

Terms of Service – United Kingdom

These terms of service, as amended by any special terms, provided in a Schedule (these “Terms”) set out the terms and conditions on which we (“we”, “us”) provide, foreign currency Conversion services (“FX Services”), Gateway Services (which is a payments gateway operated by us, for receiving payments, predominantly used by the education sector), or other payments services (each a “Payment Service”) to you, the client, (“you”).

These Terms set out the relevant information that we are required to provide you under the Payment Services Regulations 2017 (“PSR 2017”) prior to a contract being entered into. For the avoidance of doubt, a contract is only formed once a successful Order has been placed with us.

We may amend, delete or add to these Terms, (a “Change”) at any time, by giving notice of such Change by posting a revised version of these Terms on the EPM website. A Change will be made unilaterally by us and you will be deemed to have accepted the Change one (1) day after you have received notice of it. We will give you two (2) months' notice of any Change with the Change taking effect once the two (2) month notice period has passed, except the two (2) month notice period will not apply where a Change is required by law or relates to the addition of a new service, extra functionality to the existing Service or any other change which neither reduces your rights nor increases your responsibilities. In such instances, the Change will be made without prior notice to you and shall be effective immediately.

We operate the website www.earthport-fx.com. Our full company name is EarthportFX Limited, we are a company registered in England and Wales under company number 03910588, with our registered office at 140 Aldersgate Street, London, EC1A 4HY.

We are authorised by the Financial Conduct Authority (“FCA”) under the Payment Services Regulations to carry out payment services. Our firm number is 535939.

We understand that payment services may appear complicated, we hope that our support teams can answer any questions or queries you may have, please contact us at www.earthport-fx.com/contact. Any support we may provide you with will be in accordance with our Service Support Terms available upon request.

Below is a brief outline of the main sections of the Terms, with links to the relevant sections of the full Terms. Please read the full Terms carefully and ensure you understand them before using our website or a Payment Service.

Summary

Section A: Introduction

You must only use the Payments Services in accordance with the Terms in Section A. You are responsible for the accuracy of the information you supply to us and the security of your Account or payment details. Both of us shall use reasonable endeavours to prevent unauthorised or illegal use.

We will not be liable if any applicable laws prohibit the processing, settlement, or transfer of any payments.

For full details please see section A below.

Section B: Entering into a transaction

We offer two types of Payment Service: FX Services and Gateway Services. Details of how to request the relevant Payment Service, the process, how payments can be made, and the options for such Payment Service are available in Section B. Exchange rates may change but will be confirmed before we accept a request.

You may cancel your request for Payment Service at any time until we accept the request. Typically, we cannot accept a request for Payment Service unless we have received and verified the necessary identification and anti-money laundering documentation. We may need to reject a request for a Payment Service, if this happens, we are not required to provide an explanation for the rejection. We do not guarantee the availability of our Payment Service at all times.

For full details please see section B below.

Section C: Obligations and liability

All sums must be paid in full before the Payment Service can be completed. You confirm that all payments will be made from your own accounts or (where applicable) payment cards, unless you have obtained prior authorisation from us. You must comply with all applicable laws. You must not use the Payment Service for investment purposes. Where agreed in advance, we may require you to pay a deposit in relation to some payments.

We place limitations on our liability to you in certain circumstances; please ensure you read and understand the limitations on our liability to you. For example, where possible, we limit our liability to direct losses up to the amount paid by you in relation to the Payment Service.

For full details please see section C below.

Section D: Fees

If applicable, you are responsible for any bank fees (except those caused by our breach), interest on delayed payments, taxes and other charges associated with the Payment Service. We reserve the right to charge you interest rate of 4% per annum above the Bank of England base rate if you fail to make any payment.

For full details please see section D below.

Section E: Errors; Chargebacks; Termination

You are responsible for ensuring all information and instructions are correct. If you are a Consumer you must notify us of any errors (including Unauthorised Payments) as soon as possible and in any event within thirteen (13) months of the date of the payment. If you are a Business User, you must notify us of any Unauthorised Payments as soon as possible and in any event within one (1) month of the date of the payment. If you receive a payment using a Payment Service and, for any reason, the payment is then cancelled by another party (such as a bank), you will need to promptly return the payment.

Either of us can terminate a Payment Service immediately if a Default Event occurs, this includes breach of these terms or the payment is restricted in some way. You may be liable for any costs we incur if we have to terminate a Payment Service due to your fault.

For full details please see section E below.

Section F: Other important legal terms

This section also contains general legal provisions including, the duration of these Terms, intellectual property, data protection, jurisdiction and the complaint process. This section also places requirements on you to keep your payment and account information secure and details your liability if you fail to do so.

We also draw your attention to our Privacy Policy, accessible here: <https://www.earthport-fx.com/privacy-policy/>

For full details please see section F below.

Section G: Regulatory and compliance

This section helps to ensure our compliance with applicable regulatory laws and provisions that place certain restrictions on your use of a Payment Service or may require us to amend the Terms.

For full details please see section G below.

Section H: Special terms

These agreed provisions detailed in the relevant Schedule will override the other Terms.

For full details please see section H below.

Section A: Introduction

1. General use of the payment service

1.1 By ticking and agreeing to these Terms you agree to be bound by them and agree that they will be incorporated into, and apply to, each Payment Service you request from us.

1.2 You will be given a unique client number which may be required when communicating with us.

1.3 You are responsible for the accuracy and completeness of the information you provide to us as part of a request for any Payment Service.

1.4 You shall take all reasonable steps to keep safe all security features and authentication protocols or other credentials used to access the Payment Service and shall notify us, without undue delay, on becoming suspicious or aware of the loss, theft, misappropriation or unauthorised use of the Payment Service.

