



# send

Terms and Conditions

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# 1. AGREEMENT

- 1.1. SendFX Pty Ltd ACN 617 647 220 ('Send') provides foreign exchange Services, which includes buying and selling currencies for personal or commercial purposes, and such other services as provided from time to time.
- 1.2. These Terms and Conditions (as amended from time to time) apply to the Services provided to you by Send. There are other important documents which are to be read in conjunction with these Terms and Conditions, including:
  - a. our Product Disclosure Statement;
  - b. our Financial Services Guide; and
  - c. our Privacy Policy.(*'the Additional Material'*)
- 1.3. By using our Services, accessing the Send Platform or otherwise undertaking any transaction with Send, you confirm that:
  - a. you agree to receive the Terms and Conditions, Additional Material, and any other communications or documents issued by Send from time to time, electronically;
  - b. you have received and reviewed the Terms and Conditions, and Additional Material;
  - c. you accept, understand and agree to be bound by these Terms and Conditions; and
  - d. you accept and understand the Additional Material.
- 1.4. In exchange for you agreeing to the Terms and Additional Material you are granted a non-exclusive, non-transferable licence to use the Send Platform pursuant to these Terms and Conditions.
- 1.5. Please contact us if you have any queries regarding these Terms and Conditions and the Additional Material. If you do not agree to these Terms and Conditions or the Additional Material, please do not use the Services.
- 1.6. An up-to-date copy of these Terms and Conditions and the Additional Material are available on our website at [www.sendfx.com.au](http://www.sendfx.com.au), or by emailing us at [info@sendfx.com.au](mailto:info@sendfx.com.au).

## 2. DEFINITIONS AND INTERPRETATION

2.1. Unless otherwise expressed to the contrary, the following words will have the following meanings in these Terms and Conditions:

<b><i>Additional Advance Deposit</i></b>	means a further part payment of the final settlement amount of a Foreign Exchange Contract that you are required to pay in order to cover additional risk incurred by Send in respect of the Foreign Exchange Contract which is calculated by Send in its sole discretion and which has arisen since the time of the initial booking of the Foreign Exchange Contract.
<b><i>Advance Deposit</i></b>	means either or both an Initial Advance Deposit or Additional Advance Deposit.
<b><i>Authorised Representative</i></b>	means a representative authorised to act on behalf of a non-individual client.
<b><i>AFSL</i></b>	means Australian Financial Services Licence
<b><i>Exchange Rate</i></b>	means an agreed value or price of a currency relative to another currency.
<b><i>Foreign Exchange Contract</i></b>	means a contract to buy or sell currency, or to exchange one currency for another.
<b><i>Initial Advance Deposit</i></b>	means part payment of the final settlement amount of a Foreign Exchange Contract that you are required to pay in order to cover Send's settlement risk relating to the Foreign Exchange Contract as calculated by Send at its sole discretion at or around the time of entering into the Foreign Exchange Contract.
<b><i>Limit Order</i></b>	means the instruction to enter into a Spot Contract at the point that the market has risen to achieve a nominated target Exchange Rate.
<b><i>Send</i></b>	means SendFX Pty Ltd ACN 617 647 220.

<b><i>Send App</i></b>	means any mobile application released or updated by Send from time to time to enable you to use the Services.
<b><i>Send Platform</i></b>	means the Send App, online platform, website ( <a href="http://www.sendfx.com.au">www.sendfx.com.au</a> , or any other website utilised by Send from time to time to provide the Services to you), and any other platform or method that Send utilises to provide the Services to you.
<b><i>Services</i></b>	means all products and services provided by Send from time to time to you by any method, including foreign exchange services.
<b><i>Settlement Date</i></b>	means the date that the Foreign Exchange Contract will settle, and by which we must have received cleared funds from you required to settle the Contract.
<b><i>Stop Order</i></b>	means the instruction to enter into a Spot Contract at the point that the market has fallen to a nominated Exchange Rate.
<b><i>Terms and Conditions</i></b>	means this document, which contains the terms and conditions on which we provide the Services to you.

2.2. The following rules of interpretation govern these Terms and Conditions, except where the context makes it clear that a rule is not intended to apply:

- a. A reference to:
  - i. 'Customer', 'You' or 'Your', is a reference to Send's client to which these Terms and Conditions apply, and includes our personal and business clients, and where relevant, any Nominated Representative or other person or entity authorised to act on behalf of the client;
  - ii. 'our', 'we', or 'us' is a reference to Send;
  - iii. a reference to Send, includes to its representatives, contractors, agents, and nominees;

- iv. legislation (including subordinate legislation) is to that legislation, as amended, varied, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - v. a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - vi. a party to this document or to any other document or agreement includes a Nominee, permitted substitute or a permitted assign of that party;
  - vii. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - viii. anything (including a right, obligation or concept) includes each part of it;
  - ix. a person includes an individual, a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a Government Body;
  - x. a singular word includes the plural, and vice versa; and
  - xi. a word which suggests one gender includes the other genders.
- b. Headings are for convenience only, and do not affect the interpretation of these Terms and Conditions.
  - c. If there is any conflict between these Terms and Conditions and any relevant operating rules, the operating rules shall prevail.
  - d. Where a word or phrase is defined in these Terms and Conditions, its other grammatical forms have corresponding meaning.
  - e. If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - f. If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the previous Business Day.

- 2.3. These Terms and Conditions are governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the courts and tribunals of Queensland.

