

\_\_\_\_\_  
Company Name // \_\_\_\_\_ Trade Name, if different \_\_\_\_\_ Company Registration Number

\_\_\_\_\_  
Registered Address \_\_\_\_\_ Town or City, County, and Postcode \_\_\_\_\_ (if correspondence address is different, attach separately)

\_\_\_\_\_  
VAT Number \_\_\_\_\_ Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Website \_\_\_\_\_

Primary Business Activity: \_\_\_\_\_

This business is a:  Private Ltd Company  Limited Liability Partnership  Partnership  Sole Trader  Public Company (quoted)  
 Public Company (unquoted)  Other \_\_\_\_\_

Has any director, owner of the business or any other authorised party set out below, ever been convicted of, or is currently under investigation for, any crime under the laws of England and Wales or another country?  Yes  No If yes, please separately attach an explanation.

Indicate how you heard about AFEX:  Sales Call  Referral from: \_\_\_\_\_  Other (please specify): \_\_\_\_\_

This application is primarily to  SEND foreign currency  RECEIVE foreign currency  Both

Expected amount needed, per month (in GBP)  £5,000-£15,000  £15,000 - £30,000  £30,000 - £60,000  Up to £150,000  Up to £300,000  Up to £600,000  Up to £1,200,000  Greater

Approximate number of separate payments, per month  Less than 5  6 - 15  16 - 30  30 - 50  Greater than 50

What goods/services do you purchase with foreign currency: \_\_\_\_\_

What goods/services do you provide for foreign currency received: \_\_\_\_\_

List the primary countries you import from: \_\_\_\_\_

List the primary countries that you export to: \_\_\_\_\_

List the primary currencies you would like AFEX to exchange for you: \_\_\_\_\_

Proposed Payment Method:  Direct Debit  BACS  CHAPS/Electronic Funds Transfer

[Check here](#) if Client will use Forward Contracts

**LIST OF OWNERS (25% or more)** (If a subsidiary, include information of the parent on the Ownership Declaration Form)

Full Name and Residential Address	Company Title	% of Ownership

**AUTHORISED PARTIES:** Individuals named below will be authorised to 1) order trades and 2) authorise payment of Client's funds to other parties.

\_\_\_\_\_  
Name of Primary Trading Contact \_\_\_\_\_ Title of Primary Trading Contact \_\_\_\_\_ Phone \_\_\_\_\_ E-mail address \_\_\_\_\_

\_\_\_\_\_  
Name of Additional Trader \_\_\_\_\_ Title of Additional Trader \_\_\_\_\_ Phone \_\_\_\_\_ E-mail address \_\_\_\_\_

AFEX will rely on the accuracy of the information disclosed in this application. I authorise AFEX to conduct credit searches, including credit histories, and any other searches necessary to evaluate the Applicant's business history and information. All orders and transactions agreed upon by Applicant and AFEX, either orally or in writing, shall constitute a legally binding contract between the parties. By signing and returning this Application the undersigned, on behalf of the Applicant, certifies (1) the authority of the undersigned to bind the Applicant, and (2) the accuracy and completeness of all statements contained in the Application and any supporting documents, and (3) the authority to conduct foreign currency transactions on behalf of the Applicant.

By signing below, I agree to the paragraph above and to the attached Foreign Exchange Agreement Terms and Conditions, which I have read and hereby accept. **Signatory must be a nominated officer of the applicant (Company Secretary or Director).**

