

## Terms of Business

Singer Capital Markets Limited ("SCM")

## **Introduction**

These Terms of Business ("Terms of Business") apply to Professional Clients of Singer Capital Markets Limited ("SCM").

These Terms of Business, together with the Schedule, and accompanying documents, as amended from time to time, (together this "Agreement") set out the terms of the contract between you and us. This Agreement is legally binding and shall take effect and be deemed accepted when we receive your completed Express Consent Form or Application Form and you have been accepted by us as a Client. You are deemed to have accepted this Agreement should you place an order with us.

SCM provides Independent Investment Research and executes orders for clients in a wide range of equity securities.

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These Terms of Business set out important aspects of the relationship between SCM and their clients. If there is any aspect of these terms that you do not understand or where you require further information you should contact the Compliance Director at SCM at the address below:

Singer Capital Markets Limited  
One Hanover Street  
London  
W1S 1AX

Tel: + 44 (0)20 3205 7500  
Fax: + 44 (0)20 3205 5005

## PART 1 – TERMS APPLICABLE TO ALL CLIENTS

### 1. General Information

- 1.1 **Information about us:** We, Singer Capital Markets Limited ("SCM") is authorised and regulated by the Financial Services Authority ("FSA"), at our registered office, One Hanover Street, London W1S 1AX.
- 1.2 **Our capacity:** We will deal with you as principal unless we inform you that we are dealing with you as agent generally or with respect to any Transaction or class of Transactions and every order which we may take is accepted and executed on the basis that we act on our own account as principal and not as your agent.
- 1.3 **Your capacity:** You act as principal or as an agent (or trustee) on behalf of someone else. If you are acting as agent or trustee the supplemental terms set out in the Agency Schedule 1 will apply to you.
- 1.4 **Commencement:** This Agreement supersedes any previous agreement between us on the same subject matter and takes effect when you signify your acceptance of this Agreement by signing and returning the Express Consent Form or Application Form. By completing and signing the Application Form you confirm that you have read, understood and agree to be bound by these Terms of Business with us. In the absence of a signed Application Form, you are deemed to have agreed to be bound by these Terms of Business should you place an Order with us.
- 1.5 **Amendments:** These Terms of Business may be amended from time to time as set out in clause 22.1. Any changes to these Terms of Business will not apply to transactions opened prior to the date on which the changes become effective unless specifically agreed otherwise.
- 1.6 **Duty to you:** Nothing in these Terms of Business shall exclude or restrict any duty or liability owed by us to you under the Financial Services and Markets Act 2000 (the "Act") or the rules of the Financial Services Authority (the "FSA Rules"). If there is any conflict between these Terms of Business and the FSA Rules, the FSA Rules shall prevail.
- 1.7 **Duties and responsibilities:** We assume no greater responsibility or fiduciary duty than that imposed by the FSA Rules or the express terms of this Agreement.
- 1.8 **Investment objectives:** Your investment objectives and restrictions, if any, shall be as set out in the Investment Objectives and Restrictions Schedule 2 to this Agreement. Except as set out therein, there are no restrictions on:
- (a) the types of designated investment in which you wish to invest; or
  - (b) the markets on which you wish Transactions to be executed.

### 2. Interpretation

- 2.1 In this Agreement the following words and phrases have the following meanings:

Account	means an account of yours opened with us;
Act	has the meaning given in clause 1.6;
Affiliate	of any person means any other person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person. For purposes of this definition, "control" when used with respect to any person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing;
Applicable Regulations	means FSA Rules or any other rules of a relevant regulatory authority or any other Rules of a relevant Market and all other applicable laws, rules and regulations as in force from time to time;
Application Form	means the application form provided with these Terms of Business;
Business Day	means a day (other than a Saturday or Sunday) on which:  in relation to a date for the payment of any sum denominated in <ul style="list-style-type: none"><li>(a) any Currency (other than Euro), banks generally are open for business in the principal financial centre of the country of such Currency; or</li><li>(b) Euros, settlement of payments denominated in Euros is generally</li></ul>

possible in London or any other financial centre in Europe selected by us;

in relation to a date for the delivery of any property, property of such type is capable of being delivered in satisfaction of obligations incurred in the market in which the obligation to deliver such first property was incurred; and

for all other purposes, is not a bank holiday or public holiday in London;

Commission	means the commission, charges or other remuneration for the conduct of the business by SCM as disclosed and as notified to you from time to time;
Credit Support Provider	means any person who has entered into any guarantee, hypothecation, agreement, margin or security agreement in our favour in respect of your obligations under this Agreement;
Currency	shall be construed so as to include any unit of account;
Elective Professional Client	has the meaning given in the FSA Rules effective from 1 November 2007;
Event of Default	means any of the events of default as listed in paragraphs (a) to (k) of clause 18.1; means the Express Consent Form provided with these Terms of Business
Express Consent Form	
Financial Instrument	means an investment within articles 76 to 80 or 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
FSA	means the Financial Services Authority or any successor organisation or authority for the time being responsible for the regulation of investment business in the UK;
FSA Rules	has the meaning given in Part 1 clause 1.6;
Investment Research	means investment research as defined under FSA Rules which is labelled or described as investment research or is presented as objective or independent;
Manifest Error	has the meaning set out in clause 19;
Market	means any market or multilateral trading facility subject to government or state regulation with established trading rules and trading hours including without limitation a Regulated Market and a Multilateral Trading Facility (MTF) as defined in Article 4 of the Markets in Financial Instruments Directive 2004/39/EC;
Non-Independent Research	means a research recommendation as defined under FSA Rules which is not presented as objective or independent and does not constitute Investment Research;
Order	means an instruction from the Client to purchase or sell a Financial Instrument,
Professional Client	has the meaning given in the FSA Rules effective from 1 November 2007;
Related Party	means related party as that term is defined under FSA Rules;
Retail Client	has the meaning given in the FSA Rules effective from 1 November 2007;
Rules	means articles, rules, regulations, procedures and customs, as in force from time to time;
Security	means investments within articles 76 to 80 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
Stock Exchange Transaction	means any exchange where a Security has its primary listing; means a contract in an investment in a Financial Instrument or any other contractual arrangement entered into between you and us.

2.2 **General interpretation:** A reference in this Agreement to a “clause” or “Schedule” shall be construed as a reference to, respectively, a clause or Schedule of this Agreement, unless the context requires otherwise. References in this Agreement to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof. A reference in this Agreement to “document” shall be construed to include any electronic document. References to persons include bodies corporate, unincorporated associations and partnerships/persons, firms, companies, corporations, governments, states or agencies of a state or any associations or partnerships (whether or not having separate legal personality) of two or more of the foregoing. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the FSA’s Rules have the same meaning in this Agreement unless expressly defined in this Agreement.

2.3 **Agreement and the Schedules:** The clauses contained in this agreement and the Schedules together constitutes the Agreement. We may from time to time send to you further schedules with respect to a specific Market or Financial Instruments. In the event of any conflict between the clauses

### 3. Client Classification

3.1 **Professional Client:** We shall classify you as a Professional Client. When you would otherwise be classified as a Retail Client we have determined that you have sufficient experience and understanding to be classified as an Elective Professional Client. In the Elective Professional Client Notice Schedule 3 to this Agreement you are given a written warning of the regulatory protections you will lose as a result of classification as an Elective Professional Client. Execution of this Agreement will be treated as your informed consent of classification as an Elective Professional Client.

