

Special Conditions for Distance Communication with the FXdirekt Bank AG (incorporated)

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The FXdirekt Bank AG (incorporated) (the “bank”) also conducts its business with account holder(s) (the “client”) and persons acting on their behalf via various standardised distance communication channels, notably via internet and phone (including call center), hereinafter referred to as “distance communication channels”. These special conditions apply for the utilisation of the distance communication channels by the client, as well as by the persons having the power to dispose of their accounts (clients and persons having the power to dispose are hereinafter referred to as “users”).

1. Range of services

1.1. Users can conduct foreign currency and precious metals transactions by using one of the distance communication channels, to the extent to which they are respectively made available by the bank and in accordance with these special conditions (“range of services”), as far as the client and the bank have come to a respective agreement. Taking the interests of the client into consideration, the bank can expand or limit the range of services and will notify the users in good time and via appropriate notifications.

1.2. The range of services of the FXdirekt trading platform (“trading platform”), as well as application hints, are available in online documentation to which the client already has access via the website of the bank, before opening an account.

2. User data for the trading platform

2.1. Only those users have the right of use, who also have the power to dispose of the accounts managed by the bank.

2.2. Users only have access to the distance communication channels by means of a personal authorisation code(s). The type of authorisation code and the respective procedure to be followed by the user during execution, are described in these special conditions. The import or export or the admissibility of use of the personal authorisation code(s) can, according to the legal systems of countries other than the Federal Republic of Germany, be legally restricted or even prohibited. The bank is not able to provide reliable information with regard to the existence and the extent of the respective restrictions or prohibitions. The user is, therefore, compelled to procure the required knowledge himself and to observe the respective restrictions and prohibitions. The client is accountable to the bank for all losses represented by him, arising out of the infringement of such restrictions or prohibitions. The user will find further information, regarding the type and extent of services offered by the bank, on the bank’s website.

2.3. For access to and trade via the trading platform, the user receives the following authorisation codes:

- 1) user name,
- 2) login password
- 3) trading password.

In order to access the trading platform, the user firstly requires the user name and the login password. For the placement of orders, or for the conclusion of a transaction via the trading platform, the user must enter his trading password.

2.4. From the first login, the user can at any time change his login password via the trading platform.

2.5. For the placement of phone orders for the duration of an existing freeze on his trading password (for example, because of suspected misuse by third parties), the user requires as an additional authorisation code, a phone password. The user himself specifies the phone password after his first login. At any time, the user can change his phone password via the trading platform. When the user calls the bank, the user will be asked – based on a random system - to name individual digits of his password, he will never be asked to provide the entire password.

2.6. The authorisation codes referred to in points 1) and 2) of para. 2.3 are sent to the user by separate e-mail, the trading password is sent by post.

2.7. The user can, at any time, decide after how many minutes of inactivity the trading password must again be entered in order to access the trading platform.

2.8. To explain the possibilities of use, the bank makes digital, written or acoustic hints available for the user (especially the online user guide and procedure on this). The user is obliged to always observe these hints when using the distance communication channels. In particular, the user only has access to the trading platform via the distance communication channels when adhering

to the procedure for use of the respective personal authorisation code.

- 2.9. The bank is entitled to adapt and further develop the distance communication channels to changing conditions; this also applies to the respective authorisation codes to be used. The bank will inform the user of such modifications in good time and in an appropriate manner. The bank does not take responsibility for the adequacy and compatibility of the software and the efficiency of the teletransmission utilised by the user to gain access to trading via the distance communication channels, as far as the bank has not made these available.

3. Processing of orders

- 3.1. Generally, trading via the trading platform is possible during the customary international trading hours. These trading hours are stated in the bank's schedule of prices and services.
- 3.2. Phone trading is solely possible during the customary international trading hours when the authorisation code is frozen as per para. 6.2. These trading hours are stated in the bank's schedule of prices and services. If, under exceptional circumstances (also repeatedly), the bank accepts orders from the client by phone, this does not substantiate any claim by the client for continued acceptance of placed by phone orders by the client.
- 3.3. Receipt or acceptance of an offer by the bank is significant for the execution of an order. The order is deemed as accepted by the bank if the client receives an electronic or phone confirmation of execution from the bank. The general or occasional non-execution of orders, due to non-conformance to requirements, is indicated by notifications. The bank is hereby authorised to execute or disallow ambiguous or incomplete orders only after consultation with the client. In cases such as this, the bank is not liable for consequences resulting from the delayed execution or non-execution of orders, unless the bank caused these delays either deliberately or through gross negligence.

4. Recall or changes to orders

With the exception of the correction of orders prior to their placement, orders can only be recalled or changed outside of the distance communication chan-

nels, except if the bank expressly makes provision for such a recall or such a change via the respective distance communication channel. Indeed, the bank can only consider a recall or a change if the respective order reaches the bank in such good time that the bank is still able to take it into account within the framework of its orderly workflow. The user will be notified via the system, whether the recall / change via the trading platform, was still accepted.

5. Special due diligence of the user

The user must ensure that no other person obtains knowledge of his personal authorisation codes (para. 2.3 points 1-3) or acquires a personified authorisation code. Every person who has knowledge of a personal authorisation code or who is in possession of a personified authorisation code or a duplicate thereof, has the possibility of using the distance communication channel; the person can then, for example, place orders at the expense of the account. In particular, the following should be observed in order to ensure the nondisclosure of the personal authorisation codes:

- personal authorisation codes may not be electronically recorded, copied or noted in any other form,
- the personal authorisation codes made available to the user must be securely kept,
- when using a personal authorisation code, it must be ensured that third parties cannot see or copy the personal authorisation code.