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_



**1. Definitions.**

- 1.1 Account** means a single account held by AFEX for the Client's funds.
- 1.2 Account Application** means AFEX's Business Account Application or AFEX's Personal Account Application and other information submitted by Client prior to the execution of any transaction on behalf of Client.
- 1.3 AFEX** means Associated Foreign Exchange Limited, a private limited company registered in England and Wales with registered number 4848033 whose registered office is at 10 John Street, London WC 1N 2EB.
- 1.4 Agreement** means these Terms and Conditions (as amended from time to time), the Account Application terms and conditions (as amended from time to time) and the particulars of any Confirmation.
- 1.5 Authorised Party** means any natural person listed as an "Authorised Party" on the Account Application or subsequently added by Client.
- 1.6 Balance Due** means the amount of funds sold to AFEX by the Client less any Margin Amount already paid.
- 1.7 Balance Due Date** means the date on which payment must be received by AFEX. The Balance Due Date must be a Business Day.
- 1.8 Beneficiary** means the Client or any payee so designated by the Client.
- 1.9 Blocked Person** means any person or organization: (i) listed in Schedule 2 of the Terrorism Act 2000 (as amended), (ii) listed on the HM Treasury's Consolidated List of Financial Sanctions Targets, (iii) owned or controlled by, or acting for or on behalf of, any person listed in Schedule 2 of the Terrorism Act 2000 or HM Treasury's Consolidated List of Financial Sanctions Targets, (iv) with which AFEX is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (v) with whom AFEX believes it is prohibited from conducting transactions by virtue of any government-issued sanctions presently in force or created at a future date, or (vi) that commits, threatens or conspires to commit or supports "terrorism" as defined in the Terrorism Act 2000.
- 1.10 Business Day** means a day on which banks are open for general banking business in all jurisdictions involved in the Trade, including both countries of the currencies involved in the Trade.
- 1.11 Client** means the party entering into this Agreement with AFEX.
- 1.12 Contract Date** means the date on which the Client and AFEX entered into a Trade.
- 1.13 Confirmation** means a) the Trade Confirmation sent by AFEX to the Client setting out details of the Trade or b) the Payment Confirmation sent by AFEX to Client setting out the details of the Delivery Instructions.
- 1.14 Delivery Date** means the date on which funds will be remitted by AFEX upon receipt of the Client's Beneficiary payment instructions, provided the Client has fully paid for the purchased funds and complied with this Agreement. The Delivery Date must be a Business Day.
- 1.15 Delivery Instructions** means the identifying information, including but not limited to the bank account number and bank identifying number, by which AFEX will deliver Client's funds to Beneficiary.
- 1.16 Facility** means any trading lines, settlement line or foreign currency exposure limit that AFEX has granted to Client.
- 1.17 Foreign Currency** means any currency other than Pound Sterling.
- 1.18 Forward Contract** means a binding Agreement wherein the Client agrees, that on a specific date or specified range of dates in the future, the Client will purchase a specific amount of funds in one currency from AFEX and also agrees to sell a specific amount of funds in another currency to AFEX.
- 1.19 Insolvent** means insolvent or otherwise unable to pay its debts as they become due, or upon the filing of any proceeding (whether voluntary or involuntary) for bankruptcy, insolvency or relief from creditors.
- 1.20 Interest Rate** means two percent (2%) above the London Interbank Offered Rate from time to time. The daily Interest Rate shall be the Interest Rate divided by three hundred and sixty five.
- 1.21 Loss(es)** mean any and all market losses associated with movements in the foreign exchange rates, damages, costs, liabilities, losses, claims, judgments, penalties, fines, expenses (including reasonable legal and accountants' fees and expenses), costs of investigation, amounts paid in settlement, court costs and other expenses of litigation.
- 1.22 Margin Amount** means security, expressed as a percentage of the funds sold to AFEX or an absolute value. Margin Amount may be required by AFEX as a condition of the Trade. Subject to Force Majeure, Margin Amounts are non-refundable until maturity of the Trade.
- 1.23 On-Line System** means any electronic system or interface provided by AFEX to its Clients for the purpose of placing Trades, inputting Payment Instruction and payment management. AFEX may revise the On-Line System at any time or change its domain, without prior notice and without Client's consent.
- 1.24 Trade** means an order placed with AFEX via telephone, facsimile, electronic mail, or on-line, or any other mutually agreeable means by which trades are communicated between the Client and AFEX.
- 1.25 Parties** mean Client and AFEX.
- 1.26 Payment** means good cleared funds received by AFEX from, or on behalf of, the Client.
- 1.27 Regulations** mean the Payment Services Regulations 2009 which can be found at [http://www.opsi.gov.uk/si/si2009/uksi\\_20090209\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090209_en_1).
- 1.28 Services** means AFEX's provision of various foreign exchange and related services, including without limitation buying and selling of foreign currencies and making or receiving of cross-border payments, purchase and sale of wires and bank drafts in foreign currency and forward contracts.
- 1.29 User** means any Authorised Party authorised by Client to use the On-Line Service.