3.2 If you are acting on behalf of another, we shall treat you alone as our client (“Client”) for the purposes of Applicable Regulations and you will be liable as such. No other person (whether identified to us or not) shall be our Client.

### 4. Applicable Regulations, Market And Stock Exchange Requirements

4.1 **Subject to Applicable Regulations:** This Agreement and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between this Agreement and any Applicable Regulations, the latter will prevail; and (ii) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you.

4.2 **Market and Stock Exchange action:** If a Market or Stock Exchange (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a Market or Stock Exchange) take any action which affects a Transaction, then we may take any action which we, at our discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on you.

### Our Services

#### 5. Execution and Advice

5.1 **Execution only:** We deal on an execution-only basis and will not make personal recommendations or advise on the merits or suitability of purchasing, selling or otherwise dealing in particular Financial Instruments or executing particular Transactions, their taxation consequences or the composition of any account or any other rights or obligations attaching to such Financial Instrument or Transactions. You should bear in mind that merely explaining the terms of a Transaction or a Financial Instrument or its performance characteristics does not itself amount to advice on the merits of the investment.

5.2 **Advice:** If specifically agreed with you we may provide you with either general investment advice or advice in relation to a specific Transaction or proposed Transaction. Unless otherwise agreed in writing, such advice shall be given subject to the provisions of clauses 5.3 to 5.5 and clauses 8 and 9 herein.

5.3 Any advice (which may be given either orally or in writing) by any of our directors, officers, employees or agents to you in relation to any Transactions shall be given in good faith without obligation to communicate to you the basis on which the judgement leading to such advice was made. Advice will be confined to the investment merits of the relevant Transaction and we will not be responsible for giving you tax, legal or accountancy advice and shall not be required to take into account the taxation, legal or accounting consequences of investments for you and you should take independent tax, legal or accountancy advice where you consider it appropriate to do so.

5.4 **Own judgement and suitability:** If we provide you with investment advice upon any Transaction we assume that, in the absence of specific instructions, your investment objective is to achieve a return on your investment relative to the relevant market sector and that you have the necessary experience and knowledge in order to understand the risks in the investment transaction and that you are able financially to bear any related investment risks consistent with this investment objective. If you have specific investment objectives, such as the duration of the investment or the risk profile of your investment, you must inform us of those specific investment objectives

either (a) generally in relation to all Transactions for which advice may be provided or (b) for specific Transactions if, in either case (a) or (b), they are to be taken into account in any advice we may provide.

5.5 **Incidental information:** Where we do provide general trading recommendations, market commentary, guidance on shareholding disclosure or other information:

- (a) this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to a personal recommendation or to advice;
- (b) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the legal, tax or accountancy consequences of any Transaction;
- (c) where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction;

5.6 **Research:** Our policy is to produce research material to support our own trading activities (Non-Independent Research) and other research material for our customers (Independent Research). Non-Independent Research will be made available to our employees dealing for our own account and to those dealing for customers. We may act upon or use Non-Independent Research (or the conclusions expressed by it or the analysis on which it is based) before it is published to you when we are acting as market maker in good faith and in the ordinary course of market making or in the execution of an unsolicited customer order or in accordance with the terms of our Conflicts of Interest Policy.

5.7 We have a policy for management of conflicts of interest with respect to the disclosure and use of Independent Research. Under the policy Investment Research may not be used internally for our own advantage prior to publication to our customers. Please refer to our Conflicts of Interest Policy for further information on how we manage conflicts which would affect the impartiality of Investment Research we may provide to you.

5.8 The following terms apply in relation to all research:-

- (a) we shall be under no obligation to you to ensure that any personal recommendation or advice or information given to you takes account of any Investment Research or Non-Independent Research;
- (b) no Investment Research or Non-Independent Research shall constitute any offer of or an invitation by us or on our behalf or any Affiliate to you to buy or sell any securities;
- (c) we accept no liability or responsibility whatsoever for the accuracy or completeness of any information contained in any Investment Research or Non-Independent Research or otherwise given to you. In all cases, you should conduct your own investigation and analysis of such information before taking or omitting to take any action either in relation to investments or markets;
- (d) all estimates, projections, forecasts, expressions of opinion and other subjective judgements contained in any Investment Research or Non-Independent Research or in advice or information given to you are based on assumptions considered to be reasonable as of the date of the document in which they are contained and must not be construed as a representation that the matters referred to therein will occur;
- (e) we may from time to time have a long or short position in any of the securities mentioned in any Investment Research or Non-Independent Research and may buy or sell those securities; and
- (f) we may from time to time provide corporate finance, investment management or other services for or solicit or seek to obtain corporate finance, investment management or other business from any entity referred to in any Investment Research or Non-Independent Research.

## 6. Charges and Payments

6.1 **Charges:** You will pay our charges as agreed with you from time to time or we may deduct such charges from any funds held by us on your behalf. Our charges will include any applicable tax, duty and fees and all other liabilities, charges, costs and expenses payable in connection with Transactions effected on your behalf. Subject to the FSA Rules, confirmations may be sent to you showing a single price for the Transaction, that combines both the unit price and our charges in respect of that Transaction. In accordance with our charges, notified to you from time to time, we will charge you interest (both before and after any judgement) on any amount you failed to pay us when it was due, calculated at the rate determined by us to be the cost of funding such overdue amount ("Default Interest") unless you pay such charges at the time they are incurred.

6.2 **Currency indemnity:** If we receive or recover any amount in respect of an obligation of yours in a Currency other than that in which such amount was payable, whether pursuant to a judgement of any court or otherwise, you shall indemnify us and hold us harmless from and against any cost (including costs of conversion) and loss suffered by us as a result of receiving such amount in a Currency other than the Currency in which it was due.

- 6.3 **Payments and deliveries net:** Unless we give you written notice to the contrary, all payments and deliveries between us shall be made on a net basis and we shall not be obliged to deliver or make payment to you or both (as the case may be) unless and until we have received from you the appropriate documents or cleared funds.
- 6.4 **Remuneration and sharing charges:** We may receive remuneration from, or share charges with, an Affiliate or other third party in connection with Transactions carried out on your behalf. Details of such remuneration or sharing arrangements will be made available to you on written request.

## 7. Taxes

- 7.1 You are responsible for all taxes (UK or foreign) that may arise in relation to a Transaction, whether under current or changed law or practice. We shall have no responsibility for any of your tax liabilities, or for providing information or advice in respect of such liabilities and shall not be responsible for notifying you of a change in tax law or practice. In the event that we become liable to pay any tax on your behalf arising from or incidental to Transactions executed by you with us you shall reimburse us on demand in full for the amount of such tax paid by us.

## Our Relationship with You

### 8. Material Interest and Confidentiality

- 8.1 **Material interests:** Your attention is drawn to the fact that when we deal with you or for you, we or an Affiliate or some other person connected with us may have an interest, relationship or arrangement that is material.

