

STANDARD TERMS AND CONDITIONS GOVERNING  
FOREIGN EXCHANGE TRANSACTIONS

YOU ARE REQUIRED TO READ THE TERMS CAREFULLY BEFORE EXECUTING AN AGREEMENT  
RELATING TO, AND COMMENCING TRADING WITH US IN FOREIGN EXCHANGE TRANSACTIONS.

## STANDARD TERMS AND CONDITIONS GOVERNING FOREIGN EXCHANGE TRANSACTIONS

In consideration of Oversea-Chinese Banking Corporation Limited (the "Bank") transacting any foreign exchange transaction, rolling over such foreign exchange transaction, accepting and/or maintaining one or more Accounts (as defined hereunder) of the person accepting a Facility (as defined hereunder) from the Bank (the "Customer", which expression shall include the undersigned's personal representatives, executors, administrators, trustees, successors and permitted assigns) on the terms and conditions of the Bank's facility letter to the Customer, the Customer understands and agrees as follows.

### 1. DEFINITIONS AND CONSTRUCTION

#### 1.1 Definitions

Unless otherwise required by the context, the following terms shall have the following meanings in this Agreement:-

"Account" means the account(s) opened by the Customer with the Bank and designated as such for the purposes of the Facility;

"Advice" means any statement or confirmation in respect of any FX Transaction;

"Agreement" has the meaning given to it in Clause 2.1 and as may be amended and supplemented from time to time;

"Business Day" means a day on which commercial banks and the foreign exchange market in Singapore are open for business for an entire day (and shall exclude Saturdays and Sundays);

"Collateral" means a collateral security provided to the Bank by the Customer in accordance with the provisions of Clause 7;

"Currency Obligation" means any obligation of a Party to deliver a Permitted Currency pursuant to an FX Transaction;

"Currency Pair" means the two Permitted Currencies which may be exchanged in connection with an FX Transaction;

"Early Termination Date" means the date of termination designated by the Bank of the FX Transactions pursuant to Clause 6 of this Agreement;

"Event of Default" in relation to the Customer means the occurrence of any of the following events:-

- (i) the Customer fails to pay any amount due under any FX Transaction or this Agreement at the time, in the currency and in the manner specified by the Bank;
- (ii) the Customer fails to perform or comply with any obligation under any FX Transaction or this Agreement;
- (iii) the Customer fails to maintain the required Collateral with the Bank;
- (iv) any representation or warranty made or deemed to be made by the Customer herein or any document delivered hereunder or in relation to this Agreement is not complied with or proves to be untrue in any material respect;
- (v) there is a loss of or impairment to the first priority status of any security or the Collateral given by the Customer to the Bank for the purposes of the Facility;
- (vi) any indebtedness of the Customer is declared to be due and payable (other than by regularly scheduled payment) prior to the stated maturity thereof;

- (vii) any step is taken by any person or a resolution is passed for the bankruptcy or winding up of the Customer;
- (viii) the Customer stops or suspends payment of its/his debts or is unable or admits its/his inability to pay its/his debts as they fall due, or commences negotiations with its/his creditors for the rescheduling of its/his debts or proposes or enters into any composition with its/his creditors;
- (ix) an encumbrancer takes possession of, or a trustee, receiver, judicial manager, manager or similar officer is appointed for, or a distress, execution, attachment or other process is levied or enforced upon any account of the Customer with the Bank or upon any part of the Customer's assets;
- (x) a suit, arbitration or administrative proceeding or any other step under any foreign or domestic law relating to adjustment of debts, bankruptcy or insolvency of the Customer is commenced, filed or applied for against the Customer, or action is taken by the Customer to effect any of the foregoing;
- (xi) the Customer suffers, in the opinion of the Bank, a material adverse change in its/his financial condition, or the Customer fails to give adequate assurance satisfactory to the Bank of its/his ability to perform its/his obligations under this Agreement or any FX Transaction within forty eight (48) hours (or such other period as specified by the Bank) of a request by the Bank to do so;
- (xii) if the Customer ceases or threatens to cease to carry on all or a substantial part of its/his business;
- (xiii) it becomes unlawful for the Bank or the Customer to perform any FX Transaction or the obligations hereunder;
- (xiv) any event occurs or circumstances arise which the Bank determines give(s) reasonable grounds for believing that the Customer may not be able to perform or comply with any one or more of its/his obligations under this Agreement or any FX Transaction; or
- (xv) any event occurs, which under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events mentioned in this provision;

"Facility" means the foreign exchange facility made available by the Bank to the Customer pursuant to this Agreement;

