

## รายการอ้างอิง

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 บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย.



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ภาคผนวก ก



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

EXCHANGE CONTRACT NO. 401

COCOA FUTURES CONTRACT

CONTRACT TERMS - Issue Date: 11 October 2001

ADMINISTRATIVE PROCEDURES - Issue Date: 7 December 2000



ศูนย์วิจัยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

Delivery Months: December 2001 onwards

ที่มา : The London Metal Exchange Limited, Exchange Contract No. 401. [ online]

Available from : <http://www.lme.co.uk>

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1. Interpretation

1.01 Save as otherwise specified herein, words and phrases defined in the Rules shall have the same meanings in these terms and in the Administrative Procedures.

1.02 In these terms and in the Administrative Procedures:

“Administrative Procedures” means all procedures from time to time implemented by the Board pursuant to the Rules for the purposes of this Exchange Contract.

“Allowance” means either a discount or a premium to the Contract price, expressed in Pounds per tonne, which is stated in these terms or otherwise shall be published from time to time by General Notice.

“Bean cluster” means two (or more) Cocoa beans which are joined together and are unable to be split into two (or more) whole single Cocoa beans as a result of the exertion of reasonable hand pressure.

“Bulk Delivery Unit” means an amount of loose Cocoa conforming to term 3.04 (b) and having a nominal net weight of 1,000 tonnes.

“Business Day” means a day on which the market, the Clearing House and banks in London are open for business.

“Buyer” means the person who is obliged under a Contract to accept delivery in respect of each Lot of Cocoa and to pay the Invoicing Amount in respect of such Cocoa (including, except where the context otherwise requires, the Clearing House as a buyer under a registered Contract).

“Buyer’s Position Notice” means the notice to be given by the Buyer to the Clearing House under term 13.01.

“Clearing House Procedures” means the Procedures of the Clearing House from time to time in force.

“Cocoa” means cocoa beans which are the whole seeds of the cocoa tree (*Theobroma Cacao* L).

“Contract” means a contract made expressly or impliedly in the terms of this Exchange Contract for the sale and purchase of one or more Lots and “registered Contract” means a Contract registered by the Clearing House.

“Conversion Date” means the date on which the conversion rate for Sterling against the euro is fixed in accordance with EMU legislation.

“Conversion Settlement Day” in respect of a Delivery Month means, subject to term 15.06(a), ten Business Days immediately following the Settlement Day for such Delivery Month.

“Converted Delivery Unit” means a new Delivery Unit which is formed upon the conversion of part or all of a Nominated Delivery Unit.

“Default in Performance” has the meaning attributed to it in term 18.02.

“Defective” means a Mouldy Bean or an Insect-damaged Bean or both.

“Delivery Area” means each geographic area referred to in term 3.03, as varied by the Board from time to time, within which a Warehouse must be located.

“Delivery Month” means each month specified as such by the Board pursuant to the Rules.

“Delivery Unit” means a Standard Delivery Unit, a Large Delivery Unit or a Bulk Delivery Unit.

“Dual Capacity Warehousekeeper” means a Warehousekeeper which has been nominated by the Exchange in its absolute discretion to store in its Warehouse Standard, Large and Bulk Delivery Units listed on GATS and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by General Notice.

“EDSP” means Exchange Delivery Settlement Price and has the meaning attributed to it in term 9.

“EMU Legislation” means legislative measures of the European Council, and as appropriate the United Kingdom, for the introduction of, changeover to or operation of the euro pursuant to implementation of Economic and Monetary Union including such legislative measures as are enacted in contemplation of the United Kingdom introducing the euro as its lawful currency.

“ ” denotes the single currency of the European Union introduced in a Member State as the lawful currency of that Member State pursuant to its participation in Economic and Monetary Union in the European Union pursuant to EMU legislation known, at the date of the issue of these terms, as “euro”.

“EU” means the European Union.

“Evidence of Import Duty” has the meaning attributed to it in term 7.03.



“Extended Conversion Settlement Day” has the meaning attributed to it in term 15.06(a).

“Foreign Matter” means any substance or matter, other than a whole Cocoa bean or Residue, which in the opinion of the LIFFE Registered Cocoa Graders is, upon grading, identified as foreign matter.

“Fumigation Charge” means a monthly fee which a Warehousekeeper shall be entitled to charge in respect of the fumigation and fogging of a Delivery Unit stored in its Warehouse and which is levied pursuant to the Grading and Warehousekeeping Procedures.

“GATS” means the electronic grading, tender and delivery system, or any successor thereto, administered by the Clearing House which, amongst other things, lists Delivery Units stored in a Warehouse for delivery under a Contract.

“Grading and Warehousekeeping Procedures” means the procedures from time to time implemented by the Board pursuant to the Rules in respect of sampling and storage of Cocoa by Warehousekeepers and grading of Cocoa by the LIFFE Registered Cocoa Graders, which may be contained in one or more documents.

“Grading Result” means the result given to a Delivery Unit which has been graded by the LIFFE Registered Cocoa Graders and containing such information as the Board may prescribe from time to time.

“Gross Weight” has the meaning attributed to it in term 5.04(a).

“Import Duty Documentation” has the meaning attributed to it in term 7.01(a).

“Insect-damaged Bean” means a cocoa bean the internal parts of which are found to contain insects at any stage of development or any evidence thereof, or evidence of insect damage, which is visible to the naked eye.

“Interest Rate” has the meaning attributed to it in term 15.10.

“Invoicing Amount” has the meaning attributed to it in term 10.01

“Large Delivery Unit” means an amount of bagged Cocoa conforming to term 3.04(a) and having a nominal net weight of 100 tonnes.

“Last Trading Day” in respect of a Delivery Month means (subject to term 19.01) eleven Business Days immediately prior to the last Business Day of such Delivery Month.

“LIFFE Registered Cocoa Graders” means a panel of Cocoa graders registered with the Exchange in accordance with the Grading and Warehousekeeping



Procedures who upon the application of a member examine and grade a sample of the Delivery Unit which is the subject of the application and issue a Grading Result in respect of such Delivery Unit pursuant to the Grading and Warehousekeeping Procedures.

“Lot” has the meaning attributed to it in term 2.02.

“Lotting Account” means an information register stored in GATS which is prepared and issued by a Warehousekeeper from time to time in accordance with the Grading and Warehousekeeping Procedures in respect of a Delivery Unit stored in its Warehouse, and which is in a form and specifies such details in respect of the Delivery Unit as may be prescribed by the Board from time to time.

“Member State” means a member of the European Union.

“Mouldy Bean” means a cocoa bean on the internal parts of which mould is visible to the naked eye.

“Net Weight” in respect of a Delivery Unit means the net weight of such Delivery Unit calculated in accordance with term 5.04 and expressed in tonnes.

“Nominated Bulk Delivery Unit” means a Nominated Delivery Unit which is a Bulk Delivery Unit.

“Nominated Delivery Unit” means each Delivery Unit to be converted by or on behalf of the Seller as notified to the Clearing House under term 12.04(a) or (b).

“Nominated Large Delivery Unit” means a Nominated Delivery Unit which is a Large Delivery Unit.

“Notice Day” in respect of any Lot comprised in a Contract means (subject to term 19.02) the Business Day immediately following the Last Trading Day.

“Origin” means the country, or geographic area in a country, in which the cocoa was produced.

“Origin Group” means each group specified in term 4.08.

“Pounds”, “£”, “pence” and “penny” denote lawful currency of the United Kingdom at the date of issue of these terms, known as “Sterling”.

“Preferential Rate of Import Duty” has the meaning attributed to it in term 7.01.

“Regulations” means the General Regulations and Default Rules of the Clearing House from time to time in force.

“Rent” means a periodic fee (but not including Fumigation Charges) which a Warehousekeeper shall be entitled to charge in respect of the storage of a Delivery Unit in its Warehouse, and which is levied pursuant to the Grading and Warehousekeeping Procedures.

“Residue” means any Cocoa element other than a whole Cocoa bean (which may include, without limitation, broken beans, fragments of beans and pieces of shell), which in the opinion of the LIFFE Registered Cocoa Graders is, upon grading, identified as residue.

“Seller” means the person who is obliged under a Contract to deliver Cocoa in respect of each Lot (including, except where the context otherwise requires, the Clearing House as seller under a registered Contract).

“Seller’s Delivery Notice” means the notice to be given by the Seller to the Clearing House under term 12.01.

“Settlement Day” in respect of a Delivery Month means (subject to term 19.03), the last Business Day of the Delivery Month.

“Shipment Period” means the period commencing 1 October in a calendar year and ending on 30 September in the following calendar year.

“Single Capacity Warehousekeeper” in respect of the May 2000 and subsequent Delivery Months means a Warehousekeeper which has been nominated by the Exchange in its absolute discretion to store in its Warehouse Standard and Large Delivery Units listed on GATS and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by General Notice.

“Slaty” means a cocoa bean which shows a slaty colour on half or more of the exposed surface of the cotyledons.

“Standard Delivery Unit” means an amount of bagged Cocoa conforming to term 3.04(a) and having a nominal net weight of 10 tonnes.

“Standard Deviation of the Bean Count” means the measure of the deviation of the bean count per 100 grammes of Cocoa from a nominal standard deviation of the bean count per 100 grammes of Cocoa, where the value of the deviation is derived from a methodology and an algorithm prescribed by the Board from time to time.

“Substituted Delivery Unit” means each Delivery Unit which is substituted by the Seller as notified to the Clearing House under term 12.04(c).



“Tender” means the delivery by a Seller in accordance with these terms of a , Seller’s Delivery Notice, as amended by one or more notices given under term 12.04 or 12.06.

“Valid Grading Result” has the meaning attributed to it in term 3.05.

“Warehouse” means a warehouse in respect of which a Warehousekeeper has been nominated by the Exchange in its absolute discretion to store Cocoa listed on GATS and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by General Notice. A Warehouse shall, for the purposes of nomination under the Grading and Warehousekeeping Procedures, be a single structure designed or modified for the purpose of storing Cocoa, or groups of such structures connected by internal doors allowing for the passage of such Cocoa. Where there are no such interconnecting doors between such structures these shall be nominated as separate Warehouses.

“Warehousekeeper” in respect of the May 2000 and subsequent Delivery Months means either a Single or Dual Capacity Warehousekeeper which has been nominated by the Exchange in its absolute discretion to store in its Warehouse either Standard and Large Delivery Units or Standard, Large and Bulk Delivery Units, as the case may be, listed on GATS and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by General Notice.

“Warrant” means a warrant for the delivery of a Delivery Unit stored in a Warehouse which authorises the possessor of such document to transfer or receive the Delivery Unit referred to therein and which has not expired.

“Warrant Delivery Instruction Report” means the report given by the Clearing House to the Seller under terms 12.08(c), 14.06(a) or 15.08(a) specifying the order in which Warrants are to be delivered to the Clearing House under term 16.02.