Without limiting the nature of such interests, examples include where we or an Affiliate could be:-

- (a) dealing in the investment, a related investment or an asset underlying the investment, as principal for our (or its) own account or that of someone else. This could include selling to you or buying from you and also dealing with or using the services of an intermediate broker or other agent who may be an Affiliate;
- (b) matching (e.g. by way of a cross) your Transaction with that of another customer by acting on his behalf as well as yours;
- (c) buying from you and selling immediately to another customer, or vice versa;
- (d) holding a position (including a short position) in the investment concerned, a related investment or asset underlying the investment;
- (e) quoting prices to the market in the investment, a related investment or asset underlying the investment;
- (f) advising and providing other services to Affiliates or other customers who may have interests in investments or underlying assets which conflict with your own.

You accept that we may have interests which conflict with your interests and may owe duties which conflict with duties which would otherwise be owed to you, and consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Regulations.

- 8.2 **No liability to disclose or account:** We will comply with Applicable Regulations binding on us, but we shall be under no further duty to disclose any interest to you, including any benefit, profit, commission or other remuneration made or received by reason of any Transaction or any matching transaction.
- 8.3 **Information Barriers:** We maintain arrangements which restrict access by our employees to information relating to areas of our business with which, and the affairs of clients with whom, they are not directly concerned. Accordingly, we shall not be required to have regard to or disclose to you or make use of any information which belongs to or is confidential to another client or to us or any Affiliate, and we may be unable to advise or deal with you in relation to particular investments without disclosing the reason for this.
- 8.4 **Deals using a connected broker:** Where a material connection exists between us and a connected broker, you hereby agree that you do not require us to give you notice of that.

## 9. Conflict of Interests

- 9.1 We have a policy with respect to the management of conflicts of interest. As required by Applicable Regulations we maintain and operate arrangements to take all reasonable steps to prevent conflicts of interest (as defined by FSA Rules) from causing damage or the risk of damage to your interests.
- 9.2 **Disclosure to you:** We shall not be obliged to disclose to you or take into consideration any fact, matter or finding which might involve a breach of duty or confidence to any other person, or which comes to the notice of any of our directors, officers, employees or agents but does not come to the actual notice of the individual or individuals dealing with you.
- 9.3 **No fiduciary duties:** The relationship between you and us is as described in this Agreement. Neither that relationship, nor the services we provide nor any other matter, will give rise to any fiduciary or equitable duties on our part which would prevent or hinder us in doing business with or for you, acting as both market maker and broker, principal and agent, or in doing business with any Affiliate connected clients and other investors whether for our own account, your account or for the account of any Affiliate connected clients and other investors, and generally acting as provided in this Agreement.

## 10. Market Abuse

- 10.1 **Market abuse:** You shall observe the standard of behaviour reasonably expected of persons in your position and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position. By entering into any Transaction you are not acting in any way which is intended to or may be considered to be "Market Abuse" a defined term in the Act, nor are you acting with the intention of contravening any other provision of the Act, the FSA Rules, or any other Applicable Regulation.

## 11. Account Opening

- 11.1 An Account must be opened prior to entering into any Transaction with SCM.
- 11.2 To assess your credit worthiness, manage credit risk and to prevent fraud (or other criminal activity) you acknowledge and agree that we may:
- (a) make periodic searches and enquiries about you and any Related Party at credit reference agencies, and your employers, if applicable;
  - (b) disclose information to organisations involved in fraud prevention; and
  - (c) obtain information from and disclose information to other broker-dealers or investment managers which deal in or manage investments for you concerning any payment or security default
- 11.3 Any limits for your Account (including any credit limits) will be set and varied from time to time with regard to your credit status and, where applicable, the amount of funds deposited by you with us which may, in its sole discretion apply a limit to:
- (a) the size of any Transaction or series of Transactions that you may enter into; and
  - (b) the amount of any loss or liability to which you may be exposed.
- 11.4 Account limits do not limit or represent your liability for losses to SCM, and the funds you may have from time to time on deposit with us do not represent any limit upon your financial liability to us.

## Order Placement

### 12. Instructions and Basis of Dealing

- 12.1 **Placing of instructions:** You may give us instructions in writing (including fax), by email or other electronic means or orally (including by telephone), unless we tell you that instructions can only be given in a particular way. We shall be entitled to act for you upon instructions given or purporting to be given by you or any person authorised on your behalf without further enquiry as to the genuineness, authority or identity of the person giving or purporting to give such instructions. We shall not be obliged to accept instructions to enter a Transaction on your behalf.
- 12.2 **Limit Orders:** Execution of this Agreement will be treated as your instructions not to publish details of a limit Order where you have given us a limit Order which can not be executed immediately under prevailing market conditions. Notwithstanding the foregoing, after execution of this Agreement you may give us instructions to publish the details of an unexecuted limit Order either for a specific limit order or for limit Orders generally.

- 12.3 **Confirmations:** Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within three Business Days of dispatch to you or we notify you of an error in the confirmation within the same period.
- 12.4 **Intermediate brokers and other agents:** We may, at our entire discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Affiliate of ours, and may not be in the United Kingdom. Neither, we nor our respective directors, officers, employees or agents will be liable to you for any act or omission of an intermediate broker or agent. No responsibility will be accepted for intermediate brokers or agents selected by you.
- 12.5 **Aggregation of orders:** We draw your attention to the following. We may combine your Order with our own Orders and Orders of other customers. By combining your Orders with those of other customers we must reasonably believe that this is in the overall best interests of our customers. However, on occasions aggregation may result in you obtaining a less favourable price. Where we aggregate your Order with Orders of other customers, you agree that allocation of the investments concerned may be done within a period of five Business Days after the Order has been filled. Where an Order for a particular customer has been aggregated with Orders for another customer, we will take great care to ensure a fair allocation of securities available across those Orders. Where there is an insufficient quantity or Securities available to fill all Orders any allocation undertaken by us will be:
- (a) completely even across all interested parties;
  - (b) take account of the time of receipt of an Order such that Orders are allocated in due turn; or
  - (c) take account of the size of each Order with allocation being in proportion to the relative Order sizes.
- 12.6 **Best and timely execution:** All Orders that we execute on your behalf are executed in accordance with our Best Execution Policy which is published on our website. Clients should note that the Execution Policy is subject to change in that we may add or remove specific execution venues subject to market conditions and our perception as to which particular venues are relevant to our achieving the best possible result when executing client Orders. Any updates to the execution policy will be published on our website. Clients should refer to the website to confirm the execution venues being used by us at any particular time or contact our Compliance Department who will provide the relevant information to you.
- 12.7 **Warehousing:** On occasions you may instruct us to work Orders in certain Securities, which may take more than 24 hours to complete. We are willing to accept such Orders on the following basis:
- (a) Orders may be worked for a period up to a maximum of five consecutive days. This period must not include a Saturday or Sunday;
  - (b) we will not send you contract notes in respect of each individual Transaction, which is part of a series of Transactions, executed over the period in order to achieve one investment decision or objective;
  - (c) we will undertake to inform you regularly, on at least a daily basis, of the progress of the Order, either orally or by email/facsimile, until the full Order is completed or a contract note is rendered for the completed portion of the full Order;
  - (d) Orders may be cancelled by you at any time however you will be liable for all Transactions executed up to the point at which we have acknowledged receipt of any such cancellation;
  - (e) you will be liable for all Transactions carried out under the arrangement set out in this agreement. If for any reason we are unable to fill the Order in its entirety you will accept any Transactions which form part of it.

