

# FOREIGN EXCHANGE DEALING

Terms and Conditions

Effective April 2019



# Foreign Exchange Dealing

## Terms and Conditions

Please also read the Bank of New Zealand (the 'Bank') [Automatic Payments Terms and Conditions](#), [Internet Banking for Business Terms and Conditions](#), and the [Telegraphic Transfer Terms and Conditions](#).

Effective April 2019

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# 1. General

- 1.1** These Terms and your use of FX Dealing are a contract between you and BNZ. You should read these Terms carefully as they place certain requirements and liabilities on you.
- 1.2** You must accept these Terms before you can use Foreign Exchange Dealing in Internet Banking for Business (FX Dealing), which is BNZ's online foreign exchange transaction service as offered by BNZ from time to time. Acceptance is effected when BNZ receives your signed or electronically completed Application.
- 1.3** These Terms apply to FX Dealing, which is accessed via IB4B. You must be registered to use IB4B to use FX Dealing.
- 1.4** These Terms apply only to the use of FX Dealing and do not apply to any foreign currency transaction initiated by you over the telephone or by written instruction outside the FX Dealing system (including by email or facsimile) unless such transaction is initiated due to the unavailability of FX Dealing.
- 1.5** These Terms are in addition to and should be read in conjunction with:
- (a) the IB4B terms and conditions;
  - (b) any Master Agreement that you have entered into with BNZ or may enter into in the future;
  - (c) any confirmation relating to a particular Transaction; and
  - (d) any specific terms and conditions applicable to a nominated account.
- 1.6** You should be familiar with the IB4B terms and conditions, the terms of any Master Agreement, and any specific nominated account terms and conditions when reading and before accepting these Terms.
- 1.7** To the extent of any inconsistency between these Terms, the IB4B terms and conditions, any Master Agreement and any specific terms and conditions applicable to a nominated account, these Terms will prevail.
- 1.8** BNZ can change, add to, delete or replace these Terms at any time. When BNZ does so, it will tell you about those changes at least 14 days before the change becomes effective. However, where changes are made to protect the security of BNZ's systems or FX Dealing or to comply with a change in the law, BNZ can tell you after the change has become effective.
- 1.9** BNZ will tell you about changes to these Terms in accordance with its obligations under the Code of Banking Practice, taking into account the impact of the change to you. BNZ will tell you in one or more of the following ways by:
- (a) direct communication to you at the last address you have provided to BNZ (e.g. by letter or email);
  - (b) display in BNZ's branches and partners centres;
  - (c) notice in the media (including public notices); or
  - (d) display on BNZ's website.
- 1.10** BNZ has the right at any time, in its sole discretion to:
- (a) by prior notice change, suspend or cancel your use of FX Dealing;
  - (b) change or cancel any of the features or services that comprise FX Dealing or to limit your use of FX Dealing to particular services; and
  - (c) without notice to you, alter the form and content of the Dealing Information.

## 2. Conditions of Use

- 2.1** Subject to these Terms and unless otherwise agreed with BNZ, BNZ agrees to provide you with the right to access and use FX Dealing for your own business purposes only.

- 2.2** Any Dealing Information is supplied to you on condition that you:
- (a) will not cause or permit any Dealing Information to be recirculated or republished outside your organisation in any form;
  - (b) will use any Dealing Information only in the ordinary course of your business within your organisation;
  - (c) will not re-disseminate any Dealing Information, whether or not this forms part of your business; and
  - (d) understand and accept that any Dealing Information contributed by and/or received by BNZ from any sources external to BNZ is not in any way attributable to or endorsed by BNZ.
- 2.3** You acknowledge and agree that:
- (a) FX Dealing is a Function within IB4B that may be assigned to one or more Users. Transaction Instructions issued through FX Dealing on your behalf are not Controlled Instructions, and neither those instructions nor any Transactions that may result from them require authorisation by a User with Authorise Activity Authority;
  - (b) each Authorised User is authorised by you to issue Transaction Instructions through FX Dealing on your behalf, and that you will be bound by the terms of any Transactions that result from those instructions;
  - (c) you are responsible for and bound by any Transaction Instruction issued through FX Dealing through the login of an Authorised User, and BNZ may assume the authenticity of and act on any such instruction without any enquiry as to the identity of the person giving the instruction; and
  - (d) use of FX Dealing may expose you and your business to increased risk of fraudulent use of the system by Authorised Users or third parties and that you accept that risk.

## 3. Entering and Varying Transactions

- 3.1** You may apply to create a Transaction by submitting a Transaction Instruction using the FX Dealing system.
- 3.2** You acknowledge and agree that BNZ is under no obligation to allow the issue of, act on or accept any Transaction Instruction. In particular you acknowledge and agree that:
- (a) the FX Dealing system will not allow you to issue a Transaction Instruction or enter into a Transaction where that Transaction Instruction (if executed) or that Transaction would result in a breach of any Nominated Limits or Set Limits;
  - (b) BNZ is not obliged to allow the issue of or act on any Transaction Instruction which appears, in BNZ's opinion, to be contrary to any regulations or in circumstances which BNZ deems inadvisable to allow the issue of or to act on such Transaction Instructions; and
  - (c) FX Dealing displays live prices linked directly to current market movements, and accordingly you acknowledge and agree that:
    - (i) any exchange rates or other prices communicated to you by BNZ are subject to change without notice up until the point where BNZ formally accepts your Transaction Instruction through FX dealing; and
    - (ii) the market price may move and be different from the price of the Transaction Instruction at the time of its acceptance by BNZ.

