



TERMS AND CONDITIONS

12 July 2021

KUBERA CAPITAL MARKETS LIMITED

Terms and Conditions

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1. Introduction

This document is important as it contains the Terms and Conditions (Terms) on which Kubera Capital Markets Limited (KCM, we, us, our) provides Margin Foreign Exchange contracts in the form of an Online Trading System to its Client (You).

Before you open an account with us, you should read these terms carefully in addition to our Product Disclosure Statement and Privacy Statement. KCM may update these Terms from time to time and these updates will be published on our website and a copy will be emailed to you.

You will be asked to confirm that you have read and fully understand these Terms, Product Disclosure Statement and Privacy Statement before we can open account for you.

Kubera Capital Markets Limited is authorised by the Labuan Financial Services Authority to carry on a money-broking business as defined under Section 86 of the Labuan Financial Services and Securities Act 2010 (LFSSA), pursuant to Section 92(1) of the LFSSA.

2. Agreement

The agreement (“Agreement”) between Kubera Capital Markets Limited and you (the Client) comprises:

- The Account Opening Application Form;
- These Terms and Conditions; and
- The Product Disclosure Statement (PDS).

This Agreement represents all the terms agreed between us regarding the Services unless we have agreed in writing to vary this Agreement.

This Agreement shall come into force on the date you complete and sign the Account Opening Application Form and we notify you that we have opened your account.

3. Terms and Conditions

These Terms and Conditions and our Product Disclosure Statement sets out important information about the financial products and services Kubera offers.

You will need to enter into a Client Services Agreement by completing the Account Opening Application Form and submitting it to us. The Client Services Agreement sets out the legal terms of your dealings with us for the products covered by these Terms. By completing an application form and submitting it to us you agree to these Terms and Product Disclosure Statement in the Client Services Agreement.

3.1 Changes to these Terms & Conditions

These Terms are subject to change from time to time and may be updated on our website www.kuberamarkets.com. A copy can be downloaded from our website or, by calling us and requesting that a paper copy be provided to you free of

charge. If any new information is materially adverse information, we will issue a new version of these Terms with the new information. If the new information is not materially adverse, we may not issue a new Terms but you will be able to find the updated information on our website at www.kuberamarkets.com or by contacting us. Our contact details are set out in the PDS.

4. Margin FX

Margin FX products are financial products which are agreements between you and Kubera to trade the difference arising from movements in the level of an Underlying Instrument that is an Exchange Rate for two currencies (referred to as the "Underlying Exchange Rate"). Margin FX products have no fixed expiry dates, are not standardised contracts and have no fixed contract size. As a party to a Margin FX Transaction, you can, on Closing Out the Transaction, be paid an amount (representing a gross profit) or be required to pay an amount (representing a gross loss) arising from movements in the Underlying Exchange Rate.

The Underlying Instrument for a Margin FX Transaction is referred to as the Exchange Rate. The Exchange Rate can be either the price of one currency expressed in the terms of another currency ("FX Transactions")

5. Non-advice

We offer non-advice trading using our Online Trading System. Non-advice means that all trading decisions are made and executed by you, except when the Online Trading System is not available. In this case, orders can be placed by telephone with us.

6. Orders

All orders to trade must be transmitted to us through the Online Trading System. Such an order shall not take effect unless actually received by us.

We will endeavour to advise you promptly if such circumstances arise where we have identified an order has not been executed, however we are under no obligation to provide you with our reasons for not acting on your orders. We will not be liable to you in any way if we refuse to follow your orders.

If there has been no activity for more than six months on any account in your name, we reserve the right to cancel any pending opening orders without prior notice.

When you transmit an order by clicking the submit button through our Online Trading System (or give us an order by any other means we may agree to) we will be under no obligation to accept it or, if accepted, under no obligation to execute it. Unexecuted orders may be cancelled at our discretion. Once an order has been entered into our Online Trading System it may not be altered or cancelled.

7. Margins

Before executing any order, we require a deposit of such amount as we may specify in respect of any actual, anticipated or contingent liability you may have to us in respect of anticipated or existing open positions which you have or will have with us. This is referred to as the Margin deposit.

7.1 Initial Margin

Your Initial Margin is the amount Kubera requires you to maintain in your account as soon as you open a new Margin FX contract.