### 13. Settlement and Ownership of Securities

- 13.1 **Settlement Depository for Securities:** Where you instruct us to effect settlement by accepting the transfer of Securities to our nominated settlement depository account you accept that payment obligations upon settlement will be dealt with through a settlement bank and that the creation of a settlement bank payment obligation will to the extent of such obligation discharge payment due from us or any company which is a member of our group.
- 13.2 **Trust:** If in any Transaction we deliver Securities or pay money to you or to your Order when you are obliged to pay money or transfer Securities to us at that time or subsequently and your obligations are not performed simultaneously with or prior to our obligations, then you shall hold on trust for us any Securities or money received from us until your own obligations to us are fully performed.
- 13.3 **Title to Securities:** Title to Securities purchased by you and held by us will (subject as stated above) pass to you upon payment by you of the amount due in respect of such purchase.

- 13.4 **Obligation to settle conditional upon receiving necessary documents or funds:** Our obligation to settle any Transaction whether we are acting as principal or as agent for you or any other person, is conditional upon receipt by us on or before the due date for settlement (or satisfactory confirmation of such receipt by our settlement agents) of all necessary documents or funds to be delivered by you or on your behalf by such due date.

In addition, where any Transaction is effected by us as your agent, delivery or payment (as the case may be) by the other party to the Transaction shall be at your entire risk and our obligations to deliver Securities to you or to account to you or any other person on your behalf for the proceeds of sale of Securities shall be conditional upon receipt by us of deliverable documents or sale proceeds (as the case may be) from the other party or parties to the Transaction. In the case of Securities which have already been assented to an offer or are the subject of any other corporate event, settlement may be delayed if delivery can only be completed with Securities issued by the offeror or, as the case may be, with Securities to which such corporate event relates. You will be responsible for the due and punctual performance of every Transaction which we enter into with or for you, whether you are dealing as principal or as agent for another person; accordingly, if Securities or funds are not delivered to us, as and when due, under any such Transaction, you will fully indemnify us in accordance with clause 21.8.

- 13.5 **Payments to be free of charges:** Unless otherwise agreed, all money payable by you to us in respect of any Transaction will be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, unless otherwise agreed in writing prior to the execution of any Transaction, you will pay such additional amounts as will result in the net amounts receivable by us (after taking account of such withholding or deduction) being equal to such amounts as would have been received by us had no such taxes or duties been required to be withheld or deducted.

- 13.6 **Withholding/deduction:** You acknowledge that we are entitled without notice to you to withhold or deduct amounts from any payments, dividends, interest or any other sums whatsoever due to you if we in our sole discretion determine that we are or may be required to do so under the laws, rules or regulations of any jurisdiction.

#### 14. On and Off-Exchange and Grey Market Investments

- 14.1 **On and Off exchange dealings:** The execution of Orders on your behalf will be on execution venues in accordance with our Best Execution Policy and to which you have consented by execution of this Agreement.

- 14.2 **Suspended and grey market investments, etc:** We may enter into Transactions for or with you in:

- (a) Securities whose listing on a Market is suspended, or the listing of or dealings in which have been discontinued, or which is subject to a Market announcement suspending or prohibiting dealings; or
- (b) a grey market investment, which is an investment for which application has been made for listing or admission to dealings on a Market where the investment's listing or admission has not yet taken place (otherwise than because the application has been rejected) and the investment is not already listed or admitted to dealings on another Market.

- 14.3 **Restrictions:** We may decline to accept an order for execution of a Transaction in investments identified at this clause 14 in our sole discretion. We may be unable to accept or execute such a Transaction order for reasons including but not limited to restrictions imposed by Applicable Regulations or because there may be insufficient published information on which to base a decision to buy or sell such investments.

#### Client Money

#### 15. Client Money

- 15.1 Any money received by SCM in respect of your Account with SCM shall be treated as "Client Money" in accordance with the then applicable FSA's Client Money Rules except where you transfer full ownership of money to SCM for, amongst other things, the purpose of security or otherwise covering present or future, actual or contingent or prospective obligations, in which circumstances such money will not be regarded as Client Money.

- 15.2 In relation to Client Money unless you notify us in writing or otherwise, we may hold Client Money in a Client bank account opened with either an approved bank in the United Kingdom or in any other country. Your Client Money may therefore be held outside the United Kingdom and in such circumstances the legal and regulatory regime applying to the approved bank with which you bank account is opened will be different from that of the United Kingdom.

- 15.3 In respect of clause 15.2 (a) we will request that the applicable bank provide the acknowledgement required by FSA's Rules provided that in the case of a Client bank account in the United Kingdom, if the bank does not provide such acknowledgement within 20 business days after we have dispatched the notice, we will (a) notify

you of such fact and (b) withdraw all money standing to the credit of the account and deposit it in a Client bank account with another bank as soon as possible. Unless specifically agreed to the contrary we will not pay you interest on Client Money or any other unencumbered funds.

- 15.4 Unless you notify us in writing or otherwise, we may pass on Client Money as follows we may allow another person, such as an exchange, a clearing house or an intermediate broker, to hold or control Client Money where we transfer the Client Money (a) for the purposes of a transaction for you through or with that person; or (b) to meet your obligations to provide collateral for a Transaction.
- 15.5 You consent to us releasing any Client Money balances, for or on your behalf, from client bank accounts and for us to treat as Client Money any unclaimed Client Money balance where:
- (a) we have determined that there has been no movement on your balance for a period of six years (notwithstanding any payments or receipts of charges, interest or similar items); and
  - (b) we have written to you at your last known address informing you of our intention of no longer treating that balance as Client Money, giving you 28 days to make a claim, provided we:
    - (i) shall make and retain records of all balances released from your Client bank accounts; and
    - (ii) undertake to make good any valid claims against any released balances.

## 16. Net Payment

- 16.1 We may at any time set off any liabilities to make payment owed by us to you against any liability of yours to make payment to us.

## **Representations and Undertakings**

### 17. Representations, Warranties and Covenants

- 17.1 **Representations and warranties:** You represent and warrant to us on the date this Agreement comes into effect and as of the date of each Transaction that:-
- (a) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and such Transaction and to grant the Security interests and powers referred to in this Agreement;
  - (b) any change to the details supplied on your Application Form must be immediately notified to us in writing.
  - (c) the persons entering into this Agreement and each Transaction on your behalf have been duly authorised to do so;
  - (d) this Agreement, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, Order, charge or agreement by which you are bound;
  - (e) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default (a "Potential Event of Default") has occurred and is continuing with respect to you or any Credit Support Provider;
  - (f) unless you have informed us otherwise you act as principal and sole beneficial owner (but not as trustee) in entering into this Agreement and each Transaction;
  - (g) any information which you provide or have provided to us in respect of your financial position or other matters is accurate and not misleading in any material respect;
  - (h) you are willing and financially able to sustain a total loss of funds resulting from Transactions;
  - (i) if you are not resident in the UK, you are solely responsible for ascertaining whether any Transaction entered into under this Agreement is lawful under applicable laws of the jurisdiction of your residence.