**2. Trades and Confirmations.**

- 2.1 Trades.** By placing a Trade with AFEX, Client agrees to the terms and conditions set forth in this Agreement and reaffirms Client's representations in Section 9 below and the accuracy of the information in the Client's Account Application. Upon receipt of a Trade submitted in accordance with AFEX's Trade process, AFEX will issue a Confirmation to the Client confirming the Trade as stated in the Confirmation. Client acknowledges that Client is solely responsible for the accuracy of the Trade and agrees to keep copies of any Trades transmitted to AFEX. Client assumes all risk that the Trade is altered during its transmission, and agrees to carefully review the Confirmation. Subject to this Agreement, AFEX is under no obligation to provide any Service unless a Confirmation has been delivered to the Client.
- 2.2 Confirmations.** Client agrees to promptly notify AFEX if Client does not receive a Confirmation for its Trade Order or Delivery Instructions. Client agrees that in order to perform transactions for Client, AFEX must assume that Client's instructions are those that appear on the Confirmation and therefore Client will meet its related financial obligations unless AFEX is informed by Client of the error or discrepancy prior to the execution of the Trade Order or release of payment according to Delivery Instruction.
- 2.3 No Cancellation by Client.** Once a Trade has been placed with AFEX, a Trade may not be cancelled by Client without written approval from AFEX, whether such Trade was placed via telephone, facsimile, electronic mail, the On-Line System or otherwise.
- 2.4 Trade Suspension or Cancellation.** AFEX may reject, suspend, disregard or cancel a Trade, or refuse to issue a Confirmation for a Trade, if AFEX believes, in its sole discretion, that:
- (a) the Trade is unclear;
  - (b) the Trade requires any action by AFEX on a non-Business day;
  - (c) the Trade was not authorised by an Authorised Party;
  - (d) consummation of the Trade would require AFEX to exceed the Facility granted to Client;
  - (e) Client is in default of this Agreement;
  - (f) performance of the Services would be unlawful or contravene the requirements of any government or regulatory authority;
  - (g) Client is Insolvent; or
  - (h) AFEX cannot reasonably provide the Services for reasons beyond AFEX's reasonable control.
- Client agrees to indemnify, defend and hold harmless AFEX from any Losses in connection with any Trade(s) that are defective for any of the foregoing reasons.

**3. Payment.**

- 3.1 Payment of Balance Due.** Client shall pay all amounts due to AFEX on the Balance Due Date. AFEX may refuse to deliver any funds to Beneficiary unless and until full Payment, in the form of good cleared funds from the Client has been received by AFEX. Delivery of the funds purchased from AFEX will be made by AFEX upon the receipt of Payment of the Balance Due and the Client hereby accepts AFEX's standing authority to deliver funds upon receipt of such Payment. Failure by the Client to make final Payment in full by the Delivery Date will result in Client's liability as set forth in Section 3.2, including without limitation interest on the Balance Due, calculated at the Interest Rate. AFEX reserves the right to deduct said interest from the purchased funds and any funds in Client's Account.
- 3.2 Non-payment.** If the client fails to make payment for the transaction when required, AFEX may cancel the Trade or proceed with the transaction and take any and all steps necessary to recover the balance due. Client indemnifies and holds AFEX harmless from any and all Losses incurred by AFEX as a result of Client's failure to pay the amount due, with daily interest accruing at the Interest Rate on all unpaid amounts. AFEX reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

**3.3 Right of Offset.** AFEX may satisfy or partially offset any liability that may arise against any collateral AFEX holds for the Client, or any obligation AFEX has to the Client, without prior notice to the Client. In the event such collateral is insufficient, the Client will remain liable to AFEX and will promptly pay on demand the amount of any Losses suffered by AFEX or its affiliates.

**3.4 Payment Instructions.** Provided that Client has fully paid for the funds purchased from AFEX and complied with this Agreement, AFEX will hold those funds until AFEX's receipt of payment instructions from the Client. The Client may initiate payments from the Account by providing payment instructions to AFEX. At its discretion, AFEX may require signed written instructions.

