
Terms of Service

OTX

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1 Provision of Platform

1.1 Subject to the terms of this Agreement OTX will during Service Hours:

- (a) make the Platform available to Customer with functionality to enable Customer to enter and view Orders entered directly by Online Participants and/or by OTX acting on behalf of Online Participants and/or Offline Participants;
- (b) work in good faith to apply the then applicable Matching Rules to Customer's Orders which are then current on the Platform;
- (c) undertake certain manual validation checks on any identified Match on the basis of the information available to the OTX staff at the time and their judgement; and
- (d) notify Customer of any identified and validated Matches relevant to it.

1.2 In addition to its obligations under Clause 1.1, OTX may, at its discretion from time to time:

- (a) make available to one or more Participants (as OTX may choose at its discretion) ancillary Materials and services relating to the Platform and to trading activities, including but not limited to: support in tendering in relation to Products, deal management tools, records relating to Participant's trading activities, training materials, newsletters and/or market information; and/or
- (b) Match Orders entered on the Platform with bids and offers which have not been entered on the Platform.

1.3 OTX undertakes to exercise its rights under this Agreement in a fair and reasonable manner.

2 Customer Acknowledgements and Undertakings

2.1 Customer undertakes and acknowledges that:

- (a) It will adhere to OTX's Acceptable Use Policy and ensure that use of the Platform By Customer complies with all Applicable Laws (including without limitation all such laws to trading, anti-trust, money laundering, and/or bribery) and does not infringe any rights of any third parties, including Intellectual Property Rights and does not cause OTX to be in breach of Applicable Laws;
- (b) The Products made available on the Platform:
 - (i) are only intended to introduce potentially interested Participants to one another with a view to negotiating a possible Contract;
 - (ii) do not themselves create binding legal agreements and a Match may not result in the creation of a Contract or other additional legally binding obligation; and
 - (iii) may change from time to time;
- (c) Any Contract entered into between Participants will be agreed and executed outside of the ambit of the Platform and its execution and enforcement is not the responsibility of OTX;

- (d) Customer may act as agent for any Approved Group Company by placing Orders on the Platform on their behalf. Customer shall indemnify OTX against claims by any such Approved Group Company other than where the Approved Group Company makes a claim under its own contract with OTX (if any);
- (e) Other than as provided in (d) Customer will not act as agent for any other party in accessing or using the Platform;
- (f) Following notification of a Match, Customer will work in good faith to promptly engage with the identified counterparty to negotiate a Contract materially on the terms of the Match and unless such negotiations fail will not take any actions which are incompatible with it being able to enter into a Contract based on the Match;
- (g) As operator of the Platform, OTX has an overarching responsibility to comply with all Applicable Laws, and that, notwithstanding any other provision of this Agreement, OTX may take any action it considers necessary to comply with such Applicable Laws;
- (h) OTX does not guarantee that the Platform will be continually available or that all functionality will be error free;
- (i) Where there are competing Orders for Matching, OTX will resolve such conflict: (i) in the first instance to the extent possible using the Matching Rules (ii) if any conflict cannot be resolved in accordance with (i), as OTX considers appropriate;
- (j) Customer is responsible for all content which is placed on the Platform using Customer's Credentials and OTX has no responsibility for any content that is uploaded by or on behalf of any Participant;
- (k) OTX owes no fiduciary or equitable duties to Customer and nothing in this Agreement or any Materials provided to Customer or the provision of services shall give rise to such duties;
- (l) The information on the Platform (whether provided By OTX or any Participant), including any Match, is not a confirmation or recommendation that any particular transaction is (including but not limited to the following): (i) convenient, suitable or appropriate for Customer; or (ii) that it complies with Applicable Laws; and
- (m) Customer is solely responsible for ensuring that at all times it wishes to utilise the Platform it has in place a technical environment and connectivity which meets the then applicable Customer Technical Requirements.

2.2 Customer will promptly notify OTX of:

- (a) The conclusion of a Contract in respect of a Match, in which event Customer will promptly notify OTX and provide any differences between the Contract and the terms of the Match;
- (b) The cessation of active negotiations By Customer where no Contract is entered into following a Match;
- (c) if any User ceases to be an employee, officer, agent or sub-contractor of Customer, or if there is any security, authority or other reason any of the Customer's Credentials should be withdrawn or changed;
- (d) Any action or omission by Customer which constitutes (or will with the passage of time constitute) a breach of this Agreement;

- (e) Any action or omission by any Participant, which if undertaken by Customer, would constitute a breach of this Agreement;
- (f) Any unauthorised access, security threat or security breach relevant to the Platform which Customer becomes aware of; and/or
- (g) Any change to any information which Customer has provided to OTX in support of its application to utilise the Platform or in connection with continuing such utilisation (including, without limitation, the information shown on the Customer's profile page on the Platform).