17.2 **Covenants:** You covenant to us that:

- (a) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause;
- (b) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself or any Credit Support Provider;
- (c) you will use all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and any Transaction, so far as they are applicable to you or us;
- (d) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Regulations.

## 18. **Events of Default**

18.1 If at any time:

- (a) you fail to make any payment when due under this Agreement or to make or take delivery of any property when due under, or to observe or perform any other provision of this Agreement and such failure continues for one Business Day after we give you notice of non-performance;
- (b) you commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each a "Custodian") of you or any substantial part of your assets; or if you take any corporate action to authorise any of the foregoing;
- (c) an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a Custodian of you or any substantial part of your assets;
- (d) you are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore or becomes, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement ("Proceedings") are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible);
- (e) you or any Credit Support Provider (or any Custodian acting on behalf of either of you) ("Credit Support Provider") disaffirm, disclaim or repudiate any obligation under this Agreement or any guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party, or of you, in favour of us supporting any of your obligations under this Agreement (individually a "Credit Support Document");
- (f) any representation or warranty made or given or deemed made or given by you under this Agreement or any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
  - (i) any Credit Support Provider fails to comply with or perform any agreement or obligation to be complied with or performed by you or it in accordance with the applicable Credit Support Document;
  - (ii) any Credit Support Document expires or ceases to be in full force and effect prior to the satisfaction of all your obligations under this Agreement, unless otherwise agreed in writing by us;
  - (iii) any representation or warranty made or given or deemed made or given by any Credit Support Provider pursuant to any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given or

- (iv) any event referred to in paragraphs (b) to (d) or (h) of sub-clause 1 of this clause occurs in respect of any Credit Support Provider;
- (g) you are dissolved, or, if your capacity or existence is dependent upon a record in a formal register, the registration is removed or ends, or any procedures are commenced seeking or proposing your dissolution, removal from such a register, or the ending of such a registration;
- (h) where you or your Credit Support Provider is a partnership, any of the events referred to in paragraphs (b) to (d) or (h) of sub-clause 1 of this clause occurs in respect of one or more of your or its partners;
- (i) we consider it necessary or desirable to prevent what we consider is or might be a violation of any Applicable Regulation or good standard of market practice;
- (j) we consider it necessary or desirable for our own protection/any action is taken or event occurs which we consider might have a material adverse effect upon your ability to perform any of your obligations under this Agreement;
- (k) an Event of Default (however described) occurs in relation to you under any other agreement between us;

then we may exercise our rights under clause 18.2 of this Agreement.

- 18.2 Upon occurrence of an Event of Default we may by notice specify a date for the termination of any outstanding Transactions entered into between us except that the occurrence of an Event of Default under subparagraphs (b) to (d) or (h) of clause 18.1 shall result in the automatic termination of any outstanding Transaction. Neither of us shall be obliged to make any further payments or deliveries under any Transactions which would but for this clause, have fallen due for performance on or after the termination of any outstanding Transaction and such obligations shall be satisfied by the net settlement (whether by payment, set-off or otherwise) of the amounts due between us with respect to all the outstanding terminated Transactions. With respect to each outstanding terminated Transaction we shall determine its total cost, loss or gain (including, if appropriate, any loss of bargain, cost of funding or other loss or gain as a result of the termination) and any net amount for all the outstanding terminated Transactions determined by us in accordance with the foregoing due either from you to us or from us to you shall be immediately payable upon its calculation. We shall not be obliged to make any payment or delivery scheduled to be made by us under a Transaction or this Agreement for as long as an Event of Default has occurred and is continuing.

## 19. **Manifest Errors**

- 19.1 A "Manifest Error" means a manifest or obvious misquote by us having regard to the current market conditions at the time an Order is placed. When determining whether a situation amounts to a Manifest Error, we may take into account all information in our possession including, without limitation, information concerning all relevant market conditions and any error in, or lack of clarity of, any information source.
- 19.2 We will, when making a determination as to whether a situation amounts to a Manifest Error, act fairly towards you but the fact that you may have entered into, or refrained from entering into, a corresponding financial commitment, contract or Transaction in reliance on an Order placed with us (or that you have suffered or may suffer any loss of profit, consequential or indirect loss) shall not be taken into account by us in determining whether there has been a Manifest Error. We reserve the right to either
- (a) amend the details of such a Transaction to reflect what we consider in our discretion, acting in good faith, to be the correct or fair terms of such Transaction absent such Manifest Error/s or
  - (b) if you do not promptly agree to any amendment made under (a) herein we may void from its inception any Transaction resulting from or deriving from a Manifest Error.
- 19.3 We shall not be liable to you for any loss, cost, claim, demand or expense you suffer (including loss of profits or any indirect or consequential losses) resulting from a Manifest Error except to the extent caused by our wilful default or gross negligence.

## 20. **Termination**

- 20.1 Unless required by Applicable Regulations either party may terminate this Agreement (and the relationship between us) with immediate effect by written notice of termination on the other without prejudice to accrued rights and remedies and the existence and enforceability of any open Transaction, which shall continue until close in accordance with this agreement. We may terminate this Agreement immediately if you fail to observe or perform any provision of this Agreement or upon an Event of Default.

- 20.2 Upon terminating this Agreement, all amounts payable by you to us will become immediately due and payable including (but without limitation):
- (a) all outstanding fees, charges and commissions; and
  - (b) any dealing expenses incurred by terminating this Agreement; and
  - (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.
- 20.3 Termination shall not affect then outstanding rights and obligations (in particular those in clause 21 (Exclusions and Indemnity), clause 22 (Miscellaneous) and clause 24 (Governing Law and Jurisdiction) to these Terms of Business) and Transactions which shall continue to be governed by this Agreement and the particular clauses agreed between us in relation to such Transactions until all obligations have been fully performed.