Maintenance Margin

Your Maintenance Margin is the additional amount Kubera requires you to maintain should the equity in your account falls short of the initial margin.

7.2 Change of Margins

We reserve the right to change the margin requirements at any time and any change may become effective immediately. We may inform you of this by email, via the Online Trading System, telephone call, text message, or by posting notice of the change on our website. It is your responsibility to know at all times the current margin requirements applicable to your account and your open positions.

8. Operational Risk

Operational Risk is inherent in every Margin FX contract; for example, disruption to our operational processes such as communications, computers, networks or external events may lead to delays in the execution of or settlement of a transaction.

Kubera relies on a number of technology solutions to provide you with efficient services.

A disruption to Kubera's Online Trading System may mean you are unable to trade in a Margin FX contract offered by us and you may suffer a loss as a result. An example of disruption could be if our Online Trading System crashes.

9. Slippage

In fast moving or illiquid markets "slippage" may occur. Slippage occurs when market prices do not follow a "smooth" or continuous trend and are typically caused by external factors such as world, political, economic and corporate related events. Should slippage occur in the underlying currency on which your Margin FX contract is based, you may not be able to close out your contract or open a new contract at the price at which you have placed your order.

10. Stop Loss Orders

Stop loss orders are designed to limit your loss should the market move against you and the Online Trading System is instructed to close the contract if the price reaches the pre-defined level set.

Stop loss orders are not guaranteed and the execution of such orders will depend on market volatility and liquidity. So, whilst stop losses generally allow you to control potential losses should the market move against you, stop loss orders may not always limit your losses in the way you anticipate.

In cases where stop loss orders have been placed and the market price moves immediately to a level away from your stop loss order you would suffer a loss as your stop loss order is not guaranteed.

11. Close of Contracts

You are responsible for closing contracts unless your equity falls short of the required margin. In this case you must either deposit additional funds or alternatively close out existing open positions to reduce your required margin to a level acceptable to Kubera.

Failure to meet margin requirements is an event of default and Kubera has the right to immediately close your contracts.

All contracts are closed out and cash settled. That is, the profit or loss is either credited or debited to/from your account held with Kubera.

12. Liquidity

Under certain conditions it may become difficult or impossible for you to close out your contract. This can occur when there is a significant change in the price of the underlying asset over a short period of time. Some international markets may have a lower trading volume than other more liquid international markets, which may increase the risk that the liquidity of a currency is decreased or removed from the market due to unforeseen economic, political, natural disasters or catastrophic events.

13. Swap Credits and Charges

Where a contract is held at the close of the Trading Day (5 pm New York Time (EST)), that contract will be rolled over to the next Trading Day and a Swap Credit or Charge will be made with respect to the contract. The Swap Credit or Charge is a premium or discount that represents the net interest due to you or payable by you in respect of interest received on the bought (long) side of a contract and interest payable on the sold (short) side of a contract, in each case determined using LIBOR/LIBID interest rates, due to the settlement date being extended (Rolled Over).

The LIBOR/LIBID rate is the average interest rate estimated by leading banks in London that the average leading bank would be charged if borrowing from other banks. Kubera uses these interest rates as its reference rate to determine the applicable Swap Credit or Charge on every contract held at the close of each trading day.

14. Quote Error

We will use all reasonable endeavours to provide up-to-date quotes for all contracts traded on or through our Online System, however we give no assurance that the prices quoted are accurate.

Should a quoting error occur due to a typographical error or other obvious mistake in a quote or indication (the "Quoting Error"), we are not liable for any damages, claims, losses, liabilities or costs arising from the Quoting Error. We reserve the right to make the necessary adjustments to correct the Quoting Error and close any position opened on the basis of a Quoting Error. Any dispute arising from a Quoting Error will be resolved on the basis of the fair market value, as determined by us acting reasonably, of the relevant currency at the time such Quoting Error occurred.

15. Scalping

In any circumstances where we reasonably suspect that you performed abusive trading such as scalping, this will be considered as a breach of this Agreement and for this reason we reserve the right to take any of the following actions in relation to the scalping activity:

- Immediately terminate your account and your access to our servers;
- Void any trade (i.e., treat the trade as if the trade had never taken place) which was part of any scalping activity;
- Close any trade, which was part of any scalping activity, on the basis of our current market price;
- Make immediate changes to your account, including but not limited to, the liquidity provided by us and the spread quoted

16. Client Money

Kubera only accepts money and does not accept property.