"Forward Price" means the rate of exchange at which one Party agrees to purchase an agreed amount in one Permitted Currency against the sale by it to the other Party of an agreed amount in another Permitted Currency;

"FX Transactions" means Non-Deliverable Forwards and Transactions;

"HRR Rate" means the rate at which a Transaction was originally transacted but adjusted to include all such charges and costs (including, without limitation, costs in the form of swap points) as the Bank may in its absolute discretion impose;

"Maintenance Account" means an account opened by the Bank to record/deposit any Collateral by way of margin calls;

"Margin" means the ratio (expressed as a percentage) of the value of the Collateral as determined by the Bank or the cash Collateral which is furnished to the Bank to the aggregate exposure of the Bank as determined by the Bank;

"Non-Deliverable Forward" means a transaction between the Parties for the purchase by one Party of an agreed amount in one Permitted Currency against the sale by it to the other Party of an agreed amount in another Permitted Currency, where obligations to deliver both such amounts are discharged by settling the difference between the Spot Price on the Value Date and the Forward Price/such amounts, which is subject to this Agreement and in respect of which transaction the Parties have agreed on (whether orally, electronically or in writing): the Permitted Currencies involved, the Forward Price/the amounts of such Permitted Currencies to be purchased and sold, the Value Date, the Permitted Currency to be delivered on the Value Date (in settlement of the difference between the Spot Price and the Forward Price/such amounts) and which Party will purchase which Permitted Currency;

"Parties" means the parties to this Agreement, and "Party" means either of them;

"Permitted Currency" means such currencies as may be designated by the Bank from time to time for the Facility or for any particular FX Transaction;

"Spot Date" means the spot delivery day for the relevant Currency Pair as determined by the Bank;

"Spot Price" means the rate of exchange at the time at which such price is to be determined for foreign exchange transactions in the relevant Currency Pair for value on the Spot Date, as determined in good faith by the Bank;

"Transaction" means any transaction (including any existing transaction which is rolled over at the HRR Rate) between the Parties for the purchase by one Party of an agreed amount in one Permitted Currency against the sale by it to the other Party of an agreed amount in another Permitted Currency, both such amounts being deliverable on a certain Value Date, which is subject to this Agreement and in respect of which transaction the Parties have agreed on (whether orally, electronically or in writing); the Permitted Currencies involved, the amounts of such Permitted Currencies to be purchased and sold, which Party will purchase which Permitted Currency and the Value Date;

"United States Dollars" means the lawful currency of the United States of America; and

"Value Date" in respect of an FX Transaction means the date specified by the Bank on which payment is due from the Customer to the Bank and vice-versa in respect of such FX Transaction.

## 1.2 Construction of the Agreement

Words denoting the singular number only shall include the plural number also and vice versa and words importing the masculine gender shall also include the feminine gender. The Clause headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement. Unless otherwise specified, references to Clauses and Paragraphs are to be construed as references respectively to the clauses and paragraphs of this Agreement.

## 2. FX TRANSACTIONS

### 2.1 Single Agreement

This Agreement, the terms agreed between the Parties with respect to each FX Transaction (and, to the extent recorded in an Advice, each such Advice), and all amendments to any of such items shall together form this Agreement between the Parties and shall together constitute a single agreement between the Parties. The Parties acknowledge that all FX Transactions are entered into in reliance upon such fact, it being understood that the Parties would not otherwise enter into any FX Transaction.

### 2.2 Advice

FX Transactions shall be confirmed by the Bank to the Customer by mail, telex, facsimile or other electronic means. The failure by the Bank to issue an Advice shall not prejudice or invalidate the terms of any FX Transaction.

### 2.3 Inconsistencies

In the event of any inconsistency between any term of an Advice and any provision of this Agreement, the provisions of this Agreement shall prevail.

## 3. FACILITY

### 3.1 Authority to Open and Maintain Accounts

The Customer authorises the Bank to open and maintain in the Customer's name an Account or Accounts with the Bank as the Bank deems necessary to effect the purchases and/or sales of foreign currencies pursuant to a FX Transaction. For this purpose, the Customer agrees to provide the Bank with all such documents and information as the Bank requires from time to time in connection with those Accounts and any FX Transaction.

### 3.2 Instructions

Subject to the provisions of this Agreement, the Customer may, on any Business Day during the Bank's business hours, by giving notice by or through a mode authorised by the Bank, request the Bank to enter into one or more FX Transactions. Each request shall be irrevocable and shall specify the Permitted Currency which the Customer wishes to transact, and, in respect of an FX Transaction, the Value Date therefor. The Bank may (but shall not be obliged to) comply with any such request.

