

eFX Dealing Terms and Conditions



This booklet covers the terms and conditions which apply to your use of eFX Dealing.

eFX Dealing is the Bank's internet based foreign exchange Transaction service. eFX Dealing offers a range of foreign exchange transactions, providing approved customers with direct access to real time exchange rate quotations, and allowing those customers to enter transactions from their internet connected computer. This booklet sets out the rights and responsibilities of you and the Bank in relation to the use of eFX Dealing. Further details of many of the instruments available on eFX Dealing are contained in BNZ's Product Disclosure Statement, a copy of which can be obtained, free of charge, by contacting a BNZ Markets dealer on one of the numbers below:

Auckland	0800 658 882
Wellington	0800 652 619
Christchurch	0800 854 854
Palmerston North	(06) 350 1670
Tauranga	(07) 928 0871

Contents

1. Meaning of words	1
2. Materials provided with eFX Dealing	2
3. The Software	2
4. Conditions of use	2
5. Fees and charges	3
6. Transaction limits	3
7. Liability	4
8. Termination	5
9. Variations	5
10. Other applicable terms and conditions	5
11. Notices	6
12. Governing law	6

1. Meaning of words

Additions/Amendments Request Form means the form by which you may request the Bank to make modifications in its provision of eFX Dealing to you.

Application Form means the form by which you apply to use eFX Dealing.

Authorised Currencies means those currencies determined by the Bank as available for use by you for the purpose of eFX

Dealing Transactions, as specified by the Bank at any time, and from time to time.

Authorised User means any natural person nominated as such on:

- (i) an Application Form; or
- (ii) any Additions/Amendments Request Form, received and approved by the Bank from time to time.

Bank means Bank of New Zealand and its successors and assigns.

Business Day means a day on which commercial banks are open for ordinary banking business in Auckland or Wellington and for the avoidance of doubt, excludes a Saturday or Sunday or national public holiday.

Contact Person means the person nominated as such on:

- (i) an Application Form; or
- (ii) any Additions/Amendments Request Form, received and approved by the Bank from time to time.

Cut Off Time means the time determined by the Bank as the cut off time on each Business Day for the receipt by the Bank of Transaction Instructions for particular eFX Dealing Transactions, whereby the Bank will make every reasonable endeavour to process the instruction on the date of receipt, as specified by the Bank at any time, and from time to time.

Dealing Information means any market information, exchange rate quotations or other information provided by the Bank to you via eFX Dealing.

Master Agreement means any of:

- (i) an ISDA Master Agreement;
- (ii) the Bank's standard Master Agreement for Foreign Currency Transactions; or
- (iii) any other agreement that the parties agree shall be a Master Agreement for the purposes of these terms and conditions.

eFX Dealing means the Bank's electronic transaction service, which may include any combination of services for Transactions, market information and exchange rate quotations.

eFX Dealing Connection means the Bank's communications, file transfer and mailbox facility that provides you with the ability to remotely connect to the Bank to utilise eFX Dealing.

eFX Dealing Transaction means a Transaction made using eFX Dealing.

Nominated Limit means the limit on the monetary amount of each eFX Dealing Transaction as nominated by you in respect of each Authorised User on:

- (i) an Application Form; or
- (ii) any Additions/Amendments Request Form, received and approved by the Bank from time to time.

Password means a password initially selected by the Bank for each Authorised User following approval of your application to use eFX Dealing, and any subsequent password chosen by you to replace the initial password.

Personnel includes your agents, contractors and employees.

Set Limit means any current uncommitted limit set by the Bank on the aggregate monetary amount of Transactions you may have outstanding at any time, where such limit may be advised or unadvised.

Software means the eFX Dealing software program as supplied to you by the Bank from time to time.

Transaction has the same meaning as in the Master Agreement.

Transaction Instruction means a purported entry into a Transaction by means of a communication purporting to be from an Authorised User to the Bank using eFX Dealing and requiring input of a User ID and Password.

User ID means an identification number selected by the Bank for each Authorised User following approval of your application to use eFX Dealing.

Words importing the singular include the plural and vice versa.

Year 2000 Compliant in relation to the Software means that the performance and functionality of the Software is not affected by dates before, during and after the year 2000 and **Year 2000**

Compliance has a corresponding meaning. In particular:

- (a) no value for current date will cause any interruption in operation;
- (b) date-based functionality will behave consistently for dates prior to, during and after year 2000;
- (c) in all interfaces and data storage, the century in any date must be specified explicitly; and
- (d) year 2000 must be recognised as a leap year.