1.5 You shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Payment Service and shall notify us, as soon as possible, of any such unauthorised access or use.

1.6 Both of us shall use reasonable endeavours to ensure that we do not access, store, distribute or transmit any Virus, or any material that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.

1.7 We shall incur no liability in the event that applicable laws prohibit the processing, settlement, or transfer of any payments.

1.8 If you are a Consumer (as defined in clause 1.11(a)), unless otherwise set out in these Terms, we shall provide you with specific details of your Transaction (as defined in clause 3.3) in the Order acknowledgement.

1.9 We shall provide you with information relating to your payments free of charge in a manner chosen by you at least once a month (or more frequently, if requested by you) setting out:

1.9.1 a Transaction reference number enabling you to identify the Transaction and information relating to the payee;

1.9.2 the amount of payment, including the currencies, the actual exchange rate used and breakdown of any charges or interest paid by you; and

1.9.3 the debit value date or date of receipt of the Order.

1.10 Where you have not made any Transactions in a particular month, we shall not be obliged to send you such information.

1.11 For the purpose of these Terms:

(a) a “Consumer” is an individual using the Payment Services and who is not entering onto these Terms in the course of business; and

(b) a “Business User” is a company or commercial entity using the Payment Services solely for businesses purposes who is not Consumer, micro-enterprise (as defined in Article 1 and Article 2(1) and (3) of the Annex to Recommendation 2003/361/EC) or a charity with an annual income of less than one million pounds (£1,000,000).

1.12 If you are not a Consumer you hereby agree to expressly disapply or to opt-out of the following regulations of the PSR 2017 to the maximum extent permissible by law and to execute without delay any such further documents as may be required to give effect to such disapplication and/or opt-out: regulations 48 to 54 (Framework Contracts), 66(1) (Charges), 75 (Evidence on authentication and execution of payment transactions), 77 (Payer or payee’s liability for unauthorised payment transactions), 79 (Refunds for payment transactions initiated by or through a payee), 80 (Requests for refunds for payment transactions initiated by or through a payee), 83 (Revocation of a payment order), 85(1) (Application of regulations 86 to 88), 86(1), 86(2) (Payment transactions to a payment account), 87 (Absence of payee’s payment account with the payment service provider), 88 (Cash placed on a payment account), 91 (Non-execution or defective or late execution of payment transactions initiated by the payer), 92 (Non-execution or defective or late execution of payment transactions initiated by the payee) and Part 6 (Information Requirements for Payment Services). A link to the relevant regulations can be found [[HERE](#)].

1.13 You shall only be entitled to use the Payment Service provided that any Transaction entered by you is as a Means of Payment.

For the purposes of these Terms “Means of Payment” means the Transaction:

(a) shall be settled physically except where required due to default or other termination event;

(b) is entered into by at least a person which not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council; and

(c) is entered into in order to facilitate a payment for identifiable goods, services or direct investment;

For further information please refer to MiFID2 – Foreign Exchange (FX) Means of Payment Exclusion Examples document.

Section B: Entering into a Transaction

2. Gateway services

2.1 Business Users may use the Gateway Services to receive payments from consumers or other businesses. The Consumer or Business User making the payment is referred to here as the “End User”.

2.2 We will make available our payment interface operated by us for the purpose of facilitating online payments to our customers, the payment interface is referred to as the “Gateway”. You will only be entitled to use the Gateway in accordance with these Terms and applicable laws.

2.3 Before an End User submits any payment via the Gateway, we will advise the End User of the total amount they will need to transfer to us to effect the Gateway payment (“Settlement Amount”). This Settlement Amount will include all charges to be deducted by the credit or debit card provider, relevant transaction fees and the costs of any currency conversion services.

2.4 The End User will be responsible for ensuring the accuracy of the information submitted. If the End User accepts the Settlement Amount, the End User will then enter their credit or debit card payment details. The End User will then select the ‘Process Payment by Card’ function, which submits the Settlement Amount for processing by either the card provider or direct to us.

2.5 The End User will then receive a Transaction authorisation code or a failure message. The End User will be responsible for ensuring the accuracy of the information set out in the Transaction authorisation code or a failure message. We will only process the payment when we accept the payment request after we have conducted all necessary regulatory and/or operational checks. Once we have accepted a payment request it cannot be withdrawn and payment cannot be terminated unless the termination provisions at clause 15 apply.

2.6 If the End User does not accept the Settlement Amount, they can select the “Cancel” option to stop the processing of the payment.

2.7 An End User can use the Gateway to make payments by credit or debit card at any time.

2.8 Where an End User fails to provide payment following acceptance of a rate on the Gateway for a proposed Transaction, and we have entered into a Spot Contract in relation to such a Transaction, you will be liable to pay to us on demand and/or we may deduct from any monies we hold on your behalf, including any balance in the Trading Facility, reserve or Deposit, all costs, charges, expenses and liabilities suffered or incurred by us in connection therewith (including the cost of selling any Purchase Currency) on a pound for pound basis.

3. Currency exchange services

3.1 If you have signed up for the provision of FX Services, the provisions of this clause 3 will apply to any FX Services we provide.

3.2 For the purpose of these Terms, the following definitions apply:

“Account” means the electronic records that we keep of payments and receipts of currencies during Transactions with you.

“Deposit” means an initial payment payable by you to us in relation to a Forward Contract or a Window Forward Contract.

“Forward Contract” means a Transaction where the Settlement Date is more than two UK business days after the date of a Transaction.

“Purchase Currency” means the currency which you agree to purchase from us in a Transaction.

“Sell Currency” means the currency that you agree to sell to us in a Transaction.

“Spot Contract” means a foreign exchange contract for settlement of a Payment Transaction within two (2) Business Days.

“Trading Facility” the trading facility account held with EarthportFX.