### 3.3 Limits

The Bank may at any time in its absolute discretion and without giving the Customer any reasons therefor, and without incurring any liability on its part, impose any limits on any transaction hereunder, including limits on the maturity periods of any FX Transaction and the aggregate amount of open and closed FX Transactions at any given time. The Customer agrees to be bound by and shall not exceed any such limits imposed by the Bank whether as stipulated herein or otherwise. For the avoidance of doubt, the Customer shall continue to be liable to the Bank for any liabilities incurred by the Customer over and above the limits set by the Bank.

## 4. SETTLEMENT AND NETTING OF FX TRANSACTIONS

### 4.1 Settlement of Transactions which are Rolled Over at the HRR Rate

- (i) The Customer may, in accordance with clause 3.2 above, request the Bank, and the Bank may in its absolute discretion agree and upon terms and conditions which it may impose, to roll over any Transaction, which is not closed out by the next Business Day after the Value Date of the Transaction, at the HRR Rate.
- (ii) Upon the roll over of any Transaction at the HRR Rate, the loss or gain incurred but not realised by the Customer on the Transaction rolled over shall not become due and payable by the Customer or the Bank until (a) the Value Date of the Transaction(s) which results from the roll over at the HRR Rate of any existing Transaction between the Bank and the Customer or (b) immediately upon demand by the Bank, and the amount standing to the debit balance of the Account shall become due and payable by the Customer immediately upon demand by the Bank.
- (iii) All outstanding Transactions which are rolled over at the HRR Rate are revalued daily to determine the unrealised loss or gain.

### 4.2 Settlement of Transactions and Non-Deliverable Forwards

Subject to this Clause 4.2 and Clause 4.3, each Party shall deliver to the other Party the amount of the Permitted Currency to be delivered by it under each Currency Obligation on the Value Date for such Currency Obligation. In respect of an FX Transaction, the Parties may agree that the FX Transaction shall be done on a non-delivery basis and once such an FX Transaction is entered into between the Parties, such FX Transaction shall be settled by closing out by the Customer unless such FX Transaction is closed out earlier by the Bank in accordance with this Agreement.

### 4.3 Payment Netting

If, on any date, more than one delivery of a particular Permitted Currency under Currency Obligations is to be made between the Parties then, the Bank may, at its absolute discretion require that each Party shall aggregate the amounts of such Permitted Currency deliverable by it and only the difference between these aggregate amounts shall be delivered by the Party owing the larger aggregate amount to the other Party, and, if the aggregate amounts are equal, no delivery of the Permitted Currency shall be made.

## 5. REPRESENTATIONS, WARRANTIES AND COVENANTS

### 5.1 The Customer's Representations

The Customer represents and warrants to the Bank as of the date of this Agreement and as of the date of each FX Transaction (including the date of roll over at the HRR Rate of a Transaction) that:-

- (i) the Customer has the power, capacity and authority to enter into and perform this Agreement (including any FX Transaction);