### 3. COMPANY INFORMATION

- 3.1. The Services are provided by SendFX Pty Ltd ACN 617 647 220.
- 3.2. Our registered offices are 10 Rawlins Street, Southport QLD 4215.
- 3.3. Send:
- a. is regulated by the Australian Securities and Investments Commission;
  - b. has an Australian Financial Services Licence (Licence number: 509635);
  - c. is a member of the Australian Financial Complaints Authority; and
  - d. is registered with the Australian Transaction Reports and Analysis Centre.

### 4. CUSTOMER USE

#### INFORMATION REQUIREMENTS

- 4.1. Send is required to comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (C'th). In order to comply with its compliance obligations, Send is required to obtain information from you in order to enable you to utilise the Services.
- 4.2. You agree:
- a. to provide all relevant information and documents requested by Send in its sole discretion in a format acceptable to Send;
  - b. that Send may make any inquiries and complete any checks Send deems to be necessary in order to verify information provided by you or otherwise meet its compliance requirements (including inquiries and checks made through third-party providers such as commercial databases, and checks and inquiries made directly or indirectly through a third party);
  - c. that Send may use, store and retain all information obtained pursuant to these Terms and Conditions;

- d. that Send may provide your information to third-parties, without your further consent or any further notice to you, where Send has an obligation to do so and/ or that third-party has lawfully requested or requires that information;

4.3. You confirm and warrant that:

- a. all information provided to Send by you is accurate and complete;
- b. you will not omit or withhold any material information from Send;
- c. you will update any information immediately at the time of changing; and
- d. you will immediately advise Send if it comes to your attention that any material or information provided to you is, or has become, incomplete or inaccurate.

4.4. You agree that Send may refuse to provide the Services in its absolute discretion, including, for example, where:

- a. you fail to provide information or documents;
- b. Send is not satisfied with information or documents provided by you; or
- c. Send is not satisfied with the outcome of its checks and inquiries.

4.5. Send accepts no liability for financial or other loss arising out of:

- a. your failure to provide accurate, complete or updated information or documents;
- b. any time taken, or delay caused by any inquiries and checks deemed necessary to be completed by Send in its sole discretion.

## LAWFUL USE OF THE SERVICES

4.6. Your use of the Services must not violate any relevant laws or regulations.

4.7. You must have the authority to lawfully enter into and perform all obligations outlined in these Terms and Conditions. Accordingly, you warrant and agree that:

- a. where a customer is an individual, you are be 18 years or over, and under no legal disability or incapacity;
- b. where a customer is not an individual:



- i. you are duly incorporated or otherwise properly established, registered, or constituted;
  - ii. you are solvent and no resolution has been passed, or petition presented, or order made for:
    - 1. the customer's winding up or liquidation; or
    - 2. the appointment of a receiver, a receiver and manager or an administrator;
- in respect of the customer or any of its assets.
- iii. your Nominated Representative has all relevant authorities and permissions to bind and provide instructions on behalf of the customer;
- c. where a customer is comprised of more than one person or entity:
  - i. all persons or entities comprising the customer have read, understood and accepted these Terms and Conditions and the Additional Material;
  - ii. decisions made and instructions issued by the customer are fully agreed and made pursuant to these Terms and Conditions.

## 5. YOUR ACCOUNT

- 5.1. Subject to compliance with these Terms and Conditions, Send agrees to establish an account in your name, which can be utilised by you for the Services.
- 5.2. Except with the permission of Send, you may only open one Send account, and Send retains sole discretion to close any duplicated accounts.
- 5.3. Where an account is opened by more than one person or entity:
  - a. those parties shall jointly be the customer;
  - b. the account will be established in each of those names as joint tenants; and
  - c. each of those parties to the account shall be jointly and severally liable in respect of the account.

Please see below for further information regarding the acceptance of instructions where a customer is comprised of one or more persons or entities.

- 5.4. Where an account is opened by an entity that is not an individual:
- a. you must appoint a Nominated Representative to provide instructions on your behalf;
  - b. you warrant that any Nominated Representative has appropriate authority to bind you;
  - c. you accept full responsibility for the Nominated Representative, and for advising Send in writing if your Nominated Representative details have changed;
  - d. you accept that the Nominated Representative will have unlimited authority to provide instructions and act on your behalf;
  - e. these Terms and Conditions apply to your Nominated Representative, however, you remain responsible for all obligations outlined under these Terms and Conditions.
- 5.5. A Nominated Representative may be amended by providing 48 hours' written notice to Send.
- 5.6. Where you are acting as a trustee of a trust, you agree that these Terms and Conditions bind you in your personal capacity in addition to in your capacity as trustee of the trust.
- 5.7. You must not allow anyone to operate your account on your behalf, except with the express written consent of Send or when a Nominated Representative has been appointed pursuant to these Terms and Conditions. All activities undertaken on your account will be considered to be the activity of the registered Send account holder, and you shall only use the Services to transact on your own behalf.
- 5.8. Any money held in your Send account belongs to the person or entity that is registered as the relevant Send account holder, and no one else has an interest in the Customer's account.
- 5.9. You are responsible for all instructions provided to Send and actions undertaken utilising your client login and password, even where the use of your login is unauthorised or fraudulent. Accordingly, you agree to:
- a. change your password to your account regularly, keep your account password secure, and keep your email account linked to your Send account secure;
  - b. ensure that information relating to your account, including your contact details, are kept up to date at all times; and

- c. immediately advise us if you believe that your Send account security has been compromised.
- 5.10. You must not disclose your Send account password or allow anyone to use your Send account on your behalf or otherwise.