#### **4. Additional Conditions Applicable to Forward Contracts.**

**4.1 Authorization.** The Client hereby authorizes AFEX to enter into Forward Contracts based on Trades from the Client in accordance with the terms and conditions of this Agreement. AFEX will provide the Client a Confirmation stating the details of the particular transaction. The Client acknowledges that each Forward Contract is governed by and subject to the terms and conditions of this Agreement and, upon acceptance by AFEX orally or in writing, that each constitutes a binding contract. Forward Contracts may not be cancelled by the Client once the Trade is placed with AFEX.

**4.2 Additional Margin Amounts.** From time to time during the term of the Forward Contract, AFEX, in its sole discretion, may require the Client to pay to AFEX certain Margin Amounts to maintain the relative value of the funds purchased from AFEX. Should the Client fail to pay such additional Margin Amounts within twenty-four (24) hours of AFEX's demand (or as otherwise specified by AFEX), AFEX may cancel the Forward Contract with immediate effect or complete the transaction. In such event the Client shall be liable to AFEX for any and all Losses, and agrees to promptly pay for such Losses, including market losses and expenses incurred in connection with the cancellation. AFEX, however, shall have no obligation or liability to the Client, and AFEX's sole liability to the Client is the return of any balance remaining of the Margin Amount paid by the Client after deducting any Losses suffered by AFEX sustained in connection with the Client's default.

**4.3 Risks Involved.** The Client acknowledges that the foreign currency market is volatile. Client expressly accepts the risk that if the currency of the purchased funds changes in value during the period covered by the Forward Contract, the value of the amount of currency which the Client agreed to sell to AFEX may be less favorable than the current price for the purchased currency. The Client is aware that Forward Contracts purchased hereunder are not subject to the regulations of the Financial Services Authority.

#### **5. Additional Conditions Applicable to Drafts**

**5.1 Lost Drafts.** In the event a draft issued by AFEX is not received by the Beneficiary for any reason, Client agrees to notify AFEX as soon as Client becomes so aware. Upon notification of AFEX of the Beneficiary's non-receipt, AFEX will use reasonable efforts to place a stop payment on the draft as soon as practicable. Client agrees to indemnify and hold AFEX harmless from and against any and all Losses incurred as a result of the stop payment. If AFEX determines that the draft has been cashed, AFEX shall be under no obligation to issue a refund or replacement draft. If AFEX determines that the draft has not been cashed and a stop payment has been placed on such draft, AFEX may issue a refund at an appropriate rate or issue a replacement draft. In such event, Client agrees to take all reasonable steps to ensure no attempt is made to cash the original draft and such draft is returned to AFEX. If Client recovers such draft, Client shall hold it in trust for AFEX. If a replacement draft is issued and the original draft was nonetheless cashed, AFEX may place a stop payment on any replacement draft and seek immediate reimbursement from Client, whether or not AFEX is able to be reimbursed by the paying bank.

**5.2 Purchase of Foreign Currency Drafts.** AFEX may agree in writing to purchase and exchange into Pounds Sterling, or a Foreign Currency, a draft issued in favor of Client as the Beneficiary. In connection with such a Trade, Client will present an original of such draft to AFEX so that AFEX may determine its validity. Any draft deemed invalid will be returned to Client as soon as reasonably practicable. In the event that AFEX agrees to purchase such a draft, Client agrees to endorse the draft to AFEX as instructed by AFEX and have an Authorised Party sign the endorsed draft. In the event AFEX is unable to negotiate the draft, whether such draft is not genuine, returned for insufficient funds, destroyed during negotiation, or otherwise, Client will immediately reimburse AFEX for any funds paid in connection with the transaction and indemnify and hold AFEX harmless for any Losses in connection therewith.

#### **6. On-Line System.**

**6.1 Use of On-Line System.** In order to use the On-Line System, Client will be required to create an electronic account and agrees to provide AFEX with a written list of those Authorised Parties that Client would like to access and use the On-Line System on Client's behalf. Upon AFEX's approval of such Users, AFEX grants such users a non-exclusive, non-transferable license to use the On-Line System for the sole purpose of accessing the Services. Users may have full or limited access to the On-Line System, in AFEX's sole discretion. If Client desires for AFEX to terminate one of its User's access to the On-Line System, Client agrees to issue such request in writing, to be confirmed by AFEX in writing. Without limiting this Section 6, until such time as AFEX confirms such User's access has been terminated, such User may remain authorised and Client will remain responsible for any transactions placed and other activity by such User.