- (ii) this Agreement is legal, valid and binding upon the Customer and enforceable against the Customer in accordance with its terms and does not and will not violate the terms of any agreements by which the Customer is bound;
- (iii) no proceedings have been commenced or threatened, and no order or declaration has been made, against the Customer for the Customer's liquidation, winding up or bankruptcy, or for the appointment of a judicial manager, administrator, receiver or similar officer to administer any or all of its/his assets and it/he has not declared itself or himself bankrupt;
- (iv) the Customer has acted independently and free from any undue influence by any person;
- (v) no Event of Default, or event which, with notice or lapse of time or both, would constitute an Event of Default, has occurred and is continuing with respect to it;
- (vi) the Customer acts as principal in entering into each FX Transaction;
- (vii) the Customer is a sophisticated investor able to evaluate the risks of foreign exchange trading, which include, but are not limited to:
  - (a) Risks relating to Historic Rate Rollover  
Historic rate foreign exchange transactions may be used to conceal losses or to perpetuate fraud as losses are not usually realised unless a transaction is settled or closed-out by the Bank;
  - (b) Risks relating to Exchange Rate Volatility  
Substantial losses may be sustained on the contract, trade, product or financial investment if the market conditions move against the Customer's positions. Market movements may have an impact on the extent of profit/loss the Customer would be exposed to when there is an upward or downward movement in the relevant rates, and the extent of loss if the Customer has to liquidate a position should market conditions move against the Customer. The Customer's position may be liquidated at a loss and the Customer will also be liable for any resulting deficit in his/its account with the Bank;
  - (c) Liquidity Risks  
It may be difficult or impossible to liquidate or trade in a foreign exchange transaction, to assess a fair price or assess risk exposure. This can happen, for example, where the market for a transaction is illiquid or where there is a failure in electronic or telecommunications systems, and where there is the occurrence of an event commonly known as "force majeure". Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit the Customer's losses to the intended amounts, as it may be impossible to execute such orders under certain market conditions.
  - (d) Liquidity Risk: Non-Deliverable Forwards  
The underlying currency of a non-deliverable forward transaction may not have a ready market. Consequently, the non-deliverable forward transaction may be very illiquid and, in such event, the Customer may sustain substantial losses as the bid/offer spreads may be very wide if the market moves against the Customer's position.
  - (e) Currency Risks  
The fluctuations in foreign currency rates have an impact on the profit/loss and the financial investment where the foreign exchange transaction is denominated or settled in a different currency from the currency where you carry on your ordinary business or keep your accounts;
- (viii) the Customer understands and is able to assume the risk of loss associated with foreign exchange trading;
- (ix) the Customer enters into FX Transaction(s) at its/his sole risk, based on its/his own judgement and not in reliance of any statements or representations of the Bank;
- (x) the Collateral given to the Bank as security for the purposes of the Facility and this Agreement is free and clear of any mortgage, charge, pledge, lien, attachment, encumbrances or other security interest;
- (xi) the Customer is acting for the Customer's own account and the Customer has made his own independent decisions to enter into that FX Transaction and whether that FX Transaction is appropriate or proper for the Customer is based upon the Customer's own judgement and upon advice from such advisers as the Customer deemed necessary;
- (xii) the Customer is not relying on any communication (written or oral) of the Bank as investment advice or as a recommendation to enter into that FX Transaction, it being understood that information and explanations related to the terms and conditions of an FX Transaction shall not be considered investment advice or a recommendation to enter into that FX Transaction;
- (xiii) the Customer has not received from the Bank any assurance or guarantee as to the expected results of that FX Transaction;

- (xiv) the Customer is capable of evaluating and understanding (on the Customer's own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that FX Transaction; and
- (xv) the Bank is not acting as a fiduciary or an adviser for the Customer in respect of that FX Transaction.

Each of the representations and warranties above shall be deemed to be repeated (updated where necessary) on and as of each day on which any FX Transaction is entered into or rolled over.

## 6. CLOSE-OUT AND LIQUIDATION

### 6.1 Suspension of Obligations

Without prejudice to the foregoing, the Bank shall be entitled at any time, without prior notice to the Customer, to elect to cancel and close out with immediate effect any or all FX Transactions which are outstanding on the date of such election or deemed election.

### 6.2 Close-Out

#### (i) If an Event of Default has occurred:-

- (a) the Bank shall be entitled (but shall not be obligated), without prior notice to the Customer, to terminate with immediate effect any or all FX Transactions which are then outstanding with effect from a date specified by the Bank (the "Early Termination Date"); and/or
  - (b) the Bank may forthwith terminate this Agreement.
- (ii) On or as soon as reasonably practicable following the occurrence of an Early Termination Date, the Bank will make the calculations on its part and will provide to the Customer a statement specifying any amount payable in respect of outstanding FX Transactions which are terminated under this Clause. Any amount payable by the Customer to the Bank in respect of the termination of the FX Transactions including any loss of bargain, cost of funding, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any hedge or related trading position shall be debited to the Account. The determination of the Bank shall, in the absence of bad faith and manifest error, be binding and conclusive against the Customer.
- (iii) Without prejudice to the foregoing, the Customer shall pay all costs, charges and expenses (including legal fees on a full indemnity basis) whatsoever and howsoever incurred by the Bank in connection with or arising out of or in any way consequential upon the termination of the FX Transactions as aforesaid, and in the enforcement and preservation of the Bank's rights under this Agreement or any FX Transaction.
- (iv) The Bank may consolidate all sums due and owing from the Customer to the Bank under this Agreement including all sums arising under Paragraph (iii) above, and net off any or all sums due and owing from the Bank to the Customer arising under the said Paragraph (iii). The above rights are without prejudice to any right of set-off, combination or other right which the Bank may have under any other agreement or general law.