You means the customer named on:

- (i) an Application Form; or
- (ii) any Additions/Amendments Request Form, received and approved by the Bank from time to time and includes your successors, assigns and Personnel, and yours has a corresponding meaning.

2. Materials provided with eFX Dealing

- 2.1 In order for you to use eFX Dealing, the Bank will enable you to download the following:
 - (a) one (1) copy of the Software,
 - (b) one (1) or more User ID/s and associated Password/s.
- 2.2 The number of User IDs and Passwords supplied under clause 2.1 will be determined by the number of Authorised Users.
- 2.3 The Bank will assist with the installation of the Software and any related components by liaising with the Contact Person.
- 2.4 The User Guide explains how eFX Dealing operates and how to perform the various functions associated with each eFX Dealing service.
- 2.5 Specific purpose guides and Software for additional services available using eFX Dealing may be provided by the Bank to you from time to time.
- 2.6 The Bank may reissue and amend the User Guide from time to time. You may only use the latest edition of the User Guide as supplemented or revised by any amendment.

3. The Software

- 3.1 In respect of each Authorised User, the Bank grants you a non-exclusive and non-transferable license to use the Software on one (1) stand-alone personal

computer or local area network. You may only use the Software for the purpose of using eFX Dealing. You must not use the Software in connection with any other purpose.

- 3.2 You must not copy, modify, decompile, decode or reverse engineer the Software in whole or in part. You are, however, permitted to make one back up copy of the Software for use in the event of hardware or software failure.
- 3.3 You must pay to the Bank any fees and charges relating to installation, training and support services as set by the Bank, and as notified to you from time to time.
- 3.4 You must not display, discuss or provide any information relating to the Software (including the User Guide) to anyone employed by a software consulting firm or to anyone employed by a financial institution other than the Bank, without the Bank's permission.
- 3.5 You must effect and maintain security measures to protect the Software and materials related to the Software from theft and from access by any person other than Authorised Users whether employed by you or not. You must instruct all Authorised Users to keep secret and to not make any written records of any Passwords or User IDs.
- 3.6 You must notify the Bank in writing as soon as practicable upon discovering or suspecting that the Software is not Year 2000 Compliant or that the Software contains a virus, defect or fault.

4. Conditions of Use

- 4.1 You must complete and lodge an Application Form and a Master Agreement with the Bank. You acknowledge that all applications to use eFX Dealing are subject to approval by the Bank. Your application will be accepted by the Bank when we notify you of its acceptance in writing. You will be notified in writing if your application is declined. The Bank is entitled to rely on the information provided in your Application Form (as amended or supplemented from time to time by any approved Additions/Amendments Request Form) in supplying eFX Dealing to you.
- 4.2 You acknowledge that:
 - (a) although the Bank will make every reasonable endeavour to process a Transaction Instruction received before the relevant Cut Off Time on the day of receipt, a Transaction Instruction may not be effected on the same day on which it is received by the Bank; and
 - (b) Transaction Instructions will be executed at various intervals during any Business Day, as determined by the Bank from time to time; however, should any Transaction Instruction be sent to the eFX Dealing Connection after any predetermined Cut Off Time, the Transaction Instruction may not be executed until the following Business Day without the Bank having any liability for such delay including, without limitation, any liability for loss caused by a move in exchange rates.
- 4.3 eFX Dealing may display currencies that are not

