

Terms and Conditions for Commerzbank FX Live Trader

(Updated: February 2015)

1. Subject Matter of the Agreement

These terms and conditions (hereinafter referred to as the "Terms and Conditions") are applicable to the use of Commerzbank FX Live Trader, an internet-based trading system for financial instruments, as well as spot trades in precious metals and currencies (hereinafter together referred to as "FX Products"). Commerzbank Aktiengesellschaft (hereinafter referred as the "Bank") will set up the Commerzbank FX Live Trader („FLXT“) application, using the Customer Portal. The FX Products and functions available in FXLT are described in the FXLT User Manual (the "User Manual"). The Customer has access to the current version of the User Manual via the Customer Portal.

2. Relation to Other Agreements

These Terms and Conditions apply to the products and services provided on the FXLT website by the Bank, and therefore supplement any Master Agreement which may be in place (German Master Agreement on Financial Derivatives, ISDA Master Agreement, or other such Master Agreement for the conclusion of trades). In case of a conflict between the applicable Master Agreement and these Terms and Conditions, the provisions of the Master Agreement shall prevail.

These Terms and Conditions replace all previous agreements on the use of Commerzbank FX Live Trader, as well as other agreements in place on the use of comforex plus. Besides these Terms and Conditions, the following regulations apply: "Terms and Conditions for the Execution of Banking Business using the Customer Portal" („Bedingungen für die Abwicklung von Bankgeschäften über das Firmenkundenportal"), the "General Terms and Conditions of Commerzbank AG" („Allgemeine Geschäftsbedingungen der Commerzbank AG"), as well as any other Terms and Conditions entered into. In case of a conflict between those provisions and these Terms and Conditions, the provisions of this document shall prevail.

The parties agree that declarations of intent referring to the execution of transactions may be expressed electronically via internet in FXLT, following receipt of authorisation from the Customer. FXLT shall be regarded as an addition to the other communication channels between Bank and Customer.

3. No Private Use

The Customer hereby agrees to use FXLT exclusively for commercial or self-employed professional purposes, and to enter into Trades only for such purposes.

4. No Advice

4.1 Execution-only business

The Bank does not intend to provide individual investment advice, tailored to the needs of the Customer, through FXLT. Customers take their own, independent investment decisions. Entering into Trades using FXLT constitutes execution-only business. Customers must inform themselves about the structure and risks of Trades before execution. This also applies to authorised persons and employees, who must have sufficient knowledge prior to entering into Trades.

4.2 Level of knowledge and experience

Based on the information provided pursuant to section 31 (5) of the German Securities Trading Act (Wertpapierhandelsgesetz – "WpHG"), the Bank assigns an individual level of knowledge and experience to each Customer. The Customer will be notified concerning the level of knowledge and experience assigned by the Bank, and may only enter into Trades within the respective level. The system does not accept orders for Trades outside of the level of knowledge and experience assigned.

4.3 Information on Terms of Transactions

The terms of each trade are determined by reference to the FX Product's prevailing market value, taking the bid/offer spread into account, and also incorporate the costs incurred for entering into the transaction. These costs cover the Bank's expenses for structuring and selling the product, credit costs and cost of equity, as well as the Bank's profit. As a matter of precaution, we emphasise the fact that FX Products entered into through FXLT might have a negative market value at the time of trade entry.

Depending on their type and structure, the trades entered into may involve considerable or unlimited risk of loss. The impact of any unfavourable developments may exceed the financial ability of the Customer. Therefore, these risks should be taken into account before the execution of each trade.

5. Trading Conditions

5.1 Contracting Parties

The Customer may only enter into FXLT transactions in his/her/their own name and account. The Bank is always the contracting party to the Customer for all transactions entered into through FXLT.

5.2 Execution of trades

The Bank provides price indications for FX Products in FXLT in its sole discretion, and without any obligation to do so, in order to initiate trades (hereinafter referred to as "Trades"). Such price indications are for Customer information purposes only, and are updated automatically.

FXLT, and the price indications provided on FXLT, are not an offer or offers from the Bank for the execution of Trades. However, the Customer may offer to the Bank the execution of a trade on the basis of these price indications. To the extent the Customer wants to enter into a Trade on the basis of the information provided on FXLT, the Customer itself makes a binding offer for the execution of a Trade.

The Bank may accept or decline the Customer's offer for the execution of a Trade without giving any reasons. The acceptance of an offer will be indicated via FXLT.