“Window Forward Contract” means a Forward Contract where you are allowed to take delivery of funds in part or in full between two agreed dates.

3.3 You can submit a request for FX Services either by informing us online, by email or by telephone (an “Order”). For clarification, we will not be bound to provide you with the FX Services until we have accepted your Order and sent you confirmation that we have entered into a “Transaction”. We will only enter into a Transaction with you when we accept your Order and we have satisfactorily received and verified identification and anti-money laundering documents.

3.4 Once we have accepted your Order you cannot withdraw it and the Transaction cannot be terminated unless the termination provisions at clause 15 apply.

3.5 Immediately after you place an Order and, again, after the completion of a Transaction, we will send you written confirmation. You are responsible for checking the accuracy of each confirmation and you must notify us of any errors promptly, and in any event prior to the relevant Settlement Date.

3.6 We are only able to process Orders during our normal business hours, therefore, where we enter into a Transaction with you after the UK banking cut-off times, we will not be able to process such Transaction until the following business day in the UK.

3.7 Notwithstanding our obligations in clauses 7 and 13, if you are a Consumer, we may accept or refuse an Order at our absolute discretion without any liability to you. We will notify you of the refusal of an Order at the earliest opportunity and we will try to notify you by the end of the business day following receipt of the Order (or such longer time as may be permitted by the PSR 2017 as amended from time to time. If possible, we will provide our reasons for the refusal and the procedure for rectifying any factual errors that led to the refusal. At your request (but not otherwise), we will inform you of the maximum execution time for a Transaction and a breakdown of any charges payable by you.

3.8 Any Order you submit will be at your own risk. We shall be entitled to rely on and treat as genuine any Order which we believe in good faith you have placed. You agree that we are not under any duty to make enquiries about any Order or other instructions which we reasonably believe are your genuine instructions.

3.9 Notwithstanding that an exchange rate is agreed at the time we accept your Order in accordance with Section B, in relation to a Transaction we cannot guarantee the same rate of exchange will apply to any other Transaction. We will confirm the exchange rate to you immediately prior to each Transaction.

3.10 If you are a Consumer, we will confirm the exchange rate (including the relevant date and index or base for determining the reference date) to you immediately prior to each Transaction.

3.11 We shall be entitled to make certain charges in connection with a Transaction. A list of our current charges will be made available to you or is available on request. Where these charges are based on reference interest or exchange rates, and unless prevented by applicable laws, we shall be entitled to apply any changes immediately and without notice.

3.12 Where you have asked us to make an advance payment to you of the Purchase Currency to your Account prior to your payment of a Forward Contract or a Window Forward Contract, you must first pay us the equivalent amount of Sell Currency, calculated at the rate agreed at the time we accept your Order. Any such payment by you shall be in addition to any Deposit that we require. We are under no obligation to apply the whole or any part of the Deposit towards such payment.

3.13 Where you have provided a Deposit for a Forward Contract or a Window Forward Contract, the amount of the Deposit can be applied by us towards any of your payment obligations in relation to your settlement of a Transaction and, provided there are no other outstanding Transactions, any balance remaining after such settlement will be repaid to you. We may use the Deposit as collateral for forward positions that we hold with regulated financial institutions in relation to any Transaction.

3.14 All Forward Contracts or Window Forward Contracts will be subject to a mark to market valuation and we may make a request to you to provide additional amounts to cover mark to market losses on a Forward Contract or Window Forward Contract (a "Margin Call") on you at any time for such amounts as we may in our discretion decide provided that the amount of a Margin Call will not exceed the market loss that we calculate at the time the Margin Call is made.

4. Market orders with FX Services

4.1 If you issue an instruction that specifies an amount of currency and a desired exchange rate at which you would like us to purchase or sell currency automatically (a "Market Order"), we will execute it without further reference to you within the time period agreed, unless, sufficiently prior to execution, you cancel or vary the Market Order.

4.2 You may also ask us to issue a system of alerts to monitor for specific exchange rates (the "Rate Alert"). Whilst we try to issue Rate Alerts as promptly as possible, we shall not be liable for any delay in your receiving the Rate Alert or any fluctuation in exchange rates in the meantime.

5. Online Payments

5.1 If you have signed up to online services the provisions of this clause 5 will apply to your use of the system to buy or sell currency or to obtain quotations for currency exchange rates or to effect currency transfers.

5.2 You acknowledge that the internet and email may not be secure media for the communication of sensitive payment information. You agree that communication by email or your use online will be at your own risk.

5.3 When you subscribe online, we grant you a revocable, non-exclusive, non-transferable licence to access and use our online services.

5.4 Use of online services or termination of the licence to use it will not affect your or our rights under any other provision of these Terms.

5.5 All intellectual property rights in online content belong to and will remain our or our suppliers' property at all time, including copyright in our website. You may not reproduce any parts thereof, create any derivative works or incorporate the website into any other website, electronic retrieval system, publication or otherwise. You may print information from our website for your own use. You acknowledge that our website contains our copyright material and that you will not acquire any rights to such material by downloading it.

5.6 We do not warrant the availability or online performance at any time nor the correctness, accuracy or completeness of any information that you receive online.

5.7 We reserve the right to suspend, restrict or terminate your access to online or to change the configuration or functionality of the website at any time without notice to you.

Section C: Obligations and liability

6. Your obligations

6.1 You are required to pay all sums in relation to a Payment Service to us in full, in cleared funds, free from any other rights prior to the relevant settlement date (the "Settlement Date"), and prior to us providing any Payment Service. Where we have agreed a spending limit with you, you agree not to exceed the spending limit.

6.2 You understand the importance of providing the correct unique identifier information or reference number when placing your Order. In the event of any errors, the provisions of clause 13 shall apply.