- Authorised Currencies. You must not attempt to enter into eFX Dealing Transactions involving currencies that are not Authorised Currencies.
- 4.4 eFX Dealing may permit you to enter remarks into a field called "Remarks". You acknowledge that the Bank will not examine any remarks you type in such a field.
- 4.5 To use eFX Dealing you must have or obtain a personal computer that meets the minimum requirements (as advised by the Bank from time to time) to run the Software together with a modem and telecommunication line to the internet. The Bank makes no representations or warranties as to the suitability of any personal computer or modem provided or obtained by you for the purpose of using the Software. You will be responsible for maintaining the personal computer on which the Software is installed, obtaining internet access and any other required hardware, equipment or telecommunication line at your expense.
- 4.6 You must not in any manner whatsoever assign or transfer to any other person any of your rights and interests under these terms and conditions, but the Bank may assign any of its rights and interests under these terms and conditions without your consent.
- 4.7 Any Dealing Information is supplied to you on condition that you:
- will not cause or permit any Dealing Information to be recirculated or republished outside your organisation in any form;
 - will use any Dealing Information only in the ordinary course of your business within your organisation;
 - will not re-disseminate any Dealing Information, whether or not this forms part of your business; and
 - understand and accept that any Dealing Information contributed by and/or received by the Bank from any sources external to the Bank is not in any way attributable to or endorsed by the Bank.
- 4.8 You acknowledge that:
- the Bank is entitled to assume that any access and operation of eFX Dealing using the appropriate Passwords and User IDs has been made by an Authorised User within the scope of that Authorised Users's authority, regardless of the true identity of the person accessing and operating eFX Dealing; and,
 - the Bank is under no duty to make any inquiry whatsoever as to whether that person is an Authorised User or the scope of that person's authority. The Bank's records of eFX Dealing transactions shall be prima facie evidence of such access and operations.
- 4.9 You appoint the Authorised Users listed in the Application Form as your agents to use eFX Dealing and to enter into eFX Dealing Transactions on your behalf. You are bound by, and the Bank is entitled to act on, any Transaction Instruction purporting to be from an Authorised User (whether or not it is in fact from an Authorised User and whether or not it is performed within the scope of the Authorised User's authority) unless you provide the Bank timely and adequate written warning in advance not to act on a Transaction Instruction. Any change in the identity of the Authorised Users should be advised to the Bank by written notice as soon as the change is known.
- 4.10 Subject to availability in your area, the eFX Dealing Connection may be accessed from 8.00am to 8.00pm on each Business Day. The eFX Dealing Connection will provide confirmation of successful receipt of a Transaction Instruction.
- 4.11 You agree:
- that the Passwords you choose to access eFX Dealing will not be the same as, or similar to, any other personal identification number or password you have for any other account you have with, or service provided by the Bank;
 - not to select an unsuitable Password such as family or street names, birth dates or months, sequential numbers (e.g. AB3456), parts of personal telephone numbers or other easily accessible personal data, or number or letter combinations that may be easily identified (eg AA1111 or 11ABCD);
 - not to permit any person other than the Authorised Users to use the Passwords;
 - not to disclose Passwords to any other person including family members or those in apparent authority, including bank staff;
 - not to record or store Passwords anywhere but to commit them to memory; and
 - to take reasonable care when accessing eFX Dealing to ensure that Passwords are not disclosed to any other person.
- 4.12 You must notify the Bank by phoning 0800 440 351 immediately if:
- a Password becomes known to anyone other than yourself or the Authorised User to which that Password applies;
 - your computer which you use to access and use eFX Dealing is lost, stolen or fraudulently accessed; or
 - you become aware of any unauthorised Transaction, Transaction Instruction or error using eFX Dealing.

5. Fees and Charges

- 5.1 You will pay to the Bank on demand the fees and charges for your application and for ongoing use of eFX Dealing as set by the Bank and as notified to you, from time to time, including the Bank's standard support and training fees for support and training services provided on request by the Bank to you in relation to eFX Dealing.
- 5.2 You will be responsible for paying all telecommunication and internet access costs associated with connection to the internet and the eFX Dealing Connection.

6. Transaction Limits

- 6.1 The Bank may impose Set Limits from time to time. The Bank may increase or decrease Set Limits at its discretion from time to time without notifying you.
- 6.2 The Bank may refuse to accept a Transaction Instruction from you if by entering that Transaction the relevant Authorised User would exceed their

- Nominated Limit or you would exceed any applicable Set Limit.
- 6.3 You will obtain all necessary governmental approvals and comply with all requirements (including those relating to taxation), as may be necessary from time to time in relation to any Transaction Instruction.
- 6.4 The Bank is not obliged to act on any Transaction Instructions which appear, in the Bank's opinion, to be contrary to any applicable law, regulation, government, court or regulatory body's order, rule, or direction, or in circumstances which the Bank deems inadvisable to act on such Transaction Instructions.

7. Liability

- 7.1 You are not liable for any losses:
 - (a) resulting from unauthorised Transaction Instructions where it is clear that you have not contributed to those losses;
 - (b) that are caused by the fraudulent or negligent conduct of the Bank's employees or agents;
 - (c) resulting from faults that occur in the Bank's machines or systems used to provide eFX Dealing, unless the faults are obvious or advised by message or notice on display.
- 7.2 If you have promptly reported the actual or possible disclosure of your Passwords, you are not liable for any loss occurring after notification, unless you have acted fraudulently or negligently.
- 7.3 You are liable for all loss from unauthorised Transactions or Transaction Instructions if you have acted fraudulently, either alone or together with any other person.
- 7.4 You may be liable for some or all of the loss from unauthorised Transactions or Transaction Instructions if you have contributed to or caused that loss, for example by failing to comply with these terms and conditions (including those relating to Passwords).
- 7.5 If you have not acted fraudulently or negligently but have contributed to or caused losses from unauthorised Transactions or Transaction Instructions, you may be liable for some or all of the actual losses occurring before notification to the Bank except for that portion of the total losses incurred on any one day that exceeds the aggregate of your Set Limits last advised by the Bank.
- 7.6 Except as provided in paragraphs 7.1 to 7.5 and paragraph 10.1:
 - (a) the approved Application Form, any approved Additions/Amendments Request Form and these terms and conditions are the entire agreement between you and the Bank, and all other terms, undertakings and warranties are excluded; and
 - (b) the Bank will not be responsible and excludes all liability for loss or damage (including any indirect or consequential loss or damage) that you may suffer or incur by reason of or in connection with your use of eFX Dealing whether or not it is attributable to the Bank, its agents or employees, or any act or omission of the Bank, its agents or employees in relation to eFX Dealing or your use of eFX Dealing. Without limiting