2.3 Customer shall ensure that each User only uses the Credentials issued to that User and Customer irrevocably undertakes to take responsibility for and ratify all Orders and other actions undertaken using Customer's Credentials whether such issue and use takes place before or after the date of this Agreement.

2.4 Customer acknowledges that the contracts under which other Participants contract with OTX may include rights of suspension and termination of such Participants which OTX exercise from time to time without regard to the impact that such exercise may have on Matches and Contracts.

3 Use of Information

3.1 Subject to the permissions granted by this Clause 3, neither Party will disclose, and each will take reasonable measures to protect from unauthorised use or disclosure, information provided to it in confidence By the other.

3.2 OTX hereby grants to Customer such IPR as OTX is entitled to grant by way of a non-exclusive, non-transferable, worldwide, revocable licence to use Platform and the Trading Information made available to Customer on the Platform solely to: (i) evaluate such information to consider placing an Order, (ii) negotiate Contracts for which a Match is made and (iii) maintain such records as it is required to maintain by Applicable Law.

3.3 Customer acknowledges that the operation of the Platform involves OTX sharing Trading Information provided By Customer with Online Participants and Offline Participants. Customer hereby grants permission for OTX to:

- (a) share Trading Information with other Online Participants and Offline Participants (including by providing them with the rights and technical ability to view and download Trading Information) other than to the extent that Customer has used Platform functionality to designate Trading Information as private;
- (b) use all information provided By Customer to fulfil OTX's obligations under this Agreement, follow its standard matching and trade confirmation processes and otherwise provide any discretionary services for the benefit of Customer; and
- (c) monitor (i) compliance by Customer with this Agreement and other Participants with their agreements with OTX and (ii) Customer and other Participants' compliance with Applicable Laws and the Acceptable Use Policy; and
- (d) use any information provided By Customer to monitor the market, create Market Data Products and to maintain, develop, test and improve the Platform and/or any services which OTX offers (or might offer).

3.4 All IPR in any Market Data Products created by or on behalf of OTX from information provided By Customer shall belong to OTX from the date of their creation. OTX will be free to distribute and commercially exploit such Market Data Products as it sees fit provided that neither Customer nor any

trading information relating solely to Customer can readily be identified from any such Market Data Product taking the information it contains in isolation. Nothing in this Agreement provides Customer with any rights to receive or use any such Market Data Products.

- 3.5 In addition to its other rights OTX shall be entitled to disclose any data provided By Customer or held by OTX in respect of Customer:
- (a) for the purposes of OTX complying with Applicable Laws; and/or
 - (b) to provide information to any governmental authority requesting such information; and/or
 - (c) where such data is generally available to and known by the public.
- 3.6 The permissions granted to OTX under this Agreement are irrevocable, non-exclusive, unconditional, worldwide and without charge.
- 3.7 All IPR in the Platform and any enhancements belong to OTX. Save for the permissions and licences granted By Customer under this Agreement, nothing in this Agreement limits or otherwise affects any rights Customer may acquire under any other agreement with any party entitled to grant such rights or any rights which the Customer has in Materials it uploads to the Platform.
- 3.8 Customer must not alter, enhance, make Materials from, reverse engineer or decompile the Platform or any Materials belonging to OTX, or any part thereof, and must not permit or facilitate any other person to do so, in each case except to the extent explicitly permitted under this Agreement or required or specifically permitted by Applicable Laws.

4 Fees and/or charges

- 4.1 OTX may invoice Customer for the services provided By OTX as may be agreed between OTX and Customer from time to time or, in the absence of any agreement in writing, on the same basis as OTX has most recently invoiced to Customer.