### 6.3 Set-Off

- (i) Without prejudice to Paragraph (ii) below, where close-out and liquidation occur, the Bank shall also be entitled:-
- (a) to set-off the net payment calculated by the Bank which the Bank owes to the Customer (whether actual or contingent, present or future), if any, against any property including the Collateral held by the Bank (including the liquidated value of any non-cash collateral) in respect of the Bank's obligations under this Agreement; or
  - (b) to set off the net payment calculated by the Bank which the Customer owes to the Bank (whether actual or contingent, present or future), if any, against any property including the Collateral held by the Bank (including the liquidated value of any non-cash collateral) in respect of the Customer's obligations under this Agreement,
- provided that, for the purposes of either such set-off, any Collateral denominated in a Permitted Currency other than the Bank's base currency shall be converted into such Permitted Currency at the rate determined by the Bank.

- (ii) The Customer agrees with the Bank as follows:-
- (a) that in addition to any right of set-off or general lien or other rights to which the Bank as a banker may be entitled by law, the Bank may at its discretion and without demand or notice to the Customer, combine or consolidate all or any of the accounts of the Customer or in the name of the Customer held at any branch whether located in Singapore or any other country (whether alone or jointly with any other person or persons) including without limitation the Account and the Maintenance Account (the "Bank Accounts") with all or any of the losses whether realised or unrealised arising from this Agreement, obligations, claims, expenses and other liabilities (the "Obligations") outstanding or owing or unpaid to the Bank by the Customer and set-off any sum or sums standing from time to time to the credit of any one or more of such Bank Accounts (notwithstanding that any deposit in any fixed deposit account has not matured or any of the special conditions applicable to the deposit(s) have not been satisfied) in or towards payment, discharge or satisfaction of all or any of the Obligations if an Event of Default occurs. The Bank is hereby authorised to purchase with the moneys standing to the credit of any of the accounts such other currencies as may be necessary to effect such application or set-off. Where such combination or set-off or transfer requires the conversion of one currency to another, such conversion shall be effected in such manner and at such rate as the Bank may deem appropriate;
  - (b) that so long as any Obligations are outstanding or owing or unpaid to the Bank by the Customer, the Bank shall be entitled to withhold, and to refuse to accept or honour any orders for or payment of the whole or any part of the Bank Accounts. The Customer undertakes that so long as any Obligations are outstanding or owing or unpaid to the Bank by the Customer, the Customer shall not revoke or alter the Customer's instructions with respect to any account designated by the Customer or the Bank for the purpose of this Agreement;
  - (c) that so long as any Obligations are outstanding or owing or unpaid to the Bank by the Customer, the Customer shall not withdraw or in any way cause or permit to be withdrawn, or assign, deal with or create (or agree, conditionally or unconditionally, to assign, deal with or create) or have outstanding any mortgage, lien, charge, or other security on or over all or any part of the Accounts and the Maintenance Account without the Bank's prior consent in writing;
  - (d) that in the event any of the Customer's creditors should seek to attach the Accounts or the Maintenance Account by any proceedings or otherwise or in the event that a liquidator, receiver, administrator, judicial manager or other similar officer should be appointed by the Customer or over any of the Customer's assets or properties, the Bank's right of set-off shall be deemed to have arisen immediately before the commencement of such proceedings or before such appointment (as the case may be); and
  - (e) that the Customer shall immediately upon its/his request execute and sign all such documents and do or procure the doing of all such other acts and things as the Bank may deem necessary or appropriate to secure to the Bank the full benefits of all of its rights to the Bank Accounts or any part or parts thereof and shall pay all legal fees (on a full indemnity basis) and other costs and disbursements (and any goods and services tax payable in connection therewith) incurred in connection with demanding and enforcing the payment of moneys due or owing to the Bank or otherwise howsoever in enforcing any of its rights under this Agreement.

#### 6.4 Consolidation

In addition to any rights the Bank may be entitled to by law or otherwise, the Bank may at its discretion at any time and from time to time without notice to the Customer combine, consolidate or merge the balances on all or any of the accounts of the Customer with the Bank held at any branch whether located in Singapore or any other country (notwithstanding that any fixed deposit has not matured or any of the conditions applicable to any account have not been satisfied) and the Bank's right of set-off shall extend to include a continuing right at any time and without any prior notice or demand forthwith to transfer and set-off all or any part of any balance standing to the credit of any account (including non-currency accounts) in the name of the Customer with the Bank and to apply the same in or towards payment or satisfaction of all liabilities



(whether actual or contingent, present or future) of the Customer, whether owing individually, jointly or jointly and severally.