**6.2 Access.** AFEX will provide each User with a username and temporary password to access the On-Line System. It is the sole responsibility of Client and the User to safeguard the security of the User's password, and the Client and User agree that User will change the temporary password to a unique password promptly upon issuance, and periodically change User's password thereafter to ensure security. The Client agrees that its Users will not use the account of another person without permission and will provide accurate and complete information to AFEX in all circumstances. Client and the User expressly acknowledge and agree that such use is made in accordance with this Agreement and any additional user agreement or manual provided by AFEX, including maintaining any minimum operating and Internet browser requirements. AFEX may suspend, limit or terminate a User's access or Client's access to the On-Line System, without notice, at any time for any reason whatsoever, including without limitation violation of this Agreement or any reason set forth in Section 8.

**6.3 Client's Responsibility for Use of On-Line System.** The Client and User are solely responsible for any and all activity on Client's Account, and each agrees to notify AFEX immediately upon becoming aware of any unauthorised use of Client's Account. AFEX will have no responsibility for any Losses incurred by reason of any use, whether authorised or unauthorised, and Client agrees to hold AFEX harmless from any expenses or Losses AFEX may incur by reason of the use of Client's Account. Client agrees that its Users, employees, agents or affiliates will not (a) attempt to collect or harvest any personally identifiable information, including account names of other Clients, (b) solicit additional users of the On-Line Service, (c) use the One-Line Service to communicate with other users or for any commercial purpose, or (d) use the On-Line Service in any way that may damage, disable, overburden, or impair AFEX's servers or networks or interfere with any other Client's use and enjoyment of the On-Line Service. Client will not try to gain unauthorised access to any services, user accounts, computer systems or networks, through hacking, password mining or any other means.

**6.4 Exchange Rate.** Once a User approves a Trade, either by clicking "Yes" or otherwise, Client shall be deemed responsible for such Trade as if Client had placed the Trade. The exchange rate visible on the computer screen at the time the User places the Trade will be the exchange rate applicable to Client's Trade. Once placed, a Trade may not be cancelled by Client without written approval from AFEX.

**6.5 Electronic Communications from AFEX.** Client acknowledges that the On-Line Service may include certain communications from AFEX or its partners, such as service announcements and administrative messages, and that these communications are considered part of the On-Line Service and Client may not be able to opt-out of receiving them. Unless explicitly stated otherwise, any new features that augment or enhance the current Service, including any new Service, shall be subject to this Agreement.

**6.6 Copyright/Trademark Notice.** The On-Line System, the content therein, and all intellectual property pertaining thereto and contained therein (including but not limited to copyrights, patents, trademarks and service marks) are owned by AFEX or licensed through third parties, and all rights, title, and interest therein and thereto shall remain the property of AFEX or of such third parties.

**6.7 On-Line System Provided "As Is."** The On-Line System (and all other related services) is provided "as is" with no representations or warranties of any kind, either express or implied. AFEX shall have no responsibility for transmission errors, faulty or unreliable Internet connections or website downtime. All Disclaimers, Limitation on Liability and Indemnity terms set forth in Section 14 shall apply fully to the Client or User's use of the On-Line System, as well as any other means of accessing such Services.

**7. Force Majeure.** In the event that AFEX is unable to deliver purchased funds due to circumstances beyond AFEX's control, including but not limited to government acts, wars, strikes, riots, other civil disturbances, legal process, electronic failure or mechanical failure, the Client agrees that AFEX shall have no liability for direct, indirect, special, incidental or consequential damages, including, but not limited to, loss of profits or expenses, arising in connection with any transaction entered into with the Client pursuant to this Agreement, any Forward Contract or any Confirmation.

