

## Terms of Business

### Preamble

flatex Bank AG (FTXB or the Broker) is a credit institution (*Einlagenkreditinstitut*) and a trading member at the Frankfurt Stock Exchange and other regional stock exchanges in Germany and has trading access to other international trading platforms. As such the Broker is authorized to use the electronic trading system XETRA operated by the Frankfurt Stock Exchange and other electronic trading systems of the Stock Exchanges.

FTXB provides institutional brokerage services under the brand "KochBank".

Koch Wertpapier GmbH owns the brand "Koch Bank" and lends this brand to flatex Bank AG. In Germany, Koch Wertpapier GmbH acts under the brand "KochBank" as a tied agent as defined in section 2 para. 10 German Banking Act (KWG) in the name and for the account of flatex Bank AG, with regard to investment broking and placement business pursuant to section 1 para. 1a sentence 2 no. 1 and 1c KWG.

With regard to the aforesaid services flatex Bank AG is the only contractual partner of the client.

The Clients are only institutional investors which qualify as an "Eligible Counterparty" pursuant to the German Securities Trading Act (WpHG), interested in trading securities on the Stock Exchanges and on XETRA. The Parties agree that the Broker will provide the Client assistance in its endeavor to trade securities on the Stock Exchanges and on XETRA.

### 1. Definitions

The following definitions apply for the purposes of this contract:

<b>"Terms of Business":</b>	Terms
<b>"Broker"</b>	flatex Bank AG
<b>"Information of FTXB"</b>	supervisory and license
<b>"Order":</b>	any instruction from the Client to the Broker by telephone, fax, email or Bloomberg-Chat.
<b>"Party":</b>	the Broker or the Client.
<b>"Parties":</b>	the Broker and the Client collectively.
<b>"Regular Business Hours"</b>	has the meaning as defined in <b>Appendix 1</b>
<b>"Regulation":</b>	the applicable rules and regulations of the Stock Exchanges.
<b>"Stock Exchanges":</b>	Frankfurt Stock Exchange, other regional stock exchanges in Germany and other international trading platforms.
<b>"Stock Exchange Day":</b>	every day in which the market on which trades are carried out operates according to the relevant Stock Exchanges' calendar.

**"Trade Limits":** maximum authorized positions for transactions on the Stock Exchanges or on XETRA defined by the Broker and/or the relevant Stock Exchanges.

**"XETRA":** the electronic trading system operated by the Frankfurt Stock Exchange.

## **2. Subject Matter of the Terms of Business**

2.1 The Broker enters and executes Orders, transmitted by the Client by telephone, fax, email or Bloomberg-Chat on Stock Exchange Days during the Regular Business Hours at the Stock Exchanges according to the provisions set out in these Terms and the Appendices hereto.

2.2 The Broker may also provide the following services for the client:

- a) the provision of investment research
- b) any other services may be agreed upon between the broker and the client as deemed necessary

2.3 Unless otherwise agreed, the Broker cannot be held responsible by the client for any risks involved due to point 2.2. Furthermore, the broker cannot be held responsible by the client for any tax related consequences.

2.4 If FTXB provides information under the brand "KochBank", this shall not constitute investment advice, but are intended to facilitate the decision made independently by customers only.

## **3. Client Classification and Client Information**

The Broker will categorize the Client as an "Eligible Counterparty" under the provisions of the German Securities Trading Act (WpHG).

## **4. Money Laundering**

The Client will provide to Broker all information needed in regards of any money laundering rules and regulations.

## **5. Transmission of Orders**

5.1 The Client is obliged to establish a communication link with the Broker, which enables the Client to transmit Orders (via telephone, fax, email or Bloomberg-Chat) to the Broker. The Broker provides all necessary contact details of its employees, authorized to receive Orders from the Client (**Appendix 1**).