## 6. RECEIVING FUNDS INTO YOUR SEND ACCOUNT

- 6.1. You must comply with any reasonable instructions or directions issued to you by Send in regards to processing a Foreign Exchange Contract or otherwise utilising the Services, including using particular payment reference details when sending funds, and ensuring that funds are received by a particular time.
- 6.2. Send accepts no responsibility for delays or any loss in the event that you fail to comply with these Terms and Conditions, or any reasonable instructions or directions issued by Send.

### SENDING FUNDS IN

- 6.3. Any funds transferred into your Send account must:
  - a. be sent electronically; and
  - b. belong to you; and
  - c. come from source in your own name (e.g. from a bank account in your own name), or you must be able to provide evidence that you are entitled to the funds.
- 6.4. All funds sent to Send by you, or on your behalf must be deposited into your Send account.
- 6.5. Send may offer, at its discretion, a number of methods to enable you to transfer funds into your Send account. These methods are provided by third-parties and do not form part of the Services. The availability and type of methods are not guaranteed by Send and Send may stop offering a certain method at any time, at its sole discretion and without notice to you.
- 6.6. If you deposit funds into your Send account in anticipation of booking a Foreign Exchange Contract, you must provide us with instructions regarding the use of those funds within 12 months of their deposit unless otherwise agreed. We reserve our right to return funds not attributed to a Foreign Exchange Contract where we do not receive instructions, or the funds are not utilised within a reasonable time period.

- 6.7. If you are transferring funds into your Send account from a source that allows you to reverse the transfer, you agree that, except in circumstances where there was an unauthorised use of your payment instrument, you will not exercise a reversal for any reason.
- 6.8. Send may in its complete discretion impose limits on the amount that you may transfer or upload into your Send account and Send retains complete discretion to return funds uploaded to your Send account where an inadequate reason is given for the upload or Send has otherwise refused to provide the Services to you.
- 6.9. You must check the funds received into your Send account regularly and notify us if there are any irregularities.

## SEND ACCOUNTS

### Pre-trade funds

- 6.10. Funds sent by you to your Send account pre-trade will be kept by Send in a segregated bank account (held by us or on our behalf), which is kept in accordance with legislative requirements.
- 6.11. You acknowledge and understand that:
- a. this segregation of funds does not protect your funds from the risk of loss;
  - b. while your funds are segregated from Send's funds, they may be:
    - i. mixed with the money of other Send clients; and
    - ii. used as collateral by Send from time to time and at Send's sole discretion in respect of other open positions.
  - c. Send is authorised to withdraw funds from the segregated account to be used for the purpose of managing Send's dealings with other parties, without further notice, or consent from you;
  - d. you have no interest in, or claim over any contract between Send and any other party, or in respect of any account that Send pays funds withdrawn from the segregated accounts into; and
  - e. Send may earn interest on money held in the segregated account and you are not entitled to any interest earned.

## Funds once a trade has been booked

6.12. You acknowledge and understand that:

- a. subject to the separate obligation for Send to settle the Foreign Exchange Contract pursuant to these Terms and Conditions, funds transferred into the Send account for the purposes of settling a Foreign Exchange Contract shall, once cleared, be the legal and beneficial property of Send – they are not held on trust by Send on your behalf;
- b. the relationship between you and Send is one of principal to principal. That is, we do not act on your behalf in making the payment to the Beneficiary, rather our obligation to make the payment to the Beneficiary arises from our contractual obligation to make the payment once the funds are received.

## 7. SENDING FUNDS FROM YOUR SEND ACCOUNT

### PROVIDING INSTRUCTIONS

#### Security

- 7.1. Send will accept instructions from you by telephone or the Send Platform only unless agreed to the contrary.
- 7.2. Send may limit access to your account, or implement additional authentication or security processes for your Send account for any reason, including in the event that it has any concern that use of your Send account is unauthorised or fraudulent, or we are required to do so pursuant to law. However, Send:
  - a. is not obliged to undertake any additional security processes, or identity verification processes;
  - b. is entitled to rely on any instructions given by any person or entity where Send reasonably believes that the person or entity providing the instructions is you, or your Nominated Representative, or is otherwise authorised to provide the instructions on your behalf;
- 7.3. Send may, at its sole discretion, refuse to act on any instruction given by you, or any other person or entity purporting to provide instructions on your behalf, including where:
  - a. you have not provided Send with information or documents that Send has requested from you, or Send is not satisfied with the information or documents you have provided;

- b. you are located, or are sending funds to, countries that Send does not provide services to, or which Send has categorised as too high risk;
- c. Send is concerned that the use of your account, or your instructions, are unauthorised or fraudulent;
- d. Send has not received cleared funds from you by the Settlement Date;
- e. acting on the instructions would be unlawful for any reason, or would expose Send to legal or regulatory action.

### Customer's comprising more than one persons or entities

- 7.4. Where a customer is comprised of more than one persons or entities instructions provided by one of those persons or entities will be accepted by Send as received on behalf of all those persons or entities, notwithstanding any arrangement made between those persons or entities regarding who is entitled to provide instructions to Send.

