

Wednesday, 15 September 2004

2004

TRADING TERMS

(DISCRETIONARY)

ELITE E SERVICES LIMITED

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Client

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TRADING TERMS

ELITE E SERVICES LIMITED (“Elite E Services”) will invest and trade funds on behalf of the Client on the terms set out in this document (“Agreement”). Elite E Services may change the terms of this Agreement at any time.

TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms shall have the following meanings:

- (a) **“Available Funds”** means at any time the Client Funds held by Elite E Services that are not already invested;
- (b) **“Business Day”** means a day (other than a Saturday or a Sunday) on which banks, foreign exchange markets and Elite E Services are open for business;
- (c) **“Client”** means the legal body acting as the client of Elite E Services, being an individual, company, trust, or legal organization;
- (d) **“Client Funds”** means money of the Client which is deposited with and held by Elite E Services as agent of the Client for the purpose of investment on the Client’s behalf;
- (e) **“Contract”** means any contract, whether oral or written, entered into by Elite E Services as agent for the Client;
- (f) **“Initial Deposit”** means the amount of funds deposited by the client;
- (g) **“Market Rules”** means the rules, regulations, customs and practices of any exchange, clearing house or other organisation or market involved in the conclusion, execution or settlement of a Contract;
- (h) **“Trading Application Form”** means the form set out in Schedule 1;

1.2 In this Agreement unless the context otherwise indicates:

- (a) Words denoting the singular shall include the plural and vice versa and words denoting a given gender shall include all other genders;
- (b) Headings are for convenience only and shall not affect the interpretation hereof;
- (c) References to clauses are to clauses of this Agreement; and
- (d) References to any time of the day are to New Zealand time.

2. DISCRETIONARY ACCOUNT

- 2.1 Subject to the provisions of this Agreement the Client grants Elite E Services full discretionary authority to enter into Contracts (including on a margined basis) or otherwise invest the Client Funds on behalf and as agent of the Client at any time without any need first to obtain from the Client specific authority for any relevant Contract or other investment or without first referring to the Client the details of or reasons for any relevant Contract or investment.
- 2.2 Immediately on signing this Agreement the Client will:
- (a) Complete the Trading and Investment Account Application form and deliver it to Elite E Services; and
 - (b) Pay the Initial Deposit to Elite E Services to be held as part of the Client Funds.
- 2.3 The Client will promptly pay to Elite E Services:
- (a) Any money which the Client is required to pay under this Agreement; and
 - (b) Any money which may be required in or towards clearance of any debit balance on the Client Deposit.
- 2.4 Notwithstanding any other provision of this Agreement, in respect of any Contracts or other investment Elite E Services will be entitled to take any action it considers necessary in its absolute discretion to ensure compliance with Market Rules.
- 2.5 Elite E Services will not enter into any Contract or other investment on behalf of the Client if the Available Funds are insufficient.

3. CLIENT MONEY

- 3.1 Any money which is held by Elite E Services as a credit to the Client Funds will at all times remain the beneficial property of the Client and accordingly will be held by Elite E Services as agent of the Client. The Client Funds will at all times be separately accounted for by Elite E Services.
- 3.2 The Client agrees that all right, title and interest to and in the Client Funds is free and clear of any liens, charges, encumbrances or any other interest of any third party other than the Client.

4. CLIENT DEPOSIT

- 4.1 While the Client may request the return of all or part of the Client Funds at any time, Elite E Services will only be required to return the Client Funds to the extent that the Available Funds permit. Elite E Services will use all reasonable endeavours to close out any Contract or otherwise cash up any investment made on behalf of the Client in order to satisfy any request by the Client for the return of all or any part of the Client Funds but will not be obliged close out any such Contract or cash up any such investment where it is not possible to do so at the time of the request or to do so would jeopardise funds invested by other clients of Elite E Services.
- 4.2 Elite E Services will be entitled to deduct the following from the Client Funds:

- (a) Cash withdrawals from the Client Funds requested by the Client;
- (b) Realised and unrealised losses (whether described as losses, interest charges, or otherwise) on Contracts and other investments; and
- (c) Elite E Services fees.

4.3 Elite E Services will be entitled to add the following to the Client Deposit:

- (a) Any realised profits made on Contracts closed out or investments cashed in by Elite E Services on behalf of the Client;
- (b) Cash payments into the Client Funds; and
- (c) Realised and unrealised profits (whether described as profits, interest receipts, or otherwise) on Contracts and other investments.

4.4 If at any time the balance of the Client Funds is in debit Elite E Services may in its sole discretion by notice require the Client to pay more money into the Client Funds to restore a zero balance and may immediately close out all or any Contracts and/or cash up any other investments if such payment is not made by the Client by the close of the Business Day following the day on which the notice is given.

4.5 In extreme circumstances where any continuing Contracts are moving or have moved particularly quickly against the Client, Elite E Services may exercise its right to close out all or any such Contracts without first giving notice requiring the Client to pay more money under clause 4.4.

4.6 If Elite E Services exercises its right to close out any Open Position, it may apply any proceeds in payment of any amounts due from the Client to Elite E Services.