Money paid by you to Kubera for margin and fees is held in separate accounts for client funds. This money is not regarded as a part of the assets of Kubera and cannot be accessed by Kubera except to pay for hedging contracts with counterparties, fees and margin calls as described in the contract between us. When money is moved from the client account to an authorised hedging counterparty it is no longer afforded the protection of being held by us.

You agree that Kubera may transfer from your Trading Account, moneys to be used for authorised hedging activities. Money may be transferred to a hedging counterparty as is reasonably required for entering into contracts with the hedging counterparty or for settling or securing those contracts with the hedging counterparty.

Kubera maintains a balance in the client account to meet its obligations such as client withdrawals etc. The remaining funds are forwarded to our counterparties and applied against your margin, fee and settlement obligations. It is important to note that holding your money in one or more segregated accounts with our counterparties may not afford you absolute protection.

Kubera enters into arrangements with third party counterparties for the facilitation of transactions and settlements, and uses money received for margin calls and settlements for this purpose. Accordingly, clients are indirectly exposed to the financial risks of our counterparties and organisations with whom Kubera holds client funds. If the financial conditions of Kubera or assets of our counterparties or the parties with which we hold client assets deteriorate, then clients could suffer loss because the return of client capital could become difficult.

Client trades can only be placed when there are cleared funds in your account.

No interest is paid to you on money held in your Trading Account.

17. Risk of Unauthorised Access

We are entitled to treat anyone logging on to your Online Trading System and conducting trading activity as you. You are responsible for maintaining the secrecy of your login details. If someone accesses your Online Trading System and enters into unauthorised trading activity, you may suffer a loss.

Confirmations

When we deal for you we will provide you with a notice in electronic form confirming the execution of your order and providing you with details of the transaction (such as the price and order type). This confirmation will be accessible on the Online Trading System. You should check the confirmation carefully and let us know immediately of any errors. Unless you let us know within 24 hours that there is an error in the confirmation it will be deemed to be binding on you (in the absence of manifest error).

18. Electronic Online Trading System

You shall be responsible for providing and maintaining the means by which to access the electronic Online Trading System, which may include without limitation a personal computer and internet access. While the Internet is generally reliable, technical problems or other conditions may delay or prevent access. If you are unable to access the Internet and thus, the electronic Online Trading System, it will mean you may be unable to trade in Margin FX contracts offered by Kubera and you may suffer a loss as a result. Furthermore, in unforeseen and extreme market situations, such as an event like September 11 or a global catastrophe, Kubera reserves the right to suspend the operation of its electronic Online Trading System or any part or sections of it. In such an event, Kubera may, at its sole discretion (with or without notice), close out your open contracts at prices it considers fair and reasonable at such a time. Kubera may impose volume limits on client accounts at its sole discretion. Please note that such measures would only be implemented in extreme market conditions, and such discretion only reasonably exercised in the best interests of the client.

19. Issuer Risks

You are dealing with Kubera as counterparty to every transaction, you will have an exposure to us in relation to each transaction.

You are subject to Kubera's credit risk. If we were to become insolvent, we may be unable to meet our obligations to you. Kubera enters into arrangements with third party counterparties for the facilitation of transactions and settlements, and uses money received for margin and settlements for this purpose. If the financial conditions of Kubera, its counterparties or the parties with which we hold client assets deteriorate, then you could suffer loss because the return of your capital and other client's capital could become difficult.

20. Extent of Responsibilities

20.1 Our Responsibility

We will carry out our duties with reasonable skill, care and diligence and in accordance with the instructions and authority you have given us. As long as we do this, we cannot and do not accept any liability for loss (or the loss of an opportunity to gain) which arises from the provision of our Services for and on your behalf. We shall be liable under any circumstances for any direct, indirect or consequential loss incurred as a result of a delay in funds reaching you.

20.2 Events outside our Reasonable Control

We cannot and do not accept responsibility for losses you suffer as a result of our (or our agents) failing to comply with these terms as a result of circumstances outside our or their reasonable control. These circumstances would include, but not be limited to, interruption of power supply, electronic equipment or supplier failure. Neither objectives, nor restrictions will be deemed to be breached as a result of changes in the value of investments caused by movements in the market.