Executed Trades are indicated to the Customer on the respective trade overview window, and are binding, irrespective of whether or not the Customer acknowledges the letter of acceptance. Each Trade is binding, irrespective of whether the Bank receives the Customer's letter of acceptance. Should the Customer be uncertain regarding the validity of a Trade, he/she/they is/are obliged to telephone the Bank in order to check on the status of the Trade.

In addition, the Customer is obliged to check on the completeness and accuracy of the Trade listed on the respective trade overview window without undue delay. If a Trade is not listed on the respective trade overview window, or if the information provided is obviously incomplete or inaccurate according to the Customer, it is obliged to inform the Bank without undue delay, by phone or by fax (in accordance with No. 9 of these Terms and Conditions).

Further details on the execution of Trades are provided to the Customer in the User Manual.

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5.3 Mistrade rule

The Bank has the contractual right to cancel a Trade in the case of an execution at a price that is not in line with prevailing market conditions (a „mistrade“). As a rule, a mistrade exists if the price deviates considerably and obviously from the reference price in line with prevailing market conditions at the time of the execution of the Trade. A mistrade may occur for the following reasons: (1) errors in the technical system of the Bank or its contracting parties or (2) errors in the entry or calculation of a price indication or (3) erroneous data provided by a third party or (4) an official price revision from higher authorities. However, an incorrect entry of the Trade volume shall not constitute grounds for a mistrade.

The reference price is calculated using prevailing market methods, on the basis of prices provided by Reuters (Thomson Reuters, 3 Times Square, New York) for comparable FX Products at the time of the execution of the mistrade. If Reuters does not provide appropriate data, prices provided by EBS (ICAP plc, 2 Broadgate, London) may be used instead. If neither Reuters nor EBS is able to provide appropriate data, the Bank will calculate the reference price at its equitable discretion, using widely acknowledged, prevailing market methods.

As a rule, every deviation from the reference price in line with prevailing market conditions of more than 10% is considered considerable and obvious. However, in the case of special market conditions or transactions, a deviation of under 1% from the reference price may already be considered a mistrade.

The Bank will cancel and reverse mistrades. The parties undertake to settle any remaining claims through cash payments without undue delay.

The parties assert their contractual right to cancel a Trade without undue delay, but no later than three hours following the mistrade. If the Trade to be cancelled was executed after 6pm, the deadline for the assertion of the contractual right to cancel the Trade is extended until 10am on the next Trading Day. The contractual right to cancel the Trade can only be asserted by the parties themselves.

The parties are not entitled to any claims for restitution due to losses incurred by relying on the existence of the cancelled Trade. However, other legal rights, in particular rights to rescission, remain unaffected by this mistrade rule.

6. Access to the FXLT Website

Access to FXLT will be granted via the Customer Portal of the Bank.

The Customer may authorise Users for information purposes only, or assign the right to enter into Trades. If the Customer wants to add a new User, change existing rights, or delete a User, the Customer has to hand in the amended form “Application for the use of Commerzbank FX Live Trader” to the Bank.

The Bank assigns an electronic certificate to every User for authentication.

The Customer may instruct the Bank to block access for certain Users. Such blocking will take effect as soon as the Customer's instruction has been processed in the Bank's proper course of business.

The Customer ensures that the access data provided is protected from unauthorised third-party access. In particular, the Customer will ensure and monitor that

- the Users will keep their access data confidential and guard it carefully;
- no other person other than the respective authorised User obtains knowledge of the access data.
- the Bank will be notified without undue delay in cases of suspected abuse.

Furthermore, the Customer has to take adequate measures for protection against harmful software on its IT infrastructure.

All Trades entered into by an authorised User through the Customer's access to FXLT before the issue of a blocking instruction shall be binding to the Customer. For additional provisions, please refer to the “Terms and Conditions for the Execution of Banking Business using the Customer Portal”.

Furthermore, the Customer has to take adequate measures for protection against harmful software on its IT infrastructure.

All Trades entered into by an authorised User through the Customer's access to FXLT before the issue of a blocking instruction shall be binding to the Customer. For additional provisions, please refer to the “Terms and Conditions for the Execution of Banking Business using the Customer Portal”.

7. No Warranty

The Bank does not accept responsibility for the results which the Customer achieves for itself or a third party via the use of FXLT, neither for the information provided by third parties, which is contained on or accessible via this website. The Customer uses FXLT at its own risk and bears the losses incurred from trading activities.