- 1.03 In these terms, unless the contrary is indicated, references to a “term” refer to a term hereof, references to a “Rule” refer to a rule of the Exchange’s Rules, and references to the singular include the plural and vice versa.
- 1.03 Subject to term 26.01, in these terms references to “lawful currency” shall be construed to include units of value of the euro which may be used validly to discharge payment obligations pursuant to the laws of the United Kingdom once the United Kingdom has introduced the euro as its lawful currency pursuant to EMU Legislation and notwithstanding that such units of value of the euro may not at all material times following the Conversion Date constitute legal tender in the United Kingdom.



2. Contract Specification

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2.01 Each Contract shall be for one or more Lots for the Delivery Month specified.

2.02 A "Lot" shall be an amount of Cocoa having a nominal net weight of 10 tonnes.

3. Delivery Units

3.01 A Seller shall, in respect of one or more Lots of a Contract, deliver a Standard Delivery Unit, a Large Delivery Unit or a Bulk Delivery Unit, or any combination thereof, of an amount or aggregate amount of Cocoa which is equal to the amount of Cocoa to be delivered under such Lots.

3.02 A Seller may only deliver a Tender for a Delivery Unit, if on or before the day and by the time specified for delivery of such Tender in the Administrative Procedures, the Delivery Unit:

- (a) has a Lotting Account and a Warrant;
- (b) a Valid Grading Result; and
- (c) complies with term 5.05 and, if appropriate, term 5.06.

3.03 (a) In respect of Delivery Months up to and including September 2003, the delivery of a Delivery Unit shall be made in a Warehouse in a geographic area (a "Delivery Area") which is, in the Board's opinion, in or sufficiently close to Amsterdam, Antwerp, Bremen, Brighton and Hove, Dunkirk, Felixstowe, Hamburg, Humberside, Liverpool, London, Rotterdam or Teesside. The Board may from time to time de-list a Delivery Area or list any other Delivery Area which shall have such effect with regard to existing or new Contracts or both as the Board may determine in its absolute discretion.

(b) In respect of the December 2003 and subsequent Delivery Months, delivery of a Delivery Unit shall be made in a Warehouse in a geographic area (a "Delivery Area") which is, in the Board's opinion, in or sufficiently close to Amsterdam, Antwerp, Bremen, Felixstowe, Hamburg, Humberside, Le Havre, Liverpool, London, Rotterdam or Teesside. The Board may from time to time de-list a Delivery Area or list any other Delivery Area which shall have such effect with regard to existing or new Contracts or both as the Board may determine in its absolute discretion.

3.04 A Seller shall deliver:

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- (a) a Standard or Large Delivery Unit which conforms to terms 4 and 5, which is stored in a Warehouse as a clearly identifiable pile of bagged Cocoa in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery; or
- (b) a Bulk Delivery Unit which conforms to terms 4 and 5, which is stored in a Warehouse as segregated loose Cocoa in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery.

3.05 A Grading Result issued in respect of a Delivery Unit shall be valid (“Valid Grading Result”) if:

- (a) it has been issued by the Exchange in respect of the May 2000 or following Delivery Months;
- (b) the Delivery Unit has been graded as “tenderable”;
- (c) it has not expired; subject to term 3.06, the Grading Result will expire at the end of the sixth month after the date of issue of the Grading Result and any unexpired part of the month in which it was graded; and
- (d) it has not lapsed, subject to term 14.03(a) or 15.03(a), upon conversion of the Delivery Unit, or upon bagging, rebagging or debagging of Cocoa contained in the Delivery Unit or regrading of the Delivery Unit under the Grading and Warehousekeeping Procedures or if term 16.11 applies.

3.06 Notwithstanding that a Valid Grading Result may be due to expire in accordance with term 3.05(c), any such Valid Grading Result applying to a Nominated Bulk Delivery Unit shall continue to apply until the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be.

3.07 If a Delivery Unit is graded by LIFFE Registered Cocoa Graders as not tenderable prior to the coming into effect of these terms, a Seller may submit such Delivery Unit for regrading if it is to be delivered in respect of the May 2000 or following Delivery Months.

3.08 If a Delivery Unit is graded by LIFFE Registered Cocoa Graders as not tenderable under these terms for the May 2000 or a following Delivery Month, a Seller shall not submit such Delivery Unit for regrading, except where permitted to do so by the Grading and Warehousekeeping Procedures.

3.09 Without prejudice to any exclusion of liability provision in the Rules, neither the Exchange nor the Board shall be liable for any loss or damage whatsoever, whether for negligence, breach of contract, misrepresentation or otherwise (other than for fraud or wilful default) in respect of:



- (a) the failure by the Exchange or LIFFE Registered Cocoa Graders to grade or to issue a Grading Result by a particular date;
- (b) the performance or non-performance of a Warehousekeeper of his supervisory duties; or
- (c) the performance or non-performance of any Warehousekeeper of his obligations pursuant to these terms or the Grading and Warehousekeeping Procedures.

4. Quality, Condition and Origin

- 4.01 (a) A Seller shall deliver a Delivery Unit which is of a quality, condition and Origin which complies with this term 4. The quality and condition of a Delivery Unit shall be evidenced by the Valid Grading Result for such Delivery Unit.
- (b) A Delivery Unit to be delivered under a Contract may be subject to one or more Allowances as specified in these terms and by the Valid Grading Result and such Allowances shall be used in the calculation of the Invoicing Amount in accordance with term 10.01.
- 4.02 A Seller shall deliver under a Contract a Delivery Unit in which not more than 20% of the beans are Slaty by count. A Delivery Unit in which:
- (a) less than or equal to 5% of the beans are Slaty by count, shall be delivered under a Contract without a Slaty Allowance; and
  - (b) more than 5% of the beans are Slaty by count but less than or equal to 20% of the beans are Slaty by count, shall be delivered under a Contract subject to the Slaty discount specified by the Valid Grading Result.
- 4.03 A Seller shall deliver under a Contract a Delivery Unit in which not more than 15% of the beans are Defective by count. A Delivery Unit in which:
- (a) less than 5% of the beans are Defective by count, shall be delivered under a Contract subject to the Defective premium specified by the Valid Grading Result;
  - (b) 5% of the beans are Defective by count, shall be delivered under a Contract without a Defective Allowance; and
  - (c) more than 5% of the beans are Defective by count but less than or equal to 15% of the beans are Defective by count, shall be delivered under a Contract subject to the Defective discount specified by the Valid Grading Result.



- 4.04 A Seller shall deliver under a Contract a Delivery Unit which does not have more than 120 beans per 100g bean count. A Delivery Unit which is delivered with a bean count:
- (a) of less than 100 beans per 100g, shall be delivered under a Contract subject to the bean count premium specified by the Valid Grading Result;
  - (b) equal to 100 beans per 100g, shall be delivered under a Contract without a bean count Allowance; and
  - (c) of more than 100 beans but less than or equal to 120 beans per 100g, shall be delivered under a Contract subject to the bean count discount specified by the Valid Grading Result.
- 4.05 Subject to term 4.13, a Seller shall deliver under a Contract a Delivery Unit which does not have a Standard Deviation of the Bean Count of more than 40. A Delivery Unit which is delivered with a Standard Deviation of the Bean Count:
- (a) of 25 or less, shall be delivered without a Standard Deviation of the Bean Count Allowance; and
  - (b) of more than 25 but less than or equal to 40, shall be delivered subject to the Standard Deviation of the Bean Count discount as specified by the Valid Grading Result.
- 4.06 (a) A Seller shall deliver under a Contract a Delivery Unit which does not have a quantity of Residue and Foreign Matter in excess of the weight specified in the Grading and Warehousekeeping Procedures applicable to the Delivery Unit and the Origin. An Allowance calculated by reference to the scale of Allowances for Residue and Foreign Matter applicable to the Origin will be determined with respect to any Residue and Foreign Matter in the Delivery Unit in accordance with the Grading and Warehousekeeping Procedures.
- (b) A Seller shall deliver under a Contract a Delivery Unit which does not have a quantity of bean clusters in excess of the weight specified in the Grading and Warehousekeeping Procedures applicable to the Delivery Unit. An Allowance calculated by reference to the scale of Allowances for Residue and Foreign Matter referred to in the Grading and Warehousekeeping Procedures will be determined in respect of any bean clusters in a Delivery Unit of a quantity equal to or which exceeds the applicable weight specified in, and determined in accordance with, the Grading and Warehousekeeping Procedures.

4.07 A Seller shall deliver under a Contract a Delivery Unit the Cocoa in which, in the opinion of the LIFFE Registered Cocoa Graders upon grading:

- (a) does not have a smoky, hammy or other taint or smell;
- (b) subject to term 4.06, does not contain a substance which is not inherent in Cocoa; or
- (c) subject to terms 4.02, 4.03, 4.04, 4.05 and 4.06, is not unsound.

4.08 A Seller shall deliver under a Contract a Delivery Unit which exclusively contains Cocoa from a single Origin stated from time to time to be in the following Origin Groups. A Delivery Unit delivered under a Contract shall be subject to the discount stated in respect of the following Origin Groups, or such other discount as may be prescribed by the Board from time to time.

- (a) Origin Group 1: Cocoa delivered from one of the following Origins shall not be subject to a discount: Ghana; Cote d'Ivoire; Nigeria; Sierra Leone; Togo; Cameroon; Equatorial Guinea; Democratic Republic of Congo (formerly known as Zaire); Western Samoa; Grenada Fine Estates; Trinidad & Tobago Plantation; and Jamaica.
- (b) Origin Group 2: Cocoa delivered from one of the following Origins shall be subject to a discount of £25 per tonne: Sao Tome and Principe; and Sri Lanka.
- (c) Origin Group 3: Cocoa delivered from one of the following Origins shall be subject to a discount of £50 per tonne: Brazil Bahia Superior; Brazil Vitoria Superior; Ecuador; and Papua New Guinea.
- (d) Origin Group 4: Cocoa delivered from the following Origin shall be subject to a discount of £75 per tonne: Malaysia.
- (e) Origin Group 5: Cocoa delivered from any other Origin shall be subject to a discount of £100 per tonne.

4.09 The Board may at its discretion, in respect of an Origin:

- (a) remove such Origin from, or add it to, an Origin Group;
- (b) move such Origin between Origin Groups; and
- (c) vary a discount which applies to Cocoa delivered from such Origin in an Origin Group.



Any such variation, addition or deletion shall have such effect with regard to existing or new Contracts or both as the Board may determine in its absolute discretion.

4.10 In respect of a Delivery Unit delivered under a Contract, the Origin as stated in the Bill of Lading or, if more than one Bill of Lading, each Bill of Lading in respect of Cocoa contained in the Delivery Unit, shall be prima facie evidence of the relevant Origin of such Cocoa.