21. Indemnity

You (the account holder) indemnify us on our written demand against all proceedings, actions, costs and expenses, claims, demands and/or other liabilities incurred by us, our agents, or any nominee or custodian, as a consequence of:

- the acceptance of instructions from you or any Authorised User over the telephone or by email or via the Online Trading System.
- any breach by you or any Authorised User of any of the terms of this Agreement.

This indemnity shall not apply to the extent of any liability caused by a breach of this Agreement by us or the negligence, fraud or willful default by us, our agents, a nominee or custodian.

22. Market Disturbances

We may give a notice to you at any time if we form the view that market or trading conditions in the relevant market for the currency concerned are seriously disturbed. This includes circumstances where, in our opinion, deposits in the currency concerned are not available to us in the ordinary course of business in the relevant market or because of national or international financial, political or economic circumstances or exchange controls. When a Notice is given, our obligations will be suspended while we negotiate alternative arrangements with you. If we do not reach agreement, we will each be released from our obligations under the relevant transaction.

Liquidity during Market Disruption Events or Events outside Our Control

In order to protect you and act in your best interests in the event of exceptional market conditions that are outside our control and includes, but not limited to, extreme volatility, significant reduction or a temporary or permanent cessation in liquidity in an underlying market or where pricing may be unstable, we, at our discretion, and with immediate effect can suspend pricing an instrument, place a contract on close only or take any other action we consider reasonable.

23. Complaints

In the event that you wish to make a complaint, you should first make the complaint in writing detailing the nature of the complaint and send it to Kubera Capital Markets Limited's Compliance Manager. On receipt of your complaint, Kubera will confirm to you that it has received the same and will endeavour to investigate it and respond to you within 10 days.

In the first instance the Compliance Manager will try and resolve the dispute between the parties. However, if a satisfactory outcome cannot be achieved, the matter will be referred to an independent party to consider. The independent party will be someone with knowledge of trading and be independent from Kubera.

Kubera will not charge you any fee to investigate or resolve your complaint.

24. Communications

24.1 Email Communications

You agree that we may communicate with you by email and on instructions received via email from you. You acknowledge and accept the risks inherent in email, particularly of its unauthorised interception and of it not reaching the intended recipient. Please notify us in writing if you do not consent to the use of email as a means of communication.

24.2 General Communications

We will write to, telephone or email you and/or, as appropriate, a third party authorised by you, at the address and the other contact details as set out in the Account Opening Application Form or any other address and other contact details you notify to us in writing.

25. Your Undertakings

25.1 Authority

You undertake that you have full power and authority to enter into, and to instruct us, on the terms of this Agreement.

25.2 Information

You undertake:

- that all the information you have supplied to us in the Account Opening Application Form is complete and accurate;
- to notify us promptly of any change to the information supplied by you in the Account Opening Application Form or otherwise;
- to supply us with all information, documentation or copy of documentation that we require in order to allow us to carry out our account opening procedures and carry out ongoing monitoring of you and your account;
- to provide us with any additional information which may be reasonably required by us in order that we can fulfill our legal, regulatory and contractual obligations in connection with or relating to this Agreement.

25.3 Your Investments

You undertake that:

- the investments and cash within your account are within your beneficial ownership and are and will remain, for the term of this Agreement, free from all liens, charges and any other encumbrances;
- while this Agreement continues you will not, except through us, deal, or authorise anyone else to deal in the investments in your account;
- while this Agreement continues you will not, either directly or indirectly, cause us to incur any liability to any third party which is not anticipated by the express terms of this Agreement.

26. Dormant Account Fees

If there has been no activity for more than six months on any account in your name it will be classified as dormant and may be charged the dormant account fee. The fee will be charged every six months after this time if there continues to be no activity.

27. Termination of Agreement

You may end this Agreement by giving us written notice at any time. This Agreement will end when we receive your notice (or on a later date specified by you in such notice).

We may end this Agreement by giving you written notice at any time. This Agreement will end when you receive our notice (or on a later date specified by us in such notice).

We may also end this Agreement with immediate effect by written notice if either you breach any of the terms of this Agreement or we need to do so for regulatory or operational reasons.