### **Indemnities and Limitation of Liability**

#### **21. Exclusions, Limitations and Indemnity**

- 21.1 Nothing in this Agreement shall exclude or restrict any duty or liability owed by us to you under the Act or the FSA Rules (as may be amended or replaced from time to time).
- 21.2 **General exclusion:** Except as set out in 21.1 above neither we nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses, whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under this Agreement (including any Transaction or where we have declined to enter into a proposed Transaction) unless such loss is a reasonably foreseeable consequence or arises directly from our or their respective gross negligence, wilful default or fraud. In no circumstance shall our liability include losses suffered by you or any third party for any special damage, or loss of profits or loss of goodwill or reputation or loss of business opportunity arising under or in connection with this Agreement, whether arising out of negligence, breach of contract, misrepresentation or otherwise. Nothing in this Agreement will limit our liability for death or personal injury resulting from our negligence.
- 21.3 **Tax implications:** Without limitation, we do not accept liability for any adverse tax implications of any Transaction whatsoever.
- 21.4 **Changes in the market:** Without limitation, we do not accept any liability by reason of any delay or change in market conditions before any particular Transaction is effected.
- 21.5 **Force majeure:** We may in our reasonable opinion determine that an emergency or exceptional market condition exists (a "Force Majeure Event").
- 21.6 In this Agreement "Force Majeure" shall mean any cause preventing either party from performing any or all of its obligations which arise from or are attributable to acts, events or omissions or accidents beyond the reasonable control of the party so prevented. Force Majeure shall include but without limitation:
- (a) any breakdown, malfunction or failure of transmission, act of God, war, terrorism, malicious damage, civil commotion, communication or computer facilities, industrial action, acts and regulations of any governmental or supra national bodies or authorities which in our opinion prevents an orderly Market in one or more of the Financial Instruments in respect of which we ordinarily accept Orders;
  - (b) the failure of any relevant intermediate broker, agent or principal of ours, custodian, sub-custodian, dealer, exchange, clearing house or regulatory or self-regulatory organization;
  - (c) the suspension or closure of any Market or the abandonment or failure of any event upon which we base, or to which we may refer, its quotes, or the imposition of limits or special or unusual terms on the trading in any such Market or on any such event.
- 21.7 If we are prevented from performing any of our obligations under this Agreement by a Force Majeure Event, we shall serve notice in writing on the other party specifying the nature and extent of the circumstances. There will be no obligation to perform any of our obligations under this Agreement on the occurrence of a Force Majeure Event or while a Force Majeure Event is continuing. We shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the Agreement may be performed despite the continuance of a Force Majeure circumstance and/or we shall take all reasonable steps to resume performance as soon as is reasonably possible following the cessation of a Force Majeure Event. In any event we shall not be liable to you for any delayed, partial or non-performance of our obligations hereunder by reason of a Force Majeure Event.
- 21.8 **Indemnity:** You shall pay to us such sums as we may from time to time require in or towards satisfaction of any debit balance on any of your Accounts with us and, on a full indemnity basis, any losses, liabilities, costs or

expenses (including legal fees), taxes, imposts and levies which we may incur or be subjected to with respect to any of your Accounts or any Transaction or any matching Transaction on a Market or with an intermediate broker or as a result of any misrepresentation by you or any violation by you of your obligations under this Agreement (including any Transaction) or by the enforcement of our rights.

- 21.9 **Claims from your customers:** To the extent you have entered Orders for the account of your customers, you shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of claims raised by your customers. This clause shall not be affected by the termination of this Agreement.

## 22. Miscellaneous

- 22.1 **Amendments:** We may amend this agreement by not less than 10 Business Days written notice to you, except where it is impracticable in the circumstances. Such amendment will become effective on the date specified in the notice. Any other amendment must be agreed in writing between us. Unless otherwise agreed, an amendment will not affect any outstanding Order or Transaction or any legal rights or obligations which may already have arisen. If you do not wish to accept any amendment made by us to these Terms of Business you may by notice to us close your Account in accordance with this Agreement.

- 22.2 **Notices:** Unless otherwise agreed, all notices, instructions and other communications to be given by us to you under this Agreement may be verbal or in writing and shall be given to your last known home address, place of work, telephone number (including a telephone answering machine), fax number, e-mail address or other contact details. All notices, instructions and other communications to be given to Singer Capital Markets Limited by you under this Agreement should be sent to the Compliance Director.

- 22.3 Any notice, instruction or other communication shall be deemed to have been duly given when received or given as follows, whichever is the earlier:

- (a) when left at your last known home or work address;
- (b) if given by leaving a telephone answering machine message or voice mail message, one hour after the message being left on the relevant medium;
- (c) if sent by first class post, in the ordinary course of the post and in any event on the next day (or third in the case of air mail) after posting (excluding Sundays and public holidays);
- (d) if sent by e-mail, one hour after sending, provided no "not sent" or "not received" message is received from the relevant e-mail provider/s.
- (e) Each notice, instruction or other communication to you (except confirmations of trade, statements of account, and margin calls) shall be conclusive unless written notice of objection is received by us within five Business Days of the date on which such document was deemed to have been received.

- 22.4 You will notify us in writing of any change of your address or other contact details in accordance with this clause.

- 22.5 **Assignment:** This Agreement shall be for the benefit of and binding upon us both and our respective successors and assigns. No assignment of this Agreement or any rights hereunder shall relieve you of any of your obligations or liabilities hereunder. Neither of us shall assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer rights or obligations under this Agreement or any interest in this Agreement, without the other party's prior written consent, and any purported assignment, charge or transfer in violation of this clause shall be void. You hereby instruct us as the case may be that upon any such assignment any monies held as Client Money be transferred to the Assignee to be held as Client Money on your behalf.

- 22.6 **Disclosures:** In order to comply with its obligations under the Companies Act 1985 & 2006, the Financial Services and Markets Act 2000, the FSA Handbook, the United Kingdom Listing Authority's Listing Rules, the City Code on Takeovers and Mergers, and any other Applicable Regulations (together the "Legislation") we may be required to make certain disclosures relating to your Transactions, which may or may not include disclosing your identity. In addition to complying with its obligations under the Legislation, we may comply with any request for information regarding any Transaction from the Takeover Panel, the FSA or any other relevant regulatory or governmental authority. You agree that such compliance does not cause us to breach any obligation of confidentiality which we owe to you pursuant to this Agreement.

- 22.7 **Time of essence:** Time shall be of the essence in respect of all obligations of yours under this Agreement (including any Transaction).

- 22.8 **Rights and remedies:** The rights and remedies provided under this Agreement are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under this Agreement (including any Transaction) or otherwise shall operate as a waiver of those or any other

- rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.
- 22.9 **Set-off:** Without prejudice to any other rights to which we may be entitled we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) at any time owing between you and us.
- 22.10 **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.
- 22.11 **Waiver:** We are entitled to waive or relax any of this Agreement from time to time without notice to you:
- (a) no failure or delay in exercising or relaxation by us of this Agreement shall operate as a general waiver of the relevant term, condition, right or power and no partial or single exercise of any term, condition, right or power shall preclude any other or further exercise of some or any of our other rights and remedies against you. In particular, and without limitation, where this Agreement specifies certain limits or parameters to your trading activities, we shall be entitled from time to time and with or without notice to you to allow you to breach such limits or parameters.
- (b) the Terms of Business set out herein (and in any other document incorporated by reference) shall constitute the entire Agreement in relation to the subject matter hereof between the parties save as otherwise expressly agreed in writing.
- 22.12 **Recording of calls:** We may record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of the Orders or instructions given.
- 22.13 **Electronic communications:** Subject to Applicable Regulations, any communications between us using electronic signatures shall be binding as if it were in writing. By execution of this Agreement you give your consent to the receipt of communications by electronic means which but for your consent must be made using a durable medium under Applicable Regulations. Orders or instructions given to you by electronic means will constitute evidence of the Orders or instructions given.
- 22.14 **Our records:** Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 22.15 **Your records:** You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of Orders submitted and the time at which such Orders are submitted.
- 22.16 **Third party rights:** The parties to this Agreement do not intend that any provision of this Agreement should be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.
- 22.17 **Co-operation for proceedings:** If any action or proceeding is brought by or against us in relation to this Agreement or arising out of any act or omission by us required or permitted under this Agreement, you agree to co-operate with us to the fullest extent possible in the defence or prosecution of such action or proceeding.
- 22.18 **Investor protection schemes:** We are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim. Most types of investment business are covered for 100% of the first £30,000 and 90% of the next £20,000, so the maximum compensation is £48,000. Further information about compensation arrangements is available from the Financial Services Compensation Scheme.
- 22.19 **Complaints procedure:** You must notify us of any dispute or complaint with all relevant details as soon as reasonably practicable. We have internal procedures for handling customer complaints fairly and promptly. You may submit a complaint to us, for example by letter, telephone, e-mail, or in person. We will send you a written acknowledgement of your complaint within five days of receipt enclosing details of our complaints procedure. Please contact us if you would like further details regarding our complaints procedures.
- 22.20 **Information and Intellectual Property:** You acknowledge and agree:
- (a) all copyrights, trademarks and all other intellectual property or other rights thereto in any information distributed to or received by you whether sent by or on behalf of us by any means whatsoever (including

but not limited to internet or pager), together with any advertising media, website or other material connected to our services hereunder and in any databases that contain or constitute the information, shall remain our sole and exclusive property;

- (b) you shall not permit or facilitate, and shall take steps to prevent any sale, re-distribution, dissemination, re-publication or re-display of the information referred to in sub-clause (a) above however received to any third party.