BNZ accepts no liability for adverse exchange rate movements prior to acceptance of a Transaction Instruction.

- 3.3** You and BNZ are legally bound by a Transaction from the time of BNZ's acceptance of the Transaction Instruction. BNZ will, at the time of acceptance, endeavour to communicate that acceptance to you via FX Dealing, but the Transaction is binding whether or not you receive any such communication.
- 3.4** Once the Transaction Instruction is accepted by BNZ, BNZ will send you a confirmation setting out the details of the Transaction. The Transaction is valid even if we fail to send a confirmation, or the confirmation contains an error. You must notify BNZ immediately if there is an error in the confirmation.

## 4. Payments and Settlement

- 4.1** If you have not provided settlement instructions for a Transaction through FX Dealing, you agree to provide these instructions to BNZ before the cut-off times for the applicable currencies on the date or dates that settlement payments are due.
- 4.2** If you do not provide settlement instructions for a Transaction before the relevant cut-off times, you agree that BNZ may, at its discretion, settle the Transaction through any BNZ accounts you may have in the applicable currency or currencies. If you do not have a BNZ account in any applicable currency or currencies, you authorise BNZ to open such account(s) on your behalf, and agree to pay BNZ's standard fees in respect of those account(s).
- 4.3** You agree that a Transaction may be settled by BNZ in accordance with any settlement instructions received by us through FX Dealing or IB4B from you or on your behalf including where the relevant BNZ accounts included in the instruction are not held by you, and that such settlement will discharge BNZ's obligations to you in respect of that Transaction.

## 5. Transaction Limits

- 5.1** BNZ may impose Set Limits from time to time. BNZ may increase or decrease Set Limits at its discretion from time to time without notifying you.

## 6. Exchange Rates

- 6.1** You acknowledge that foreign currency exchange rates fluctuate and that the buying or selling of foreign currency can result in a loss to you. You agree not to hold BNZ responsible in any way for any loss which you may suffer as a result of any Transactions that you may enter into via FX Dealing

## 7. Service Availability

- 7.1** Transaction Instructions may be issued only on the Business Days and at the times of day designated by BNZ from time to time.
- 7.2** BNZ gives no undertaking and makes no representation or warranty express or implied as to the availability of the features and services that comprise FX Dealing. BNZ accepts no liability if you are unable to complete a Transaction because FX Dealing or any part of it is unavailable. You acknowledge that, in the event that FX Dealing is unavailable, BNZ may provide alternative methods of executing a Transaction, but need not accept any Authorised User as being authorised to transact on your behalf outside the FX Dealing system solely by reason of their status as an Authorised User.

## 8. Fees and Charges

- 8.1** BNZ will charge you fees for the use of FX Dealing as set out on our website ([www.bnz.co.nz](http://www.bnz.co.nz)) or as otherwise notified to you.
- 8.2** You acknowledge and agree that settlement of a Transaction may result in commissions, fees or charges being charged by BNZ or third parties (and, in particular, the involvement of correspondents and any beneficiary bank means that the settlement of the Transaction may be subject to commissions, fees or charges payable to the correspondent, BNZ or the beneficiary bank). The IB4B terms and conditions contain more details about these commissions, fees or charges.
- 8.3** You are responsible for paying all telecommunication and internet access costs associated with connection to the internet and FX Dealing.

## 9. Termination

- 9.1** BNZ may suspend or terminate your use of FX 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 or as it sees fit in order to protect the security of FX Dealing or otherwise to protect BNZ's interests.
- 9.2** You may terminate your use of FX Dealing by written notice of termination to BNZ. Such termination:
- will not be effective unless the notice of termination is actually received by BNZ;
  - will take effect from no later than 6:00pm on the Business Day after the day on which BNZ actually receives notice of termination ("Termination Time"); and
  - will not affect any obligations incurred by you in respect of your use of FX Dealing prior to the Termination Time.

## 10. Liability

- 10.1** BNZ:
- may decline to act or delay acting on any Transaction Instruction given in connection with FX Dealing where it considers that it has good reason to do so;
  - will not be liable for any claim that arises from acting reasonably in accordance with your instructions in connection with FX Dealing;
  - will not be liable for any loss suffered by you or a third party due to matters outside BNZ's control;
  - will not be liable for any loss suffered by you or a third party due to any of the matters or circumstances referred to in these Terms;
  - accepts no liability for the loss or destruction of, or delay in processing of instructions or documents; and
  - accepts no liability for any delay in transferring funds to or from your accounts.
- 10.2** If for any reason BNZ is found to be liable to you, BNZ's liability for loss of any kind which cannot be excluded by reason of applicable law is limited to reimbursement of any fees paid to BNZ arising directly in relation to the adversely affected Transaction or Transactions (as applicable).
- 10.3** The Consumer Guarantees Act 1993 does not apply to this agreement to the extent that you use FX Dealing for the purpose of a business. If the Consumer Guarantees Act 1993 applies to this agreement, nothing in this agreement affects your rights under that Act.