When this Agreement ends we shall liquidate or close out all open positions and may charge you for:

- periodic charges which have accrued through to the date of termination which shall become immediately due and payable;
- any additional expenses we incur on termination of this Agreement;
- any losses necessarily realised by us in settling or concluding outstanding obligations.

28. Assignment / Transfer

This Agreement is personal to you and you may not assign or transfer any of your rights or responsibilities under it without our prior written consent. We may assign or transfer our rights and responsibilities under this Agreement to an Associated Company upon giving you written notice. We may assign or transfer our rights and responsibilities under this Agreement to a third party but will give you 30 calendar days' prior written notice if we intend to do so.

29. Language

This Agreement is supplied in English and all communications from us to you for the duration of this Agreement shall be in English.

30. Telephone Calls

Telephone calls between us may be recorded to maintain the quality of our service to you. All recordings shall and will remain solely our property and will be accepted by you as conclusive evidence of instructions or conversations recorded. You agree that we may deliver copies of transcripts of such recordings to any court, regulatory or government authority.

31. Privacy

We may via our website from time to time request and collect personally identifiable information such as name, identity card number, address, phone number, e-mail address and financial information through various means, for example via an application form, surveys, questions, comments and communications to and from the website. All such personal information is processed in accordance with the Malaysian Personal Data Protection Act 2010.

32. Death during the Term of the Agreement

On the death of you (account holder) this Agreement will not terminate and we will treat the survivor(s) as the only person(s) entitled to or interested in the account. Should all of you die during the term of this Agreement we shall continue to hold the account according to the investment mandate specified until such time as we are instructed otherwise by the properly appointed executor(s).

33. Governing Law

This agreement is governed by the laws in effect in Malaysia and all parties to this agreement agree to submit to the non-exclusive jurisdiction of the Courts of Malaysia. For the avoidance of doubt, this clause is inserted for the benefit of Kubera and does not prevent Kubera from commencing proceedings in any other relevant jurisdiction.

34. Definitions and Interpretation

In these Terms and Conditions, the following terms, unless otherwise stated, have the following meanings:

KCM, we or us means Kubera Capital Markets Limited

Account Opening Application Form means the form given to Clients to apply for an account with KCM.

Agreement means all the terms, conditions, appendices, representations and warranties contained herein and in any supplementary agreement including KCM's Account Opening Application Form, Terms and Conditions; and the Product Disclosure Statement.

Allocation Policy provides that orders will be executed in the order in which they are received.

Authorised Person means the Client and any other person who has been authorised in writing by the Client to transact on the Clients account and who may bind the Client under the Terms & Conditions.

Base Currency means the currency in which the relevant account has been denominated and will be US dollars unless otherwise notified.

Business Day means any day (other than a Saturday, Sunday or public holiday) on which banks are open for business in the country where KCM holds its bank accounts.

Client means the person(s) who have completed KCM's Account Opening Application Form and agreed to be bound by these Terms and Conditions and the Product Disclosure Statement.

Collateral means securities or other assets, including money, or any guarantee or indemnity accepted by KCM from the Client instead of cash for the purposes of complying with the Client's obligations to pay, or as approved by KCM as collateral.

Contract means any transaction relating to Margin Foreign Exchange.

Counterparty means a person or entity that takes the contra position of any Contract, including a bank or financial intermediary.

Discretionary Account means an account where the Client has authorised another person(s) to trade that account on the Client's behalf.

Effective Date means the Date of signing of this Agreement as evidenced in the Account Opening Application Form whether it be an actual signature or electronic signature/agreement.

End of Day means 5.00 pm New York time.

Equity means the money in your Account, which includes deposits, withdrawals and realised profit and loss.

Initial margin means the amount required in respect of a Contract entered into by the Client.

Margin means an Initial Margin.

Margin Foreign Exchange means two-day rolling spot futures traded over the counter and which are cash settled on a T+2 basis. Margin Foreign Exchange constitute Rolling Daily Positions.

Minimum Equity Balance means the minimum money required in an account to maintain a Contract.

Minor means a person under the age of 18 years at time of application.

Order means an instruction by a client to open or close a position in a Contract.

Platform means an electronic trading platform, such as MT4 that we may use from time to time for the provision of our Services.

Regulatory Authority means Labuan Financial Services Authority.