4.11 A Seller shall deliver a Delivery Unit which only contains Cocoa shipped during the same Shipment Period. In respect of a Delivery Unit delivered under a Contract, the date of issue of the Bill of Lading or, if more than one Bill of Lading, each Bill of Lading in respect of Cocoa contained in the Delivery Unit, shall be prima facie evidence of the relevant Shipment Period of such Cocoa. In respect of the Shipment Period, the date of issue of the Bill of Lading shall take precedence over any other date specified in the Bill of Lading.

4.12 Cocoa:

- (a) in which more than 20% of the beans are Slaty by count;
- (b) in which more than 15% of the beans are Defective by count;
- (c) which has more than 120 beans per 100g bean count;
- (d) which, subject to term 4.13, has a Standard Deviation of the Bean Count of more than 40;
- (e) which has a quantity of:
  - (i) Residue and Foreign Matter; or
  - (ii) bean clusters
 in excess of the weight specified in the Grading and Warehousekeeping Procedures applicable to the Delivery Unit and, in the case of Residue and Foreign Matter, the Origin;
- (f) which does not comply with term 4.07; or
- (g) which has at any time been graded as not tenderable by LIFFE Registered Cocoa Graders under these terms,

shall not form part or all of a Delivery Unit and shall not be delivered by a Seller under a Contract. Notwithstanding term 4.12(g), if a Delivery Unit has been regraded pursuant to term 3.08 and a Valid Grading Result has been issued,



Cocoa forming part or all of that Delivery Unit may be delivered by a Seller under a Contract.

- 4.13 (a) Notwithstanding term 4.05 and subject to term 4.13(b), a Standard Delivery Unit shall be:
- (i) on or prior to 30 September 2001, graded by LIFFE Registered Cocoa Graders under these terms without a Standard Deviation of the Bean Count test; and
  - (ii) delivered by a Seller without a Standard Deviation of the Bean Count Allowance throughout the normal duration of any Valid Grading Result.

provided that the Cocoa comprised in such Delivery Unit was landed, graded and listed on GATS as a Lot or Standard Delivery Unit on or prior to 31 March 2000.

- (b) Notwithstanding term 4.13(a), a Standard Delivery Unit which:
- (i) is either graded on or from 1 October 2001 or is converted from a Large or Bulk Delivery Unit (other than a Converted Delivery Unit), such Standard Delivery Unit shall be graded by LIFFE Registered Cocoa Graders under these terms with a Standard Deviation of the Bean Count test and shall be delivered by a Seller on or from such date with a Standard Deviation of the Bean Count Allowance; or
  - (ii) is a Converted Delivery Unit, shall be delivered by a Seller with a Standard Deviation of the Bean Count Allowance.

## 5. Packing and Weights

- 5.01 Subject to term 5.02, Cocoa to be delivered in a Standard or Large Delivery Unit shall be packed in sound bags in external good order and meeting the criteria prescribed by the Board from time to time.
- 5.02 Cocoa contained in a Delivery Unit which is listed on GATS may only be bagged, rebagged or debagged in a Warehouse in accordance with the Grading and Warehousekeeping Procedures in force at the time of such bagging, rebagging or debagging. The Exchange may, at its absolute discretion, supervise the bagging, rebagging or debagging of Cocoa contained in a Delivery Unit.
- 5.03 Each bag of Cocoa contained in a Standard or Large Delivery Unit shall not have a Gross Weight of more than 75 kilogrammes.

5.04 Each Delivery Unit to be delivered by a Seller under a Contract shall be invoiced in accordance with term 10.01. In term 10.01 the "Net Weight" referred to in "A" shall be calculated in accordance with this term 5.04 and shall equal:

- (a) the actual weight of a Delivery Unit as specified in its Lotting Account ("Gross Weight");
- (b) less the weight of any samples drawn from such Delivery Unit after it was last weighed; and
- (c) in respect of a Standard or Large Delivery Unit, less the actual tare of the Delivery Unit as specified in its Lotting Account, to the nearest gramme.

5.05 A Seller shall deliver under a Contract a Delivery Unit which:

- (a) in respect of a Standard Delivery Unit, has a Net Weight within a tolerance of 1.5 % above or below the weight specified in term 1.02 for a Standard Delivery Unit;
- (b) in respect of a Large Delivery Unit, has a Net Weight within a tolerance of 1.5 % above or 1.0% below the weight specified in term 1.02 for a Large Delivery Unit; or
- (c) in respect of a Bulk Delivery Unit, has a Net Weight within a tolerance of 1.5% above or 0.5% below the weight specified in term 1.02 for a Bulk Delivery Unit.

For the avoidance of doubt, the Buyer shall not reject a Delivery Unit for not being delivered at the Contract weight, provided it is delivered within the tolerance band for such Delivery Unit as specified in this term 5.05.

5.06 A Seller shall only deliver a Standard or Large Delivery Unit under a Contract if the Tender in respect of such Delivery Unit is delivered in accordance with these terms on a day which is not more than thirty-six months after the last day of the month in which the Delivery Unit was last weighed. If the Tender is delivered more than six months, but less than thirty-six months, after the last day of the month in which the Delivery Unit was last weighed, the Seller shall accept a deduction from the Contract price of a sum equal to 0.25% of the EDSP for the relevant Delivery Month, per tonne Net Weight for every additional period of six months or part thereof from the date the Delivery Unit was last weighed, subject to a maximum deduction of 1.25%.

5.07 A Delivery Unit shall be weighed or reweighed in a Warehouse in accordance with the Grading and Warehousekeeping Procedures in force at the time of such weighing or reweighing.



6. Price

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- 6.01 The Contract price shall be expressed in Pounds per tonne.
- 6.02 Subject to any other Allowances specified in these terms or by the Valid Grading Result for a Delivery Unit:
- (a) a Standard Delivery Unit or a Large Delivery Unit delivered under a Contract shall not be subject to a discount; and
  - (b) a Bulk Delivery Unit delivered under a Contract shall be subject to a Bulk Delivery Unit discount of £20 per tonne to the Contract price.
- 6.03 Notwithstanding term 15.09(b), the Seller shall pay all Rent and Fumigation Charges up to and including the Settlement Day, except in respect of a Nominated Bulk Delivery Unit, in which case all Rent and Fumigation Charges shall be paid up to the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be. Any Rent and Fumigation Charges paid by the Seller beyond the relevant Settlement Day shall be borne by the Seller and not the Buyer.

7. Import Duty

- 7.01 Subject to term 7.03, a Seller may deliver Cocoa qualifying on account of its Origin for a nil or reduced rate of import duty ("Preferential Rate of Import Duty"), if:
- (a) sufficient documentation has been lodged with the appropriate authorities to enable the Buyer to take delivery of Cocoa contained in a Delivery Unit at a Preferential Rate of Import Duty in the country of importation ("Import Duty Documentation"); or
  - (b) the Preferential Rate of Import Duty has been paid.
- 7.02 A Seller shall deliver Cocoa which does not qualify for a Preferential Rate of Import Duty under term 7.01 as either:
- (a) import duty unpaid, and any duty will be payable by the Buyer; or
  - (b) import duty paid, and any duty paid or payable will be borne by the Seller.
- 7.03 The Clearing House may, at its absolute discretion, request the Seller to provide to the Clearing House evidence that paragraph (a) or (b) of term 7.01 has been complied with ("Evidence of Import Duty"). The Evidence of Import Duty shall be in the form required by the Clearing House in its absolute discretion from time to time. If the Seller fails to provide satisfactory Evidence of Import Duty



- (i) if only one Contract has been made, the EDSP shall be the price (as far as reasonably ascertainable) at which that Contract was made; or
  - (ii) if more than one Contract has been made, the EDSP shall be the average rounded down to the nearest pound of the prices (as far as reasonably ascertainable) at which such Contracts were made, weighted by reference to the number of Lots (as far as reasonably ascertainable) comprised in each such Contract;
- (b) if (as far as reasonably ascertainable) on the Last Trading Day, during the period specified for this purpose in the Administrative Procedures, no Contract for that Delivery Month has been made in the pit but both an offer (or offers) and a bid (or bids) have been made in the pit in respect of a Contract (or Contracts) for that Delivery Month, then the EDSP shall be the average of the lowest price (as far as reasonably ascertainable) at which such an offer was made and the highest price (as far as reasonably ascertainable) at which such a bid was made and such average shall be rounded down to the nearest pound;
- (c) if (as far as reasonably ascertainable) on the Last Trading Day, during the period specified for this purpose in the Administrative Procedures, no Contract for that Delivery Month has been made in the pit and either no offer or no bid has been made in the pit in respect of a Contract (or Contracts) for that Delivery Month, then exchange officials shall determine the EDSP by reference inter alia to the price at which any offer or bid, as the case may be, in respect of a Contract for that Delivery Month was made in the pit during such period on such day; or
- (d) if (as far as reasonably ascertainable) on the Last Trading Day, during the period specified for this purpose in the Administrative Procedures, no Contract for that Delivery Month has been made in the pit and neither an offer nor a bid have been made in the pit in respect of a Contract (or Contracts) for that Delivery Month, then exchange officials may in their absolute discretion fix the EDSP at a price determined by them as being consistent with the prices at which any Contracts or any offers or bids in respect of a Contract were made in the pit on the Last Trading Day for the Delivery Month and period referred to in paragraphs 9.02(a) and (b) below and, if necessary, rounded down to the nearest pound.
- 9.02 If in the opinion of exchange officials, the EDSP which would result from a calculation made in accordance with term 9.01(a), (b) or (c) would not be consistent with the prices at which any Contracts or any offers or bids in respect of a Contract were made in the pit on the Last Trading Day for:
- (a) the relevant Delivery Month prior to the applicable period referred to in term 9.01(a), (b) or (c), as the case may be; or

- (b) any other Delivery Month during the applicable period referred to in term 9.01(a), (b) or (c), as the case may be,

then exchange officials may in their absolute discretion fix the EDSP at a price determined by them as being consistent with the prices, offers or bids for the Delivery Month and period referred to in paragraphs (a) or (b) above, and, if necessary, rounded down to the nearest pound.

- 9.03 The Exchange shall publish the EDSP by the time specified for that purpose in the Administrative Procedures. The EDSP shall be final and binding for all purposes.

10. Invoicing Amount

- 10.01 Subject to term 10.02, the "Invoicing Amount" in respect of each Delivery Unit to be delivered under a Contract shall be a sum calculated in accordance with the formula:

$$(\text{Contract weight} + A) \times (\text{EDSP} + B) + C$$

where:

EDSP = the EDSP for the Delivery Month.

A = the Net Weight less the Contract weight.

B = any Allowances made in accordance with terms 4, 5.06 and 6.02(b) and the Rules.

C = any Allowance made under term 15.09.