6.3 For the purposes of these Terms, "Unauthorised Payments" means the execution of any payment or Transaction made without your prior consent.

6.4 You agree that your clear, informed, specific consent is given where you have placed an Order online, by telephone or email. The procedures are outlined below:

6.4.1 Online consent procedure: by clicking the "confirm" button on the order page.

6.4.2 Telephone consent procedure: when we receive clear instructions from you to proceed based of the exchange rate quoted.

6.4.3 Email consent procedure: when we receive clear instructions in the email from you to proceed based of the exchange rate quoted (which may be subject to change). If we cannot guarantee this rate at the time of receiving your consent, we will contact you to requote.

6.5 Your consent to an Order will be deemed as having been received if it is given by email or telephone before 5 pm or placed online before 5.30pm. If your consent is provided after these cut off times, the Order shall be deemed as having been received on the following business day. The number of days after which we shall credit the recipient's account on successful receipt of an Order shall depend on the currency, value date and receipt of settlement of the Order. The maximum execution time for Transactions to be completed is one (1) business day following the date of receipt of Order.

6.6 You may revoke your consent to a Transaction at any time before we confirm that the Order has been received.

6.7 In the case of direct debit payments, or Orders for payment on a specific date, you may not revoke an Order after the end of the business day before the agreed debit or payment date. We may agree to revocation of an Order after these dates, however you may incur a charge if there is a loss in the exchange rate.

6.8 If you are a Consumer or Business User, you acknowledge that you shall have unlimited liability for:

6.8.1 any Unauthorised Payments arising as a result of your own fraud, wilful intent or gross negligence;

6.8.2 any failure to notify us without undue delay of becoming aware of the loss, theft, misappropriation or unauthorised use of a payment instrument used to make an Unauthorised Payment; and

6.8.3 any failure to notify us of the Unauthorised Payment within the time limits specified in clause 13.1.

6.9 If you are a Consumer, subject to clause 6.8.1 you shall not be liable for:

(a) any Unauthorised Payments resulting from the loss, theft or misappropriation of a payment instrument that was not detectable by you prior to payment being made; or

(b) any loss caused by any act or omission of one of our employees, agents or branches carrying out activities on our behalf,

and your entire liability for any losses incurred in respect of all other Unauthorised Payments arising as a result of the use of a lost, stolen or misappropriated payment instrument shall be limited to a maximum of £35.

6.10 If you are a Business User the provisions of clause 6.9 do not apply.

6.11 In relation to the Gateway Services, the Settlement Date will be the date the End User agrees to pay the Settlement Amount. Settlement Amounts may be paid by credit or debit card or bank transfer on the Gateway.

6.12 In the case of the FX Services, unless we agree otherwise (for example in relation to Market Orders or “spot trades”), the Settlement Date will be the time at which: we transmit our acceptance of your Order; we accept your Order online; or our operator accepts your Order by telephone, (as appropriate).

6.13 You can make payments for FX Services by electronic transfer or by direct debit from your bank account into the bank or other account(s) specified by us.

6.14 Unless you have obtained prior authorisation from us, you confirm that you will make any payment from your own bank account or (where applicable) credit or debit card.

6.15 You may not hold funds on account without the intention to make payments imminently. Should you hold funds for longer than 90 days, we shall have the right to return these using your bank details provided. It is your responsibility to ensure that bank details held by us remain up to date.

6.16 In accordance with applicable law and Earthport’s policies you agree to provide due diligence information as required.

6.16.1 We reserve the right to refuse to accept any payment made by a third party without the prior written consent of our Money Laundering Reporting Officer, unless you have established such third party’s identity in accordance with our then current compliance policies and procedures, and satisfied all other requirements to establish the source of funds and the purpose of any payment made to your Account. Any unauthorised payment may be returned to the payer and the payment will not be credited to your Account for the purposes of the Payment Service.

6.17 You must comply with all laws and regulations relating directly or indirectly to the Payment Service, currency transactions and payments including (without limitation) the PSR 2017 and the laws and regulations of England and Wales relating to data protection and in respect of the prevention of money laundering and terrorist financing, including (without limitation) the Money Laundering Regulations 2017 and the Proceeds of Crime Act 2002, and data protection (referred to as the “Applicable Regulations”). You will promptly, on request, provide such information as may be required by any Applicable Regulations.

6.18 You confirm that you will not enter into a Transaction for the purposes of speculative activity (with the intention of profiting solely from currency movements). All payments of Sell Currency and Purchase Currency shall be paid into or withdrawn from your Account in accordance with the terms of a Transaction.

7. Our obligations and limitations on our liability

Please ensure you understand these provisions.

7.1 In relation to FX Services, we shall not be obliged to pay into or release to you from your Account any Purchase Currency until we have unconditionally received from you the full amount of the Sell Currency in relation to a Transaction in cleared funds together with any amounts payable by you under your obligations set out in Section C. Following such receipt, we will pay the Purchase Currency into your Account or in accordance with any other instructions you provide. All payments will be made as soon as is practical but if we do not receive your payment of the Sell Currency in sufficient time to make the payment of the Purchase Currency to you before the market cut-off time applicable to the Purchase Currency, we will pay the amount of the Purchase Currency to you or your beneficiary on the next following business day. No interest is payable on any balances in the Account.

7.2 We shall be entitled to assume that all information provided by you about your personal and financial circumstances remains true and accurate and complete in all material respects until you notify us otherwise. We will not be obliged to make any further enquiries about you before providing any Payment Service and our reliance on such information shall not affect any other right we may have against you under these Terms or otherwise at law in relation to a Payment Service.

