(iii) All the Client's investment decisions will be based solely on his own evaluation of the market, his financial circumstances and investment objectives; the Client agrees not to hold Dukascopy liable for any trading losses or other damages or losses incurred by the Client;

(iv) The ongoing maintenance of multi-instrument exposure may expose the Client to increased risks of losses and may increase significantly the amount of the losses that may be suffered by the Client in connection with a particular transaction executed within the scope of the Banking Services; the Client agrees not to hold Dukascopy liable for losses incurred as a consequence of Dukascopy maintaining such multi-instrument exposure or otherwise holding the Client's account, as further set out in Section "Exclusion and limitation of liability";

(v) Market Rules and/or significant imbalance of supply and demand and/or a lack of Liquidity may result in the temporary impossibility to carry out, buy or sell orders and, consequently, to wind up positions that the Client wishes to liquidate, or that the Client may have

decided to liquidate due to insufficient amount of the prepaid Trading Line. The Client is fully aware of the significant losses he may suffer due to those factors, among others;

(vi) The Client and Dukascopy are bound to comply with the Market Rules, regulations, practices and general conditions in force on relevant marketplaces or jurisdictions and applicable to or required to be complied with by Counterparties with which Dukascopy may operate;

(vii) In the scope of its core business, Dukascopy and its employees may - at the Client's request or not - provide information based on knowledge and information at Dukascopy's disposal. Any and all information available at any time on [www.dukascopy.com](http://www.dukascopy.com) and/or the Trading System and/or otherwise provided by Dukascopy or its employees regarding trading issues or any other financial matter shall not constitute an advice or a recommendation by Dukascopy with regard to investments, trading or any other financial matter nor constitute an offer to buy or sell or a solicitation to execute any transaction. Such information, although based upon information from sources believed by Dukascopy to be reliable, may be incomplete, faulty, unverified and unverifiable. The Client releases Dukascopy from all and any liability for providing such information, or for any results of using it.

13.4. Accordingly, any investment decisions and / or transactions on the Trading System on the Client's behalf shall be deemed to have been made solely by the Client or his authorised representative(s), for which the Client shall bear full and exclusive responsibility. The Client releases Dukascopy from any liability on whatsoever ground, should the Client's trades and/or investments fail to achieve a performance in line with the Client's expectations or show a negative performance.

#### **14. Exclusion and limitation of liability**

14.1. The Client agrees not to hold Dukascopy or any of its officers, directors, employees, agents, subsidiaries or affiliates liable for any trading losses or other losses that may be incurred by the Client or his attorney(s), except in case of wilful default or gross negligence. Dukascopy shall in particular not be liable for any loss of any kind suffered or incurred by the Client (i) as a result of Dukascopy's negligence, (ii) caused by the auxiliary persons of Dukascopy, (iii) in case of use by a third party of the Client's login and password either communicated to this third party by the Client or obtained by the third party by an abusive/ fraudulent manner or (iv) in case Dukascopy imposes limits or preconditions.

14.2. Dukascopy assumes no liability towards the Client for the ability of the Trading System to meet the user's requirements, be error-free, or operate without interruption, or that information transmitted through the Trading System (or via phone) shall be accurate or timely. Dukascopy shall also assume no liability for other users of the Trading System or any employees of Dukascopy to perform as expected.

#### **15. Force Majeure**

15.1. Dukascopy is released from any liability for partial or complete failure to perform its obligations under the Conditions including regarding any order and transaction pursuant to the Conditions, if such failure is caused by Force Majeure circumstances.

15.2. A Force Majeure situation does not terminate the Conditions but immediately suspends the obligations of Dukascopy for the all duration of the Force Majeure situation.

15.3. Dukascopy shall swiftly inform the client in case it invokes a Force Majeure situation. This notice shall specify the starting date and time, the cause and the expected duration of the Force Majeure situation.

15.4. Dukascopy shall swiftly notify the client when the Force Majeure situation has ended. This notice shall specify the date and time of the ending of the Force Majeure situation.

15.5. Dukascopy shall use commercially reasonable efforts to resume performing its obligations after the ending of a Force Majeure situation.

15.6. Dukascopy and the client agree to postpone any claim toward each other until the ending of the Force Majeure situation.