- 10.02 Where the sum calculated in accordance with term 10.01 is not a number of Pounds and whole pence, if such sum is:

- (a) less than a number of Pounds, pence and a whole half penny, such sum shall be rounded down to the nearest sum which is a number of Pounds and whole pence; and
- (b) equal to or more than a number of Pounds, pence and a whole half penny, such sum shall be rounded up to the nearest sum which is a number of Pounds and whole pence,

and the Invoicing Amount shall be such nearest sum.



10.03 In respect of a registered Contract, the final Invoicing Amount in respect of a Delivery Unit shall be paid by or to the Clearing House (as the case may require) in accordance with terms 16.01 and 16.06 and the Administrative Procedures.

## 11. Settlement Payments

11.01 In respect of each Lot referred to in a Seller's Delivery Notice, in addition to any other payment required by these terms, the following payments shall be made by the time specified for that purpose in the Administrative Procedures:

- (a) where the EDSP exceeds the Contract price, payment by the Seller to the Clearing House or payment by the Clearing House to the Buyer, or both (as the case may require); and
- (b) where the Contract price exceeds the EDSP, payment by the Buyer to the Clearing House or payment by the Clearing House to the Seller, or both (as the case may require),

of an amount calculated as the difference, in Pounds multiplied by 10 in respect of each Lot, between the EDSP and the Contract price.

## 12. Seller's Delivery Notice and Notifications to Seller

12.01 A Seller in whose name are registered by the Clearing House, or who intends to submit or has submitted to the Clearing House for registration, one or more Contracts shall have given to the Clearing House a Seller's Delivery Notice in respect of each Lot comprised in such Contracts not later than the time on the Notice Day specified for that purpose in the Administrative Procedures.

12.02 A Seller's Delivery Notice shall be presented to the Clearing House by the Seller by such means and in a form prescribed from time to time by the Clearing House. The Seller's Delivery Notice shall in respect of each Delivery Unit to be delivered by the Seller specify the information set out in the Administrative Procedures and such other information as the Clearing House may prescribe from time to time.

12.03 By the time specified for that purpose in the Administrative Procedures on the Notice Day, the Clearing House may in respect of any Bulk or Large Delivery Units specified in the Seller's Delivery Notice, direct the Seller to convert one or more Large Delivery Units into Standard Delivery Units or one or more Bulk Delivery Units into Large or Standard Delivery Units or both. The Clearing House shall notify the Exchange of any direction made under this term 12.03.

12.04 If the Clearing House has made a direction pursuant to term 12.03, the Seller shall, by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately following the Notice Day, notify the Clearing



House by such means and in a form from time to time prescribed by the Clearing House that it shall comply with such direction by:

- (a) converting the Delivery Unit specified in the Seller's Delivery Notice in respect of which such direction was made and shall promptly instruct the Warehousekeeper to undertake such conversion; or
- (b) converting one or more other Delivery Units as determined by the Seller, specifying the relevant details of each such Delivery Unit, provided that each such Delivery Unit:
  - (i) in aggregate, is of an amount of Cocoa to enable the Seller to fulfil its delivery obligations under the relevant Lots;
  - (ii) complies with term 3.02;
  - (iii) if not of the same size as the Delivery Unit in respect of which such direction was made, is of a size acceptable to the Clearing House, as determined in its absolute discretion, to facilitate delivery by the Clearing House of the relevant Lots; and
  - (iv) if it is the same size as the Delivery Unit in respect of which such direction was made, does not have one or more discounts to the Contract price in respect of the quality or condition as specified by the Valid Grading Result which is greater than any discount awarded in respect of the same category of quality or condition for the Delivery Unit specified in the Seller's Delivery Notice in respect of which such direction was made,

and shall promptly instruct the Warehousekeeper to undertake such conversion; or:

- (c) substituting the Delivery Unit specified in the Seller's Delivery Notice in respect of which such direction was made with such other Delivery Units as determined by the Seller, specifying the relevant details of each such Delivery Unit, provided that each such Delivery Unit:
  - (i) in aggregate, is of an amount of Cocoa to enable the Seller to fulfil its delivery obligations under the relevant Lots;
  - (ii) complies with term 3.02; and
  - (iii) if not of a size required by the Clearing House as specified in its discretion, is of a size acceptable to the Clearing House, as determined in its absolute discretion, to facilitate delivery by the Clearing House of the relevant Lots.

If the Seller makes a notification under term 12.04(b) or (c), the Seller shall in respect of each Delivery Unit to be delivered by the Seller give to the Clearing House the information set out in the Administrative Procedures and such other information as the Clearing House may prescribe from time to time.

- 12.05 If the Seller has made a notification to the Clearing House under term 12.04(a) or (b), the Seller shall, as applicable:
- (a) convert each Nominated Large Delivery Unit in accordance with term 14 and deliver each Converted Delivery Unit on the Settlement Day in accordance with term 16.02(a); and
  - (b) convert each Nominated Bulk Delivery Unit in accordance with term 15 and deliver each Converted Delivery Unit on the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be, in accordance with term 16.02(b).
- 12.06 A Seller shall not remove, substitute or vary a Tender, or any of its terms, after the time on the relevant Day specified in the Administrative Procedures for delivery of the Tender to the Clearing House, unless:
- (a) the Seller has obtained the prior consent of the Clearing House, the Clearing House has obtained the Buyer's prior written consent in respect of any Lots referred to in the Tender which have been allocated to such Buyer under term 13.04 and the Seller has notified the Exchange of the proposed removal, substitution or variation;
  - (b) the Seller makes a notification to the Clearing House under term 12.04; or
  - (c) the Seller is directed by either the Exchange or the Clearing House to make a substitution of the Tender, or any of its terms.
- 12.07 The Clearing House shall not be obliged to accept a Tender in respect of one or more Lots, unless:
- (a) the Tender complies with terms 12.02, 12.04 and 12.06, as applicable; and
  - (b) the Seller is able to present such other documents or information in respect of such Lots or the Delivery Units to be delivered in respect of such Lots, as may be required by the Clearing House under term 12.06.
- 12.08 By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately following the Notice Day, the Clearing House shall make available to the Seller:



- (a) details of the final Invoicing Amount payable to the Seller by the Clearing House in respect of each Delivery Unit to be delivered by the Seller, other than a Nominated Delivery Unit;
- (b) details of the provisional Invoicing Amount payable to the Seller by the Clearing House in respect of each Converted Delivery Unit to be delivered by the Seller which is formed upon the conversion of a Nominated Delivery Unit; and
- (c) the Warrant Delivery Instruction Report in respect of all Delivery Units to be delivered by the Seller.

13. Buyer's Notification and Allocation and Notifications to Buyers

- 13.01 A Buyer in whose name are registered by the Clearing House, or who intends to submit or has submitted to the Clearing House for registration, one or more Contracts shall have given to the Clearing House a Buyer's Position Notice in respect of each Lot comprised in such Contracts not later than the time on the Notice Day specified for that purpose in the Administrative Procedures.
- 13.02 A Buyer's Position Notice shall be presented to the Clearing House by the Buyer by such means and in a form prescribed from time to time by the Clearing House. The Buyer's Position Notice shall in respect of one or more Contracts specify the number of Lots to be delivered by the Clearing House to the Buyer, and by the Buyer to each of its underlying clients, and such other information as the Clearing House may prescribe from time to time.
- 13.03 A Buyer shall not remove, substitute or vary a Buyer's Position Notice, or any of its terms, after the time on the Notice Day specified in the Administrative Procedures for delivery of the Buyer's Position Notice to the Clearing House, without the Clearing House's prior consent.
- 13.04 (a) In respect of registered Contracts, the Clearing House will, not later than the time on the first Business Day after the Notice Day specified for that purpose in the Administrative Procedures, allocate to a clearing member registered as a Buyer one or more Delivery Units referred to in a Tender in respect of each Lot to be delivered to it by the Clearing House and by such method of allocation as may be specified in the Clearing House Procedures.
- (b) The allocation to a Buyer of any Converted Delivery Unit under paragraph (a) of this term 13.04 will be a provisional allocation and the Clearing House shall confirm to the Buyer, in accordance with term 14.06 (b) and 15.08(b), as applicable, the final allocation of the Converted Delivery Units to be delivered by the Clearing House.



- 13.05 The Buyer shall accept the allocation of each Delivery Unit made by the Clearing House under term 13.04 and under terms 14.06(b) or 15.08(b), as applicable, notwithstanding that such allocation may not reflect either the requirements of the Buyer, or any of the Buyer's underlying clients, or the information provided by the Buyer to the Clearing House in the Buyer's Position Notice.
- 13.06 By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately following the Notice Day, the Clearing House shall make available to the Buyer:
- (a) details of the final Invoicing Amount payable by the Buyer to the Clearing House in respect of each Delivery Unit allocated to the Buyer, other than a Delivery Unit to be converted from a Nominated Delivery Unit; and
  - (b) details of the provisional Invoicing Amount payable by the Buyer to the Clearing House in respect of each Converted Delivery Unit to be converted from a Nominated Delivery Unit which has been provisionally allocated to the Buyer.
- 13.07 The Buyer acknowledges and agrees that any information provided by the Clearing House pursuant to terms 13.04 or 13.06(b) may be amended from time to time by the Clearing House under terms 14.06(b) and 15.08(b).
14. Conversion of Nominated Large Delivery Units and Final Allocation
- 14.01 This term 14 shall apply to each Nominated Large Delivery Unit in respect of which the Seller has made a notification to the Clearing House under term 12.04 (a) or (b) and each Converted Delivery Unit formed upon conversion of such Nominated Large Delivery Unit.
- 14.02 A Seller shall convert a Nominated Large Delivery Unit in accordance with this term 14 and the Grading and Warehousekeeping Procedures in force at the time of delivery. The costs of converting such Delivery Unit shall be borne by the Seller. The Exchange may, at its absolute discretion, supervise the conversion of a Nominated Large Delivery Unit.
- 14.03 Upon conversion of a Nominated Large Delivery Unit:
- (a) its Valid Grading Result shall, subject to term 16.11, apply to each Converted Delivery Unit; and
  - (b) each Converted Delivery Unit shall be weighed and issued with a new Lotting Account and Warrant by the Warehousekeeper in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery.

14.04 By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Settlement Day, the Seller shall have:

- (a) completed the conversion of each Nominated Large Delivery Unit;
- (b) complied with term 14.03(b) in respect of each Converted Delivery Unit and ensure that such Converted Delivery Unit has a Net Weight within the tolerance specified in term 5.05(a);
- (c) presented a notice to the Clearing House by such means and in a form from time to time prescribed by the Clearing House, specifying in respect of each Converted Delivery Unit the information set out in the Administrative Procedures and such other information as the Clearing House may require from time to time; and
- (d) procured the Warehousekeeper to present to the Clearing House by such means and in a form prescribed by the Exchange and the Clearing House from time to time, the Warrant number for, and weight details of, each Converted Delivery Unit together with such other information as the Exchange or the Clearing House may require the Warehousekeeper to provide from time to time.

