



Terms of business

Professional Clients

Version: August 2021



1. Introduction

These terms of business, as supplemented from time to time (including the Annexes, the “**Agreement**”) comprise the terms and conditions under which FIL (LUXEMBOURG) S.A. (“**FILUX**”) provides the Service to you, in your capacity as Professional Client.

The defined terms used in this Agreement are set out in Annex 1.

2. Information about us

FILUX is an investment firm authorised by the Commission de Surveillance du Secteur Financier (“CSSF”) to provide certain investment services and activities under MiFID II.

FILUX operates in Germany as a branch within the meaning of section 73 (1) Financial Institutions Act and is entered in the Federal Financial Supervisory Authority (“BaFin”) register under BaFin-ID 10155627. FILUX’s branch passport in Germany encompasses, inter alia, the reception and transmission of orders in relation to (1) transferable securities, (2) money-market instruments, (3) units in CIUs, and (4) options, futures, swaps, forward rate agreements and any other derivative contracts in relation to securities.

The name and address of our office are:

FIL (Luxembourg) S.A. - Germany Branch

Mail address: Postfach 20 01 18, 60605 Frankfurt am Main

Office address: Kastanienhöhe 1, 61476 Kronberg im Taunus

The competent authorities are:

- in Luxembourg: Commission du Surveillance du Secteur Financier, 283, route d’Arlon, 2991 Luxembourg, Luxembourg
- in Germany: Federal Financial Supervisory Authority, Marie-Curie-Straße 24-28, 60439 Frankfurt am Main, Germany

3. Communication with us

If you or any of your personnel or other relevant individuals wish to exercise any of the rights relating to your information set out below, or if you have any questions or comments about data protection, or you wish to raise a complaint about how we are using your information, you can contact us using the above details, refer to clause 19 of this Agreement, or any other details notified to you from time to time.

You expressly authorise us to communicate information to you via our website ([Private Markets Access \(fidelity.de\)](https://www.fidelity.de)) to the extent permitted by the Applicable Regulation. We may also send you any written communication to the address (which may be an email address) provided by you.

4. Language

This Agreement is supplied to you in English and the language of communication between us will be English or German. You expressly accept to receive documents and other information from us in English or German.



5. Service

We will promote and offer to you a selection of shares/units in CIUs (the “**Service**”).

We will not collect or transmit any of your orders relating to the shares/units in CIUs. Any such orders shall be directly addressed by you to the entity marketing the CIUs under separate arrangements between you and such entity and you and the CIUs, as applicable.

You acknowledge that prior to the execution of this Agreement you have received the FILUX Client Information Document and that you will take note of it and any additional information as required by Applicable Regulation.

We will not provide you with any investment advice or personal recommendations. We will not advise you on the legal, regulatory, tax, business, financial, accounting or other consequences of a transaction in CIUs or any other financial instruments. You take all investment decisions based on your own judgment and, if you deem it appropriate, on the advice of independent third parties, without relying on us.

We will not hold financial instruments or funds belonging to you.

6. Your capacity and status - Client categorisation

We shall treat you as a Professional Client as defined by the Applicable Regulations, in accordance with your categorisation prior to execution of this Agreement.

You are entitled to request a different client categorisation. Where you request re-categorisation, you must confirm such request in writing.

It is your responsibility to request a categorisation with a higher level of protection when you are unable to adequately assess or manage the risks associated with the Service, types of transactions or financial instruments. This request may apply generally to the Service or one or more types of transactions or financial instruments/CIUs. Any change in categorisation must be agreed with us in writing.

You are responsible for informing us if you no longer meet the criteria of your categorisation.

If you request to be reclassified as a retail client, please be advised that we will not be able to provide the Service to you on that basis.

If you act as Principal, you accept the terms of this Agreement for yourself.

If you act as Agent on behalf of one or more Principals:

- (i) you accept the terms of this Agreement for yourself and on behalf of each of the Principals;
- (ii) we will only treat you as our client for the purposes of the Applicable Regulations and not any of the Principals.

7. Information on costs and associated charges

There are no service-related costs associated with the Service charged by FILUX. You will only incur the costs related to the financial instrument – shares/units in CIUs - and to the investment services provided by the entity with which you will place your orders regarding the CIUs. Cost disclosures related



to such investment services and the CIUs will be provided to you by the above entity and/or the CIUs, as applicable.