7.3 Save as provided in the PSR 2017, we shall not be liable to you for any delay, failure, Unauthorised Payment or error in crediting the Purchase Currency to your Account or in transmitting funds to any bank account in accordance with your instructions pursuant, where such delay, failure, Unauthorised Payment or error is caused by:

- (a) failure or error of any machine, data processing system or transmission link (whether or not under our control); or
- (b) any period of essential maintenance, critical change, repairs, alteration to or failure of computer systems (whether or not under our control); or
- (c) the acts or omissions of any third party.

7.4 Where the error, Unauthorised Payment failure or delay in sending any Purchase Currency to your Account pursuant to a Transaction is caused by our breach of contract, negligence, or failure to obtain consent we will be responsible for any direct losses that arise as a result. This may (but will not necessarily) include a refund of the amount of Unauthorised Payment, repayment of bank charges, loss of interest or a fall in the value of the Sell Currency against the Purchase Currency between the business day following Settlement Date and the date of actual payment. However we will have no liability for, nor be required to compensate you against, any loss of profit or other consequential or indirect, special or economic loss or a loss of bargain howsoever arising including because you have been unable to enter into or to perform a contract with a third party, even if such losses were known to us or were reasonably foreseeable by us.

7.5 Notwithstanding any other provision of these Terms, where we have any liability to you in respect of any Payment Service (whether under statute, or in negligence or other tort, contract or otherwise), subject to any mandatory requirement of the PSR 2017, our liability shall be limited to the amount paid by you under the relevant Payment Service.

7.6 We shall have the right to deduct from any amount to be paid into your Account, from your Account itself or from any Deposit, such sums as we may be required to deduct by law together with any other sums that you may owe to us in connection with any Payment Service or otherwise.

7.7 Nothing in these Terms excludes or limits our liability in relation to:

- 7.7.1 death or personal injury arising as a result of our negligence; or
- 7.7.2 for fraud or fraudulent misrepresentation; or
- 7.7.3 any liability that cannot be excluded by applicable law.

7.8 For the purposes of this Section C, references to us include our directors and employees while acting in the course of our business.

8. Your capacity

8.1 You represent and warrant on the date that you sign a copy of these.

Terms and on the dates on which you place an Order and on which a Transaction is entered into, that you are and will be entering into each Transaction as a principal and not as an agent.

8.2 You may not assign the benefit of a Transaction to a third party.

9. No advice

9.1 While we believe, to the best of our knowledge, that any information including any charts or market news that we supply to you by any method is accurate and reliable at the time it is given, we do not warrant the accuracy, completeness or timeliness of any such information, nor do we give any assurance or guarantee as to the outcome of any Payment Service. Market conditions and prices may change at any time. Accordingly, in placing an Order, entering into any Transaction or making use of any Payment Service, you represent and warrant that you have taken such other advice as you think necessary, that you understand the nature of such Transaction or service and your associated obligations, that you are relying upon your own skill and judgment in placing an Order, entering into the Transaction or using the Payment Service, and that you are not relying on any statement or information provided by us.

Section D: Fees

10. Bank fees

10.1 Where such bank charges apply, you shall be responsible for all intermediary bank fees or bank fees associated with returned funds except where such return is attributable solely to our breach or error. You agree that we may deduct such fees from any amounts held on your behalf, including your Account or any Deposit.

11. Interest

11.1 If you fail to make any payment due to us in accordance with these Terms (including Section C) and without affecting our right to terminate a Payment Service, we reserve the right to charge interest on any monies due to us from you at a rate of 4% per annum above the base rate from time to time of Bank of England between the due date for payment and either date of actual payment or the date of termination of the applicable Payment Services.

12. Taxes

12.1 It is your responsibility to determine what, if any, taxes apply to the payments you receive in connection with the use of the Payment Services ("Taxes"). It is solely your responsibility to assess, collect, report, or remit the correct Taxes to the proper tax authority. We are not under any obligation to, nor shall it determine whether Taxes apply, or calculate, collect, report, or remit any Taxes to any tax authority arising from any transaction. You acknowledge that we may make certain reports to tax authorities regarding transactions that we process and merchants to which we provide card payment services. We reserve the right to report to relevant revenue or taxing authorities regarding payment card transactions processed by us on your behalf, to the extent we are required to do so by applicable law.

Section E: Errors; Chargebacks; Termination

13. Errors, Unauthorised Payments and payee-initiated Transactions

13.1 Subject to the below clauses, for a Gateway Services End User who is a Consumer, you must provide us with a written notice of any suspected errors in relation to payments via the Gateway as soon as possible and in any event within thirteen (13) months of the payment being made, whereas where an End User is a Business you must provide us with a written notice of any Unauthorised Payments in relation to payments via the Gateway as soon as possible and in any event within one (1) month of the payment being made. We will conduct an investigation into the errors and will use reasonable endeavours to keep you updated as to the status of the investigation. If we believe that an error was caused by us or our Gateway, we will use reasonable endeavours to refund the payment to the End User within five (5) business days of the conclusion of our investigation.

13.2 When using the Gateway, if we reasonably believe that the error was a result of the End User's (or any agent or recipient's) fault, we will use reasonable endeavours to refund the payment to the End User within ten (10) business days, less an administration charge of 2% of the error amount.

13.3 Where such payment error involves a conversion from one currency to another then the amount returned to the End User may differ from the original Settlement Amount as a result of the application of the Currency Conversion Rate to the attempted payment.

13.4 Where a Transaction consists of an Unauthorised Payment and subject to the notification requirements in clause 13.1 we shall:

13.4.1 refund you or the End User the full amount of the Unauthorised Payment; and

13.4.2 where applicable, restore the debited account to the state it would have been in had the Unauthorised Payment not taken place.

13.5 Any refund under clause 13.4 shall be made as soon as reasonably practicable and in any event, no later than the end of the business day following the day in which we are notified of the Unauthorised Payment.