5 Indemnity and liability

- 5.1 Customer agrees and acknowledges that the Platform and all services provided By OTX from time to time in connection with this are provided **AS IS**, and all warranties, conditions, terms and undertakings, express or implied, statutory or otherwise, in relation to in respect of such services and Materials are hereby excluded to the maximum extent permitted by law.
- 5.2 Save as provided in Clause 5.6, OTX expressly excludes all liability in respect of loss or damage arising from, or in connection with, an act or omission in the course of, or relating to, the activities to which this Agreement applies (including in respect of negligence) except to the extent such loss or damage is caused by OTX's intentional breach of this Agreement, wilful misconduct or fraud by OTX.
- 5.3 Customer acknowledges that the limitations and exclusions in this Clause 5 are based on the fact that the services and information which are made available from time to time By OTX, by the Platform and otherwise:
- (a) do not create any contractual relationships with other Participants in relation to any Product but simply provide an additional channel for Customer to be potentially matched to potentially interested counterparties;
 - (b) do not oblige Customer to use any information made available from time to time via the Platform and do not replace the need for Customer to take its own legal and financial advice

and verify all content it obtains via the Platform (including conducting its own "know your client" and credit checks, as it considers appropriate);

- (c) are intended to be supplemental to all other means of identifying counterparties which Customer has and is able to put in place from time to time;
- (d) are in some cases provided free of charge and/or at the discretion of OTX; and
- (e) do not replace any steps which Customer considers appropriate to backup any data relevant to Customer's business.

Customer acknowledges that, in light of the foregoing, the limitations and exclusions in this Clause 5 are reasonable and fair.

5.4 Save to the extent provided in Clause 5.6:

- (a) OTX's aggregate liability under or in connection with this Agreement is not to exceed £10,000 in respect of any one incident or in respect of a series of incidents attributable to the same cause, and to a maximum of £50,000 in aggregate in relation to all agreements which Customer may have from time to time in relation to access to and/or use of the Platform.
- (b) OTX is not to be liable for: any (a) loss of profit (or expectation of profit), business revenue or anticipated savings; (b) loss of information, interruption to business or damage to reputation or goodwill; or (c) indirect, consequential or special loss, howsoever arising.

5.5 Customer indemnifies on demand and holds harmless OTX and its Representatives against any and all Losses incurred or suffered by any of them arising out of:

- (a) a breach by Customer of any of its obligations under this Agreement;
- (b) a breach by Customer of any Applicable Laws;
- (c) a breach or infringement by Customer of any Intellectual Property Rights of OTX or a third party (including but not limited to any use By Customer of the Platform other than as licensed to Customer under this Agreement);
- (d) any content uploaded to the Platform using Customer's Credentials (including any Losses relating to a breach of any legal rights of OTX or a third party relating to that content);
- (e) any breach By Customer of the Acceptable Use Policy; and/or
- (f) any claim asserted against OTX and its Representatives by any party for whom Customer acts or purports to act (including any asserted breach of fiduciary duty) in relation to the services provided to Customer in accordance with this Agreement,

unless such Losses result from OTX's intentional breach of this Agreement, wilful misconduct or fraud.

5.6 Nothing in this Agreement excludes or limits liability on the part of either Party in respect of:

- (a) death or personal injury resulting from negligence or any liability which cannot be excluded or limited under Applicable Laws; or
- (b) any claim which is directly attributable to the Party's fraud.

6 Termination and suspension

- 6.1 OTX may add or remove any Product or suspend the Platform as it relates to all or any Products at any time in its sole discretion.
- 6.1.1 OTX may without liability to Customer:
- (a) suspend an Order following a Match while it undertakes verification activities. Where OTX's manual verification results in any Match not being treated as valid the relevant Order will promptly be restored to the Platform, unless Customer is notified otherwise; and/or
 - (b) suspend or cancel any orders associated with Customer (whether on the Platform or otherwise) where OTX, in its sole discretion, considers it appropriate to ensure compliance by any party with the Acceptable Use Policy.
- 6.2 OTX may suspend all or partial access to the Platform (in its absolute discretion and without any liability to Customer) if:
- (a) OTX considers there to be any relevant issue either: (i) found against Customer or any related party by a court, governmental agency or regulatory body or (ii) being investigated by such a body;
 - (b) Customer commits any breach of any of its obligations under this Agreement (including any failure to pay any charges due under or in connection with this Agreement, if any are applicable);
 - (c) OTX considers Customer has not adhered to the Acceptable Use Policy; and/or
 - (d) OTX (acting reasonably) considers that Customer's financial position has deteriorated such that Customer's ability to perform any of its obligations under this Agreement or a Contract is in jeopardy.
- 6.3 OTX shall act reasonably to lift any suspension under Clause 6.2 where Customer is able to demonstrate to the reasonable satisfaction of OTX that the circumstances giving rise to the suspension do not or have ceased to apply. Where any suspension continues for more than 10 days OTX shall be entitled to terminate this Agreement.
- 6.4 Either Party shall be entitled to terminate this Agreement by 30 days' notice to the other.
- 6.5 Any termination, cancellation or suspension under this Clause 6 shall be without prejudice to: (i) any liability for any pre-existing breach, (ii) any obligations to negotiate in good faith in relation to any Match which has already been made, and (iii) the effect of the provisions of Clauses 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12 which shall be deemed to survive termination of this Agreement.