#### **16. Transactions on securities**

16.1. Unless instructions to the contrary, orders received by Dukascopy with respect to transactions on securities may be executed at Dukascopy's sole discretion, on any stock exchange, market or trading platform or over-the-counter (OTC). Dukascopy may freely select the brokers and market makers to execute any order. Execution of orders with third parties is made at the Client's sole risks.

16.2. When executing transactions, Dukascopy is entitled to act as counterparty to the Client, or as an intermediary between the latter and any third party, including other Clients accessing the Banking Services or customers of Dukascopy who use other services than the Banking Services. The Client is therefore conscious that potential conflicts of interests may occur.

However, when acting further to this Section, Dukascopy shall not act in any way which would be detrimental to the Client. Further potential conflicts of interests may arise in connection with remuneration that Dukascopy may receive from third parties in the course of executing any of the Client's instructions or otherwise providing Banking Services to the Client, in the form of commissions, rebates, discounts or other kind of advantages, whether financial or not, the nature, amount and calculation of which depend on the third party involved, as well as on the type, volume and frequency of investments or transactions made. At the request of the Client, Dukascopy will provide him with further information about this type of remuneration. The Client hereby waives all claims to such remuneration, commission and other benefits and accepts therefore that they shall accrue in perpetuity to Dukascopy.



16.3. The Client is solely responsible to monitor his positions at all time and to comply with his obligations, under any applicable laws and rules including any market rules, e.g. to disclose the crossing of substantial shareholding disclosure thresholds, taking into account other positions held as the case may be with other depositaries or custodians. The Client hereby acknowledges that Dukascopy itself may be under an obligation to provide to the relevant authorities, stock exchanges or securities issuers, in Switzerland or abroad, certain information regarding namely the Client, his positions and transactions, the beneficial owner of the latter, if certain thresholds are crossed in its books, SUCH DISCLOSURE BEING FULLY ACCEPTED BY THE CLIENT.

16.4. Dukascopy may freely decide not to execute certain transactions or to manage certain assets if it may trigger a disclosure duty, or for any other reason affecting its interests, provided that it informs forthwith the Client when possible after receiving the relevant instruction, without being obliged to provide any reason, though. Under the same circumstances, Dukascopy may either accept to appear as the holder of securities and positions purchased for the account of the Client or decide that the Client must be disclosed as the true holder of such securities or positions, which is accepted by the Client.

16.5. When giving instructions to Dukascopy with respect to any transaction on securities, the Client represents and warrants, and undertakes to indemnify Dukascopy for and against any adverse consequences of any of the following representation and warranties not being true at all time, that:

- (i) He has received all useful and desirable information in this respect and has been able to take note of all related documents and to ask every possible question in this respect; he has read and understood all subscription documents and other relevant information;
- (ii) He meets all conditions of eligibility required under the subscription documents or otherwise imposed by law and relevant regulation including market rules, such as nationality, residence, experience, personal status, fortune, etc. );
- (iii) He has the necessary financial experience and knowledge to correctly assess the advantages and risks related to the transactions contemplated; taking into account his objectives and personal, financial and tax situation, either by himself or through his specialised attorneys and legal, tax and financial advisors;
- (iv) He has carried out the necessary assessment of the contemplated transaction and the resulting financial situation, irrespective as to whether the transaction was initiated on any party's advice or recommendation;
- (v) He has understood the nature and extent of the risks inherent with the contemplated transaction and fully assumes them.

## 17. Social/Signal/Group trading

17.1. The Client acknowledges and agrees that his participation to Social/Signal/Group trading activities can be authorised only upon receipt of an express consent from Dukascopy. Before entering into such trading activities, the Client shall inform Dukascopy. The latter may request additional information in order to authorise and/or to set up individual trading conditions for Social/Signal/Group trading depending on the cases. Clients are informed that the basic self-trading account volume commission and trading conditions are not intended and may not be applicable to Social/Signal/Group trading.

17.2. The failure to receive such consent from Dukascopy or providing incomplete or false information to obtain the authorisation for Social/Signal/Group trading (e.g. wrong declaration of the trading tool used or other relevant information) may lead to the cancellation of the executed orders, the revision of execution prices and/or the implementation of additional volume commission for already executed orders (adjusted volume commission rate may amount to a USD 100 per USD 1 million traded for all trading instruments, except for single stock CFD and ETF CFD where all trading commissions may be doubled).

17.3. Dukascopy may initiate at its own discretion an investigation when a suspicious Social/Signal/Group trading activity is detected. In such case, Dukascopy is entitled to block for a reasonable period of investigation all activities on the Client's account including opening of new positions, closing of open positions and withdrawal of funds.