14.05 The Seller shall deliver on the Settlement Day each Converted Delivery Unit in respect of which the Seller has complied with term 14.04. If the Seller has not complied with term 14.04 in respect of any Converted Delivery Unit, the Seller shall be deemed to be in Default in Performance of its obligations under term 18 entitling the Clearing House to take such steps as it deems appropriate under any of the provisions of term 18 including, without limitation, under term 18.05(a).

14.06 The Clearing House shall, by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Settlement Day make available to:

- (a) the Seller, in respect of each Converted Delivery Unit to be delivered by the Seller, details of the final Invoicing Amount payable to the Seller in respect of each such Converted Delivery Unit and, if appropriate, a revised Warrant Delivery Instruction Report; and
- (b) the Buyer, confirmation of the final allocation of the Converted Delivery Units derived from one or more Nominated Large Delivery Units to be delivered to it and details of the final Invoicing Amount payable by the Buyer in respect of each such Converted Delivery Unit.



15. Conversion of Nominated Bulk Delivery Units and Final Allocation 242

- 15.01 This term 15 shall apply to each Nominated Bulk Delivery Unit in respect of which the Seller has made a notification to the Clearing House under term 12.04 (a) or (b) and each Converted Delivery Unit formed upon conversion of such Nominated Bulk Delivery Unit.
- 15.02 A Seller shall convert a Nominated Bulk Delivery Unit in accordance with this term 15 and the Grading and Warehousekeeping Procedures in force at the time of delivery. The costs of converting such Delivery Unit shall be borne by the Seller. The Exchange may, at its absolute discretion, supervise the conversion of a Nominated Bulk Delivery Unit.
- 15.03 Upon conversion of a Nominated Bulk Delivery Unit:
- (a) its Valid Grading Result shall, subject to term 16.11, apply to each Converted Delivery Unit; and
  - (b) each Converted Delivery Unit shall be weighed and issued with a new Lotting Account and Warrant by the Warehousekeeper in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery.
- 15.04 By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Conversion Settlement Day, the Seller shall have:
- (a) completed the conversion of each Nominated Bulk Delivery Unit;
  - (b) complied with term 15.03(b) in respect of each Converted Delivery Unit and ensure that such Converted Delivery Unit has a Net Weight within the tolerance specified in term 5.05(a) or (b), as the case may be;
  - (c) presented a notice to the Clearing House by such means and in a form from time to time prescribed by the Clearing House, specifying in respect of each Converted Delivery Unit the information set out in the Administrative Procedures and such other information as the Clearing House may require from time to time; and
  - (d) procured the Warehousekeeper to present to the Clearing House by such means and in a form prescribed by the Exchange and the Clearing House from time to time, the Warrant number for, and weight details of, each Converted Delivery Unit together with such other information as the Exchange or the Clearing House may require the Warehousekeeper to provide from time to time.



15.05 The Seller shall notify the Clearing House by such means and in a form from time to time prescribed by the Clearing House as soon as the Seller becomes aware that it is, or is likely to be, unable to comply with term 15.04. Such notice shall not be provided later than the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Conversion Settlement Day. The Seller shall specify in such notice the circumstances and reason for non-compliance with term 15.04, an estimate of the date when the Seller will comply with such term, the number of Lots affected and such other information as the Clearing House may require from time to time. The Clearing House shall immediately notify the Buyer and the Exchange upon receiving a notice under this term 15.05.

15.06 If upon receiving a notification under term 15.05, the Clearing House and the Exchange determine in their absolute discretion that the Seller is unable to comply with term 15.04:

- (a) due to an event occurring which is beyond the reasonable control of the Seller or the Warehousekeeper, as the case may be, which without prejudice to the foregoing, may include the unavailability or breakdown of machinery used to convert the Nominated Delivery Unit or the unavailability of bags meeting the criteria prescribed by the Exchange from time to time, the Clearing House and the Exchange shall determine in their absolute discretion whether to move the Conversion Settlement Day to ten Business Days immediately following the Conversion Settlement Day (“Extended Conversion Settlement Day”) to enable the Seller to comply with term 15.04 by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Extended Conversion Settlement Day; or
- (b) due to an event occurring which does not fall within term 15.06(a) above, the Seller shall:
  - (i) deliver on the Conversion Settlement Day Converted Delivery Units which comply with term 15.04; and
  - (ii) in relation to those Lots in respect of which the Seller is unable to deliver Converted Delivery Units, be deemed to be in Default in Performance of its obligations under term 18 entitling the Clearing House to take such steps as it deems appropriate under any of the provisions of term 18 including, without limitation, term 18.05(a).

The Clearing House shall notify the Seller and the Buyer of any determination made under this term 15.06.

- 15.07 By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Extended Conversion Settlement Day:
- (a) the Seller shall have complied with term 15.04; and
  - (b) if the Seller has not complied fully with term 15.04:
    - (i) the Seller shall deliver on the Extended Conversion Settlement Day Converted Delivery Units which comply with term 15.04; and
    - (ii) in respect of any Converted Delivery Unit which does not comply with term 15.04, the Clearing House may:
      - (A) in its absolute discretion take such steps as it deems appropriate under any of the provisions of term 18 including, without limitation, term 18.05(a); or
      - (B) if the Seller is unable to comply with its obligations under term 15.04 due to an event of force majeure under term 20.01, take such steps as it deems appropriate to facilitate a mutually acceptable arrangement between the parties, which may be on such terms and take such form as is acceptable to the Clearing House, the Seller and the Buyer, and in the absence of such an arrangement, shall refer the matter to the Board for its determination which shall be made in accordance with term 20.05.
- 15.08 The Clearing House shall, by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Conversion Settlement Day or on the first Business Day immediately prior to the Extended Conversion Settlement Day, as the case may be, make available to:
- (a) the Seller details of the final Invoicing Amount payable to the Seller in respect of each Converted Delivery Unit which complies with terms 15.04 and 5.05 (a) or (b), as the case may be, to be delivered by the Seller and, if appropriate, a revised Warrant Delivery Instruction Report; and
  - (b) the Buyer, confirmation of the final allocation of Converted Delivery Units derived from Nominated Bulk Delivery Units to be delivered to it on the Conversion Settlement Day or the Extended Conversion Settlement Day and details of the final Invoicing Amount payable by the Buyer in respect each such Converted Delivery Unit.



15.09 The Buyer shall pay a premium on the Contract of a sum equal to:

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- (a) the Interest Rate multiplied by the EDSP for the relevant Delivery Month per tonne Net Weight in respect of each Converted Delivery Unit to be delivered to it for each day after the Settlement Day up to and including the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be; and
  - (b) the daily rate per tonne of the Gross Weight of each Converted Delivery Unit in respect of all Rent and Fumigation Charges, in an amount determined by the Board from time to time, which have been paid from the Settlement Day up to and including the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be.
- 15.10 (a) For the purposes of term 15.09(a) and subject to term 15.10(b), the term "Interest Rate" shall be BBA LIBOR for one month deposits in sterling as at 11.00 hours on the Settlement Day for the relevant Delivery Month.
- (b) The Board may at its discretion resolve, prior to the commencement of the calendar month in which the Settlement Day for the relevant Delivery Month falls, that the Interest Rate shall be determined by means other than that specified in term 15.10(a). Any such determination by the Board shall be the subject of a General Notice.
- 15.11 The Seller and the Buyer shall comply with any instructions and determination made by the Clearing House, the Exchange or the Board, as the case may be, under this term 15. In the case of any disagreement between the Clearing House and the Seller as to whether the Seller can comply with term 15.04 within such time as the Clearing House may specify, the determination of the Clearing House shall be final.

## 16. Delivery

- 16.01 No later than the time specified for that purpose in the Administrative Procedures, the Buyer shall make payment to the Clearing House of the final Invoicing Amount:
- (a) on the Settlement Day in respect of each Delivery Unit allocated to the Buyer, other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, in accordance with these terms and the Regulations; and
  - (b) on the Conversion Settlement Day or on the Extended Conversion Settlement Day, as the case may be, in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit allocated to the Buyer in accordance with these terms and the Regulations.



Payment is to be made without prejudice to the reference of any claim or dispute to arbitration.

- 16.02 No later than the time specified for that purpose in the Administrative Procedures, the Seller shall deliver to the Clearing House:
- (a) on the Settlement Day the Warrant in respect of each Delivery Unit, other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, to be delivered by the Seller under a Contract; and
  - (b) on the Conversion Settlement Day or on the Extended Conversion Settlement Day, as the case may be, the Warrant in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit to be delivered by the Seller under a Contract.
- 16.03 Notwithstanding term 15.09(b), Rent and Fumigation Charges in respect of each Delivery Unit shall be paid by the Seller in accordance with term 6.03. Each Warrant delivered to the Clearing House in accordance with term 16.02 shall be endorsed by the Warehousekeeper with the words "Rent and Fumigation Charges paid" and shall state the relevant Settlement Day up to and including for which each charge is paid.
- 16.04 The Seller represents and warrants to the Buyer that each Delivery Unit delivered by the Seller is free from any security interest, lien or encumbrance. The Seller shall indemnify the Buyer on demand against each loss, liability and cost which the Buyer incurs or suffers arising out of any claim, made or action brought or threatened alleging infringement of the rights of any third party in respect of any Delivery Unit delivered by the Seller under a Contract.
- 16.05 If a Warrant is delayed, defaced, lost or destroyed (each an "Event") and the Seller is unable due to such Event to present the Warrant to the Clearing House in accordance with term 16.02, the Seller shall immediately notify the Clearing House, who shall promptly notify the Buyer. The Seller shall specify in the notice: the circumstances of such Event; the date by when the Seller shall present the Warrant, or a replacement Warrant, to the Clearing House; and such other information as the Clearing House may require from time to time. Without prejudice to any action taken by the Clearing House under its default rules or term 18, the Seller shall be deemed to be in Default in Performance under term 18 if it fails to present the Warrant to the Clearing House in accordance with term 16.02 and the Administrative Procedures, and the Clearing House may take such steps as it deems appropriate in its absolute discretion under term 18 including, without limitation, term 18.05(a).
- 16.06 No later than the time specified for that purpose in the Administrative Procedures, the Clearing House shall make payment to the Seller of the final Invoicing Amount:

- (a) on the Settlement Day in respect of each Delivery Unit delivered by the Seller, other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, in accordance with these terms and the Regulations; and
- (b) on the Conversion Settlement Day or on the Extended Conversion Settlement Day, as the case may be, in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit delivered by the Seller in accordance with these terms and the Regulations.