5.2 An Order is regarded as being transmitted to the Broker if such Order fulfils the conditions specified in these Terms and has been successfully transmitted to an Authorized Employee of the Broker on a Stock Exchange Day during the Regular Business Hours. Orders transmitted to the Broker outside the Regular Business Hours or to non-authorized persons by the Broker are not regarded as being transmitted.

5.3 Each Order received by the Broker will be registered with a timestamp. The Client may at any time request confirmation on a time-stamped Order. A transmission of an Order is binding for the Client.

## **6. Execution of Orders**

6.1 The Broker executes the Orders for the Client on a commission basis. An Order will only be executed if

- a) the Order is in the German or English language and contains all the necessary information and is clear, understandable and unambiguous for the Authorized Employee of the Broker;
- b) any Trade Limits defined by the Stock Exchanges or the Broker are respected;
- c) the Client is not in breach of any of its obligations arising from these Terms;
- d) the market conditions permit such execution; and
- e) such Order complies with all applicable Laws and Regulations.

6.2 The client acknowledges, that the Broker is allowed to forward the client's Orders to another financial services enterprise in compliance with the Execution Policy (*Zwischenkommission*).

6.3 The Broker executes Orders of the Client according to the Regulations.

6.4 The Client bears the risk of an incomplete and/or inaccurate Order or of a failed, incomplete and/or inaccurate transmission.

6.5 The Broker is not obliged to control or verify that Orders transmitted by the Client are accurate, i.e. that the content of the Orders is complete and correct. The Broker takes no responsibility for any inaccurate Orders transmitted by the Client.

6.6 The Broker will send to the Client a trade confirmation of every transaction via email, fax or other electronic ways no later than the first business day following the execution of the relevant transaction. Any other order- and trade confirmation, generated by the Stock Exchanges and/or a third party, do not have any legal impact and do not impose any legal obligations on the Broker.

The Parties agree that the Client must notify an Authorized Employee of the Broker of any discrepancies discovered between Orders and trade confirmations no later than twenty-four (24) hours after having received the relevant trade confirmation. Failure to contest a transaction within this deadline is deemed to be an agreement on the terms specified in the relevant trade confirmation. Objections must be reasoned and made in writing.

6.7 Further the rules in the Brokers Best Execution Policy are applicable

## **7. Settlement of Orders**

7.1 The Client warrants the timely fulfillment of its Orders on a delivery-versus payment basis. The settlement of the Orders via the clearing banks used by the Parties will occur on the second Stock Exchange Day following the day of the execution of the relevant transaction. In case of a non-timely fulfillment, the Client is liable for interests towards the Broker. The applicable interest rate for each day until the relevant settlement occurs is EONIA (European Overnight Interest Average) plus a margin of (0.5 %).

7.2 The settlement is governed by the usages (*Handelsusancen*) and the applicable Regulations. The settlement discharges the Broker of its obligations to the Client.

7.3 If the Client has not fulfilled in a timely manner, the Broker may conduct a compulsory settlement according to the Regulations. The notification of the Client by the Broker is a requirement for conducting such compulsory settlement according to the Regulations in writing by fax or by email. It is expressly agreed that all financial instruments and cash funds in the Client's account(s) are assigned to the Broker as security for the obligations taken on by the Client.

**8. MiFIR Post Trade Transparency**

Post-trade, all EEA investment firms (including SIs) must make public, via an approved third-party vendor (known as an Approved Publication Arrangement, or "APA"), the volume, price and time of OTC transactions for the instruments that are admitted to trade or traded on an EEA trading venue (i.e. qualified as TOTV). The broker will disclose OTC trades under attention of MiFIR if the broker is the selling counterpart of the otc trade.

**9. Regulatory Reporting pursuant to section 26 MiFIR (German Securities Trading Act)**

Please note that the client has to identify flatex Bank AG (LEI: 529900MKYC1FZ83V3121) within the reporting messages. Furthermore please note that the client has to report an OTC Trade (XOFF).