8. Disclosure of inducements

We may pay, receive or share fees, commissions and/or non-monetary benefits with third parties, including our Associates to the extent permitted by Applicable Regulations. We will provide you with details of the nature and amount of such fees, commissions and/or non-monetary benefits to the extent required by Applicable Regulations.

You will need to conduct your own assessment to determine (i) whether or not some of the benefits or services we may provide to you are inducements and (ii) whether or not you are eligible to receive such benefits or services from us.

In consideration of fees, commissions and/or non-monetary benefits we or our Associates may receive from third parties in connection with the provision of the Service we may offer to you additional or higher level service in accordance with Applicable Regulations. You agree that we or our Associates, as the case may be, are not obliged to pay out such fees, commissions and/or non-monetary benefits to you.

9. Appropriateness

When providing the Service, FILUX, based on your categorisation as Professional Client, is entitled to assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to the Service and the CIUs.

For the purposes of the above and of your categorisation as Professional Client, FILUX is entitled to rely on the information you have supplied to us and you represent and warrant that such information is true, accurate and complete. You undertake to notify FILUX immediately if any of such information changes in any respect.

10. Recording of conversations

We may keep, record and use voice-recording devices in connection with any communication with us. We may also record and keep any other electronic communication between us and you.

You agree to inform your personnel and any other relevant individual that such recording takes place. Such records will be our exclusive property and will be conclusive evidence of such communications. A copy of such recordings and communications will be available upon request for a period of five years, and, if requested by the supervisory authority, for a period of up to seven years.

11. Privacy and confidentiality

In the context of this Agreement, you may make available to us and/or to our Associates information relating to your staff to the extent this is necessary for the provision of our Service to you. To the extent that such data is personal data within the meaning of Regulation (EU) 2016/679 and its local implementing legislation ("**Data Protection Laws**"), you will provide the personal data to us and/or to our Associates in our capacity as data controller(s). We and/or our Associates will act as data controller(s) in our own right within the meaning of the Data Protection Laws. With regard to the personal



data, you, we and our Associates shall comply with the respective obligations under the applicable Data Protection Laws. In particular, you, we and our Associates shall ensure that any processing of personal data is lawful and based on an appropriate legal basis. Data processing by us and our Associates may include the transfer of such data outside the European Economic Area, subject to the requirements under Art. 44 et seq. Regulation (EU) 2016/679. Such personal data may also be used by us and/or our Associates to update records and to inform you in respect of similar products and services unless otherwise indicated by you. You warrant that any personal data provided to us and/or to our Associates have been collected in a such a manner that we and/or our Associate may lawfully process them. You shall not do, or cause or permit to be done, anything that may result in a breach by us or by our Associates of the Data Protection Laws. You acknowledge that information provided by us where marked as 'confidential' or relating to any personal data of our officers and employees is of a confidential nature and business sensitive. By accepting the information, you agree that if at any time you receive a request from any person claiming to be entitled to such information, then you shall immediately notify us of the nature and scope of the request and shall not respond to that person without first consulting with us and having regard to our representation.

12. Termination

Any party may terminate this Agreement by giving a 30 calendar days' prior written notice to the other party, delivered in accordance with clause 3.

13. Entire agreement

This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement as of the effective date hereof excluding any terms implied by law or Applicable Regulations that may be excluded by contract. To the extent permitted by Applicable Regulations and excluding the case of fraud, you agree and acknowledge that your only rights and remedies in connection with this Agreement shall be for breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those arising in tort or arising at law).

14. Amendment

We may amend the terms of this Agreement with at least calendar 10 calendar days' prior written notice. If an amendment is necessary to comply with Applicable Regulations, we may do so with immediate effect.

You are entitled to terminate this Agreement if you do not accept any amendment to this Agreement made by us under this clause 14.

15. Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.



16. Know your customer

To the extent our relationship with you will be covered by applicable laws and regulations on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, we may be required to seek further evidence and confirmation of your identity and the business you propose to undertake with us. In addition, where you act as an Agent, we may require confirmation and/or evidence that appropriate evidence of the identity of your Principals has been obtained and recorded in accordance with procedures maintained by you.