4.7 Elite E Services will not, unless otherwise agreed in writing, be liable to pay any interest to the Client in respect of the Client Funds.

5. STATEMENTS

5.1 Elite E Services will provide the Client with a six monthly report setting out:

- (a) Details of the performance in the previous six months of Contracts and other investments entered into by Elite E Services on behalf of the Client; and
- (b) Details of movements in the Client Funds during that six month period.

6. CONTRACT TERMS

6.1 Each Contract and other investment will be governed, as appropriate, by the terms and conditions set out in this Agreement, the relevant Market Rules and any other terms and conditions agreed as applying to the particular Contract or investment.

7. CHARGES AND TAXATION

- 7.1 Elite E Services will be paid:
- (a) An account opening fee of on signing of this Agreement; and
 - (b) A brokerage fee equal to 50% of the amount (if any) of any realised profits earned by the trading and/or investment of the Client Funds.
- 7.2 The Client authorises Elite E Services to deduct the foregoing fees from the Client Funds.
- 7.3 The Client will pay all taxes and other fees incurred in connection with the foregoing fees or any Contract or other investment.
- 7.4 Elite E Services will be entitled to deduct or withhold from any payment made under this Agreement or credited to the Client Funds any tax required by law to be deducted or withheld from any such payment or credit.

8. PAYMENTS

- 8.1 If the Client makes any payment under this Agreement which is subject to any withholding or deduction, the Client will pay to Elite E Services such additional amount to ensure that the amount actually received by Elite E Services will equal the full amount Elite E Services would have received had no withholding or deduction been made.
- 8.2 Elite E Services may at its discretion withhold any withdrawal from the Client Funds requested by the Client if:
- (a) Elite E Services reasonably considers that funds may be required to meet any current or future obligations in respect of any existing Contracts or other investments;
 - (b) The Client has any contingent liability to Elite E Services;
 - (c) Elite E Services reasonably determines that there is an unresolved dispute between Elite E Services and the Client in connection with this Agreement or any Contract or other investment.

9. RISKS

- 9.1 The Client agrees and acknowledges that:
- (a) The Client Funds may be invested in very high risk activities which involve the exercise of judgment by Elite E Services. Whilst Elite E Services will exercise all reasonable care in forming its judgments, it cannot guarantee that losses will not be made from time to time and it will have no liability for any losses incurred in connection with any decision taken by Elite E Services to enter into a Contract or to close out an existing Contract or to enter into another investment or cash up an investment on behalf of the Client;

- (b) The type of investments to be made by Elite E Services may only be suitable for sophisticated individuals and institutions who are prepared to sustain potential losses in excess of the Client Funds;
- (c) Although Elite E Services will use all reasonable endeavours to close out existing Contracts before the Client Funds become negative in amount, in the unlikely event that despite the reasonable efforts of Elite E Services a negative balance in the Client Funds results from adverse movements under any Contract, Elite E Services will have the right to recover the negative balance from the Client under the terms of this Agreement;
- (d) The Client's financial condition, objectives and temperament are suited to its involvement in the types of trading and investment described in this clause;
- (e) There are risks associated with utilising an internet-based trading system, including the failure of hardware, software and internet connection and that since Elite E Services cannot control these matters it cannot be responsible for communication failures, distortions or delays when trading via the internet;
- (f) Elite E Services will be entitled to receive and retain for its own benefit any brokerage paid to it by any third party in consideration of entering into a Contract or other investment;
- (g) Elite E Services or persons connected with Elite E Services may have an interest, relationship or arrangement that is material in relation to any Contract or other investment and the Client acknowledges that Elite E Services may transact such business without prior reference to the Client;
- (h) Elite E Services or persons connected with Elite E Services may provide services to third parties whose interests may be in conflict or competition with the Client's interests;
- (i) Elite E Services or persons connected with Elite E Services may, or may act on behalf of other customers who may, take positions opposite to the Client or may be in competition with the Client to acquire the same or a similar position;
- (j) Elite E Services does not advise the Client on and has no responsibility at all for the Client's taxation liabilities or affairs.

10. EVENTS OF DEFAULT AND TERMINATION

10.1 Elite E Services will have the right to terminate this Agreement and to close out all or any existing Contracts (to the extent that any existing Contracts have not already been closed out) and cash up any other investments upon or at any time after the happening of any of the following events without giving prior notice to or receiving further authority from the Client:

- (a) If the Client fails to make any payment when due under this Agreement;
- (b) If the balance of the Client Funds becomes negative and the Client has not duly paid the required additional amount.

- (c) If the Client suspends payment of its debts, makes any composition with its creditors, suffers a receiver of some or all of its assets to be appointed, takes or has any proceeding taken against it in bankruptcy or (being a company) taken or suffers any steps to be taken for its liquidation other than for the purposes of amalgamation or reconstruction approved in writing by Elite E Services;
- (d) If the Client fails in any respect fully and promptly to comply with any obligations to Elite E Services or through Elite E Services to any exchange, clearing house, or other organisation or market;
- (e) If it becomes unlawful for Elite E Services to maintain or give effect to all or any of the obligations under this Agreement or if Elite E Services or the Client is requested to close out a Contract (or any part thereof) by any regulatory authority whether or not that request is legally binding.