13.6 Where a Transaction is initiated by a payee (such as through direct debit arrangement), you (if you are a Consumer) shall be entitled to an unconditional refund for the full amount of the Transaction in the event that:

13.6.1 the payment authorisation did not specify the exact amount Transaction when the Transaction was authorised; and

13.6.2 the amount of the Transaction exceeded the amount that you could reasonably have expected taking into account the relevant circumstances.

13.7 Any refund requests under clause 13.6 must be made to us within eight (8) weeks from the date on which the funds were debited from your account.

13.8 We reserve the right to request that you provide us with such information as may be reasonably necessary in order for us to determine that the conditions in clauses 13.6.1 and 13.6.2 are satisfied.

13.9 Any refund or justification for refusing a refund must be provided within ten (10) business days of receiving a request for a refund or, where applicable, within ten (10) business days of receiving any further information requested under clause 13.8.

13.10 For the avoidance of doubt, clauses 13.6 to 13.9 shall not apply to Business Users.

14. Chargebacks

14.1 If we have provided the Payment Service (for example, paid you any Purchase Currency or remitted a payment from an End User) and, for any reason:

(a) the relevant bank refuses payment of any of the Sell Currency or Settlement Amount, or any other sum due to us or demands the repayment from us of any sum paid to us; or

(b) the credit card issuer seeks to charge back to us any payment made by the End User using the credit card

you will pay to us on our first written demand and/or we may deduct from any monies we hold on your behalf, including any balance in the Account or Deposit, the amount withheld or repaid under paragraph (a) or the amount charged back to us under paragraph (b) together with all losses, break costs and other costs, charges, expenses and liabilities suffered or incurred by us in connection therewith (including the cost of selling any Purchase Currency) on a pound for pound basis.

14.2 In the event that such chargeback is requested before we perform the Payment Service, we shall notify you as soon as practicable and notwithstanding anything else in these Terms, we will be under no obligation to perform such Payment Service.

15. Termination

15.1 Either party may terminate a Payment Service with immediate effect upon the occurrence of a Default Event in relation to the other party, by giving notice to the other party, where verbal notice is given, the party shall confirm it in writing within one hour or as soon as possible. Termination of a Payment Service shall not affect the rights of either party arising prior to termination.

15.2 A Default Event means:

15.2.1 in relation to you:

(a) if you are in breach of your obligations in relation to a Payment Service;

(b) if you are unable to pay your debts as they fall due;

(c) if in our opinion any information provided by you is incorrect or misleading in any material respect;

(d) if any event occurs which we reasonably believe will have a material adverse effect on your ability to comply with your obligations under these Terms;

(e) if we reasonably believe that you or a Payment Service is or is likely to be in breach of any Applicable Regulations; or

(f) if we have reasonable cause to believe that a payment is being made to, from or via a Sanctioned Entity (as defined in Section G)

15.2.2 in relation to us, a breach by us of the terms of a Payment Service which, if capable of remedy, is not remedied within five (5) business days after you have served written notice on us relating to such failure.

15.3 If we terminate a Payment Service following a Default Event in addition to your liability elsewhere under these Terms you will compensate us (on a pound for pound basis) against all costs and charges incurred by us including without limitation all intermediary or receiving bank charges and break costs which may arise in connection with the Payment Service. You may discuss the possibility of such charges arising with us at any time by contacting us on +44 (0)207 594 0584. If we terminate a Payment Service under to this Section E, we will not need to explain our reasons for our decision, if we are prevented from doing so under any applicable regulations, and we will not be liable to you as a result.

15.4 In relation to the FX Services, following termination of any Transaction, we will be entitled, at our discretion, to sell or retain any Purchase Currency purchased in relation to that Transaction. Where we terminate a Transaction, we will be entitled to set off any loss or expense suffered or incurred by us against any Deposit or other monies held by us for you, without affecting the indemnity given under Section C.

Section F: Other important legal terms

16. Duration of contract

16.1 If you are a Consumer, these Terms will remain in force until terminated by either of us giving written notice to the other at any time. Except in the case of any regulatory changes covered by Section G, we will provide you with not less than two (2) months' notice of any changes to these Terms. If you are dissatisfied with the changes, you have the right to terminate these Terms immediately without charge before the proposed changes take place. This obligation to provide not less than two (2) months' notice shall not apply to any changes in the interest or exchange rates or any change that is favourable to you, which we may apply immediately and without notice. If you do not terminate these Terms within the notice period we provide, the amended Terms will apply from the effective date set out in the notice.

16.2 If you are a business, these Terms will remain in force until terminated by either party giving written notice to the other at any time. We will provide you with not less than one (1) months' notice of any changes to these Terms.

17. Safeguards and corrective measures

17.1 You must ensure that details relating to the operation of your Account

are kept secure. Should you become aware that the personal details, (sort code and bank account number, password) have been disclosed to a third party, you must notify us immediately. If we become aware that you are entering into or using a Payment Service for a restricted purpose, we will stop the Payment Service with immediate effect.

18. Entire agreement

18.1 If you are a business, these Terms together with your Order, once it has been accepted by us, constitute the entire agreement between us in relation to each Payment Service.

19. Events outside our control

19.1 We will not be liable or responsible for failure to perform, or delay in performance of, any of our obligations in relation to the Payment Service where that is caused by an Event Outside Our Control.

19.2 An "Event Outside Our Control" means any act or event beyond our reasonable control (including without limitation any acts or restraints of governments or public authorities, strikes, lock-outs, or other industrial action by third parties, terrorism or threat of terrorist attack, war (whether declared or not) or threat of war, revolution, riot or civil commotion, fire, extreme weather or natural disaster and failure of public or private telecommunications, networks or other systems, loss of electricity or other utilities).