### Instructions from Nominated Representatives

- 7.5. Send will accept instructions provided by a Nominated Representative on your behalf, until such time as we receive 48 hours' notice in writing that the Nominated Representative's authority has been revoked.

### General

- 7.6. You are responsible for the accuracy of all instructions provided to Send and you agree to provide Send with prompt instructions as required by Send. If you fail to provide instructions promptly, or Send is unable to contact you via the contact details provided by you, Send may, at its sole discretion:
- a. refuse to provide you with an initially quoted Exchange Rate and provide you with a new quote; and
  - b. take any actions it considers necessary in order to protect you or Send.
- 7.7. The simple provision of instructions by you or your Nominated Representative, or the act of requesting to book a transfer on the Send Platform does not constitute a legally binding contract with Send until such time as trade or other confirmation has been provided to you by Send.
- 7.8. Send will act on your instructions as soon as practicably possible and within a reasonable timeframe having regard to the nature and context of the instructions. Send will advise you within a reasonable time period (where it is legally able to do so):

- a. if it is unable to act on your instructions within a reasonable timeframe;
  - b. if it is unable to act on your instructions due to security concerns;
  - c. if you are required to provide additional information or documents before Send can act on your instructions.
- 7.9. Send will not be liable for any act or omission which arises in reliance on instructions received by Send, where Send reasonably believes that the instructions have been received by you, your Nominated Representative, or another person or entity that is otherwise authorised or entitled to provide instructions on your behalf.
- 7.10. Additionally, Send does not accept any loss or liability suffered by you or any other party in the event that:
- a. instructions provided to Send be unauthorised or fraudulent;
  - b. delays arise in providing the Services to you due to Send taking steps to comply with its legislative and other compliance and verification obligations.

## FOREIGN EXCHANGE CONTRACTS

- 7.11. In order to enter into a Foreign Exchange Contract, you must provide certain information to Send, which will include:
- a. the amount and currency pairing that you want to send funds from and receive funds in;
  - b. details of the type of Foreign Exchange Contract you want to enter into (for example, a Forward Contract, or Spot Contract – see further information on types of contracts below); and
  - c. the Beneficiary details, including their name and bank details.
- 7.12. Send will provide you with the Exchange Rate that it would consider entering into a Foreign Exchange Contract with you, based on the details provided by you. Additionally, Send will advise if it would require an Advance Deposit to be paid in respect of the proposed Foreign Exchange Contract (see further on Advance Deposits below). This does not constitute an offer to enter into a Foreign Exchange Contract.
- 7.13. If acceptable to you, you may offer to enter into a Foreign Exchange Contract with Send for the proposed Exchange Rate. Send retains its right to refuse to enter into the Foreign Exchange Contract with you.

- 7.14. When a Foreign Exchange Contract is being booked, Send will issue you an email and/ or text message outlining the material details of the Contract. You must carefully review the details of this message prior to confirming the Contract:
- a. if there is an error in the details, you must not confirm the Contract and must advise us of the error immediately for correction;
  - b. if the details of the Contract are correct, you may confirm the Contract via the method outlined in the email and/ or text message. You only need to confirm the Contract once.
- 7.15. A Foreign Exchange Contract has not been booked until such time as you receive a trade confirmation that the transfer has been effected. A trade confirmation will be issued to you by email and/ or text message, and, in the absence of any manifest error or notice from you, will be conclusive evidence of the executed Contract.
- 7.16. Once a trade confirmation has been issued, the Foreign Exchange Contract is a legally binding contract and you are obliged to comply with the obligations of that Foreign Exchange Contract as detailed in these Terms and Conditions.

### Types of Foreign Exchange Contracts

- 7.17. Send offers the following types of Foreign Exchange Contracts:
- a. Spot Contract (including Limit Orders and Stop Orders); and
  - b. Forward Contracts.

#### *Spot Contract*

- 7.18. A Spot Contract is legally binding at the time of booking and matures on a Settlement Date which is generally within 2 business days after the trade has been entered into, once cleared funds have been received from you.

#### *Limit Order*

- 7.19. A Limit Order is an instruction to enter into a Spot Contract at the point that the market has risen to achieve a nominated target Exchange Rate.
- 7.20. You may be required to pay an Advance Deposit for a Limit Order (see further on Advance Deposits below).
- 7.21. Limit Orders may only be placed for Foreign Exchange Contracts where the sending currency is equivalent to a minimum of AUD\$50,000.



7.22. Limit Orders become legally binding at the point that the nominated target Exchange Rate is achieved. At this point you will be sent a trade confirmation with details on how you must effect settlement.

#### *Stop Order*

7.23. A Stop Order is an instruction to enter into a Spot Contract at the point that the market has dropped to a certain nominated target Exchange Rate.

7.24. You may be required to pay an Advance Deposit for a Stop Order (see further on Advance Deposits below).

7.25. Stop Orders may only be placed for Foreign Exchange Contracts where the sending currency is equivalent to a minimum of AUD\$50,000.

7.26. Stop Orders become legally binding at the point that the nominated target Exchange Rate is achieved. At this point you will be sent a trade confirmation with details on how you must effect settlement.

#### *Forward Contract*

7.27. A Forward Contract is an instruction to book a certain Exchange Rate now, with the contract to settle at an agreed Settlement Date in the future.

7.28. A Forward Contract is legally binding at the time of booking the Forward Contract.

7.29. You will be required to pay an Advance Deposit for a Forward Contract (see further on Advance Deposits below), with the balance of the settlement amount being payable with cleared funds available on the Settlement Date.