**8. Term and Termination.** In the absence of an express agreement to the contrary, AFEX may terminate this Agreement, and Client's access to the On-Line System, with or without cause by giving at least five (5) Business Days' notice to the Client, or immediately at any time without notice if:

- (a) The Client is Insolvent;
- (b) Applicable regulatory or law enforcement authority initiates a regulatory or enforcement action or investigation against the Client which, in the reasonable judgment of AFEX will materially impair the terms of the Agreement, the expected economic value of this Agreement, or the business reputation of AFEX;
- (c) In the event the Client breaches this Agreement, any terms of a Trade; or
- (d) In the event the transactions originating under this Agreement are deemed by AFEX, in AFEX's sole discretion, to represent a regulatory compliance or business risk.

Where the Agreement is terminated by AFEX, the Agreement remains in force until all funds owed by the Client to AFEX are paid in full.

**9. Representations and Warranties.** The Account Application signatory above, on behalf of Client, represents and warrants that:

- (a) The above-signed has the authority to complete the Account Application and this Agreement on behalf of the Client;
- (b) All information on the Account Application is true and complete, and Client will promptly advise AFEX of any changes to such information.
- (c) Client will have legal title to all funds used in connection with Trades entered into hereunder;
- (d) Client will fully comply with all applicable laws and regulations;
- (e) Client has all requisite authorizations and approvals to make any payments for the Services;
- (f) Client will enter into a Forward Contract, if at all, for risk management purposes and not speculation; and
- (g) If the Client is a corporation or any other entity, the undersigned and the entity each has the authority to enter into this Agreement, place Trades, and enter into Forward Contracts and that all Authorised Parties are authorised to do so on Client's behalf.

**10. Anti-Money Laundering and Anti-Terrorism Laws.** Client represents and covenants, that Client: (a) is familiar with all applicable laws, regulations, orders, etc. in effect from time to time relating to anti-money laundering and counter terrorism ("Anti-Terrorism Laws") of the United Kingdom, including the Terrorism Act 2000, the Proceeds of Crime Act 2002, the Serious Organized Crime and Police Act 2005 and the Money Laundering Regulations 2007; (b) acknowledges that Client's transactions are subject to applicable Anti-Terrorism Laws, and that AFEX may provide information to governmental authorities to assist in such regard; (c) will comply in all material respects with all applicable Anti-Terrorism Laws; (d) acknowledges that AFEX's performance hereunder may also be subject to compliance with all applicable Anti-Terrorism Laws; (e) will not conduct business with any Blocked Person, and none of its shareholders or Authorised Parties are Blocked Persons; and (f) will take such other action as AFEX may reasonably request in connection herewith.

### **11. Regulations**

**11.1** The following provisions of section 11 apply solely to the following categories of client:

- (a) a micro-enterprise (being a business employing fewer than 10 people with an annual turnover and/or annual balance sheet not exceeding €2 million). Please note that the Client will not be a micro-enterprise where it is part of a larger group whose aggregate annual turnover exceeds the €2 million threshold; or
- (b) a small charity (being a charity with an annual income of less than €1 million).

**11.2** All money remittance transactions ("**Payment Transaction**") carried out by AFEX are subject to the Regulations.

**11.3** In accordance with the Regulations, AFEX must provide or make available certain information to the Client when carrying out a Payment Transaction on the Client's behalf. Such information will be provided to the Client or made available to the Client at the appropriate stage of the Payment Transaction.

**11.4** The Client must take all reasonable steps to keep any personalised security features utilised in connection with the Account safe.

**11.5** The Client must notify AFEX without undue delay on becoming aware of any loss or misappropriation arising from the Payment Transaction.

**11.6** In the event that the Client discovers an unauthorised or incorrectly executed Payment Transaction, the Client must notify AFEX without undue delay and in any event no later than thirteen (13) months from the date of debit of that Payment Transaction in order to be entitled to redress. If the Client has informed AFEX that the Client has not authorised a Payment Transaction, it is AFEX's responsibility to prove that such Payment Transaction was authorised by the Client.

**11.7** In the event that a Payment Transaction was not properly authorised by the Client, AFEX will refund the amount of the transaction to the Client. If the Client disputes a Payment Transaction or reports the loss or theft of security protection provided by AFEX, the Client's maximum liability in respect of the Payment Transaction will be £50 unless the Client has acted fraudulently or negligently or allowed another person to use its Account.