19.3 If an Event Outside Our Control takes place that affects the performance of our obligations, we will promptly notify you, and our obligations under in relation to the Payment Service will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. You may cancel a Payment Service affected by an Event Outside Our Control, which has continued for more than thirty (30) days. To cancel, please contact us.

20. Data protection

20.1 Each party will comply with the Data Protection Laws.

20.2 In particular each party agrees to abide by the Data Protection Principles, namely that personal data is: 1) used fairly, lawfully and transparently, 2) used for specified, explicit purposes, 3) used in a way that is adequate, relevant and limited to only what is

necessary, accurate and, where necessary, kept up to date, 4) kept for no longer than is necessary, 5) handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage

20.3. We shall:

20.3.1 process the personal data only to the extent necessary to perform our obligations under these Terms (this includes processing for the for the purposes of preventing money laundering or terrorist financing, unless otherwise required or permitted by regulation or with consent for alternative processing), and in accordance with your documented instructions (including in relation to international transfers);

20.3.2 ensure that all persons authorised by us to process the personal data are subject to confidentiality commitments which cover such processing;

20.3.3 have at all times during these Terms appropriate technical and organisational measures to secure the personal data, with particular regard to its accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;

20.3.4 respect the requirements of the Data Protection Laws when engaging other processors of the personal data;

20.3.5 not engage another processor of the personal data without the controller's consent, save for the data storage, hosting and payment service providers we need to perform the Payment Services which are deemed to be approved by you for the purpose of these Terms;

20.3.6 unless otherwise required by law, at the controller's election, delete or return all Personal Data to it, and delete all existing copies, at the end of these Terms;

20.3.7 make available all information reasonably necessary to demonstrate the controller's compliance with the Data Protection Laws, and allow for and contribute to audits, including inspections, conducted by the controller or its representative; and

20.3.8 provide reasonable assistance to the controller in facilitating the exercise of relevant data subjects' rights.

20.2.9 act in accordance with our Privacy Policy in respect of your data. This policy can be found here: <https://www.earthport-fx.com/privacy-policy/>

20.4 You will, prior to submitting any instruction to us:

20.4.1 advise the relevant data subject that their Personal Data may be transferred outside of the EEA, and that such jurisdictions may not have appropriate safeguards in place with respect to their personal data, and of the possible risks associated with such transfers; and

20.4.2 where required by the Data Protection Laws, obtain the data subject's explicit consent to the standard required by the Data Protection Laws for the transaction in light of the advice provided.

20.5. You acknowledge that we:

20.5.1 rely on you to provide instructions to us which comply with the Data Protection Laws; and

20.5.2 may need to process, share and disclose certain of the personal data provided by you for anti-money laundering/know your client and other legal or regulatory purposes. You shall inform relevant data subjects of the possibility of such use prior to collecting their personal data.

20.6 For the purpose of this clause, "Data Protection Laws" means the European Union's General Data Protection Regulation, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all applicable laws and regulations relating to the processing of personal data as amended, re-enacted, replaced or superseded from time to time, including the guidance and codes of practice issued by the United Kingdom's Information Commissioner's Office.

21. Invalidity of terms

21.1 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect. If any of the rights or obligations of either of us are substantially altered to its disadvantage, it may terminate the Payment Service by written notice to the other within five (5) business days such court decision.

22. Notices

22.1 When we refer, in these Terms, to “in writing”, this will include e-mail.

22.2 If you are a Consumer, you may contact us as described in the “About Our Terms” section.

22.3 If you are a Business user, any notices in connection with the Payment Service must be in writing and in English and shall be delivered personally, sent by pre-paid first-class post, by fax or email to the other party’s registered office address or the address, fax number or email address set out in the Order. Notice shall be deemed received: if delivered personally, at the time of delivery to the address referred to above; if sent by pre-paid first-class post, on the second business day after posting it; and if sent by fax or email, at the time of its transmission.

23. Third party rights

23.1 These Terms are between you and us and no other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

24. Law and jurisdiction

24.1 These Terms are governed by English law. This means any dispute or claim arising out of or in connection with the Payment Services or these Terms will be governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction.

25. Telephone recordings

25.1 You agree that we may record all telephone conversations with you with or without any warning tone or other notification either to record the terms upon which we enter into any Transaction with you or in connection with termination of a Payment Service (as well as for complying with obligations under the Applicable Regulations, any quality control programme and for training purposes) and such recordings may be used as evidence in any dispute arising between us.

26. Complaint process

26.1 We have a Complaint and Redress procedure, a copy of which can be obtained on our website (www.earthport-fx.com) or will be sent to you on request. Complaints can be made either verbally, in writing or by email directly to us. We shall send a full response to the points raised responding to your complaint within fifteen (15) business days. In exceptional circumstances or where complaints are particularly complicated, we shall send you an acknowledgement of your complaint within fifteen (15) business days of receipt with an explanation for the delay and a full response within thirty-five (35) business days. If any complaint is not resolved to your satisfaction, you may be able, if you are eligible to do so, to refer the complaint to the Financial Ombudsman Service (FOS) for adjudication.

27. Miscellaneous

27.1 We are authorised by the Financial Conduct Authority to carry out payment services. Our firm reference number is 535939.

27.2 However, we are not authorised to accept deposits within the meaning of Article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI2001/544).

27.3 We are registered as a Money Service Business with HM Customs & Revenue under MLR Number 12115318 and comply with the requirements of the Applicable Regulations and other legislation. This includes the obligation to report knowledge or suspicion of money laundering in accordance with the Proceeds of Crime Act 2002. We hold client monies in segregated accounts, which provide extra security for clients. Details of our current charges are available on our website (www.earthport-fx.com) or will be sent to you on request.