7.30. Send may, at its discretion, agree to amend the Settlement Date of a Forward Contract at your request. However, the Exchange Rate offered may be adjusted in respect of any amendment, and you agree that you will be liable to pay any subsequent adjustment to any Advance Deposit/s paid.

#### **Settlement**

7.31. A trade confirmation will include details regarding how you must effect settlement of the Foreign Exchange Contract, including the amount and the currency type of the amount that you are required to deposit into your Send account to settle the transfer, and the timing that payment/s must be received (which will be determined at Send's sole discretion).

General information about payments and timing for different types of Foreign Exchange Contracts are outlined below.

7.32. We are only able to process your Foreign Exchange Contract where you have complied with the settlement instructions and we have received cleared funds. We are not responsible for any loss or delays arising from the time it takes your bank to send us your money.

7.33. If you fail to comply with the settlement instructions within the relevant timeframes, Send reserves its right to, without any further notice to you:

- a. cancel the Foreign Exchange Contract (or any other open Foreign Exchange Contract between you and Send);
- b. refuse to enter into any other Foreign Exchange Contracts with you; and/ or
- c. recover from you any losses from you arising from the cancellation/s (see further regarding cancellations below).

#### *Spot Contract*

7.34. You must pay the full settlement amount on the date that the Spot Contract is entered into. We must receive cleared funds from you within 2 business days.

#### *Forward Contract*

7.35. You must pay:

- a. any Advance Deposit requested by Send to be paid at the time of booking the Forward Contract or as otherwise requested by Send (see further on Advance Deposits below);
- b. the settlement amount less any Advance Deposit/s paid, payable so that cleared funds are received in your Send account prior to the agreed Settlement Date.

#### *Limit and Stop Orders*

7.36. You must pay:

- a. any Advance Deposit requested by Send to be paid at the time of booking Limit or Stop Order or as otherwise requested by Send (see further on Advance Deposits below);
- b. the settlement amount less any Advance Deposit/s paid, payable at Send's direction at or around the time that the Limit or Stop Order is booked (i.e. once the nominated Exchange Rate has been achieved).

## Mistake

- 7.37. You are responsible for ensuring that details and information relating to a Foreign Exchange Contract are correct at the time of booking.
- 7.38. If you make an error and provide us with incorrect information when the Foreign Exchange Contract is booked, you must notify us immediately. Where possible, we will take reasonable steps to assist you in recovering the funds. However:
- a. we cannot guarantee that we can recover the funds or correct the error;
  - b. we accept no liability for any loss or delay arising from the mistake; and
  - c. you will be liable for any additional fees or costs arising from any steps taken to recover the funds, even if the funds are not ultimately recovered.

## Advance Deposits

- 7.39. Send may, in its complete discretion, ask you to pay either or both an Initial Advance Deposit and/ or one or more Additional Advance Deposit/s in respect of a Foreign Exchange Contract, at the time of booking the transfer, and/ or at any time up until the Settlement Date, in order to cover Send's risk in respect of the transaction.
- 7.40. Typically, you will be asked to pay an Advance Deposit in respect of:
- a. Forward Contracts; or
  - b. Limit or Stop Orders.
- 7.41. Time is of the essence in respect of all obligations to pay Advance Deposits.

## Deposit Amount

- 7.42. The amount of the Initial Advance Deposit is at Send's sole discretion but will typically be around 10% of the total settlement amount of the Foreign Exchange Contract in the sending currency. Send retains complete discretion to increase or reduce the amount that will be requested for an Initial Advance Deposit in respect of any existing or new Foreign Exchange Contracts.
- 7.43. One or more Additional Advance Deposit/s may be payable at Send's discretion in the event that there are changes in the market or any other event, which results in the risk to Send increasing above the Initial Advance Deposit collected (if any). In this event, an Additional Advance Deposit will be required to be paid by you to cover the additional risk. The amount of the Additional Advance Deposit will be limited to 5% of the sending currency in the Foreign Exchange Contract.

7.44. There is no limit on the number of Additional Advance Deposits that Send may request you to pay, however Send may only request that one Additional Advance Deposit is paid per 24-hour period.

7.45. Send will provide you notice you by phone and/ or email if you are required to pay an Additional Advance Deposit, and will advise you of the amount/s of any Additional Advance Deposit/s and the timeframes for required payment.

#### *Timing and payment of Advance Deposits*

7.46. Initial Advance Deposits and Additional Advance Deposits must be paid in the manner outlined in Send's instructions and within the timeframes outlined by Send, which may be set by Send in its sole discretion.

7.47. Send reserves its rights to refuse to enter into any further Foreign Exchange Contracts, or provide any additional Services to you until such time as you have complied with a request to pay an Initial or Additional Advance Deposit.

7.48. If you fail to make payment as instructed and within the timeframe requested, Send reserves its right to, without any further notice to you:

- a. cancel the Foreign Exchange Contract (or any other open Foreign Exchange Contract between you and Send);
- b. refuse to enter into any other Foreign Exchange Contracts with you; and/ or
- c. recover any deposit paid by you or other amounts in your account to cover any costs or losses incurred by Send in cancelling the Foreign Exchange Contract/s.

#### **Requesting a cancellation of a Foreign Exchange Contract**

##### *Limit Order or Stop Order*

7.49. You may cancel a Limit Order or Stop Order at any time prior to the nominated Exchange Rate being achieved without any liability.