16.07 No later than the time specified for that purpose in the Administrative Procedures, the Buyer shall, if the Buyer has paid the final Invoicing Amount in respect of a Delivery Unit, take up each Warrant in respect of such Delivery Unit:

- (a) on the Settlement Day in respect of each Delivery Unit allocated to the Buyer, other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit; or
- (b) on the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be, in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit allocated to the Buyer,

in accordance with these terms and the Regulations. Each Warrant is to be taken up by the Buyer without prejudice to the reference of any claim or dispute to arbitration. The Clearing House is under no obligation to deliver a Warrant to the Buyer if the Buyer has not paid the final Invoicing Amount in respect of the Delivery Unit the subject of the Warrant.

16.08 Without prejudice to any steps taken by the Clearing House under term 18, if payment is not made or, if made by the Buyer but the Warrant in respect of a Delivery Unit allocated to the Buyer is not taken up by the time and on the day prescribed for that purpose in the Administrative Procedures, the Clearing House may sell the Delivery Unit in respect of which payment has not been made or a Warrant has not been taken up. Any surplus or deficit resulting from such sale, with an account for interest and the costs of sale, shall be settled with the Clearing House forthwith.

16.09 A Buyer shall be deemed to have accepted a Delivery Unit delivered under term 16.02, by the time stipulated in the Administrative Procedures on the Business Day which:

- (a) in respect of each Delivery Unit other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, is seven Business Days immediately after the Settlement Day; or



- (b) in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit, is seven Business Days immediately after the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be,

(each date being referred to as the “Acceptance Date”) unless the Buyer has, not later than the time stipulated in the Administrative Procedures on the relevant Acceptance Date, notified the Exchange and the Clearing House in accordance with the Rules, of the Buyer’s intention to refer a claim or dispute to arbitration. The Clearing House will promptly notify the Seller of the Buyer’s notification.

- 16.10 Without prejudice to the provisions of terms 16.04 and 18, a failure by the Seller or Buyer to comply with its obligations under any of the provisions of terms 12, 13, 14, 15 and 16, as the case may be, shall constitute a Default in Performance entitling the Clearing House forthwith to take steps under any of the provisions of term 18. Any action taken by the Clearing House shall be without prejudice to any rights, obligations or claims of the Seller or the Buyer or the Clearing House and any costs, claims, losses, taxes or expenses of whatsoever nature incurred or suffered by the Clearing House in connection with such action shall be paid by the Seller or by the Buyer in Default in Performance.
- 16.11 Notwithstanding terms 14.03(a) and 15.03(a), the Valid Grading Result of a Nominated Delivery Unit shall not apply to any Converted Delivery Unit which the Seller fails to deliver by the time and on the day prescribed for that purpose in the Administrative Procedures.

## 17. Property and Risk

- 17.01 Risk and property in respect of a Delivery Unit delivered under a registered Contract will pass:
- (a) from the Seller to the Clearing House as Buyer, upon the later of:
- (i) the delivery by the Seller of the Warrant in respect of such Delivery Unit to the Clearing House; and
  - (ii) the payment by the Clearing House of the final Invoicing Amount in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and
- (b) from the Clearing House as Seller to the Buyer, upon the later of:
- (i) the payment by the Buyer of the final Invoicing Amount in respect of such Delivery Unit to the Clearing House in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and

- (ii) take up of the Warrant in respect of such Delivery Unit by the Buyer. <sup>249</sup>

17.02 In the event of the Buyer acquiring under term 17.01 a Delivery Unit which forms part of an identified bulk of Cocoa, the Buyer will acquire proprietary rights in an undivided share in the identified bulk of Cocoa as set out in section 20A of the Sale of Goods Act 1979.

## 18. Default in Performance

18.01 The provisions of this term 18 shall be subject to the default rules from time to time in force of the Clearing House.

18.02 For the purposes of this term 18, a reference to a “Default in Performance” shall, subject to term 18.04, be construed as including an actual failure by a Seller or a Buyer under term 18.03 in performing its obligations under a Contract, or an anticipated failure. An anticipated failure is one which the Clearing House, in its reasonable opinion, thinks will occur and in respect of which the Clearing House considers that it should take action under the provisions of this term 18.

18.03 A Buyer or a Seller shall be in Default in Performance where:

- (a) he fails to fulfil his obligations under a Contract by the time and in the manner prescribed in accordance with these terms, the Rules and the Administrative Procedures and the Regulations;
- (b) he fails to pay any sum due to the Clearing House in respect of a registered Contract by the time specified for that purpose in the Administrative Procedures; or
- (c) in the reasonable opinion of the Clearing House, he is in Default in Performance.

18.04 Errors in a notice, which are determined in the Clearing House’s absolute discretion to be clerical errors which can be readily rectified and are rectified, shall not be treated as constituting a Default in Performance.

18.05 Subject to terms 18.06(b) and 18.10, if it appears to the Clearing House that a Seller or a Buyer is in Default in Performance under a registered Contract, the Clearing House shall notify the Exchange of the Default in Performance and may, in its absolute discretion:

- (a) take such steps as it deems appropriate to facilitate a mutually acceptable resolution of the Default in Performance. A resolution of a Default in Performance may be on such terms and take such form as is acceptable to the Clearing House, to the Seller and to the Buyer. Such terms may limit some or all of the rights of the Seller, the Buyer or the Clearing House to



refer any matter concerning or arising out of a Default in Performance (or the resolution thereof) to arbitration under term 23;

- (b) without prejudice to any of its other rights under this term 18, refer to the Board any dispute or issue arising between any of the parties. If upon such reference, the Board is of the opinion that the Default in Performance is of minor significance it shall determine any such dispute or issue between such parties upon such evidence as it may deem relevant and convey its findings to such parties who shall forthwith accept such determination and shall implement its terms without question, provided that such acceptance and implementation shall be without prejudice to the right of any party to refer the dispute or any related dispute to arbitration under term 23; or
- (c) take any steps whatsoever which may appear desirable to the Clearing House for the protection of the Clearing House or of the Seller or Buyer not in Default in Performance including, without prejudice to the generality of the foregoing, any steps in order to perform its obligations to a party under a registered Contract.

18.06 If, within five Business Days of the Default in Performance having come to the attention of the Clearing House:

- (a) the steps taken by the Clearing House have not led or are not likely to lead to a resolution of the Default in Performance; or
- (b) the Clearing House has not taken any steps and the Default in Performance remains unresolved,

the Clearing House will refer the matter to the Board. If upon reference of the dispute or issue to the Board, the Board is of the opinion that the Default in Performance may not be determined by the Board in accordance with term 18.06 (b), then each Lot of Cocoa the subject of the dispute or issue shall be the subject of cash settlement at a price fixed by the Board in consultation with the Clearing House. The price may at the Board's absolute discretion take account of any compensation that the Board may consider, on the evidence before it, should be paid by either party to the other.

18.07 Any cash settlement price fixed under term 18.06 shall be binding on the parties. No dispute as to the price may be referred to arbitration but the completion of cash settlement shall be without prejudice to the right of either party to refer the dispute or issue between them to arbitration under term 23.

18.08 Any costs, claims, losses, taxes or expenses of whatsoever nature suffered or incurred by the Clearing House in connection with any steps taken by the Clearing House in relation to a Contract to which the Default in Performance relates shall be paid by the Buyer or Seller who is in Default in Performance. Any steps taken by the Clearing House in relation to a Default in Performance

shall be without prejudice to any rights (including rights to refer matters to arbitration under term 23), obligations or claims of the Buyer, the Seller or the Clearing House in relation to a Contract to which the Default in Performance relates.

- 18.09 A Buyer or Seller who is in Default in Performance under this term 18, shall forthwith pay to the Clearing House any sums payable by him under term 11 and any sums payable pursuant to this term 18.
- 18.10 Notwithstanding that a Buyer or Seller may be in Default in Performance under this term 18, the Clearing House may in its absolute discretion determine not to exercise or to delay in exercising any of its rights under this term 18, and no failure by the Clearing House to exercise nor any delay on its part in exercising any of such rights shall operate as a waiver of the Clearing House's rights upon that or any subsequent occasion, nor shall any single or partial exercise of any such rights prevent any further exercise thereof or of any other right.
- 18.11 A Buyer, a Seller or the Clearing House may refer a dispute or issue arising out of a Default in Performance under this term 18 (subject always to the application of provisions of terms 18.05, 18.06 and 18.07) to arbitration under term 23.
- 18.12 The provisions of this term 18 relating to steps that may be taken by the Clearing House, where there appears to the Clearing House to be a Default in Performance by a party to a registered Contract, may be varied, or different steps may be substituted therefor by the Board from time to time. Any such variation or substitution shall have such effect with regard to such existing and/or new Contracts and registered Contracts as the Board may determine.
19. Emergency Provisions
- 19.01 If, at any time after the close of trading two Business Days prior to the day which would have been the Last Trading Day in respect of a Delivery Month, it becomes known to the Exchange that the day which would have been the Last Trading Day will not be a Business Day, then the Board may at its discretion determine that the Business Day next following such day shall become the Last Trading Day in respect of that Delivery Month and the Exchange shall publish the Board's determination by General Notice.
- 19.02 The Notice Day shall be the Business Day immediately following the Last Trading Day so that if the Last Trading Day is moved by the Board in the circumstances described in term 19.01, then the Notice Day shall be moved so that it falls on the Business Day immediately following the Last Trading Day.
- 19.03 The Settlement Day shall be the last Business Day in the relevant Delivery Month. If, at any time after two Business Days prior to the day which would have been the Settlement Day in respect of a Delivery Month, it becomes known to the Exchange that the day which would have been the Settlement Day will not



be a Business Day, then the Board may at its discretion determine that the Business Day next following such day shall become the Settlement Day in respect of that Delivery Month, and the Exchange shall publish the Board's determination by General Notice.

- 19.04 If the Settlement Day, Conversion Settlement Day or the Extended Conversion Settlement Day is moved by the Board (whether as a result of the operation of term 19.03 or otherwise), the Invoicing Amount calculated in accordance with term 10 shall be adjusted by the Clearing House to reflect any Allowance made under term 15.09 to reflect such new Day.
- 19.05 If an adjustment to the Invoicing Amount is required by term 19.04 after the Clearing House has made available details of the final Invoicing Amount to the Seller and Buyer under terms 12.08(a), 13.06(a), 14.06(b) and 15.08, as the case may be, then a sum equal to the difference between that Invoicing Amount and the Invoicing Amount adjusted under term 19.04 shall be payable:
- (a) by the Seller to the Clearing House and by the Clearing House to the Buyer if the total adjustment gives rise to a reduction in the Invoicing Amount; or
  - (b) by the Buyer to the Clearing House and by the Clearing House to the Seller if the total adjustment gives rise to an increase in the Invoicing Amount.

Sums payable hereunder shall be payable by such time and in such manner as the Clearing House may specify.