27.4 Pursuant to Article 106 of the Payment Services Directive, the FCA's publication on consumer protection can be found <https://www.fca.org.uk/firms/revised-payment-services-directive-psd2/consumer-protection>

Section G: Regulatory and compliance

28. Compliance with financial crime prevention laws

28.1 You agree to comply with all applicable financial crime prevention laws, including anti-money laundering, combatting terrorist financing, economic sanctions, anti-bribery and corruption and fraud prevention methods ("Financial Crime Prevention Laws") and, without limitation, you will not make any payment to, from or via: (i) any person or entity named in the consolidated list of asset freeze targets designated by the United Nations, European Union and/or United Kingdom from time to time under legislation relating to current financial sanctions regimes; (ii) any country against which the United Nations, the European Union or the United Kingdom has declared a sanction or embargo; and/or (iii) any person or entity named by any other body that maintains similar lists (each a "Sanctioned Entity").

28.2 You acknowledge that:

28.2.1 we and our partners may also apply own sanctions screening checks;

28.2.2 we may apply additional checks in relation to high-risk payment instructions, including (i) those to or from individuals, entities or jurisdictions that are determined to be high-risk in our reasonable opinion; or (ii) in relation to any payment instructions that appear to be for an illegal or unauthorised purpose;

28.2.3 you are responsible for reviewing and dealing promptly with any concerns arising from any such checks; and

28.2.4 we may, as a regulated entity, be subject to audit and inspection by our regulators in relation to the provision of the Payment Services and therefore we may request that you provide, such records and other information as we may reasonably require.

28.3 In the event that you, we or any of our partners identify any activity or payment instruction as requiring further investigation, then you:

28.3.1 shall promptly provide us with any applicable information that you hold in relation to the payment or any End User (and we may forward any such information to any relevant party (including any bank, regulator or law enforcement agency));

28.3.2 acknowledge that any such investigation may result in delay or rejection of individual payment instructions;

28.3.3 acknowledge that in the event that the necessary information is not provided, or there is an unreasonable delay in providing such information, then we will not process the payment and we may be obliged under applicable law to withhold payments and provide information to our regulators;

28.3.4 acknowledge that we are under no obligation to provide any Payment Service to you, and we may terminate any Payment Service for reasons other than proven criminality, based on our own or our partner's assessment of the financial crime risk posed by you or any actual or proposed payment related to you, End Users or associated persons.

28.4 We employ automatic and manual processes to identify and investigate potentially fraudulent use of the Payment Services. If we detect fraudulent activity or suspect fraudulent activity, then we may take whatever action we reasonably believe is required under applicable laws or regulations.

28.5 In order that both parties can reasonably act to mitigate losses, in the event that either party becomes aware of any material event relating to Financial Crime Prevention that impacts upon your continued use or our continued provision of the Payment Services; then that party shall, within five (5) business days, disclose details of that material event to the other party.

28.6 You agree to give all reasonable cooperation to us in relation to any periodic due diligence review that we or our parent company, Earthport plc., may undertake.

28.7 You shall promptly notify us of any breach of your obligations under these Terms.

29. Anti-corruption

29.1 You and we both shall:

29.1.1 comply with all applicable laws relating to anti-bribery and anti-corruption, including but not limited to:

(a) the UK Bribery Act 2010 (as amended); and

(b) the US Foreign Corrupt Practices Act 1977 (as amended)

29.1.2 not engage in any activity, practice or conduct anywhere in the world which would constitute an offence under sections 1, 2 or 6 of the Bribery Act

2010 if such activity, practice or conduct had been carried out in the UK;

29.1.3 promptly report to the other any request or demand for any undue financial or other advantage of any kind received by them in connection with the performance of any Payment Service; and

29.1.4 you and we shall each ensure that all persons who are receiving or providing Payment Services on your or our behalf in connection with an actual or proposed Payment Service shall comply with the requirements of this Section G.

30. Regulatory change

30.1 Our Payment Services, these Terms and any associated policies and procedures are subject to amendment by us to the extent necessary to conform to any change required by any applicable law or regulatory authority. If the change materially degrades, limits, or prevents your use of the Payment Services as originally envisaged, or we cannot reasonably modify the Payment Services to meet such change, either of us may terminate these Terms by giving thirty (30) days' written notice to the other.

Section H: Special terms

31.1 You and we may agree that: additional terms apply, or the Terms set out above are varied, in relation to the provision of a Payment Service, a Transaction or for all services we provide to you. Any additional terms or variations will be set out in the Schedule and, if agreed after we start providing any services under these Terms, the Schedule must be signed by the parties (or their authorised representatives).

31.2 If there is an inconsistency between any of the provisions in the main body of these Terms any variation of these Terms set out in the Schedules and agreed in accordance with this Section H, the terms of the Schedule shall take precedence over these Terms.

About Earthport FX

EarthportFX is part of Earthport .

Earthport provides cross-border payment services to banks and businesses. Through a single relationship with Earthport, clients can seamlessly manage payments to almost any bank account in the world, reducing complexity to meet their customers' evolving expectations of cost, speed and transparency.

Earthport offers clients access to global payment capability and an evolving suite of currencies and settlement options.

Earthport continues to invest in the establishment of in-country bank partnerships across the world, bringing together its deep market and regulatory expertise in order to maintain compliant and commercially competitive services.

The result – a trusted global payments network accessed via a single relationship, delivering significant cost and operating efficiencies for banks and businesses servicing high volumes of lower value payments.

Copyright

The content of these pages, unless otherwise stated, is the property of Earthport plc and as such is copyright protected. All rights reserved. Material may not be copied, republished or redistributed, in full or in part, for commercial purposes or gain.



Get in touch:

UK 0800 085 5770 | Int. +44 (0)20 7594 0584

enquiries@earthport.com | earthport-fx.com | @earthportFX