## 7. COLLATERAL

### 7.1 Collateral

- (i) The Customer undertakes to place, and at all times undertakes to maintain, such cash, assets and other property which are acceptable to the Bank as Collateral to secure or otherwise support the obligations of the Customer under this Agreement.
- (ii) The Customer agrees that in view of administrative difficulties involved in appropriating and paying interest earned on all cash collateral placed with the Bank to the Customer, the Customer hereby waives the Customer's entitlement to such interest as part of the consideration for the Bank accepting the Customer's account opening application. Notwithstanding the foregoing, the Bank may, if it believes it to be appropriate and at its discretion, from time to time pay the Customer interest at a rate and for such period as may be determined by the Bank at the Bank's discretion and notified to the Customer in writing. All such interest if and when paid by the Bank shall be paid into the Maintenance Account and form part of the Collateral. No interest which may be paid pursuant to any other agreement shall establish any precedent for interest which may be paid herein.
- (iii) The Customer shall execute such standard form security documentation of the Bank as the Bank may require. The rights of the Bank under such security documentation shall be in addition to and without prejudice to the Bank's rights hereunder.
- (iv) The Customer further undertakes to at all times, ensure that the Margin prescribed by the Bank from time to time is complied with and ensure that any Collateral provided to the Bank remains in the minimum value notified to the Customer by the Bank from time to time.

### 7.2 Placements of and Dealings with Collateral

The acceptability of any asset or property as Collateral shall be determined at the sole discretion of the Bank and may be subject to change and the valuation of such Collateral for margining purposes shall be determined by the Bank in its sole discretion. Without prejudice to the Customer's obligation to deliver without any demand or request from the Bank additional Collateral which is acceptable to the Bank to prevent the Collateral from falling below the Margin determined by the Bank from time to time, the Customer undertakes to provide promptly such additional assets or property by way of Collateral as the Bank may from time to time require if the value (as determined by the Bank) of the Collateral is less than what the Bank in its absolute discretion deems appropriate, whereupon such additional assets shall be added to, and thereafter form part of, the Collateral. The Customer shall not withdraw from the Bank any Collateral except to the extent that the Bank confirms in writing that such asset or property is not required in respect of any outstanding liabilities under this Agreement. The Bank is entitled at any time, without prior notice or restriction, to appropriate the whole or any part of the Collateral held in the discharge of any indebtedness of the Customer to the Bank whether under this Agreement or otherwise and, for the purposes of so doing, may convert such sums (or any part of them) into any currency other than that in which they are held. The rates used will be at the sole discretion of the Bank but will be the market rates for the amounts so converted. Any dividends or interest received in respect of the Collateral shall form part of the Collateral.

## 8. CHARGES, INTEREST, INDEMNITY AND NO LIABILITY

### 8.1 Charges and Fees

The Customer agrees and undertakes to pay to the Bank such transaction costs, fees, charges and commissions relating to the FX Transactions and this Agreement as may be imposed from time to time.

### 8.2 Interest

The Customer agrees to pay such interest at such rate as the Bank may determine (i) on any amount which is due and payable to the Bank until the date of receipt of payment by the Bank, (ii) on any shortfall in Collateral howsoever arising (that is, when the Collateral falls below the prescribed Margin) including the adjustment of any Margin requirements by the Bank whether or not a demand has been made by the Bank for additional Collateral to cover any resulting shortfall, (iii) on any deficit balances in the Account in respect of any realised losses.

### 8.3 Indemnity

- (i) The Customer shall pay and indemnify the Bank on demand all fees (including legal fees on a full indemnity basis) expenses, losses, costs and other liabilities (whether present or future, actual or contingent) which the Bank may suffer arising under this Agreement including, without limitation, fraud of the Customer's agent, defending its rights or protection or enforcement (including the collection of debts) by the Bank of its rights, under this Agreement. In addition and without prejudice to any of the Bank's rights arising out of this Agreement, the Customer agrees to indemnify the Bank and keep the Bank indemnified, fully and completely at all times from and against any and all claims, demands, actions, proceedings, damages, costs, expenses, losses and all other liabilities whatsoever including legal costs (on a full indemnity basis) which the Bank may suffer, incur or sustain in connection with arising out of or in relation to any transaction including the FX Transactions, in connection with acting or carrying out any instructions purportedly given to the Bank either orally, by facsimile or electronically, using any system or means of transmission, communication, transportation or otherwise in carrying out such instructions (including, without limitation, by reason of loss, delay, misunderstandings, mistakes, distortions or duplications), change in any existing law, regulation or official directive relating to the margin trading, the exercise of any of the Bank's rights or powers under this Agreement, the instructions or execution of the instructions of the Customer or any act, delay or omission on the Customer's part including, but not limited to, deficit balances and unrealised losses in the account of the Customer or otherwise howsoever arising out of this Agreement.
- (ii) Without prejudice to the foregoing, the Customer shall reimburse the Bank for all goods and services tax and other levies now or hereinafter imposed or required to be paid in respect of any monies payable to the Bank, and any expenses incurred by the Bank (including fees and disbursements of counsel, including attorneys who may be employees of the Bank) in connection with any reasonable collection or other enforcement proceedings related to the payments required under this Agreement) under this Agreement.