## 23. Data Protection and Disclosure of Information

23.1 By opening an Account with us and by placing Orders and entering into Transactions, you acknowledge that you will be providing personal information (possibly including sensitive data) within the meaning of the Data Protection Act 1998 to us, and you consent to the processing of that information by us for the purposes of performing our obligations under this Agreement and administering the relationship between you and us, including the disclosure of the information to Affiliates both within and outside the European Union and/or European Economic Area.

23.2 We shall be entitled to disclose information concerning you or your Account (including without limitation information concerning late payment) to any regulator of your business or, to your employer (including the employer's Compliance Officer) if it is authorised or exempt under the Act (or any successor legislation or equivalent legislation or regulations in a foreign jurisdiction) or to any other person we accept as seeking a reference or credit reference in good faith.

## 24. Governing Law and Jurisdiction

24.1 **Governing law:** A Transaction which is subject to the Rules of a Market shall be governed by the law applicable to it under those Rules. Subject thereto, this Agreement shall be governed by and construed in accordance with English law.

24.2 **Jurisdiction:** Each of the parties irrevocably:

- (a) agrees for our benefit that the courts of England shall have jurisdiction to settle any suit, action or other proceedings relating to this Agreement ("Proceedings") and irrevocably submits to the jurisdiction of such courts (provided that this shall not prevent us from bringing an action in the courts of any other jurisdiction); and
- (b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and agrees not to claim that such Proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over it.

24.3 **Waiver of immunity:** Each of the parties irrevocably waives to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from:

- (a) suit;
- (b) jurisdiction of any court;
- (c) relief by way of injunction, order for specific performance or for recovery of property;
- (d) attachment of its assets (whether before or after judgement);
- (e) execution or enforcement of any judgement to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction;

and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

AGENCY SCHEDULE1. **Application and Scope**

- 1.1 **Scope of these terms:** These terms set out the basis on which we will provide the services referred to in the Agreement to you where you are acting as agent for a third party ("Counterparty") which is a Counterparty agreed to in writing by us from time to time on behalf of which you are to enter as agent into Transactions with us; and where a Counterparty does not constitute a single legal person, means the trustees, individuals or other persons who are the primary representatives of the organisation, trust or fund on whose behalf they are dealing. Where you are acting for your own account the supplemental terms set out in this Schedule shall not apply.
- 1.2 **Notification:** You will notify us before placing any Order on behalf of a Counterparty that you are acting as agent for that Counterparty and inform us of the identity, address and any other details which we require in respect of each Counterparty to enable us to form a credit and counterparty risk assessment in respect of any Transaction.
- 1.3 **Instructions:** You may give us oral and written instructions and Orders. We shall not accept nor act upon any instructions received by anyone other than persons whom we reasonably believe to be duly authorised by you ("Authorised Persons"). If we refuse to act on any instruction or Order, we shall notify you as soon as practicable of our refusal. You agree not to give us instructions on behalf of Counterparties which are on the US Department of Treasury's Office of Foreign Assets Control (OFAC) list of specially designated nationals and blocked persons and that instructions that you give to us will not, when executed, cause us to breach the OFAC sanctions programme.
- 1.4 **Capacity:** Each Transaction will be entered into by you as agent for and on behalf of the Counterparty specified by you (whether by code name or otherwise) in accordance with term 1.8 below. Unless we agree otherwise in writing, we shall treat you alone as our customer and we shall not treat any Counterparty as our customer for the purposes of the FSA Rules.
- 1.5 **Nature of Counterparties:** You represent, warrant and undertake on your own behalf and as agent for the Counterparties that no Counterparty will be a state or a separate entity within the meaning of the State Immunity Act 1978 and that a Counterparty shall, at the time an instruction is given in respect of it, have the characteristics and conform to any criteria agreed between us from time to time.
- 1.6 **Counterparty accounts:** We shall, in respect of each Counterparty, establish and maintain one or more separate sub-accounts (each a "Counterparty Account"). You undertake, as agent for the relevant Counterparty and on your own behalf, in respect of each instruction given, to specify within two hours of giving an instruction (or such other time as we may reasonably specify) the Counterparty Account to which the relevant instruction relates. Until you specify a specific Counterparty Account you shall be personally liable, as principal, in respect of the relevant Transaction. You further undertake, as agent for each Counterparty and on your own behalf, to notify us immediately if any two or more Counterparty Accounts relate to the same Counterparty.
- 1.7 **Separate administration:** We shall, subject to these terms, administer Counterparty Accounts which we reasonably believe relate to different Counterparties separately. We shall not exercise any power to consolidate accounts or set off amounts owing between Counterparty Accounts relating to different Counterparties.
- 1.8 **Documentation:** You agree to forward to a Counterparty any documentation in relation to such Counterparty that we are required to provide under the FSA Rules and which we make available to you for that purpose.

2. **Advice**

- 2.1 **Limitations:** You, as agent for the Counterparties and on your own behalf, retain full responsibility for making all investment decisions with respect to any Counterparty. We will not be responsible for judging the merits or suitability of any Transaction to be entered into on behalf of a Counterparty. Unless otherwise required under Applicable Regulations, we shall have no responsibility for your or any Counterparty's compliance with any laws or Rules governing or affecting your conduct or that of any Counterparty, or for your or any Counterparty's compliance with any laws or rules governing or affecting Transactions.

### 3. Representations, Warranties and Covenants

3.1 **Representations and warranties:** As agent for each Counterparty and on your own behalf, you represent and warrant to us as of the date these terms come into effect and as of the date of each Transaction that:-

- (a) you and the Counterparty each have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform these terms, the Agreement and each Transaction;
- (b) the person(s) entering into these terms, the Agreement and each Transaction have been duly authorised to do so;
- (c) these terms, the Agreement, each Transaction and the obligations created under each of them are binding upon, and are enforceable against, you and/or the Counterparty (as applicable) in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you or the Counterparty is bound;
- (d) no Event of Default or Potential Event of Default has occurred and is continuing with respect to you or the Counterparty;
- (e) each of you and the Counterparty is permitted under its constitution and any applicable law or regulation and is financially able to sustain any loss which may result from Transactions, and that entering into Transactions is a suitable investment vehicle for the Counterparty;
- (f) the relevant Counterparty owns, with full title guarantee, all investments, or collateral deposited with, transferred to us or charged in our favour, by you acting as agent for the Counterparty and such investments, or collateral are free from any prior mortgage, charge, lien or other encumbrance whatsoever and neither you acting as agent for the relevant Counterparty, nor the Counterparty itself, will further pledge or charge such investments, or collateral or grant any lien over them while it is pledged or charged to us except with our prior written consent; and
- (g) any information which you provide or have provided to us in respect of your or the Counterparty's financial position, domicile, or other matters is accurate and not misleading in any material respect.