## 18. Domestic and cross-border wire transfers and transfers of securities, credit-cards

18.1. The Client acknowledges and agrees that:

- (i) Dukascopy is entitled to refuse the execution of payment orders which do not contain the required information;
- (ii) Dukascopy may reject payment orders from or to countries, financial institutions, physical or legal persons under sanctions;
- (iii) Orders are irrevocable from the moment of the debit of the account;
- (iv) The credit may be made on the basis of the IBAN only without any reconciliation thereof with the name and address of the beneficiary.
- (v) Dukascopy reserves the right to perform such reconciliation at any time and at its own discretion and to request the correct details from the financial institution of the originator or to return the incoming payment if these details do not match.

## 19. Termination and netting of positions

19.1. Without prejudice of the right of early termination as set forth in Section "Early termination", either party is entitled to terminate its relationship with the other at any time, without reason, by giving no less than seven (7)

calendar days prior written notice, including but not limited to notice given by e-mail to the other party, such notice to specify the date on which the termination is to become effective. No penalty shall be payable by either party upon termination of its relationship with the other. Termination shall in no way affect any rights and obligations accrued hereunder until the date of termination.

19.2. The termination of the relationship with the Client shall extinguish the Client's right to use the Banking Services including the Trading System as well as all and any software and solutions made available to him by Dukascopy.

19.3. Upon termination of the relationship, Dukascopy and the Client undertake to complete all transactions including transfers that are already in progress and the terms of these Conditions shall continue to bind both parties in relation to such transactions. However, Dukascopy shall be entitled to close all open positions of the Client and to offset, after conversion into the Basic Currency, any amount due to the Client against any amount owed by him, irrespective of the maturity date of any respective transaction. Dukascopy shall be entitled to deduct all amounts due to it before transferring any funds on any account of the Client, and Dukascopy shall be entitled to postpone such transferring until any and all positions between Dukascopy and the Client are closed. Furthermore, Dukascopy shall be entitled to require the Client to pay any charges incurred in transferring the Client's investments.

## 20. Early termination

20.1. Without prior notice to the Client, Dukascopy shall have the right to terminate its relationship with the Client and/or to close out all or any positions of the Client and realise any other assets held by Dukascopy on behalf of the Client, upon or at any time after the occurrence of any of the following events:

- (i) the Client fails to make any payment or fails to comply fully with any obligations under these Conditions or any transaction;
- (ii) the Client has no equity on his account;
- (iii) the Client dies or becomes of unsound mind;
- (iv) the Client enters into liquidation or into an insolvency arrangement (including an arrangement with its creditors), or if a receiver is appointed over all or part of its assets or undertaking;
- (v) any of the warranties or representations given by the Client are or become untrue;
- (vi) Dukascopy or the Client is requested to close an exposure (or any part of an exposure) by any regulatory agency or authority;
- (vii) Dukascopy reasonably considers it necessary for its own protection or the protection of its customers or associates.

20.2. The Client acknowledges, recognises and agrees that Dukascopy shall not be liable for any consequences of it taking the steps described in this Section. The rights

described in this Section shall be in addition to any other rights which Dukascopy may have against the Client under these Conditions or under Swiss law.

## 21. Amendments to these Conditions

21.1. Dukascopy shall be entitled to amend the Conditions at any time by giving a notice of minimum thirty (30) calendar days, including but not limited to a notice given by e-mail to the Client or posted on Dukascopy's website. Such changes shall become effective on the date specified in the notice, unless expressly disapproved by the Client within thirty (30) calendar days as from the date of notification, in which case the parties may exercise their right to terminate the relationship in accordance with these Conditions.

21.2. Dukascopy expressly reserves the right to use its website to inform the Client about any changes in these Conditions and the posting of a notice on Dukascopy's website shall be deemed a valid notification to the Client of such changes. The Client undertakes to regularly review Dukascopy's website and/or to regularly access his online reporting where relevant information may be published.

## 22. Confidentiality and data protection

22.1. Neither party shall disclose to any person (unless required to do so by any applicable law or by any regulatory or supervisory authority or by any other person entitled by law to require such disclosure) any Confidential Information of the other party which it may become aware in the course of its duties or otherwise, and each party shall use all reasonable endeavours to prevent any such disclosure.