**10. Regulation on Short-Selling pursuant to European Directive No. 236/2012**

The Client is obliged to ensure that all orders are in line with EU Short-Selling regulations. This means that naked or uncovered short-selling is not permitted. By placing a sales order the client confirms that the sale is covered and that securities will be delivered in time.

**11. Conflict of Interest**

The Brokers "Conflict of Interest Policy" applies in aspect to any of the business conducted between the Client and Broker.

**12. Fees**

For each Order executed by the Broker, the Client has to pay the Broker a commission:

12.1 The Broker and the Client shall agree from time to time any fees, commissions, charges and expenses in respect of Transactions executed under these Terms of Business. These fees and commissions are free of VAT, if any other laws, rules and/or rules and regulations should apply, the Client and the Broker shall agree that such fees, commissions, charges and expenses shall be inclusive of any VAT.

12.2 The Client agrees to ensure as far as is reasonably practicable that any fees, commissions and expenses as may be agreed between the Client and the Broker from time to time in respect of Transactions executed under these Terms of Business are paid to the Broker by the relevant principal as soon as reasonably practicable following receipt of notice from the Broker to the Manager of the amount due.

**13. Information Obligations**

13.1 The Client shall notify the Broker in writing of any Authorized Employee of the Client. Each Order transmitted by the Client shall always reveal the identity of the Authorized Employee of the Client.

13.2 The Client has to take all necessary security measures to ensure that only Authorized Employees of the Client will contact the Broker with Orders.

13.3 The Client is bound to Orders, whether transmitted by an Authorized Employee of the Client or by a non-authorized person.

**14. Liability**

The Broker will render its services with the due care of a diligent businessman. Claims for compensation resulting from breaches of contract committed by the Broker, as well as claims arising from unauthorized acts will be restricted to cases in which it has acted either intentionally or with gross negligence.

14.1 In cases where material contractual obligations have been breached, however, the Broker will also be liable for simple negligence. In this case, liability will be limited to reimbursement of typical losses that are foreseeable for the Broker.

The Broker will therefore not be liable for consequential losses, indirect losses, lost profits, internal costs and wasted expenditure within the meaning of section 284 of the German Civil Code (BGB), or for other losses that are untypical of such agreements or are beyond the Broker's control.

14.2 The Broker shall not be liable for any damage resulting from acts or omissions by the Client and/or Authorized Employees of the Client, especially if unauthorized personnel of the Client transmit Orders. Additionally the Broker is not liable for any malfunction or unavailability of the communication link between the Client and the Broker and/or the trading facilities and technology operated by the Stock Exchanges.

14.3 The Broker shall not be liable for circumstances qualifying as "force majeure", including but not limited to any act of God, war, riot, natural disaster, strike, fire, court order, industrial disputes, acts, omissions or regulations of any government or supranational bodies, authorities or regulatory bodies (whether in Germany or elsewhere); partial or total failure, breakdown or malfunction of any energy supply or delays; or the failure of any relevant exchange, clearing house, or any other third party for any reason to perform its obligations. Computer viruses and intentional attacks of "hackers" on the computer system are also considered as "force majeure" provided that reasonable security measures have been taken.

#### **15. Indemnification by the Client**

The Client shall indemnify and hold harmless the Broker from any damages, loss, cost or liability (including, without limitation, legal fees and other costs of enforcing this liability) arising out of or resulting from any breach of any covenant or obligation by the Client under these Terms and arising out of or resulting from any unauthorized use.

#### **16. Taxes**

All payments shall be made free and clear of, and without withholding or deduction for, any Taxes of whatsoever nature, unless the same is required by Applicable Law.

#### **17. Telephone Recordings**

Either party may record and monitor telephone conversations and any other communications without the use of a warning or warning tone. The Broker and the Client agree that such records may be used as evidence in the event of a dispute or investigation and shall be admissible as evidence in any legal proceedings, to the fullest extent permissible by Applicable Law.