If satisfactory evidence of your identity and/or the identity of any beneficial owner is not obtained within a reasonable period, we reserve the right not to provide the Service.

17. Limitation of liability

Neither party nor any of its affiliates, nor any personnel, shall be liable for any loss, howsoever arising, incurred or suffered by the other party under this Agreement unless such loss arises directly from negligence, wilful default or fraud of the other party, its affiliates, or the personnel of its affiliates.

Under no circumstances shall you, we, any Associate and respective affiliates, or any personnel, be liable for losses suffered by the other party or any third party for any (i) indirect, special or consequential damages, (ii) loss of profits, (iii) loss of goodwill or (iv) loss of business opportunity arising out or in connection with this Agreement, regardless of whether the possibility of such losses or damages has been disclosed to, or could have been reasonably foreseen by you, us, our respective affiliates or the personnel. With respect to (ii), (iii) and (iv), neither you, we, any Associate and respective affiliates nor the personnel shall be liable regardless of whether such losses are direct or indirect. Nothing in this Agreement shall limit the liability of any party for any liability that cannot be lawfully excluded or limited. Nothing in this Agreement shall exclude or limit any duty or liability which a party may have to another party under the Applicable Regulations, which cannot be excluded or limited thereunder.

18. Applicable law and jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and shall be construed in accordance with, the laws of the Grand Duchy of Luxembourg.

All disputes arising out of or in connection with this Agreement or any non-contractual obligations arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the courts of the Grand Duchy of Luxembourg.

19. Complaints

If you have any complaints about our performance of the Service, you should follow the steps outlined in our complaints handling policy which is available at <https://www.fidelity.de/beschwerdemanagement-institutionelle-anleger-und-private-markets-access/>.



IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused their proper and duly authorised officers to execute and deliver this Agreement as of the day and year first above written.

Date **FIL (LUXEMBOURG) S.A.**

By:

Name:

Title:

Date **[CLIENT]**

By:

Name:

Title:

Date **[CLIENT]**

By:

Name:

Title:



ANNEX 1

Definitions

In this Agreement, references to the singular shall also be construed as references to the plural, and vice versa, depending on the context.

“**Agent**” means a person (including any entity) that acts on behalf of one or more Principals under this Agreement.

“**Agreement**” means these terms of business, as supplemented from time to time (including the Annexes).

“**Applicable Regulations**” means all applicable laws, rules and regulations concerning the provision of investment services (including without limitation the Rules and any rules, policies, guidelines and practices of a relevant Regulator and any applicable economic sanctions programmes) from time to time, including but not limited to, EU MiFID II Acts.

“**Associate**” means any entity controlled, directly or indirectly, by FIL (Luxembourg) S.A., or any entity that controls, directly or indirectly, FIL (Luxembourg) S.A or is directly or indirectly under common control of the FIL (Luxembourg) S.A.

“**BaFin**” means the Federal Financial Supervisory Authority in Germany.

“**CIU**” means an undertaking for the collective investment in transferable securities falling within the scope of application of Directive 2009/65/EC and undertaking for the collective investment falling within the scope of application of Directive 2011/61/EC, including, amongst others, funds available on the platform of Moonfare GMBH (acting in capacity as tied agent of AHP Capital Management GmbH).

“**CSSF**” means the Luxembourg Commission de Surveillance du Secteur Financier.

“**EU MiFID II Acts**” means MiFID II, MiFIR and all relevant implementing acts and delegated acts based on MiFID II and MiFIR.

“**FILUX**”/“**we**”/“**us**”/“**our**” means FIL (LUXEMBOURG) S.A.

“**MiFID II**” means Directive 2014/65/EU of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments.

“**MiFIR**” means Regulation (EU) no. 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments.

“**Principal**” means the party, or parties, on whose behalf the Agent acts.

“**Professional Client**” means a client meeting the criteria laid down in Annex II of MiFID II.

“**Regulator**” means any regulator to whose rules or regulations we or you are subject in relation to the services provided by us under this Agreement, including but not limited to CSSF and BaFin.

“**Service**” has the meaning given to it in clause 5.