## 20. Force Majeure

- 20.01 Subject to term 20.02 and 15.07(b)(ii)(B), a "Force Majeure event" shall mean an event beyond the reasonable control of either party to a Contract which delays, hinders or prevents the performance in whole or in part by a party of his obligations under the Contract (other than an obligation to make a payment), including, without limitation, act of God, storm, flood, earthquake, fire, explosion, malicious damage, accident howsoever caused, strike, lock-out, labour dispute, riot, civil commotion, war whether declared or undeclared, armed conflict, use of force by authority of United Nations, act of terrorism, act of government or other national or local authority or any agency thereof, breakdown of machinery, and unavailability, restriction, failure or delay in or computer or data processing systems or communication or energy supplies or bank transfer systems.
- 20.02 The following shall not be a Force Majeure event: the failure for whatever reason of a computer or other electronic facility to accept a notification made by a Seller or a Buyer (other than the Clearing House) as required by these terms and the

Administrative Procedures; or the delay, defacement or destruction of a Warrant as described in term 16.05.

- 20.03 A party to a Contract shall not be entitled to rely upon this term 20 unless such party has notified the Clearing House and the Exchange in writing immediately after such party has become aware (or after it ought reasonably to have become aware) of such Force Majeure event, and has continued to seek to perform its obligations in accordance with the Contract (in which event it shall be entitled to such relief with effect from the commencement of such Force Majeure event). The notice shall state the date on which the Force Majeure event commenced and the effects of the Force Majeure event on such party's ability to perform its obligations in accordance with the Contract, including an estimate of the period of the Force Majeure event.
- 20.04 Upon the request of the Clearing House or the Exchange, a party seeking relief under this term 20 shall promptly provide such other information as required by the Clearing House or the Exchange as soon as reasonably practicable to assist the Board in determining whether a Force Majeure event has occurred. If a Force Majeure event has occurred, neither party will be deemed in Default in Performance of its obligations under a Contract if such party was unable to perform its obligations as a direct result of the occurrence of such Force Majeure event nor will any penalty or damages be payable if and to the extent that performance of any obligation is hindered or prevented by a Force Majeure event.
- 20.05 Subject to any steps taken at any time by the Board under emergency powers in the Rules and subject to the default rules from time to time in force of the Clearing House, if the Board determines under term 20.04 that a Force Majeure event delays, hinders or prevents a party from performing any obligation under a Contract for a period of at least five Business Days beyond the time limit fixed in or under the Contract any Delivery Unit or part thereof not delivered to the Buyer, shall be the subject of cash settlement at a price to be fixed by the Board in consultation with the Clearing House in their absolute discretion. Such price shall be binding on the parties. No dispute as to the price may be referred to arbitration but the completion of cash settlement shall be without prejudice to the right of either party to refer any dispute arising out of the Contract to arbitration under the Rules.
21. New Legislation
- 21.01 Subject to any steps taken by the Board under the emergency powers in the Rules, if the Board in its absolute discretion determines that a change of legislative or administrative provisions in the United Kingdom, the European Union, any country or group of countries or of an institution or market organisation in any country or group of countries, has affected, is affecting or is likely to affect the normal course of business or the performance of these terms or the Administrative Procedures, the Board shall have the power to vary these



terms (including without limitation those of any existing Contract) in any way it considers necessary for restoring or preserving the orderly course of business or performance of these terms or the Administrative Procedures.

- 21.02 A variation pursuant to term 21.01 may be made notwithstanding that it may affect the performance or value of an existing Contract (or of such existing Contracts as may be specified by the Board).
- 21.03 Any determination made by the Board under this term 21 shall be the subject of a General Notice. Any such variation of these terms or Administrative Procedures shall take effect at such time and for such period as may be specified in the General Notice and may be modified or revoked by a subsequent variation by the Board made under this term 21.
- 21.04 A Contract affected by a variation under this term 21 shall remain in full force and effect subject to such variation and neither party shall be entitled to repudiate such Contract or treat it as frustrated except so far as may be allowed by the Board.

## 22. Articles, Rules and Regulations

- 22.01 Every Contract shall be subject to the Articles and the Rules and the Regulations insofar as applicable notwithstanding that either or both of the parties to it are not a member of the market or of the Clearing House.
- 22.02 In case of any conflict between the Administrative Procedures and these terms or the Rules, the provisions of these terms and the Rules shall prevail and in the event of any conflict between these terms and the Rules, the Rules shall prevail.

## 23. Arbitration

- 23.01 Subject to term 23.02 and to the Rules, any dispute arising from or in relation to a Contract shall be referred to arbitration under the Rules. The arbitration shall be held in accordance with the Rules in force at the time of such reference.
- 23.02 No dispute arising from or in relation to any cash settlement price fixed by the Board under these terms shall be referred to arbitration under the Rules.

## 24. Governing Law

- 24.01 Every Contract shall be governed by and construed in accordance with English law.
- 24.02 The provisions of neither the Convention relating to a Uniform Law on the International Sale of Goods, of 1964, nor the United Nations Convention on Contracts for the International Sale of Goods, 1980, shall apply to Contracts.

25. Non-registered Contracts

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25.01 In respect of a Contract which is not a registered Contract (“non-registered Contract”) these terms shall be modified so as to require and allow that a Contract to be registered with the Clearing House under the Rules and the Regulations is capable of being so registered, and to facilitate the performance of such registered Contract (and of any intermediate Contract) in accordance with these terms and the Administrative Procedures. Modifications may also be made to the terms of a non-registered Contract if, without such modifications, it may not be possible to perform such Contract by the applicable times specified in these terms and the Administrative Procedures. Without prejudice to the generality of the foregoing, all references in these terms to payment or dealing between the Buyer or the Seller and the Clearing House shall be modified so as to require a similar payment or dealing directly between the Buyer and the Seller party to such non-registered Contract.

26. Economic and Monetary Union

26.01 The Board in its absolute discretion may from time to time vary, substitute or remove any of, or add to, the terms of this Exchange Contract in any way which the Board considers desirable, arising out of or in connection with the introduction of the euro as the lawful currency of the United Kingdom, or to facilitate the calculation of and making of payments in euros or to facilitate the calculation of the EDSP or any invoicing amount, in pursuance of this Exchange Contract.

26.02 Any variation, substitution or removal of, or addition to, the terms of this Exchange Contract made pursuant to term 26.01 shall have such effect with regard to existing and/or new Contracts as the Board may determine.

26.03 Any determination by the Board to vary, substitute or remove any of, or add to, the terms of this Exchange Contract pursuant to terms 26.01 and 26.02 shall be the subject of a General Notice.

Issue Date: 11 October 2001

ศูนย์วิทยพัทพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



## Cocoa Futures Contract

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Exchange Contract No. 401

### Administrative Procedures

1. Price

The minimum price fluctuation shall be £1.

2. Settlement Procedures

All deliveries in respect of this Contract must be made in accordance with the Contract's terms, the Administrative Procedures and the Clearing House Procedures. Clearing Members are obliged to deliver or take delivery in respect of their total gross Contract position remaining open after the close of trading on the Last Trading Day in the relevant Delivery Month and must therefore ensure that their gross position (open buying and selling Contracts) registered with the Clearing House or submitted to the Clearing House for registration allows for this.

3. Last Trading Day

At 12.00 hours Trading in Contracts for the relevant Delivery Month shall cease.

By 16.00 hours The Exchange will publish the EDSP. The EDSP will be determined in accordance with term 9. The prices, offers or bids used for the calculation of the EDSP under: term 9.01(a), (b) or (c) shall be those during the period of one minute immediately preceding 12.00 hours; and term 9.01 (d) or 9.02 shall be those during the period referred to in term 9.02(a) or (b), as applicable.

4. Notice Day

By 10.00 hours Each Buying Clearing Member ("Buyer") shall have given a Buyer's Position Notice to the Clearing House by such means and in a form prescribed by the Clearing House from time to time. The Buyer's Position Notice may only be removed, substituted or replaced by the Buyer up to but no later than 10.00 hours.

Each Selling Clearing Member (“Seller”) shall have given a Seller’s Delivery Notice to the Clearing House by such means and in a form prescribed by the Clearing House from time to time. The Seller’s Delivery Notice may only be removed, substituted or replaced by the Seller up to but no later than 10.00 hours.

Each Seller’s Delivery Notice shall specify in respect of each Delivery Unit:

- (a) the name of the Seller and details of the Seller’s agent, if any;
- (b) details of the number of Lots and size and number of Delivery Units to be delivered under the Contract;
- (c) details of the Delivery Area for each Delivery Unit and Warehousekeeper in whose Warehouse each Delivery Unit is stored and details of the Origin for each Delivery Unit;
- (d) details of the Warrant number and Valid Grading Result number for each Delivery Unit; and
- (e) details of the account designation of each Lot (e.g. house or client); and
- (f) such other information as the Clearing House may prescribe from time to time.

All payments required by term 11.01 to be made by the Buyer and the Seller shall have been completed.

By 16.00 hours The Clearing House may direct the Seller to convert:

- (a) a Bulk Delivery Unit into Large or Standard Delivery Units or both; or
- (b) a Large Delivery Unit into Standard Delivery Units,

and will notify the Exchange of any such direction.



5. The First Business Day after the Notice Day

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By 12.00 hours

The Seller shall have given the Clearing House by such means as the Clearing House may prescribe, a notice under term 12.04 in a form prescribed by the Clearing House from time to time. Such notice shall specify whether the Seller will comply with the direction of the Clearing House by converting the Nominated Delivery Unit under term 12.04(a) or (b) or delivering Substituted Delivery Units under term 12.04(c).

If the Seller makes a notification pursuant to term 12.04(b) or 12.04(c), the Seller shall specify the following details for each Delivery Unit:

- (a) the name of the Seller and details of the Seller's agent, if any;
- (b) details of the number of Lots and size and number of the Delivery Units to be converted or delivered under the Contract, as the case may be;
- (c) details of the Delivery Area for each Delivery Unit and Warehousekeeper in whose Warehouse each Delivery Unit is stored and, in respect of each substituted Delivery Unit, details of the Origin;
- (d) details of the Warrant number and Valid Grading Result number for each Delivery Unit;
- (e) details of the account designation (e.g. house or client) of each Lot; and
- (f) such other information as the Clearing House may prescribe from time to time.

If the Seller has made a notification to the Clearing House under term 12.04(a) or (b), the Seller shall immediately instruct the relevant Warehousekeeper to undertake the conversion of the Nominated Delivery Unit.

The Seller may only remove, substitute or replace a notice made under term 12.04 up to but no later than 12.00 hours.

By 16.00 hours

The Clearing House will allocate to a Buyer one or more Delivery Units referred to in a Tender in respect of each Lot to be delivered to it by the Clearing House by such method of allocation as may be prescribed from time to time by the Clearing House. The allocation to a Buyer of any Converted Delivery Unit under term 13.04(a) will be a provisional allocation subject to confirmation by the Clearing House under term 14.06(b) or 15.08(b), as applicable.