22.2. By adhering to these Conditions, the Client however authorises Dukascopy to disclose such information relating to the Client, his account and his transactions as may be required for the execution of Dukascopy's contractual obligations (e.g. indication of the name and address of the ordering client when ordering cards to third parties such as Visa or Mastercard on behalf of the Client, when executing transfer orders, when declaring derivatives transactions to a central repository, when providing clarification of economic background of transfers and/or origin of Client's funds if requested by correspondent banks or by other intermediaries in payments transactions, when processing and/or storing back up data, etc.), by any law, rule, or regulatory authority, including any applicable Market Rules, without prior notice to the Client. This may also include disclosure to contractual partner either located abroad or not in the framework of an outsourcing agreement signed with Dukascopy.

22.3. Moreover the Client hereby acknowledges that Dukascopy itself may be under an obligation to provide to the relevant authorities, stock exchanges or securities issuers, vendors, trading counterparties, in Switzerland or abroad, certain information regarding namely the Account Holder, his trading positions and transactions, the beneficial owner of the latter, etc.

22.4. For the processing of transactions such as payment instructions, guarantees, collections, foreign exchange transactions and transfer of securities, corresponding orders may have to be processed by international channels, even for domestic payments/transactions, and data on the ordering client may be sent abroad. The Client acknowledges that data held abroad are not protected by Swiss law. Foreign laws and regulations or official orders may require that such data be passed on to authorities or other third parties.

22.5. For the processing of domestic and cross-border payments or transfer of securities, Dukascopy is required to provide certain data, such as the name, address, IBAN and account number of the ordering client, possibly his identification number, date of birth and/or place of birth. The Client acknowledges and accepts that such data may be communicated to the involved Swiss and foreign banks, traffic system operators, payment system providers SIC (Swiss Interbank Clearing) or SWIFT (Society for Worldwide Interbank Financial Telecommunication) and, as a rule, to the beneficiary. For instance, SEPA (Single Euro Payments Area) payments to and from Switzerland are subject to the Financial Action Task Force (FATF) regulations on disclosure of the ordering client. The Client expressly authorises Dukascopy to disclose such information whenever instructions are sent in relation to such transfers. Dukascopy shall not be liable for losses that may arise from the disclosure of such information. The Client acknowledges the information provided by the Swiss Bankers Association ([www.swissbanking.org](http://www.swissbanking.org)) regarding "the disclosure of client details in payment transactions, securities transactions and other transaction types in connection with SWIFT".

22.6. In case of return of funds, full client details and the reason of the return (including the information "closed account") may be disclosed to all parties involved.

22.7. When executing the present Conditions the Client also confirms having read and agreed with Dukascopy's Privacy Policy published on Dukascopy's websites which is amended from time to time, without further notice.

### 23. FATCA

23.1. Where the Client is a US Person or maintains a connection between the account and a US person, the Client authorises Dukascopy to report to the US Internal Revenue Service (IRS) any information relating to the relationship with Dukascopy and requested within the form 8966 "FATCA Report", including but not limited to the name and address of the Client, as well as information on owners of the Client if any, as well as the Tax Identification Number (TIN or EIN) of the Client, copies of any IRS forms, including the Form W-9 "Request for the identification and certification of the taxpayer" which are in the file and / or any or all of the data that are contained in such forms, as well as statements, total amount held in the Client accounts, gains and income, which were obtained on all accounts, as well as any further information regarding the banking relationship which could be required by the IRS.

23.2. The Client acknowledges and accepts that all data disclosed by the Bank to the IRS is then subject to U.S. law and no longer subject to Swiss law.

### 24. Automatic Exchange of Information (AEOI)

Important information: Switzerland has adopted the OECD Common Reporting Standard for AEOI ensuring declaration of bank accounts to tax authorities about (and only about) clients having tax residence in a Partner State. Partner States are all countries which signed an agreement for AEOI with Switzerland as per the list available at: <https://www.sif.admin.ch/sif/en/home/themen/informationsaustausch/automatischer-informationsaustausch/automatischer-informationsaustausch1.html>. Dukascopy is obliged by Swiss law to report annually to the Swiss Federal Tax Administration (FTA) for AEOI about concerned accounts. As per current regulation Partner States receiving information are not allowed to forward it to any other state, may only use this information for handling or supervising taxation and must ensure confidentiality of received information.