If the user ascertains that another person has gained knowledge of his personal authorisation code or that another person is in possession of one of his personal authorisation codes, or if misuse is suspected, the user is obliged to immediately change his login password or to freeze his personal authorisation code. As far as this is not possible for him, he must immediately inform the bank. In this case, the bank will freeze the respective distance communication channel for the user.

6. Freezing

- 6.1. Under the following conditions, a distance communication channel will automatically be either completely or partly frozen if the user arranges with the bank, either via the distance communication channel itself, or outside of this channel, for the freeze to be implemented.

6.2. The bank is, at any time, authorised to freeze a communication channel altogether for the trading platform due to an important reason, for the protection of the authorised interests of the client, alternatively in terms of all or individual accounts of the client or for individual users. Such important reasons include, if the well-founded suspicion of misuse of a distance communication channel by a third party or the commitment of a felony or a misdemeanor by a user via the distance communication channel exists. The bank will inform the user hereof in an appropriate manner. Only the bank can cancel the freeze.

6.3. For the duration of a freeze as defined in para. 6.2, the user has the possibility to place his orders by phone with the bank.

7. Client's liability

If the user has contributed to the development of a loss through negligence, especially through an infringement of the due diligence regarding the personal authorisation codes, the principles of contributory negligence determine to what extent the bank or the client will bear the loss. The client bears the transmission risk for orders placed, or for other declarations, for the teletransmission employed by the user.

8. System availability and system failure

8.1. The bank will ensure the availability of the respective server via the common internet nodes during the trading hours specified in the schedule of prices. The continued availability during these trading hours cannot, however, be guaranteed, especially where technical interruptions (for example, a breakdown of the telecommunication lines provided by third parties) and maintenance are concerned. The bank will, as far as possible, execute own or commissioned work, which may lead to an interruption of use and/or impairment of use, outside the trading hours and will organise it in such a way that the duration of the interruption of use/impairment of use is kept to the minimum. The user will be informed of restrictions in good time.

8.2. In the event of a failure of the bank's trading platform, alternatively the telecommunication lines provided by third parties, the client has the possibility to close open positions with the bank by phone or by fax under the number provided in the confirmation notification at the opening of the account.

8.3. In the event of a failure of the bank's trading platform the user has the possibility to retrieve the status of his trading positions by phone at the time of the system failure.

9. Liability

9.1. The bank is not liable for losses due to orders not being executed or being incorrectly executed because they were not received at all or only partially received as a result of technical interruptions. The bank is also not liable for such losses resulting from mistakes in the use of the internet or the trading platform and for losses caused by technical resources utilised by clients or third parties such as, for example, phone lines, modems or computers. The previously mentioned restrictions do not apply unless the bank caused these interruptions either deliberately or due to gross negligence.

9.2. Furthermore, the bank is not liable if the trading platform is temporarily inaccessible, unless the bank caused the impossibility of access either deliberately or due to gross negligence.

9.3. The bank is not liable for orders, alternatively, offers already on hand but not yet accepted by the bank, which cannot be executed due to interruptions of any kind or due to system failure, unless the bank caused these interruptions either deliberately or by gross negligence.

9.4. If, at order placement via one of the available communication mediums (phone or internet), the bank cannot be reached, the client is obliged to switch to the respective alternative communication medium. Furthermore, the client is obliged to inform the bank of interruptions known to him during the transmission of data. The bank is not liable for damages resulting from the failure of one or from both of the communication mediums unless the bank has caused these interruptions either deliberately or by gross negligence.

9.5. In the case of a failure of the trading platform due to a disruption or interruption of the phone network, the internet and other communication systems and phonelines of the Deutsche Telekom AG or other network providers, the bank is not liable, unless the bank has caused these interruptions or disruptions either deliberately or by gross negligence.

- 9.6. The client must verify that the input data is complete and correct. Incomplete or incorrectly completed fields can result in misunderstandings, which can lead to delays in execution. The bank is not liable for losses resulting from this for the client, unless the bank acted either deliberately or with gross negligence.
- 9.7. The bank, exercising ordinary care, takes measures for the protection of the client from computer viruses, „Trojans“ or comparable programs, codes or applications. If, however, the client still suffers losses from computer viruses, “Trojans” or comparable programs, codes or applications as a result of the client’s contact to the bank via the bank’s internet pages or e-mail, the bank is only liable if it acted deliberately or with gross negligence.

10. Cancellation

- 10.1. If the client cancels one of the distance communication channels, it results in the cancellation of the entire business relationship.
- 10.2. The bank can cancel the access to a distance communication channel thereby cancelling the entire business relationship without observance of a period of cancellation in the event of an important reason, which makes it unacceptable for the bank to pursue the business relationship, even when taking the legitimate interests of the client into consideration. If the important reason constitutes a violation of a contractual duty by the client, the cancellation is only permitted after the unsuccessful progression of a reasonable remedial period or after the issue of unsuccessful written warnings, unless this is expendable, due to the anomaly of the individual case (§ 323 para. 2 and 3 of the “Bürgerliches Gesetzbuch” (Civil Code)).

11. Data protection

- 11.1. The client agrees to be contacted by the bank in case of queries regarding the trading platform.
- 11.2. For client or account related questions via the call center, the user requires his phone password as well as his client number or account number. In the interest of the client, the bank reserves the right to further security queries.

- 11.3. The client agrees that his phone calls to the call center of the bank and within the scope of phone trading can be recorded for documentation and legal purposes.

12. Other regulations

Regarding the business relationship between the user and the bank, the general conditions and special conditions for foreign currency and precious metals transactions are, in addition, applicable for the account management via the trading platform.