- 10.4** Otherwise than as set out in these Terms, your liability to BNZ and BNZ's liability to you in relation to the use of FX Dealing is as set out in clauses 8 and 9 of the IB4B terms and conditions (read as if a reference to the "Service" included a reference to the FX Dealing service) and your Master Agreement, provided that the maximum liability referred to in clause 8.3 of the IB4B terms and conditions does not apply.

## 11. Disclosure of Information

- 11.1** BNZ will need to collect personal information about you in order to enable you to use and access FX Dealing. You agree to provide BNZ with full and correct information and to notify us as soon as possible if you become aware that the information is incomplete or if the information changes.
- 11.2** You consent to BNZ recording its telephone conversations with you and such recordings being used in any legal proceedings between us.
- 11.3** You authorise BNZ and each of its officers, agents, employees and contractors to disclose to any of BNZ's branches or other offices, National Australia Bank Limited or any other person (including, without limitation, the Financial Markets Authority) who requires such information in order for BNZ to provide FX Dealing to you, any information relating to you which BNZ may hold now or in the future.

## 12. Laws and Regulations

- 12.1** Any service BNZ provides to you may be affected by laws and the acts, practices and policies of local or foreign governments (a "Regulatory Authority") whether or not having the force of law ("Regulations"). Regulations may be those of any place where BNZ or with which FX Dealing has some direct or indirect connection, or to which or from which a payment or Transaction Instruction is made or received or in which some other thing is done, or may be the Regulations of or applicable to the currency of any payment. Regulations include those which affect, restrict, prohibit or otherwise render unlawful transactions, payments or dealings with assets, countries, any person, group or entity.
- 12.2** FX Dealing may be interrupted, prevented, delayed or otherwise adversely affected, in whole or in part, by reason of a Regulation including where BNZ or a Regulatory Authority asserts, that a Regulation may apply (each an "Adverse Effect"). It is entirely your risk if any Adverse Effect occurs and BNZ has no obligation to contest any act of any Regulatory Authority. To the maximum extent permitted by applicable law, BNZ is not liable for any loss of any kind arising directly or indirectly from or in connection with any Adverse Effect.
- 12.3** You agree that 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.

## 13. Code of Banking Practice

- 13.1** BNZ will comply with the Code of Banking Practice as it applies to these Terms.

## 14. General

- 14.1** You must not in any manner whatsoever assign or transfer to any other person any of your rights and interests under these Terms, but BNZ may assign any of its rights and interests under these Terms without your consent.
- 14.2** These Terms 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.

## 15. Definitions

**In these Terms (unless the context otherwise requires):**

**'Adverse Effect'** has the meaning given to that term in clause 12.1. Application means the form provided by BNZ by which you apply to use FX Dealing (whether in conjunction with an application for IB4B or otherwise).

**'Authorised User'** means any User who through IB4B has been assigned the Function of creating Transactions through FX Dealing.

**'BNZ'** means Bank of New Zealand and its successors and assigns.

**'Dealing Information'** means any market, exchange rate or other similar information provided by BNZ to you via FX Dealing, but excludes any information in relation to the terms of a completed Transaction.

**'IB4B'** means BNZ's Internet Banking for Business Service and any successor thereto.

**'Master Agreement'** means any Master Agreement for Foreign Exchange and Derivative Transactions, Master Agreement for Foreign Currency Transactions, Master Agreement for Derivative Transactions or ISDA Master Agreement that you have entered into with BNZ.

**'Nominated Limits'** means any limits in connection with the use of FX Dealing (for example, the maximum amount of any individual Transaction) specified by you in your Application or through FX Dealing from time to time.

**'Set Limit'** means any current uncommitted limit set by BNZ relating to the aggregate monetary amount or other characteristics of Transactions you may have outstanding at any time, whether or not that limit has been advised to you.

**'Terms'** means these terms and conditions, as varied by BNZ in accordance with clauses 1.8 - 1.10.

**'Transaction'** means a forward exchange contract or other foreign exchange transaction entered into between you and BNZ through FX Dealing, including any variation of an earlier Transaction.

**'Transaction Instruction'** means, in respect of an Authorised User, an offer issued through FX Dealing by that Authorised User to enter into a Transaction of a class for which that Authorised User has been authorised through FX Dealing.

**'You'** means the customer named on the Application Form and includes your agents, employees, successors and permitted assigns; and yours has a corresponding meaning.

Words with initial capital letters not defined in these Terms have the meaning given in the Internet Banking for Business terms and conditions.