7.50. Once the nominated Exchange Rate has been achieved, the Limit or Stop Order is a legally binding Foreign Exchange Contract, regardless of whether you were aware that the nominated Exchange Rate was achieved and you cannot cancel it without being responsible for any loss arising from the cancellation.

##### *Cancellation of a legally binding Foreign Exchange Contract generally*

7.51. Once a Foreign Exchange Contract has been booked and confirmed, you have a legal obligation to fulfil the terms of that Foreign Exchange Contract. However, at

Send's sole discretion, Send may agree to allow you to cancel a Foreign Exchange Contract if the request is received prior to settlement of the Foreign Exchange Contract and any outstanding amounts or losses have been paid by you.

- 7.52. Please note that if you request that a Foreign Exchange Contract is cancelled, you will be liable for losses arising as a result of that cancellation (please see further regarding liability that may arise from a cancellation below).

### **Delays**

- 7.53. We will take all reasonable steps to ensure that your payment reaches the Beneficiary within any estimated time periods. However, some circumstances are out of our control, for example, it may take some time for the Beneficiary's bank to make the funds available to the Beneficiary.
- 7.54. We accept no liability for any loss or damage arising from delays resulting from any third parties.

## **8. CLOSING OR SUSPENDING YOUR SEND ACCOUNT**

### **SUSPENSION OF YOUR SEND ACCOUNT**

- 8.1. Send reserves the right to suspend your Send account at its sole discretion, with immediate effect and without notice to you, including where you have breached these Terms and Conditions, or for security reasons.

### **TERMINATION OF YOUR SEND ACCOUNT**

- 8.2. These Terms and Conditions shall continue to operate in full force until such time as they are terminated between the parties.

### **Notice of termination**

- 8.3. Either party may terminate these Terms and Conditions by giving 7 days written notice to the party.
- 8.4. Send reserves the right to terminate your Send account without notice to you, where:
- a. you have breached these Terms and Conditions;
  - b. Send has reason to believe that you have breached any applicable law or rule, or that you are involved in money laundering, fraudulent activity, terrorism financing, or any other illegal activity; or

- c. providing you with the Services would be unlawful, or expose Send to legal proceedings, claims by third parties, or regulatory action;
- d. required at law, or where requested to do so by any regulator, law enforcement agency, government authority or Court of law.

### Effect of termination

- 8.5. Where Send has exercised its right to terminate your Send account without notice to you:
- a. Send reserves the right to close out any existing Foreign Exchange Contracts unless otherwise agreed between the parties in writing;
  - b. you are liable for any costs, fees, expenses or losses that are incurred by Send in closing out the existing Foreign Exchange Contracts;
  - c. Send will provide you notice in writing if it intends to exercise its right to close out an Existing Foreign Exchange Contract, including notice of any liability payable by you as a result.
- 8.6. Where these Terms and Conditions are terminated by the giving of notice, or where Send does not elect to close out any of your existing Foreign Exchange Contracts, you are obliged to complete and satisfy any outstanding Contracts.
- 8.7. The termination of these Terms and Conditions will not impact on any previously existing obligations or any liability that has arisen prior to the termination.

## 9. AMENDING THESE TERMS AND CONDITIONS

- 9.1. Send reserves its right to amend these Terms and Conditions at its discretion.
- 9.2. Updated Terms and Conditions will apply to:
- a. any new Contracts you enter into with Send after the updated Terms and Conditions have been published on our website; and
  - b. any existing Contracts after Send has provided notice to you of the amendments. The amount of notice will depend on the change that is being made.
- 9.3. Changes to the Terms and Conditions will apply immediately to existing Contracts upon giving notice where amendments to the Terms and Conditions:
- a. are required pursuant to the law;

- b. relate to the addition of new Services or products, or additional functionality to existing Services;
  - c. do not impact on your rights or obligations under the existing Terms and Conditions, or the changes are more favourable to you.
- 9.4. All other changes or updates to the Terms and Conditions will apply to existing Contracts upon Send giving you 30 days written notice.
- 9.5. If you do not agree to the proposed amendment of the Terms and Conditions, you can provide Send with notice in writing within 7 days of being advised of the changes (where the Terms and Conditions apply immediately to existing Contracts), or within 30 days of being advised of the changes (where the Terms and Conditions apply in 30 days).
- 9.6. If you have provided notice to Send of your disagreement to changes in the Terms and Conditions you are required to fulfil any outstanding Contracts with Send, after which the agreement between the parties will be terminated. (Please see further about what will happen with the terminating of the agreement above).
- 9.7. If you do not provide notice to Send of your disagreement to the changes in the Terms and Conditions within the stated time periods outlined above, you will be taken to acquiesce to the changes in the Terms and Conditions.
- 9.8. These Terms and Conditions, once issued to you, and any notice periods as outlined in this clause have expired (where relevant), supersede and extinguish any previous Terms and Conditions, or any other written or oral agreement between you and Send relating to the provision Services.