**11.8** The Client will be able to cancel a standing order or direct debit to be paid from their Account up to the end of the business day before the payment is due.

**11.9** Should the Client have any complaints regarding the Payment Transaction, the Client must contact their AFEX account executive in the first instance for details of AFEX's complaints procedure. The Client will also be eligible to approach the Financial Ombudsman Service for redress,

**11.10** Pursuant to the Regulations, the Client must enter into the Payment Transaction in accordance with this Agreement and any other applicable terms and conditions as notified by AFEX.

**11.11** Any changes to this Agreement will be communicated to the Client at least two months before such changes are due to take effect unless such a change is to the Client's advantage or represents a change to an external reference exchange rate to which the Client's exchange rate is linked. In these circumstances AFEX may make the change immediately and inform the Client at a later stage. If the Client disagrees with a change, the Client has the right to terminate this Agreement without penalty by giving AFEX notice before the changes are due to take effect. The Client shall be deemed to have accepted any changes to this Agreement if the Client fails to notify AFEX of any disagreement before this time.

**11.12** In the event that the Client requires any further information in relation to the Regulations or has any questions regarding the impact of the Regulations on the Agreement, such questions should be directed to the AFEX Compliance Team ([compliance@afex.com](mailto:compliance@afex.com)).

### **12. Regulations**

**12.1** The following provisions of this section 12 apply solely to business clients employing more than 10 people with an annual turnover and/or annual balance sheet exceeding €2 million.

**12.2** The Client warrants that it does not fall within the categories specified in section 11.1(a) and (b) above and accordingly the Parties agree that Part 5 of the Regulations does not apply to this Agreement. In the event that the Client falls within the categories specified in section 11.1(a) and (b) above, the Client shall notify AFEX immediately and upon receipt by AFEX of the Client's notification the terms of this section 12 shall no longer apply to the Client. In the event that the Client notifies AFEX of a change in status under this section 12.2, section 11 shall be applicable to the Client.

**12.3** For the purposes of regulation 59(1) of the Regulations, the Parties agree that the Client must notify AFEX on becoming aware of any unauthorised or incorrectly executed payment transactions no later than three (3) months after the debit date.

**12.4** Where the Client denies having authorised a payment transaction or claims that a payment transaction has not been correctly executed, the Client must prove that such payment transaction was not authorised by the Client.

**12.5** The Client shall be liable for any losses incurred in respect of unauthorised Payment Transactions arising from:

- (a) the use of a lost Account payment instruction; or
- (b) the Client's failure to keep the personalised security features of their Account safe.

**12.6** The Parties agree that regulations 60, 62(1), 63, 64, 75, 76 and 77 of the Regulations do not apply to this Agreement.

**12.7** In the event that the Client requires any further information in relation to the Regulations or has any questions regarding the impact of the Regulations on the Agreement, such questions should be directed to the AFEX Compliance Team ([compliance@afex.com](mailto:compliance@afex.com)).

**12.8** Should the Client have any complaints regarding the Payment Transaction, the Client must contact their AFEX account executive in the first instance for details of AFEX's complaints procedure. Complaints received by corporate clients are dealt with the same level of care as complaints received by consumers.

### **13. Privacy Protection**

**13.1 Personal Information.** AFEX does not disclose nonpublic personal information about its Clients or former Clients, but may disclose such information in certain limited circumstances such as the following: (a) where it is necessary to effect, administer, or enforce a transaction requested or authorised by the Client, or in connection with servicing or processing a financial product or service requested or authorised by the Client, (b) where such sharing is reasonably necessary to protect the confidentiality or security of Client records, the services or products AFEX offers, or transactions AFEX processes or handles, (c) to protect against or prevent actual or potential fraud, identity theft, unauthorised transactions, claims or other liability, as well as for resolving Client disputes or inquiries or checking credit, (d) to comply with federal, state or local laws or regulations or other legal requirements, such as subpoenas or other legal process. The preceding list sets forth examples only, and is not meant to be comprehensive. AFEX also restricts access to Clients' nonpublic personal information to those employees and agents who need to know that information to provide products or services to the Client or fulfill certain obligations described above. AFEX also maintains physical, electronic and procedural safeguards to guard Clients' nonpublic personal information.