As per current regulation, concerned clients have the following rights under the AEOI Act and the Federal Act on Data Protection (FADP):

- (i) Vis-à-vis Dukascopy: clients are entitled to the legal protection offered by FADP. In particular, clients have the right to request which information was collected about them for reporting to FTA. On request, Dukascopy shall provide clients with a copy of its reports to FTA and/or correct any possible wrong data about them in Dukascopy's systems;
- (ii) Vis-à-vis FTA: clients have the right to access information and to request that incorrect data about them resulting from errors in the reporting process to FTA be corrected.
- (iii) For the rest we refer to the article 25a of the Federal Act on Administrative Procedure.

As per applicable legislation, the Client is punishable by a fine up to CHF 10'000 if he provides Dukascopy with false statements or miss to update Dukascopy regarding his situation with AEOI (e.g. if the Client misleads Dukascopy about his tax residence).

24.1. For the needs of AEOI, the Client hereby unconditionally agrees that in case the Account Holder(s) and/or beneficial owner(s)/controlling person(s) on the account have (or get in the future) tax residence in at least one Partner State, Dukascopy is authorised to report annually to FTA all following information:

- (i) the full name, date of birth/incorporation, address, country of tax residence, tax identification number (TIN) of individuals/entities linked to the account and having tax residence in a Partner State;
- (ii) the account number; and
- (iii) the total annual gross income, gross profit/loss and balance on the account at the end of each calendar year.

#### Dukascopy Bank SA

## 25. Waiver of rights

25.1. The rights and remedies contained in these Conditions shall be cumulative and not exclusive of any rights or remedies provided by law. No delay or omission of Dukascopy in exercising any right, power or remedy provided by law or under these Conditions, or partial or defective exercise thereof, shall:

- (i) impair or prevent any further or other exercise of such right, power or remedy; or
- (ii) operate as a waiver of such right, power or remedy.

25.2. No waiver of breach of all or part of these Conditions shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of any future breach of the same or as authorising a continuation of a particular breach.

## 26. Remedies

26.1. The Client shall indemnify Dukascopy and keep Dukascopy indemnified against all losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise, and including reasonable legal fees) which may be suffered or incurred by Dukascopy as a result of or in connection with:

- (i) any breach of these Conditions by the Client;
- (ii) Dukascopy entering into any transaction for the account of the Client hereunder;

26.2. Dukascopy taking any of the steps which Dukascopy is entitled to take upon the occurrence of an event of default;

unless and only to the extent that such losses, taxes, expenses, costs and liabilities are suffered or incurred as a result of Dukascopy's gross negligence or wilful default.

26.3. These indemnities shall be in addition to any other right, indemnity or claim which Dukascopy may have under these Conditions or general law and shall not be affected by any variation or limitation of these Conditions.

26.4. This Section shall survive any termination of the relationship with the Client.

## 27. Dispute resolution

27.1. If the Client becomes aware of a discrepancy between the display of his results of trading activity as it should be in the Client's understanding and the display of such results provided by Dukascopy, e.g., if an order that was placed does not appear, has been modified, a position which shall be open is closed, the position which shall be closed is not closed, extra position(s) and/or order(s) has(ve) appeared etc., the Client shall take immediate remedial action or close the position(s) immediately.

27.2. Thereafter, the Client shall contact Dukascopy's Live trading support immediately by phone.

27.3. Should the Client not proceed in this fashion, the Client waives any rights which he might have had against

Dukascopy with regard to such discrepancy from the moment of a failure to act onwards. This means that all configurations in the Client's portfolio are the Client's full responsibility from the moment of a failure to act, irrespective of further impact of gain or loss on the total profit and loss. Failure to proceed in this fashion is considered a failure to mitigate damages.

27.4. The Client shall communicate any grievance either as a result of the aforementioned possible discrepancy or as a result of any other dissatisfaction in writing to Dukascopy with all relevant details as soon as practicable.

27.5. Dukascopy shall investigate any written sufficiently documented grievance, and communicate its position to the Client no later than within 30 days upon receipt thereof.

27.6. In turn, the Client shall not make public statements in any form concerning any grievance for 30 days. Should the Client violate this provision, the Client agrees to pay to Dukascopy anticipated reputational damages in the amount of CHF 100 per day per violation, to a cumulative maximum of CHF 3'000.