3.2 **Covenants:** You, as agent for each Counterparty and on your own behalf, covenant to us that you will:

- (a) ensure at all times that you and the Counterparty obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authority, powers, consents, licences and authorisations referred to above;
- (b) promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself or the Counterparty.
- (c) provide to us on request such information regarding your and the Counterparty's financial or business affairs as we may reasonably require to evidence the authority, powers, consents, licenses and authorisations referred to above or to comply with any Applicable Regulations;
- (d) provide to us on request copies of the relevant sections of the Counterparty's constitutive documents relating to its capacity to enter into Transactions and appoint an agent to act on its behalf and that any such extract will, to the best of your knowledge, be true and accurate in all material respects and you will not omit or withhold any information which would render the information so supplied to be false or inaccurate in any material respect; and
- (e) either: (i) execute as agent for the Counterparty where you are duly authorised to do so, or, in each other case: (ii) procure that the Counterparty executes, as applicable, on our request all such transfers, powers of attorney and other documents as we may require to vest any assets or otherwise grant any security interest.

#### 4. **Anti-Money Laundering**

- 4.1 **Anti-money laundering:** You represent, warrant and undertake that you are now and will be at all material times in the future in compliance with all Applicable Regulations concerning money-laundering. We are required to follow the Applicable Regulations concerning money-laundering relating to the identification of the Counterparty unless either of the following sub-terms apply, and if satisfactory evidence of identity has not been obtained by us within a reasonable time period, we reserve the right to cease to deal with you.
- 4.2 If you are a regulated credit or financial institution in the UK or EU, we shall deal with you on the understanding that you are complying with EU regulations concerning money-laundering and that evidence of the identification of any Counterparty will have been obtained and recorded under procedures maintained by you.
- 4.3 If you are a regulated credit or financial institution based or incorporated in Jersey, Guernsey, the Isle of Man or a non-EU country which is a member of the Financial Action Task Force, and you are or will be dealing as agent on behalf of any Counterparty, we require your written assurance that evidence of the identification of any Counterparty for whom you act as agent will have been obtained and recorded under procedures maintained by you in accordance with local regulations concerning money-laundering. If you are unable to provide us with such written assurance, we reserve the right to cease to deal with you.

#### 5. **Discharge**

- 5.1 **Discharge:** Where under any term any payment or other performance (including the delivery of Securities or any other property) is due from us, it shall be a discharge of our obligation to make such payment or performance to you notwithstanding that any Counterparty shall be interested (whether beneficially or otherwise) in such payment or performance.

#### 6. **Netting**

- 6.1 **Events of Default:** References to "Party" in the netting provisions of the Agreement shall be deemed to be references to you acting on your own behalf and to each Counterparty. If any Event of Default occurs in respect of you or a Counterparty we shall be entitled to exercise our rights under the netting provisions of this Agreement in accordance with the following sentences of this term and the expression "Defaulting Party" shall be construed accordingly. In respect of an Event of Default which occurs in respect of you (as opposed to any Counterparty), our rights under the netting provisions of the Agreement shall apply separately in respect of each Counterparty Account. If an Event of Default occurs in respect of a Counterparty, our rights under the netting provisions of the Agreement shall be limited to the relevant Counterparty Account(s).

#### 7. **Indemnity**

- 7.1 **Indemnification:** Notwithstanding that you may act as agent you undertake as principal to indemnify us in respect of any liabilities, costs, damages and losses incurred in relation to any Transaction effected by you as agent on behalf of any Counterparty.

**INVESTMENT OBJECTIVES AND RESTRICTIONS SCHEDULE**

As a Professional Client we believe that you have the appropriate knowledge and expertise to undertake Transactions in the following;

1. Equity Securities listed on a recognised stock exchange;
2. Depositary receipts (including ADRs and GDRs) related to listed equity Securities;

Other Investment objectives and restrictions to be set out where relevant.

**ELECTIVE PROFESSIONAL CLIENT NOTICE**

1. This notification is given to you in accordance with FSA rules applicable from 1 November 2007 (COBS TP 1.6R and COBS 3.3.1R(2)).
2. You have been classified by us as an Elective Professional Client because you satisfy at least two of the following criteria:
  - (a) You have carried out Transactions, in significant size, on the relevant Market at an average frequency of 10 per quarter over the previous four quarters;
  - (b) The size of your financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;
  - (c) You work or have worked in the financial sector for at least one year in a professional position, which requires knowledge of the Transactions or services envisaged.
3. As a consequence of classification as an Elective Professional Client, you will lose the following protections afforded to Retail Clients (apart from those which are also provided to Elective Professional Clients) under FSA rules:
  - (a) Direct offer financial promotions - we will not be obliged to comply with COBS Rules relating to restrictions on and the required contents of direct offer financial promotions. We do not need to provide you in a direct offer financial promotion, with sufficient information for you to make an informed assessment of the investment to which it relates.
  - (b) Understanding of risk - we will not be required to provide you with the written risk warnings and notice required for Retail Clients in relation to Transactions in complex financial instruments, in particular derivatives and warrants, and stock lending.
  - (c) Disclosure of charges, remuneration and commission - we will not be required to disclose in writing before conducting any designated business on your behalf the basis or amount of their charges for conducting that business, or the amount of remuneration or commission or other income payable to SCM for conducting the regulated business.
  - (d) Financial Ombudsman Service - Access to the Financial Ombudsman will not extend to you as an Elective Professional customer.
4. Your attention is also drawn to the following rules, which are limited in their application to Elective Professional Clients with the following possible consequences for Clients:
  - (a) Financial promotion - Certain COBS Rules relating to the form, content and checking and otherwise concerning financial promotions generally will not apply.
  - (b) Appropriateness - we may have regard to your expertise as an Elective Professional Client when complying with the requirements that Transactions are appropriate.
  - (c) Confirmation of transactions to customers - The COBS Rules relating to the confirmation of Transactions will apply in a modified form. Provisions regarding extra reporting requirements for dealings with Retail customers and provision of hard copies of confirmations not accessed electronically will not apply.
  - (d) Communication - we may have regard to your expertise as an Elective Professional customer when complying with the requirements under the regulatory system that communications be clear, fair and not misleading. Additionally, we may have regard to your expertise as an Elective Professional Client when complying with the requirements to provide you with a general description of the nature and risks of particular Transactions. If you have any queries on this warning or require any further information, you should contact our Compliance Officer.
5. You have the right under FSA Rules to request to be treated as a Retail Client on a general basis or in respect of one or more particular Transactions. However, we do not undertake any Transactions with Retail Clients. You accordingly have the option of accepting the client categorisation given by us under this Agreement or ceasing to be a customer of ours either generally or in respect of particular Transactions if you wish to be treated as a Retail Client.

COMPLIANCE DEPARTMENT  
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