**13.2 Data Protection.** AFEX is committed to safeguarding the Client's privacy and personal information. AFEX places great importance on the security of all personally identifiable information associated with the Client in general. AFEX has security measures in place to protect against the loss, misuse and alteration of data under its control. AFEX has organisational and technical security measures in place to safeguard the Client's personal information and is a registered data controller under the Data Protection Act 1998. By submitting its information to AFEX by telephone, facsimile, electronic mail, or by post, the Client consents to the collection, storage and processing of its personal information by AFEX.

**13.3 Privacy Risks Involved in Foreign Currency Trading.** AFEX may also, in connection with performing the Services or AFEX's business, transfer Client's personal data to countries outside of the European Economic Area, however, all personal data, whether held by AFEX or by its sub-contractors or agents, will be afforded a high level of protection against any unauthorised or accidental disclosure, access or deletion. By agreeing to this Agreement, the Client hereby agrees to such data being so used and transmitted to others as stated above.

**13.4 New Products and Services.** Unless the Client has indicated otherwise, AFEX may contact the Client (by telephone, mail, or other means) with information about the products and services available which AFEX believes may be of interest to the Client. If the Client prefers not to receive marketing promotions, the Client should advise AFEX in writing and AFEX will cease such contact.

**14. Limitation of Liability: Indemnity.**

**14.1 AFEX shall not be liable for:**

- a) loss of profits; or
- b) loss of business; or
- c) depletion of goodwill and/or similar losses; or
- d) loss of anticipated savings; or
- e) loss of goods; or
- f) loss of contract; or
- g) loss of use; or
- h) loss of corruption of data or information; or
- i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, incurred by the Client as a result of this Agreement.

**14.2 All warranties,** conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**14.3 LIMITATION OF LIABILITY.** If the Client's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, AFEX shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

**14.4 Indemnity.** The Client hereby undertakes to comply strictly with the terms and conditions of this Agreement and to indemnify AFEX in respect of any Losses that may arise as a consequence of the Client's breach of any representations and warranties or non-compliance with this Agreement.

**15. General Terms and Conditions.**

**15.1 Third Parties.** A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

**15.2 No Waiver.** AFEX's failure to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights or remedies at a later time.

**15.3 Legal Fees.** If either party brings an action or proceeding to enforce the terms of this Agreement or declare rights under this Agreement, the prevailing party in any such action, proceeding, trial or appeal will be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

**15.4 Counterparts.** This Agreement may be executed in one or more counterparts. Signatures may be exchanged by facsimile, with original signatures to follow. Each party to this Agreement agrees that it will be bound by its own facsimile signature and that it accepts the facsimile signatures of the other parties to this Agreement.

**15.5 Severability.** If any provision hereof shall be held to be unenforceable by a court of competent jurisdiction, the remainder of the provisions hereof shall remain in effect and shall be binding upon the Parties.

**15.6 Governing Law: Jurisdiction.** This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter or formation (including non-contractual disputes or claims).

**15.7 Assignment.** Client shall not assign this Agreement nor any rights or obligations hereunder without AFEX's written consent. If AFEX provides its written consent to any assignment of this Agreement, the Agreement shall be binding upon the successors, heirs, and assigns of the Parties.

**15.8 Telephone Calls.** For record-keeping, fraud-detection or training purposes, AFEX may record telephone calls to or from AFEX and/or AFEX's representatives with respect to the transactions contemplated herein. AFEX shall not be required to provide copies or tapes of Trades to Clients. If permitted by law, said recordings may be used as evidence for any legal purpose.

**Entire Agreement.** This Agreement constitutes the entire agreement between Client and AFEX with respect to the subject matter hereof and supersedes all previous negotiations, commitments and writings. AFEX reserves the right, in its sole discretion, to change, amend, or otherwise modify this Agreement from time to time upon written notice to the Client. Any changes, amendments, or modifications so conveyed to the Client shall be effective as to transactions entered into by the Client from the date such modification goes into effect.