27.7. Additionally, the Client hereby expressly consents that in case any issue/dispute involving the Client is disclosed via media including on the Internet, whether by disclosure by the Client or by third parties, Dukascopy may freely comment on such disclosure and provide via concerned media any information useful for understanding Dukascopy's position about the disclosed issue/dispute. **THEREFORE, THE CLIENT RELEASES DUKASCOPY FROM ITS CONFIDENTIALITY DUTIES IN SUCH CASE** and releases Dukascopy from any liability in case any damage occurs due to the disclosure of information by Dukascopy in application of the present Section.

27.8. In any event, the Client and Dukascopy shall make every endeavour to amicably resolve any dispute, in good faith and in a constructive manner. The Client acknowledges and agrees that threats and blackmailing towards Dukascopy are prohibited and constitute valid ground for interrupting negotiations and for immediate termination of the business relationship.

27.9. Without prejudice to any other rights of Dukascopy under these Conditions, in case the Client and Dukascopy are in a dispute on a trading order, Dukascopy shall be entitled at its sole discretion and without any prior notice to take any and all actions Dukascopy reasonably believes to be desirable for the purpose of limiting the maximum amount involved in the dispute. Dukascopy shall not be liable for, or be under any obligation to the Client in connection with any subsequent fluctuations in the level of the exposure of the accounts of the Client.

27.10. The Client may at any time seek advice from the Swiss Banking Ombudsman which is an official independent mediator and impartial source of information offering free of charge services (see [www.bankingombudsman.ch](http://www.bankingombudsman.ch)).

27.11. This Section shall survive any termination of the relationship with the Client.

## **28. Place of performance**

28.1. The place of performance of these Conditions and of all the obligations arising from these Conditions is Geneva, Switzerland.

## **29. Applicable law and jurisdiction**

29.1. These Conditions are subject to and shall be construed in accordance with Swiss law as the sole and exclusive governing law.

29.2. Any dispute, controversy or claim arising out of, or in relation to, these Conditions, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the notice of arbitration is submitted in accordance with these rules. The number of arbitrators shall be three, unless the rules specify otherwise. The seat of the arbitration shall be Geneva, Switzerland. The arbitral proceedings shall be conducted in English.

29.3. This Section shall survive any termination of the business relationship between the parties.

## **30. Client's personal contact details, Client Communication and dormancy risk**

30.1. Dukascopy shall be allowed to validly communicate with the Client by using the last postal address, electronic address and/or phone and fax numbers provided to Dukascopy by the Client. Each Communication made by using such address or number shall be deemed as validly made and received even if Dukascopy receives a notification of failure to deliver it to the Client.

30.2. For various reasons such as his death or a change of residence/contact details, there is a risk that Dukascopy loses contact with the Client and that his assets be forgotten. For avoiding this, the Client must inform Dukascopy of his new contact details and is advised to inform Dukascopy of trusted persons to be contacted in case the contact is lost, via the online form "Authorisation in favour of trusted person(s) in case of dormant account" which is available at <https://www.dukascopy.com/swiss/english/about/docs/>.

**30.3. The Client undertakes to notify Dukascopy without delay of any changes of his personal or contact details or of any other information relevant to these Conditions.**

30.4. Dukascopy shall be entitled to reject and/or ignore any Communication including instructions from the Client or from any authorised representative emanating from an address and/or phone or fax number not known of Dukascopy. Dukascopy shall not bear any liability on whatsoever ground in that respect.

## **31. Miscellaneous**

31.1. These Conditions shall be for the benefit of, and binding for both the Client and Dukascopy, and for their respective successors and assigns, but the Client may not assign any of his rights and obligations under these Conditions or under any transaction without prior written consent of Dukascopy.

31.2. Dukascopy shall have the right to transfer and/or assign, at its sole discretion, to a third party, whether or not affiliated with Dukascopy, all or part of its rights and/or obligations under these Conditions, including without limitation the duties assumed by Dukascopy hereunder, and the Client shall be deemed to accept such transfer and/or assignment.

31.3. The Client acknowledges and agrees that certain software components such as coding algorithms may be subject to import and export restrictions in certain countries and by accessing the Banking Services through the Internet, he may infringe laws and/or regulations applicable in such country. The Client undertakes to inform himself and assumes sole liability for risks implied by foreign legislation. Dukascopy shall bear no liability whatsoever for the infringement of foreign laws and/or regulations when the Client is using the Banking Services through the Internet outside of Switzerland.