the generality of the foregoing, liability is excluded for loss or damage that you may suffer or incur by reason of or in connection with:

- (i) the provision, availability, accuracy, completeness or currency of any Dealing Information;
 - (ii) any internal or external use which you or anyone else may make of any Dealing Information;
 - (iii) the loss, alteration or disclosure of any Transaction Instruction or other communication or information sent by you to the eFX Dealing Connection;
 - (iv) any error contained in a Transaction Instruction;
 - (v) any delays in complying with a Transaction Instruction;
 - (vi) the Bank acting on a Transaction Instruction which is the result of forgery, fraud or error or which is given in excess of the authority of your Personnel issuing the same;
 - (vii) the Bank acting on, or failing to act on, a Transaction Instruction which relates to a currency which is not an Authorised Currency;
 - (viii) any inability on your part to access the eFX Dealing Connection through a telecommunications network or where access to the eFX Dealing Connection is overloaded, suspended, terminated or otherwise unavailable or unsatisfactory for any reason; or
 - (ix) any other matter in respect of which liability is excluded under these terms and conditions.
- 7.7 You will indemnify the Bank fully against any liability, loss or damage suffered or incurred by the Bank howsoever arising and by whomsoever caused, whether arising directly or indirectly from your use or operation of eFX Dealing.
 - 7.8
 - (a) Subject to subclauses 7.8(b), (c) and (d), the Bank will indemnify you against liability under any final judgment in proceedings brought against you which determine that your use of the Software constitutes an infringement in New Zealand of any intellectual property rights in the Software.
 - (b) The Bank will not indemnify you as provided in subclause 7.8(a) unless you:
 - (i) notify the Bank in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - (ii) refrain from making any admissions in relation to such a claim without the Bank's prior written consent;
 - (iii) give the Bank the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
 - (iv) provide the Bank with reasonable assistance in conducting the defence of such a claim;
 - (v) permit the Bank to modify, alter or substitute the infringing part of the Software at its own expense in order to avoid continuing infringement, or at the option of the Bank, authorise the Bank to

procure for you the authority to continue to use and possess the infringing Software.

- (a) The Bank will not indemnify you to the extent that an infringement, suspected infringement or alleged infringement arises from:
 - (i) use of the Software in combination by any means and in any form with other hardware or software not specifically approved by the Bank;
 - (ii) use of the Software in a manner or for a purpose other than for use of eFX Dealing authorised by the Bank;
 - (iii) modification or alteration of the Software without the prior written consent of the Bank; or
 - (iv) any contract, agreement or understanding entered into by you relating to the Software without the Bank's prior written consent in writing.
 - (b) You will indemnify the Bank against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
 - (i) the claim arises from an event specified in subclause 7.8(c); or
 - (ii) the ability of the Bank to defend the claim has been prejudiced by your failure to comply with any requirements of subclauses 7.8(b).
- 7.9 You acknowledge that there is no single remedy that will guarantee that products and/or services provided by the Bank under these terms and conditions are Year 2000 Compliant.
- 7.10 The Bank warrants that it has a Year 2000 program which is designed to test its products, services and systems for Year 2000 Compliance and assess the need for remedial action in relation to any such products, services and systems which are not Year 2000 Compliant.
- 7.11 To the extent permitted by law, and except as set out in this clause 7:
- (a) the Bank makes no representations or warranties as to the extent to which products and/or services provided by the Bank under these terms and conditions are or will be Year 2000 Compliant and excludes all conditions, warranties, terms, undertakings, duties and obligations expressed or implied by statute, common law, equity, custom, trade usage or otherwise (including but not limited to any implied condition, warranty or undertaking as to merchantable quality or fitness for purpose) in relation to the Year 2000 Compliance of the Bank's systems; and
 - (b) the Bank excludes all liability, whether arising in contract, tort (including negligence) or otherwise for or in respect of all claims, actions, loss, liability or damage (whether direct, indirect, consequential or incidental loss or damage and whether for loss of profits or data or otherwise) suffered or incurred by you or any other person arising out of or in connection with a failure of any products and/or services provided under these terms and conditions to be Year 2000 Compliant.