#### **18. Confidentiality**

18.1 Broker and Client will maintain confidentiality in respect of information or documentation that derives from the sphere of the other Party to these Terms and that is marked as confidential or, owing to other circumstances, is clearly identifiable as business or company secrets and, unless this information and documentation is needed to achieve the purpose of these Terms, will not use it themselves or distribute it without permission to third parties. The Parties to these Terms will impose similar obligations on their employees and authorized representatives.

18.2 If legally required to disclose such information or documentation, Broker and Client will be obliged to notify the other Party and to restrict the content of the relevant public announcements to what is required by law or by the authorities concerned. The Client is aware that the Broker, as a securities trading bank, is subject to various regulatory notification and disclosure duties.

18.3 The obligations specified in 18.1 and 18.2 will continue to apply after these Terms have expired.

## **19. Term and Termination**

19.1 These Terms will come into force upon execution by the Parties and remains in force for an indefinite period of time.

19.2 The right to extraordinary termination for cause remains unaffected. An important cause, which entitles to terminate without notice is deemed to exist if the Client is in default with its payment obligations or its obligations to settle Orders under these Terms and has not cured such breach within two (2) days after having been notified of such breach or if the Client or the Broker breaches other material obligations under these Terms.

## **20. Concluding provisions**

20.1 These Terms are governed by German law and exclude any and all rules on conflicts of private international law.

20.2 In addition, FTXB's prevailing general business conditions (*Allgemeine Geschäftsbedingungen und Sonderbedingungen, Ausführungsgrundsätze und Grundsätze für den Umgang mit Interessenkonflikten*) shall apply. Besides the aforesaid there are no agreements in addition to these Terms. Amendments to, additions to or the rescission of these Terms – including amendments to this Section 20.2 – must be made in writing, unless a stricter form is prescribed by law.

20.3 These Terms contain all final agreements made on its subject matter and replaces all oral and written negotiations, arrangements and covenants previously concluded between the Broker and the Client in respect of the subject matter of these Terms.

20.4 The exclusive place of jurisdiction for all disputes arising from or in connection with these Terms is Frankfurt am Main, Germany, so far as permitted by law.

20.5 In the event that one of the provisions of these Terms is or becomes void, invalid or unenforceable in full or in part, this shall not affect the validity or enforceability of all the other remaining provisions thereof. The void, invalid or unenforceable provision will be deemed to have been replaced by a provision that most closely approximates to the commercial intent of the void, invalid or unenforceable provision in terms of purpose, extent, time, place and scope of application. The same applies *mutatis mutandis* if these Terms proves to contain a commission.

## **APPENDIX 1**

### **Contact details for Orders via telephone, fax, email or Bloomberg-Chat**

For the purpose of orders via telephone, fax, email or Bloomberg-Chat under these Terms the Broker's contact details shall be:

Name: flatex Bank AG  
Address: Rotfeder-Ring 7, 60327 Frankfurt am Main, Germany  
Regular Business Hours: 8 am – 6 pm, European time (Berlin)

#### **Equity Sales:**

Name: **Joram Voelklein**  
Telephone: 0049 89 54 04 85 228  
Fax: 0049 89 54 04 85 299  
Email: Voelklein@Kochbank.de

Name: **Udo Becker**  
Telephone: 0049 89 54 04 85 221  
Fax: 0049 89 54 04 85 299  
Email: Becker@Kochbank.de

Name: **Christof Ruemmelein**  
Telephone: 0049 89 54 04 85 225  
Fax: 0049 89 54 04 85 299  
Email: Ruemmelein@Kochbank.de

Name: **Matthias Mirwald**  
Telephone: 0049 89 54 04 85 223  
Fax: 0049 89 54 04 85 299  
Email: Mirwald@Kochbank.de

Name: **Dietmar Blum**  
Telephone: 0049 89 54 04 85 220  
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