The Bank undertakes no guarantee that FXLT, its contents or functions, will work without interruption. In particular, planned or unplanned maintenance work can cause lengthy downtimes. The Customer has to make other arrangements in case FXLT is not available.

All statements of opinion, projections and analysis provided by the Bank reflect the current, non-binding assessment of the Bank and are subject to change without prior notice. The Bank does not accept responsibility for the content of external websites that might be linked onto the FXLT website.

8. Bank's Liability, Customer's Liability

8.1 The Bank is only liable for damages and losses in connection with FXLT to the extent that a claim of gross or intentional negligence can be made. In any case, liability is limited to those damages that are typical and reasonably foreseeable at the time of entering into the Agreement and does not include indirect or follow-on damages.

8.2 The Customer indemnifies the Bank from claims of third parties which arise from (1) use of the system contrary to the provisions of this Agreement; or (2) disruption of the system at the Customer's end; or (3) access of unauthorised parties using the Customer's access data before the issue of a blocking instruction.

9. Technical Requirements and Questions

Please refer to the FXLT Online Help to learn more about the technical requirements; they can also be sent to the Customer upon request. For questions regarding the technology used or queries about the use of and functionality of FXLT, please contact by fax: Transaction Banking, Back Office, Center Nord Customer Service, Fax: +49 69 136-55290.

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10. Rights of Use

The Customer is permitted to use the FXLT website and its contents for the intended purpose described in these Terms and Conditions for the temporally limited period of the duration of this Agreement. Usage rights to the contents are only granted to the extent necessary for the use of FXLT, in accordance with the provisions of these Terms and Conditions. The Customer undertakes only to use the FXLT website and its contents for its own purposes and to keep them confidential at all times. In particular, the Customer is not permitted to copy the contents, to provide third-party access thereto, to embed the contents into other products or processes, or to decipher the source code. References to the rights of the Bank or third parties must not be removed or concealed. The Customer shall not use the brand name, the domain name or other identifying characteristics of the Bank or third parties without prior approval.

These Terms and Conditions do not provide the Customer with irrevocable, exclusive or transferable rights of use.

Market data provided in FXLT is for non-binding Customer information purposes only. The Customer may use this data only within FXLT. The data provided must particularly not be used or saved in Customer applications or be transferred to third parties.

11. Amendments

The functions of the FXLT website may be amended or supplemented by the Bank (i.e. through new versions of the FXLT application). The Bank will notify Customers of any material amendments or supplements in advance.

12. Termination

Either party may terminate this Agreement with 30 days' notice following receipt of the relevant communication. The right to terminate at any time for good cause without giving notice shall remain unaffected.

This Agreement terminates without notice, and without the need for any further notification, if no Master Agreement is in place anymore between the Bank and the Customer or if the Customer no longer has access authorisation for the Commerzbank Business Customer Portal.

13. Fees

The Customer will be billed those fees for the use of Commerzbank FX Live Trader which were communicated on the application form, as well as via other means. Amendments to the fees will be notified in writing to the Customer at least two (2) months before the amendments enter into force. In the case of an increase in fees, the Customer has the right, up until the point in time at which the increase becomes effective, to terminate this Agreement without notice.

14. Choice of Law, Legal Venue

The Agreement shall be governed and construed by the laws of the Federal Republic of Germany. The non-exclusive place of jurisdiction for all disputes in connection with this Agreement shall be Frankfurt/Main, Germany.

If the parties have entered into a Master Agreement, the provisions regarding choice of law and legal venue of the Master Agreement shall prevail.

In the event of individual provisions of this Agreement not being, or no longer being, legally effective, the validity of the remaining provisions shall remain unaffected. The ineffective contractual provision shall be replaced by a provision the parties would have agreed upon after a proper assessment of opposing interests, had they been aware of the ineffectiveness of the provision.

15. Permission to Record Telephone Conversations

Commerzbank AG hereby states that any incoming or outgoing telephone calls made to it/from it or any other company of the Commerzbank Group may be recorded without any additional prior notice – in particular, to fulfil regulatory requirements.

The Customer shall inform Users of the possibility of a recording. If, in a specific case, the Customer or a User does not agree to such recording, it will notify the other party to the call of this fact – without delay – at the beginning of the telephone call.

16. Location

You are aware that Commerzbank FX Live Trader is hosted and maintained in Germany. The use of Commerzbank FX Live Trader, the configuration of the website and the respective terms and conditions are governed exclusively by German law.