8. Termination

- 8.1 The Bank may suspend or terminate your use of eFX Dealing in whole or in part at any time with immediate effect without prior notification to you if it determines that you have breached any of these terms and conditions or as it sees fit in order to protect the security of eFX Dealing or otherwise to protect the Bank's interests, including, without limitation, upon termination for any reason of the Bank's licence to use the Software.
- 8.2 You may terminate your use of eFX Dealing by written notice of termination to the Bank. Such termination:
 - (a) notwithstanding paragraph 11, will not be effective unless the notice of termination is actually received by the Bank at the address specified in paragraph 11.4;
 - (b) will take effect from 5.00pm on the Business Day after the day on which the Bank actually receives notice of termination ("Termination Time"); and
 - (c) will not affect any obligations incurred by you in respect of use of eFX Dealing prior to Termination Time.
- 8.3 All moneys due and owing to the Bank in connection with eFX Dealing, if not already due and payable, will immediately become due and payable upon the date that the Bank actually receives notice of termination.
- 8.4 Upon termination, you will immediately return the Software and all materials relating to the Software to the Bank and remove all copies of the Software from the computer or local area network on which the Software is installed. Any right to use the Software and related components will terminate upon receipt of the notice of termination.

9. Variations

- 9.1 The Bank may vary these terms and conditions unilaterally from time to time by at least 14 days' written notice to you. On the date stated in the notice, or where no date is specified, then upon receipt by you of the notice, the varied and amended terms and conditions will be incorporated into and form part of these terms and conditions.
- 9.2 The Bank has the right at any time, in its sole discretion, to change or cancel any of the services that comprise eFX Dealing or to limit your use of eFX Dealing to particular services.
- 9.3 The Bank may alter the form and content of the Dealing Information, without notice to you, from time to time.

10. Other Applicable Terms and Conditions

- 10.1 The provisions of the User Guide (as amended from time to time by the Bank) and any other written supplementary terms and conditions for the provision of eFX Dealing developed by the Bank are incorporated into and form part of these terms and conditions. In the event of any inconsistency between these terms and conditions and any other supplementary terms and conditions, the relevant supplementary terms and conditions shall prevail. However, the provisions of the User Guide (as amended from time to time by the Bank) must always be read subject to these terms and conditions.

- 10.2 The provisions of the Master Agreement and any other relevant agreements between you and the Bank (including any standard terms and conditions) are also incorporated into and form part of these terms and conditions. In the event of any inconsistency between these terms and conditions and the Master Agreement or any other such relevant agreement these terms and conditions shall prevail.

11. Notices

- 11.1 A notice given by the Bank to you will be deemed to be duly given or made if it is:
- in writing signed by an authorised officer of the Bank; and
 - left at the address of the first-named party in the Application Form (as amended by any approved Additions/Amendments Request Form) or sent by prepaid ordinary post (airmail if posted in or from a place outside New Zealand) to that party's address or sent by facsimile to that party's facsimile number.
- 11.2 A notice given by you to the Bank will be deemed to be duly given or made if it is:
- in writing signed by the Customer; and
 - left at the Bank's address or sent by prepaid ordinary post (airmail if posted in or from a place outside New Zealand) to the Bank's address or sent by facsimile to the Bank's facsimile number as set out in clause 11.4.
- 11.3 A posted letter or facsimile is taken to be received:
- in the case of a posted letter, on the date that the letter is delivered or its delivery is attempted; and
 - in the case of a facsimile, on the date that transmission is received by a responsible employee of the recipient in legible form, unless the date of that delivery (or attempted delivery) or the receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication shall be deemed given and effective on the first following Business Day.
- 11.4 The Bank's address and facsimile number for purposes in connection with eFX Dealing is as follows:

Physical Address

BNZ Markets
 Level 5, Pier 1 Harbour Quays
 60 Waterloo Quay
 Wellington 6011
 New Zealand
 Facsimile: (04) 474 6266

Mailing Address

BNZ Markets
 Private Bag 39806
 Wellington Mail Centre 5045
 New Zealand

12. Governing Law

These terms and conditions shall be governed by and interpreted according to the law for the time being of New Zealand and each of the parties hereto submits to the jurisdiction of the courts of New Zealand.