## **10. USE OF THE SEND PLATFORM AND SERVICES**

- 10.1. You agree that Send remains the owner of the Send Platform at all times, and you agree to comply with any reasonable directions made by Send regarding the use of the Send Platform.
- 10.2. You must not, and must not attempt to, attempt to:
- 10.3. gain unauthorised accesses to the Send Platform, or any Send servers, computers or material that you have not been granted access to; or
- 10.4. introduce any virus, trojans or other technologically malicious software, programs or other materials to the Send Platform; or

- 10.5. undertake any other technologically malicious attack in respect of the Send Platform, or any Send servers or computers.
- 10.6. Send does not guarantee that the Send Platform will be continuously available or free from bugs or viruses, and Send reserves its rights to vary, discontinue, change, amend, withdraw, or suspend access to the Send Platform and the Services.
- 10.7. Send accepts no liability for any loss or delays arising from:
- a. any change in the availability, any interruption to the use of, the Send Platform or the Services;
  - b. any variance, change, amendment, withdrawal or suspension of access to the Send Platform and the Services; or
  - c. any third-party faults or failures which impact on your use of the Send Platform – for example due to reception issues arising from your internet provider;
- 10.8. If you download the Send App, you agree that your download and use of the Send App is subject to these Terms and Conditions and any rules or terms and conditions required by the Appstore provider or operator.

## **11. INTELLECTUAL PROPERTY**

- 11.1. You may use the Send Platform, and any materials, software, data, content or documentation developed by us and provided to you across the course of providing you with the Services ('Send Materials'), for your personal use only.
- 11.2. You agree and warrant that you will not, and will not attempt to, directly or indirectly copy, reverse engineer, alter, change, modify, create derivative works of, undertake any process to derive the source code of the Send Materials.

## **12. PRIVACY AND COMMUNICATION WITH YOU**

- 12.1. Send may communicate with you by the Send Platform or by phone, email, text message utilising the contact details provided by you.
- 12.2. Send accepts no liability for any loss or consequence which may arise as a result of you failing to check your email or other methods of communications.
- 12.3. You consent to any communications between you and Send, as well as any information or documents provided by you to Send being held, stored, processed, used and disclosed pursuant to our Privacy Policy.



- 12.4. You agree to the recording of any calls or communications between you and Send and the use of those recordings as evidence in the event of any dispute between the parties. Access to, storage of and use of the recordings shall be subject to the terms of our Privacy Policy.
- 12.5. Send will communicate with you and provide any documentation in English. Unless expressly advised to the contrary, any translations into other languages are not endorsed by Send.

## NOTICES

- 12.6. Any notices which must be given pursuant to these Terms and Conditions may be given:
- a. in person;
  - b. by registered post sent to:
    - i. for correspondence to you: the most recent address you have provided to Send as detailed in your Send account profile;
    - ii. for correspondence to Send: Send's registered office address, as amended from time to time;
  - c. by email sent to:
    - i. for correspondence to you: the most recent email address you have provided to Send as detailed in your Send account profile, or such other email address provided by you to Send where Send has received email correspondence from that email address;
    - ii. for correspondence to Send: [info@sendfx.com.au](mailto:info@sendfx.com.au)
- 12.7. Notices given pursuant to this clause are taken to be received:
- a. when delivered in person, on receipt of the notice;
  - b. when sent by registered post, two business days after it was posted to the above address;
  - c. when sent by email, at the time of transmission to the above email address, unless a notification of send failure or non-delivery is received.

- 12.8. Where a customer is comprised of more than one person or entity, notice to one of those persons or entities shall be constituted proper notice given to all persons or entities.

## 13. YOUR WARRANTIES AND REPRESENTATIONS

13.1. In using the Services, you warrant that:

- a. you understand and acknowledge that:
  - i. we have not provided you with any personal advice;
  - ii. any information provided to you has been general in nature and has not taken into account your personal circumstances or objectives;
  - iii. prior to engaging our Services, you have had the opportunity to obtain advice from taxation, legal, financial professionals and any other relevant professionals in respect of the Services that you wish to obtain from Send, which considers your own financial and other situations;
  - iv. prior to engaging our Services, you have had the opportunity to consider your own objectives and financial situation and determine whether the Services are appropriate for you; and
  - v. Send makes no representations about the accuracy, completeness or currency of any information, opinion or general advice given to you, and makes no representation or warranty in regards to the likely outcome or results of obtaining our Services, or purchasing a Foreign Exchange Contract;
  - vi. you are responsible for verifying or obtaining further advice in respect of any general advice, opinion or material provided by Send to you;
  - vii. Send accepts no responsibility for the accuracy, completeness or currency of any information or general advice provided, by Send or by its directors, employees, officers, agents, associates, contractors or sub-contractors.
- b. you understand and agree that any general advice provided to you by Send is for your use only and may not be provided or communicated to any third party without the express written consent of Send;
- c. you understand that your Send account is not a bank account and the Financial Claims Scheme does not apply in respect of your Send account;

- d. you understand and acknowledge that trading in foreign exchange contracts involves an inherent degree of risk, and therefore is only suitable for those who are able to absorb and assume the risk of any such loss;
- e. you accept all risks associated with utilising the Services, including loss arising from fluctuating Exchange Rates;
- f. you will not use the Services for speculative trading or any unlawful or criminal purpose;
- g. your use of the Services is, and will at all times be lawful;
- h. you will not at any time earn interest on any money transferred to your Send account;
- i. you understand that Send does not provide any guarantee in respect of any Foreign Exchange Contract and does not make any representation or guarantee that a Foreign Exchange Contract will achieve any particular Exchange Rate or other outcome.