31.4. If at any time any provision of these Conditions is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Conditions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be affected in any way.

31.5. If there is any conflict between these Conditions and any relevant provision of the Terms of Use of Dukascopy's websites, the terms of these Conditions shall prevail.

31.6. These Conditions are accessible on [www.dukascopy.com](http://www.dukascopy.com); they may be amended at any time by Dukascopy with prior notice to the Client, such notice to be given by any adequate mean including e-mail or general publication on the Trading System. The amended version of these Conditions enters into force 30 (thirty) days after such publication, except if the Client terminates his relation with Dukascopy within that period of time.

31.7. These Conditions constitute the entire agreement between the parties with respect to the subject matter of the contract and supersedes all previous agreements.

## **32. Involvement of Swiss and foreign offices of Dukascopy Group and third party service providers, waiver of Swiss banking secrecy and of data protection as per Swiss law**

32.1. The Client is hereby informed and accepts that for onboarding clients and providing Banking Services, Dukascopy may involve employees located abroad and/or foreign entities of its Group. For instance, Dukascopy may collaborate with Dukascopy Europe IBS

AS, Latvia, in the fight against money laundering and terrorist financing (especially video-identification, KYC, transaction monitoring, etc.).

32.2. The Client is hereby informed and accepts that Dukascopy may involve a located abroad and/or foreign contractual partner(s) in the framework of an outsourcing contract concluded by Dukascopy.

**32.3. CONSEQUENTLY, THE CLIENT HEREBY AUTHORISES DUKASCOPY TO INFORM ORALLY OR IN WRITING AND/OR TO DELIVER DOCUMENTS AND/OR TO GIVE ELECTRONIC ACCESS TO HIS DATA / CONFIDENTIAL INFORMATION TO ANY OFFICERS OF DUKASCOPY (AND ITS WORLD-WIDE SUBSIDIARIES, BRANCHES, REPRESENTATIVE OFFICES AND/OR AFFILIATES) AND/OR TO**

**OUTSOURCED EXTERNAL THIRD PARTIES WITH RESPECT TO ANY AND ALL MATTERS, WHATSOEVER, RELATING TO HIS RELATIONSHIP AND HIS ACCOUNT(S) WITH DUKASCOPY, WAIVING EXPRESSLY THE BENEFIT OF THE SWISS BANKING SECRECY, OF THE SWISS ACT ON DATA PROTECTION AND RELEASING DUKASCOPY FROM ANY LIABILITY IN THAT RESPECT.**

32.4. The Client explicitly waives to the extent that is necessary for the reporting of data to the IRS and/or FTA in accordance with the present Conditions, any protection or any rights under Swiss banking secrecy and other Swiss data protection laws.

By his signature, the Client acknowledges that he has read and understood the terms of these Conditions and that he agrees with them, including in particular its Annex on Best Execution Policy and the right of subsequent amendment by Dukascopy as per Section 31.6 above.

Date: \_\_\_\_\_

Signature(s) of the Holder/Client: \_\_\_\_\_

# Annex to the Marketplace Trading Conditions

V. 13.12.2023

## Best Execution Policy

In the frame of general applicable regulation and referring in particular to compliance with FINMA Circular 2018/1 - Organised trading facilities, Duties of operators of organised trading facilities (OTFs) in its Article 28, Dukascopy Bank, as a bilateral organised trading facility operator must ensure the execution of its clients' orders at the price valid when the order is received or at better price.

In order to fulfil this concept to be designated as a form of best execution (further Best Execution) and to protect mutual interests, the Bank and Client agree on the following:

Independently on whether client waives or not the right to Best Execution in accordance with Article 28 of Circular 2018/1, the Bank makes an order execution acting as a principal, it applies all its professional knowledge and experience and takes all reasonable steps or measures to achieve the best execution possible which takes into consideration multiple criteria, such as: fairness of the price, speed and likelihood of execution, order size, type of trading order, existing liquidity and volatility of the instrument at the moment of execution, theoretical or practical ability of the Bank to hedge fully or partially exposure arising from execution of clients order and other factors, the Bank acts in a good faith at its own discretion.

In order to increase transparency, information and to facilitate the transmission of clients trading instructions, the Bank lists below all type of orders with their explicit formulas, meaning and compliance with Best Execution.

Every time when the client submits by any mean of communication an order to the Bank, the latter will consider this order as an explicit instruction in the way it is defined according to this appendix.