7 Data Protection

- 7.1 Customer acknowledges and agrees that in the course of providing the Platform OTX will collect and process personal data concerning individuals using the Platform, including Participants, as a controller.
- 7.2 When processing personal data collected in accordance with Clause 7.1, OTX is responsible for identifying the purpose of processing which will be set out in the OTX Privacy Notice, as may be updated from time to time, as publicly available on the OTX website.

- 7.3 Each Party shall be responsible for complying with their obligations as controllers under Data Protection Legislation when processing personal data in connection with this Agreement.
- 7.4 Customer shall take reasonable steps to inform individuals that personal data will be processed in the course of using the Platform and to bring the OTX Privacy Notice to the attention of users who have access to the Platform through Customer.
- 7.5 In this Clause 7, the terms "controller", "personal data", "process", "processing" shall have the meaning attributed to these terms in Data Protection Legislation.

8 Miscellaneous

- 8.1 Neither Party may assign any of its rights and/or obligations under this Agreement, in whole or in part, without the prior written consent of the other.
- 8.2 This Agreement sets out the entire agreement and understanding between the Parties relating to its subject matter (including any products or services which may from time to time be provided under Clause 1.2) and applies to all orders entered on the Platform By Customer for communication to other Participants. This Agreement supersedes and excludes all existing agreements between the parties in respect of such subject matter and/or orders and (save to the extent prohibited by Applicable Law) all implied warranties and other terms.
- 8.3 This Agreement is a separate agreement and does not replace or vary any existing arrangements (if any) between the Parties in respect of any services not covered by the Clause 8.2 (including telephonic brokerage regardless of whether the Platform is used for deal management or other associated support services) save that (unless Customer specifically requests otherwise in relation to any order) Customer consents to OTX entering any order or trade on the Platform on its behalf at OTX's sole discretion.
- 8.4 OTX may in its sole discretion amend the Products, Acceptable Use Policy, Service Hours, Matching Rules and/or Customer Technical Requirements. OTX shall give Customer reasonable notice of such a change where it is reasonably practicable for OTX to do so.
- 8.5 In addition to the rights under Clause 8.4, OTX may vary the terms of this Agreement by no less than 40 days' notice to Customer (or by a shorter notice period where such variation is required to address a change in Applicable Law). Continued access to the Platform after the notice period will be deemed to be acceptance of the variation. No variation by Customer is effective or binding on the Parties unless it is in writing and signed by the authorised signatories of each Party.
- 8.6 Each Party acknowledges that:
- (a) it does not enter into this Agreement (and it will not enter any Order) on the basis of, and it does not rely and has not relied upon, any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral or written, express or implied) made or agreed to by any person (whether a Party or not) and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it are any remedies available under this Agreement; and
 - (b) this Clause does not apply to any statement, representation or warranty made fraudulently, for which the remedies available are all those available under the law governing this Agreement.
- 8.7 Nothing in this Agreement is to be construed as creating any agency, partnership or other form of joint enterprise between the Parties. Customer will not exercise its rights under this Agreement for the benefit of or at the direction of any other party.

- 8.8 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce, directly or indirectly, any of its terms. This Agreement is not intended to confer any benefit on any third party.
- 8.9 OTX shall be free to subcontract its obligations under this Agreement and any ancillary supporting functions or discretionary services. OTX shall be responsible for all acts and omissions by its subcontractors as if they were its own. OTX may licence the rights and permissions granted to OTX under this Agreement to any such subcontractor solely for the purpose of that subcontractor meeting those subcontracted obligations.
- 8.10 References to the singular include the plural (and vice versa), references to one gender include all genders and words denoting persons include individuals, bodies corporate, partnerships, unincorporated associations and other bodies.
- 8.11 The Parties acknowledge and accept that this Agreement is executed in English language only.

9 Form of notices

- 9.1 OTX may provide notice of any information relating to service status, bids, offers, suspension, Matches and market information via the Platform. All other notices may be provided by email save legal proceedings by either party must be provided in hard copy and delivered to the registered office of the other or (alternatively) at such other address as is shown on the Platform for that Party. For these purposes Customer's email address shall be any email address shown for a User on User's profile page on the Platform and OTX's email address is helpdesk@otxgroup.com.