## 14. LOSS OR DAMAGE

- 14.1. If you incur reasonably foreseeable loss or damage as a result of something that Send has wrongfully done, or failed to do contrary to our obligations under these Terms and Conditions, you may be able to claim the loss from us.
- 14.2. To the extent permitted by law, and in addition to any other exclusions outlined in these Terms and Conditions, we will not be liable for loss or damage:
- a. which arises from your negligence, your breach of these Terms and Conditions, or your unlawful, fraudulent or criminal conduct;
  - b. where we have performed our obligations consistently with these Terms and Conditions or pursuant to the law or any requirement, order or direction of any Court, Tribunal, regulatory body or governing authority;
  - c. where we have acted pursuant to your instructions;
  - d. where the loss or damage is indirect, relates to loss of business, opportunity or profit, relates to business interruption, or was not reasonably foreseeable;
  - e. where the loss or damage arises from a virus or other malicious technology programs or software;

- f. which arises from you relying on any opinion, general advice, forecast, view, or recommendation expressed by Send;
- g. which arise from the loss, theft or other compromise of your Send account login and/ or the security features of your Send account, up until the point where you notify us of the loss or theft;
- h. arising from any private dealing, agreement or relationship between a Send employee or contractor and you;
- i. where the loss or damage arises from your use of any third-party software or website, including any websites linked to the Send website;
- j. where any failure or delay arose from or was caused by you or any third party;
- k. where any failure or delay was due to circumstances that were unavoidable, unforeseen, outside our control, or arising due to any laws or regulations which we are obliged to comply with;

and you agree to indemnify and keep indemnified Send in respect of any loss, fees, costs, damages, claims, actions, proceedings, demands, expenses, or any other amounts arising in respect of any such loss, fee, cost, damages, claim, action, proceeding, demand, expense, or other amount.

14.3. The exclusions of liability outlined in this clause do not apply where we have acted fraudulently or with gross negligence.

14.4. You agree that you will pay:

- a. your own expenses arising from reviewing and entering into these Terms and Conditions, as well as any other expenses arising in connection with or as a result of you entering into these Terms and Conditions including any taxes, duties;
- b. any fees or expenses disclosed to you at or before you enter into a Foreign Exchange Contract;
- c. any loss, damages, expenses, fees or costs (including legal costs on an indemnity basis), that we incur as a result from any failure by you to perform your obligations outlined under these Terms and Conditions, including recovery costs, losses arising from Foreign Exchange Contracts that have been closed out, costs incurred by us in enforcing these Terms and Conditions, and any fees, taxes, or costs validly charged by third-parties in respect of the Services you enter into – for example fees charged by your bank.

14.5. In the event that you are liable to Send for any amounts pursuant to these Terms and Conditions:

- a. you agree to pay those amounts to Send; or
- b. you authorise Send to remove those amounts from your Send account balance (if any) or funds otherwise received on your behalf to apply against any outstanding amounts; or
- c. you agree to Send taking any necessary steps (including legal action, or referral to a debt collection agency) to recover outstanding amounts.

## 15. DISPUTE RESOLUTION

15.1. If you have a concern or complaint you can take the following steps

### Step one: Contact us

- Please contact your account manager, or other point of contact at Send in writing outlining your concern or complaint.

### Step two: Internal investigation

- If your complaint or concern has not been resolved at Step One, you may request that an internal investigation is completed by our Chief Operating Officer by sending a request in writing:
  - by email to [info@sendfx.com.au](mailto:info@sendfx.com.au); or
  - by post to:  
  
Dispute Resolution  
Chief Operating Officer  
10 Rawlins Street  
Southport QLD 4215  
AUSTRALIA
- Please provide as much detail and as many documents as possible to assist in the investigation. Our Chief Operating Officer may request that you provide additional information or materials to assist with completing the investigation.
- Our Chief Operating Officer will conduct its investigation into your concern or complaint and will endeavour to respond to your correspondence within 21 days, having regard to the circumstances of your concern or complaint.

### Step three: Independent review

- If the internal investigation does not resolve your concern or complaint, you may request that the Australian Financial Complaints Authority ('AFCA') conducts a review of the matter. AFCA is an independent financial services dispute resolution provider that is free for consumers.
- You can find additional information about AFCA on their website: [www.afca.org.au](http://www.afca.org.au), and contact them:
  - By telephone: 1800 931 678
  - By email: [info@afca.org.au](mailto:info@afca.org.au)
  - By post:

Australian Financial Complaints Authority,  
GPO Box 3,  
Melbourne VIC 3001  
AUSTRALIA

## 16. GENERAL

### Governing law

16.1. This Agreement will be governed by and construed in accordance with the laws of the State of Queensland, Australia and the parties submit to the jurisdiction of the Courts and Tribunals of Queensland, Australia.

### Severability

16.2. In the event that any of the provisions of this Terms and Conditions are held to be invalid or unenforceable in whole or in part, all other provisions will operate separately and continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of these Terms and Conditions.

### Waiver

16.3. Any delay by Send to enforce a breach, default, delay or omission of any of the provisions of these Terms and Conditions by you will not be construed as a waiver of any subsequent breach of the same or other provisions.

16.4. Any waiver of rights pursuant to these Terms and Conditions must be in writing, and will not affect any other rights in respect of any subsequent breaches of these Terms and Conditions.

## Assignment

- 16.5. You may not assign, transfer, charge or subcontract any of your rights or obligations under these Terms and Conditions without our prior written consent.
- 16.6. Send may assign these Terms and Conditions without your consent or notice to you.