### 8.4 Debiting/Crediting of Accounts

Without prejudice to any rights of the Bank or the provisions of this Agreement, the Customer hereby irrevocably authorises the Bank, and the Bank shall be entitled to debit any account (including the Maintenance Account) of the Customer with the Bank in respect of any charges, fees, losses and expenses incurred by the Customer or otherwise payable by the Customer and credit any account (including the Maintenance Account) of the Customer with the Bank in respect of any gains arising under this Agreement from the FX Transactions.

### 8.5 No Liability

The Bank excludes all liability of any kind whatsoever (including any loss, damage, cost or expense, loss of profits, indirect or consequential loss) and howsoever caused which may be suffered or incurred by the Customer in relation to or in connection with any FX Transaction or this Agreement.

## 9. MISCELLANEOUS

### 9.1 Assignment

The Customer shall not assign, transfer or charge or purport to assign, transfer or charge its/his rights or obligations under this Agreement to a third Party without the prior written consent of the Bank and any such or such purported assignment, transfer or charge in violation of this Clause shall be void.

### 9.2 Termination

- (i) This Agreement may be terminated by either Party at any time, by two (2) Business Days' prior written notice to the other Party, and termination shall be effective at the end of such second day provided, however, that any such termination shall not prejudice the rights of the Bank in respect of any outstanding obligations of the Customer and the provisions of this Agreement shall continue to apply until all the obligations of each Party to the other under this Agreement have been fully performed.
- (ii) Upon termination of the Agreement:-
  - (a) no further FX Transactions shall be entered into; and

- (b) the Bank may close-out any outstanding FX Transaction, irrespective of the Value Dates, and the Customer or the Bank, as the case may be, shall pay to the other an amount calculated by the Bank to be owing in respect of each FX Transaction so closed-out, which calculation shall be final and conclusive against the Customer, save for manifest error.
- (iii) The following amounts converted into United States Dollars shall be set-off against each other as appropriate, in the following order:-
  - (a) all gains realised or losses incurred, owed by one Party to the other; and
  - (b) at the election of the Bank, any or all other amounts owing and then due by one Party to the other that relates to this Agreement.
- (iv) In addition to the above rights, upon such termination, the Bank may at its election, also exercise any of its rights under Clause 6.2 as if an Event of Default had occurred.
- (v) If the Bank does not exercise its rights to close-out any outstanding FX Transaction upon termination of any of its rights under Clause 9.2, this Agreement shall continue to apply to such FX Transaction until all obligations of each Party to the other in respect of such FX Transaction have been fully performed.

### 9.3 Payments

- (i) All payments to the Bank shall be made in the currency in which such obligation is denominated or in such other currency as the Bank may require. Such payments shall be made by the Customer in immediately available and freely transferable funds without set-off and counterclaim, free and clear of any deduction or withholding on account of any present or future tax or otherwise. If the Customer is required to deduct or withhold any payment whether on account of tax or otherwise, the Customer shall pay such additional amount to the Bank as may be necessary in order that the actual amount received after such deduction or withholding shall be equal to the amount that the Bank would receive if such deduction or withholding were not required. The Customer shall pay in full to the appropriate taxing authority all taxes, levies or charges imposed by law in any jurisdiction on the Customer or the Bank with regard to the facilities and promptly deliver to the Bank the original or certified copy of each receipt evidencing such payment. The Customer shall indemnify the Bank from any liability with respect to the delay or failure by the Customer to pay such taxes, levies or charge. Without prejudice to the foregoing, the Customer shall complete such forms and documentation as may be required from time to time by the Bank for the purpose of conferring upon the Bank the benefit of any applicable tax treaties or provisions under any applicable law or for any other purposes in connection therewith.
- (ii) All obligations of the Bank under this Agreement, whether for payment or performance, or arising from this Agreement including liabilities to the Customer or any other person for any claims, damages and losses of whatever types or nature shall be deemed to be the obligations and liabilities of the Singapore branch of the Bank. The head office and other branches or offices of the Bank shall have no obligations for payment or performance under this Agreement, and it shall not assume the liabilities of the Singapore branch of the Bank arising under this Agreement.