This applies to any case of use by the client of any API, trading interface, its components and covers all possible ways of trading order submission from the client to the Bank.

## 1. Multi Currency Accounts (MCA)

MCA trading orders to buy (open) financial instrument and sell (close) financial instrument are specific case of market orders. Taking into consideration applicable commissions and relatively low maximum size of investment, these orders are executed at the price valid when the order is received by the Bank or at a better price for the client in compliance with Circular 2018/1 requirements.

## 2. JForex/MT4/MT5/FIX API trading accounts

For clients using JForex/MT4/MT5/FIX API trading accounts there are two types of prices – indicative streaming price, which can be finally valid for execution or not, and execution price, which is confirmed by the Bank as valid. Indicative prices have limited validity resulting from a short life span of prices (as they are frequently updated) on OTC markets. Validity of the indicative prices can be verified only after receiving of the order. This validation cannot be done retrospectively. The valid price can be determined only in the execution process and may differ from indicative price at the moment of receiving the order.

To control the order execution in a fast-changing market environment, clients have the choice between the following types of orders proposed by the Bank:

**2.1. Market Order** – is an order to buy or sell a financial instrument at current market price. A market order generally is executed at or near the current bid (for a sell order) or ask (for a buy order) price, taking in the account the size of order and available liquidity. Depending on the market conditions, currently available liquidity, volatility and number of orders pretending to be executed at the same bid or ask prices, the order execution price may differ from current indicative prices. This impact may be significant especially in case of important news release and other breaking events. To increase a probability of execution, a market order can be executed both at better or worse price than the indicative price when order is received. When the client submits a Market order it means that for him is more important to get an execution than a precise price, because not conditional Market order has the highest probability of execution.

**By submitting each and every Market order, the client expressly waives the right to best execution according to FINMA Circular 2018/1 Article 28 for the submitted order.**

The above-mentioned waiver concerns all types of Market orders, including Market if Touch order and Market orders with or without set Slippage control value. Slippage control function determines maximum deviation of execution price from the indicative price which client has seen in the moment of order submission. As well the valid execution price may differ from the indicative price at the moment when the order is received by the Bank. Using Slippage control function, the client fully controls the deviation of execution price from indicative price at the moment of order submission by the client (but not receiving by the Bank) and therefore, formally it does not coincide with the formula described in the FINMA Circular 2018/1 Article 28.

**2.2 Limit Order** – is a pending order to buy or sell a financial instrument at a predetermined price (the limit price) or better. Once the indicative market price reaches the limit price, the order is triggered for execution. The limit price set by client for this type of order is considered to be a clear instruction matching with the terms of Circular 2018/1 Article 28 and therefore, the execution price may differ from the valid price at the moment when the order is received. Having in mind the strict limitation on the execution price of a Limit order, there is also no guarantee that the order will be filled (completely or partially) when triggered. Limit orders may be triggered but rejected. This may especially be the case when the indicative market price quickly bounces back from the limit price but the price is not confirmed as valid for execution or the liquidity is not sufficient. When the client submits to the Bank a Limit order, it means that for him is more important to limit possible price deviation than an execution probability.

The above-mentioned concerns all type of Limit orders including Entry Buy Limit, Entry Sell Limit, Take Profit, Place Bid and Place Offer.

**2.3. Stop Order**- is a pending order to buy or sell a financial instrument at current market price when the indicative market price reaches the stop price level set in the order by client. Similarly, to Market orders, Stop order will be executed at or near the current indicative

bid (for a sell order) or ask (for a buy order) price, taking in account the size of order and available liquidity. Depending on the market conditions, currently available liquidity, volatility and number of orders pretending to be executed at the same prices, the order execution price may differ from current indicative price. This impact may be significant especially in case of important news release and other breaking events. To increase a probability of execution, Stop order can be executed both at better or worse price than the indicative price when order is triggered/received. Vast majority of Stop orders used by clients to prevent further losses from the open position. When the client submits a Stop order it means that for him it is more important to get execution than an absence of deviation of execution price from indicative price.

**By submitting each and every Stop order, the client expressly waives the right to best execution according to FINMA Circular 2018/1 Article 28 for the submitted order.**

*The above-mentioned waiver concerns all type of Stop orders including Entry Buy Stop, Entry Sell Stop, Stop Loss, Entry Buy Stop Limit, Entry Sell Stop Limit, Trailing Stop.*