10.2 On termination, Elite E Services may at any time and without notice combine or consolidate all or any Client Funds maintained by the Client and offset any and all amounts owed to or by Elite E Services and retain any sum owed by Elite E Services to the Client against any contingent or actual liability of the Client to Elite E Services.

11. INDEMNITY AND LIABILITY LIMITATION

11.1 The Client will on demand by Elite E Services indemnify Elite E Services and keep it indemnified against all costs, expenses, liabilities and losses sustained or incurred by Elite E Services as a result of:

- (a) The Client breaching this Agreement;
- (b) Elite E Services entering into any Contract or other investment;
- (c) Elite E Services exercising its rights under clause 10.1.

11.2 The indemnity in clause 11.1 will survive termination of this Agreement.

11.3 The certificate of Elite E Services as to any amount due under clause 11.1 will be conclusive except for any manifest error.

11.4 Elite E Services will not be liable:

- (a) For any loss, expense, cost or liability suffered or incurred by the Client as a result of or in connection with Elite E Services providing services to the Client under this Agreement unless and to the extent that the loss, expense, cost or liability is suffered or incurred as a result of Elite E Services' negligence or wilful default; or
- (b) For any consequential loss suffered or incurred by the Client, whether arising from Elite E Services' negligence or otherwise.

12. NOTICES

12.1 Except as otherwise set out in this Agreement any notice, demand or other communication to be given by one party to the other pursuant to this Agreement shall be in writing and shall be delivered or sent to the parties at their respective addresses set out below or by facsimile or email to the following numbers:

(a) In the case of Elite E Services:

80 Lichfield Street

Christchurch
New Zealand

Telephone: +64-3-377-3548

Email: info@ees.net.nz

(b) In the case of the Client, to the postal, facsimile or email address as advised by the Client to Elite E Services,

or to other addresses as one party may from time to time notify to the other in writing.

12.2 Any notice, demand or other document given or made by Elite E Services under this Agreement shall be deemed to have been delivered as follows:

(a) If sent by hand, at the time delivered;

(b) If sent by mail, 5 Business Days after it is posted;

(c) If sent by facsimile or electronic transmission, at the time of receipt of a correct and complete transmission report by the sender at the close of transmission,

or upon actual receipt by the receiving party, if earlier.

13. ASSIGNMENT

13.1 The Client may not, without the prior written consent of Elite E Services transfer its interests in or obligations under this Agreement.

14. TERM OF AGREEMENT

14.1 Unless terminated earlier pursuant to clause 10, this Agreement shall remain in force until terminated by either party by notice in writing to the other.

14.2 Upon termination Elite E Services will immediately close all Open Positions and cash up any other investments and refund to the Client the Client Funds which remains after appropriate adjustments have been made to the Client Funds for any outstanding fees and for the effect of closing out Open Positions.

15. GENERAL

- 15.1 This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writing with respect thereto.
- 15.2 Where more than one person is named as the Client the obligations of the Client under this Agreement shall bind each of them jointly and severally.
- 15.3 This Agreement may only be varied by written instrument or instruments signed by and on behalf of both Elite E Services and the Client.
- 15.4 If at any time any provision of this Agreement or any Contract or investment is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired thereby.
- 15.5 No failure of the part of either party to exercise, and no delay on its part in exercising, any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 15.6 The Client may be providing Elite E Services with personal information for the purposes of the Privacy Act 1993 and the Client consents to Elite E Services processing all such information for the purposes of performing its obligations under this Agreement and also for the purposes of administering the relationship between Elite E Services and the Client.
- 15.7 This Agreement will be governed by New Zealand law and be subject to the jurisdiction of the New Zealand courts.

CLIENT EXECUTION

SIGNED for and on behalf of)
)
in the presence of) _____ Director _____ Director/Authorised
 Signatory

Witness signature

Full Name

Address

Occupation

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness will be necessary for each signature.

OR

SIGNED by)
)
in the presence of) _____ Signature

Witness signature

Full Name

Address

Occupation

SCHEDULE 1

ELITE E SERVICES LIMITED

TRADING ACCOUNT APPLICATION FORM

I/We wish to apply to open a trading account for the purchase and sale of currency through Elite E Services.

I/We acknowledge that I/we have read the attached Trading and Investment Terms ("the Agreement") and fully understand the terms and conditions of the Agreement.

Type of Account Discretionary Account

Amount of Initial Client Deposit USD EUR NZD

Commencement Date

Account Holder's Name

Postal Address

Contact Details Phone:
Fax:
Email:

Authorised Signatory(s)

Please complete the above form and return together with the attached Trading and Investment Terms which must be signed on the final page with all other pages initialled, to:

Elite E Services Limited

80 Lichfield Street
Christchurch
New Zealand

Phone: 0064-3-377-3548 Web: www.ees.net.nz
Email: info@ees.net.nz