10 Governing law and jurisdiction

English law governs this Agreement and its interpretation, execution and performance. The Parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute or claim relating to any non-contractual obligation arising out of or in connection with this Agreement). Each Party agrees to waive any objection to the English courts, whether on the grounds of venue or that the forum is not appropriate.

11 Severance

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

12 Definitions

In this Agreement the following terms have the meaning set out below:

Acceptable Use Policy means the acceptable use policy available at www.otxgroup.com/en/otx-platform/resources/, as may be revised from time to time.

Agreement means this agreement entered into between Customer and OTX.

Applicable Law means all laws and regulations applicable from time to time to the Parties and/or to any activities undertaken pursuant this Agreement.

Approved Group Company means at any point in time any company which is then within Customer's Group and which OTX has approved as an approved group company (and such approval has not subsequently been withdrawn by OTX) and **Customer's Group** means Customer,

any subsidiary or holding company from time to time of Customer, and any subsidiary from time to time of Customer's holding company.

By means in relation to any activity of OTX anything done by or on behalf of OTX and in respect of any activity of Customer anything done by or on behalf of Customer and shall be deemed to include anything done using Customer's Credentials and any data entry to the Platform which Customer consents to OTX undertaking on its behalf.

Contract means a contract entered into between Customer and another Participant to sell or purchase the subject matter of a Product.

Credentials means any username and password combination for accessing the Platform provided by OTX from time to time.

Customer means the organisation entering into this Agreement with OTX.

Customer's Credentials means the Credentials provided to Customer and/or any of its Users from time to time;

Customer Technical Requirements means the requirements shown on the OTX website at at www.otxgroup.com/en/otx-platform/resources/.

Data Protection Legislation means the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data (as it forms part of the law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018) and all applicable laws relating to the processing of personal data and privacy (including any legislation amending or replacing the same).

Intellectual Property Rights or **IPR** means all rights in any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights owned, used, or intended to be used, By any Participant or OTX whether or not registered, registrable or patentable.

Losses means all losses, liabilities, judgments, suits, actions, proceedings, claims, penalties, injuries, delays, damages, costs and expenses (including legal and other professional fees and disbursements).

Market Data Product means any market analysis trading index or other Material which is derived from pricing, volume and/or any other trading data or other information relating to Products.

Match means a match between a bid and an offer where such Match is made through the Platform or which is made by OTX between an Order By Customer and another bid or offer OTX solicits or is aware of and "Matching" shall be construed accordingly.

Matching Rules means at any time the rules then used by OTX to match compatible firm buy orders and sell orders where both are shown in the Platform as being:

- (a) for compatible products and in relation to compatible jurisdictions; and

- (b) for compatible pricing (using OTX's standard methodology for currency conversion and rounding if the buy order and sell order are stated in different currencies).

A summary of the then applicable Matching Rules is available at www.otxgroup.com/en/otx-platform/resources/.

Materials means any data, information and material in whatsoever form (including specifications, plans, methodologies, software, databases, reports, processes, designs, documentation, information and know-how).

Offline Participant means, at any given time, any party to which OTX then provides voice or other brokerage services which is not an Online Participant.

Online Participant means, at any given time, any party which is then customarily able to log in to directly place an Order on the Platform (disregarding for these purposes periods of suspension, service unavailability and other temporary issues).

Order means a bid or offer which is shown on the Platform and which relates to a Product.

OTX means Project OTX Limited (registered in England No. 08521881 and trading as OTX) whose registered office is situated at 9 Seagrave Road, London, SW6 1RP, England.

OTX Privacy Notice means the privacy notice provided by OTX, as may be amended from time to time, on its website at www.otxgroup.com/en/about-otx/privacy-policy/.

Party means OTX or Customer and Parties means both of them.

Participant means at any given time a party who is then an Online Participant or an Offline Participant.

Platform means OTX's trading platform it makes available subject to the terms of this Agreement to Customer.

Products means at any given time, the products that are able to be traded on the Platform at that time.

Representative means any authorised representative of OTX.

Service Hours means the hours during which OTX intends the Platform to be available as amended from time to time and shown on the OTX website at www.otxgroup.com/en/otx-platform/resources/ but for the avoidance of doubt excluding any scheduled maintenance periods shown on that web page.

Trading Information means any information relating to a specific Order, tender or Product.

User means an employee, officer, agent or sub-contractor of Customer who is granted access to use the Platform by OTX and provided with Credentials either as a result of such User having entered into this Agreement on behalf of Customer or as a result of any then existing User requesting that access be provided to that person.