### 9.4 Force Majeure

- (i) The Bank shall not be responsible or liable for any loss, damage, injury or delay due to:-
  - (a) acts of government, strikes, lockouts, fire, lightning, aircraft, explosion, flooding, riots, civil commotion, acts of war, acts of God or other such emergencies;
  - (b) any change in exchange control, laws and regulations or any moratorium or restrictions on currency exchange or remittance; or
  - (c) any other act or circumstances beyond the control of either Party preventing this Agreement or any FX Transaction from being carried out,
 and the Customer shall indemnify the Bank and hold it harmless against any loss suffered by the Bank by reason thereof.
- (ii) In the event of any of the circumstances listed in Paragraph (i) above, the Bank shall be entitled (but is not obliged) to follow the market practice of other banks in resolving the difficulty caused by such circumstances, even if such market practice would not be in accordance with the terms of this Agreement (including making payment to the Customer in a currency determined by the Bank as it deems appropriate).

#### 9.5 Correction of Advice

- (i) Unless the Customer objects to the terms contained in any Advice sent by the Bank within seven (7) Business Days of the dispatch of such Advice, or such shorter time as may be appropriate given the Value Date of an FX Transaction, the terms of such Advice shall be deemed correct as against the Customer save for manifest error. Nothing herein shall prohibit the Bank from amending any Advice.
- (ii) A statement by the Bank, its director, officer, agent, employee or solicitor on the amount owing by the Customer under this Agreement shall be conclusive and binding on the Customer, save for any manifest or clerical error.

#### 9.6 Notices

- (i) All notices or other communications to the Customer, under or in connection with this Agreement may be given verbally or in writing (by post, facsimile or electronically). Notice and communications are deemed to be given by Bank to the Customer when the notification or communication is communicated to the Customer (for oral communication) or deposited in a postal system, addressed to the Customer's address (for communication by post) or sent to the Customer's fax number or electronic address (for communications by facsimile or electronic means), all as indicated in the Bank's records.
- (ii) Without prejudice to Clause 9.7, all notices or other communications to the Bank, under or in connection with this Agreement shall be given in writing (by post or facsimile) or in such other manner as may be notified by the Bank to the Customer from time to time. Notices and communications are deemed to be given by the Customer to the Bank when the notification or communication is sent to the Bank and the Bank actually receives the notification or communication.

#### 9.7 Telephone / Fax Instructions

The Customer may give instructions to the Bank through the telephone, by facsimile or such other method as may be approved by the Bank, and the Bank shall be entitled (but is not obliged) to act upon such instructions without making any independent inquiry as to its genuineness and/or authorisation. The Customer undertakes to indemnify the Bank (on a full indemnity basis) against any expenses, losses or damages suffered by the Bank in relation to the Bank's acting on such instructions. The Customer agrees that the Bank may record telephone conversations between the Bank and the Customer, including any director, officer, employee, agent or representative of each party. The Customer further agrees that any such recording may be submitted in evidence to any court or in any formal proceeding for any purpose relating to the Agreement or any FX Transaction.

#### 9.8 Severability

If any provision of this Agreement is illegal, invalid or unenforceable for any reason, it will be severed from the remaining provisions, which will remain unaffected.

#### 9.9 Contracts (Rights of Third Parties) Act

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act (Cap 53B) to enforce any term of this Agreement

#### 9.10 Disclosure

The Customer irrevocably consents to the Bank and the Bank's officers disclosing to any co-debtors, guarantor(s), co-mortgagors, joint account holder(s), the Bank's subsidiary, branch, agency or representative office, any authority, any credit bureau, potential assignee or transferee or any other person, information and particulars relating to the Customer, the Customer's accounts with Bank, any facilities granted to the Customer and/or any other information as the Bank deems fit.

### 10. LAW AND JURISDICTION

#### 10.1 Governing Law

This Agreement shall be governed by and construed in accordance with Singapore law.

#### 10.2 Submission to Jurisdiction

In relation to any legal actions or proceedings ("Proceedings") arising out of or in connection with this Agreement or any transaction contemplated under this Agreement, the Customer hereby irrevocably submits to the jurisdiction of the courts of Singapore and waives any objection to the Proceedings being instituted in any such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum. This submission shall not affect the rights of the Bank to take Proceedings in any other jurisdiction nor shall the taking of Proceedings in any other jurisdiction preclude the Bank from taking Proceedings in any other jurisdiction.