The Clearing House will use its reasonable endeavours to make allocations in accordance with the Buyer's Position Notice submitted by a Buyer in accordance with these terms.

The Clearing House will make available to the Seller and Buyer:

- (a) details of the final Invoicing Amount payable by the Buyer in respect of each Delivery Unit, other than a Delivery Unit to be converted from a Nominated Delivery Unit; and
- (b) details of the provisional Invoicing Amount payable by the Buyer in respect of each Converted Delivery Unit to be converted from a Nominated Delivery Unit which has been provisionally allocated to the Buyer.

The Clearing House will make available to the Seller the Warrant Delivery Instruction report which details the order in which Warrants must be presented by the Seller under term 16.02.

6. The First Business Day prior to the Settlement Day

By 10.00 hours

The Seller shall have complied with term 14.04 and given the Clearing House a notice under term 14.04(c) in a form prescribed by the Clearing House from time to time. Such notice shall specify the following details for each Converted Delivery Unit:

- (a) the name of the Seller and details of the Seller's agent, if any;



- (b) details of the Delivery Area for each Delivery Unit and Warehousekeeper in whose Warehouse each Delivery Unit is stored;
- (c) details of the Warrant number and Valid Grading Result number for each Converted Delivery Unit;
- (d) details of the account designation (e.g. house or client) of each Converted Delivery Unit; and
- (e) such other information as the Clearing House may prescribe from time to time.

By 16.00 hours

The Clearing House will make available to the Seller details of the final Invoicing Amount payable to the Seller in respect of each Converted Delivery Unit to be delivered on the Settlement Day and, if appropriate, a revised Warrant Delivery Instruction Report.

The Clearing House will make available to the Buyer confirmation of the final allocation of the Converted Delivery Units derived from one or more Nominated Large Delivery Units to be delivered to it and details of the final Invoicing Amount payable by the Buyer in respect of each such Converted Delivery Unit.

## 7. Settlement Day

By 10.00 hours

The Buyer shall pay to the Clearing House in accordance with term 16.01(a) and in the manner prescribed from time to time by the Clearing House, the final Invoicing Amount in respect of each Delivery Unit allocated to the Buyer, other than a Delivery Unit converted from a Nominated Bulk Delivery Unit.

By 12.00 hours

The Seller shall have given to the Clearing House in accordance with term 16.02(a) Warrants in respect of each Delivery Unit which is not a Nominated Delivery Unit to be delivered under a Contract.

As soon as possible after Delivery 12.00 hours

The Clearing House shall pay to the Seller the final invoicing amount in respect of each Delivery Unit, other than a Unit converted from a Nominated Bulk Delivery Unit, delivered by the Seller in accordance with term 16.02.

The Buyer shall collect from the Clearing House the Warrants in respect of each Delivery Unit, other than a Delivery Unit which is converted from a Nominated Bulk Delivery Unit, which it has been allocated under these terms.

8. The First Business Day prior to the Conversion Settlement Day

By 10.00 hours

The Seller shall have:

- (a) complied with term 15.04 and given the Clearing House a notice under term 15.04(c) in a form prescribed by the Clearing House from time to time. Such notice shall specify the following details for each Converted Delivery Unit:
  - (i) the name of the Seller and details of the Seller's agent, if any;
  - (ii) details of the Delivery Area for each Converted Delivery Unit and Warehousekeeper in whose Warehouse each Converted Delivery Unit is stored;
  - (iii) details of the Warrant number and Valid Grading Result number for each Converted Delivery Unit;
  - (iv) details of the account designation (e.g. house or client) of each Converted Delivery Unit; and
  - (v) such other information as the Clearing House may prescribe from time to time; or
- (b) given the Clearing House a notice under term 15.05 in a form prescribed by the Clearing House from time to time.

By 16.00 hours

The Clearing House will make available to the Seller details of the final Invoicing Amount payable to the Seller in respect of each Converted Delivery Unit which complies with terms 15.04 and 5.05(a) or (b), as the case may be, to be delivered by the Seller on the Conversion Settlement Day, and if appropriate a revised Warrant Delivery Instruction Report.



The Clearing House will make available to the Buyer confirmation of the final allocation of the Converted Delivery Units derived from Nominated Bulk Delivery Units to be delivered to it on the Conversion Settlement Day and details of the final Invoicing Amount payable by the Buyer in respect of each such Converted Delivery Unit.

9. Conversion Settlement Day

By 10.00 hours The Buyer shall pay to the Clearing House, in the manner prescribed from time to time by the Clearing House, the final Invoicing Amount in respect of each Converted Delivery Unit to be delivered to it on the Conversion Settlement Day in accordance with term 16.01(b).

By 12.00 hours The Seller shall have given to the Clearing House in accordance with term 16.02(b) Warrants in respect of each Converted Delivery Unit to be delivered under a Contract on the Conversion Settlement Day.

As soon as possible after each 12.00 hours The Clearing House shall pay to the Seller the final Invoicing Amount in accordance with term 16.06(b) in respect of Converted Delivery Unit delivered by the Seller in accordance with term 16.02(b).

The Buyer shall collect from the Clearing House the Warrants in respect of each Converted Delivery Unit which it has been allocated under these terms in accordance with term 16.07(b).

10. The First Business Day prior to the Extended Conversion Settlement Day

By 10.00 hours The Seller shall have:

(a) complied with term 15.04 and given the Clearing House a notice under term 15.04(c) in a form prescribed by the Clearing House from time to time. Such notice shall specify the following details for each Converted Delivery Unit:

(i) the name of the Seller and details of the Seller's agent, if any;

- (ii) details of the Delivery Area for each <sup>263</sup> Converted Delivery Unit and Warehousekeeper in whose Warehouse each Converted Delivery Unit is stored;
  - (iii) details of the Warrant number and Valid Grading Result number for each Converted Delivery Unit;
  - (iv) details of the account designation (e.g. house or client) of each Converted Delivery Unit; and;
  - (v) such other information as the Clearing House may prescribe from time to time; or
- (b) given the Clearing House a notice under term 15.07 (b)(i) in a form prescribed by the Clearing House from time to time.

By 16.00 hours

The Clearing House will make available to the Seller details of the final Invoicing Amount payable to the Seller in respect of each Converted Delivery Unit which complies with terms 15.04 and 5.05(a) or (b), as the case may be, to be delivered by the Seller on the Extended Conversion Settlement Day, and, if appropriate, a revised Warrant Delivery Instruction Report.

The Clearing House will make available to the Buyer confirmation of the final allocation of the Converted Delivery Units derived from Nominated Bulk Delivery Units to be delivered to it on the Extended Conversion Settlement Day and details of the final Invoicing Amount payable by the Buyer in respect of each Converted Delivery Unit.

#### 11. Extended Conversion Settlement Day

By 10.00 hours

The Buyer shall pay to the Clearing House, in the manner prescribed from time to time by the Clearing House, the final Invoicing Amount in respect of each Converted Delivery Unit as notified to the Buyer in accordance with term 16.01(b).



By 12.00 hours                      The Seller shall have given to the Clearing House in accordance with term 16.02(b) Warrants in respect of each Converted Delivery Unit to be delivered under a Contract.

As soon as possible after each 12.00 hours                      The Clearing House shall pay to the Seller in accordance with term 16.06(b) the final Invoicing Amount in respect of Converted Delivery Unit delivered by the Seller in accordance with term 16.02(b).

The Buyer shall collect from the Clearing House the Warrants in respect of each Converted Delivery Unit which it has been allocated under these terms.

12. The Seventh Business Day after, as the case may be, the Settlement Day, the Conversion Settlement Day or the Extended Conversion Settlement Day

By 17.00 hours                      Subject to term 16.09, the Buyer shall be deemed to have accepted each Delivery Unit delivered to the Buyer on the Settlement Day, Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be.

Issue Date: 7 December 2000

ศูนย์วิทยพัชกร  
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ข



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

แหล่งที่มา : Man Financial Limited .2001. London.



**CONFIDENTIAL CUSTOMER INFORMATION (INDIVIDUAL)****1. General Information**

Customer's name	<input type="text"/>		
Address	<input type="text"/>	Telephone	<input type="text"/>
	<input type="text"/>	Fax	<input type="text"/>
	<input type="text"/>	E-mail	<input type="text"/>
Country	<input type="text"/>	Date of birth	<input type="text"/>
Mailing address (if different from above)	<input type="text"/>	Marital status	<input type="text"/>
	<input type="text"/>	Dependents	<input type="text"/>
	<input type="text"/>	Nationality	<input type="text"/>

Are you related to an employee of either the Man Group or any other investment company?

Yes

No

If yes, please provide details

Do you have a financial interest in any other trading account at Man Financial Limited ("Man"), or any of its affiliates?

Yes

No

If yes, please indicate account number and name

Does any other person(s) have a financial interest of 10% or more in the account?

Yes

No

If yes, please provide name and address below

**2. Employment Information**

This section must be completed by all parties including those who are self-employed.

Employer's name	<input type="text"/>	Nature of business	<input type="text"/>
Employer's address	<input type="text"/>	Years in service	<input type="text"/>
	<input type="text"/>	Position held	<input type="text"/>
	<input type="text"/>	Telephone	<input type="text"/>

Trading Background/Intentions

Have you had a previous Futures/Options trading account?

Yes

No

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If you answered yes to the above question, what investments did you trade?

How often do you trade?

Yes

No

How long have you traded?

Frequently

Infrequently

How many years has the account been open?

Under 1 year

1-5 years

More than 5 years

Indicate which of the following investments you propose to trade:

Equities (On exchange)

Financials

Soft Commodities

Energy Commodities

Industrial Metals

Precious Metals

Bonds (On exchange)

Financials

Soft Commodities

Energy Commodities

Industrial Metals

Precious Metals

Over the counter dealing

Financial Background

Please complete the following questions. It is important to note that your net worth profile should accurately reflect your financial position. Failure to provide this information may lead to a delay in processing your application.

This information is held by us in the strictest of confidence and is available to be viewed by authorised persons within the Man Group, the FSA and of course yourself.

PLEASE DELETE £/€ AS APPROPRIATE.

A: Total liquid assets  
(e.g. cash, securities etc.)

£/€

B: Total liabilities  
(e.g. mortgage and loans)

£/€

C: Total fixed assets  
(e.g. property)

£/€

D: Net worth  
(A + C - B)

£/€

E: Risk Capital\*  
(This figure should not have an adverse effect on your net worth)

£/€

F: Initial investment  
(This will be added to your net worth)

£/€

G: Gross Annual Income  
(e.g. salary, pension, investment income)

£/€

\* This information is provided to assist Man in assessing your suitability and will not limit your potential losses to the amount indicated.

Man is proceeding on the basis that your investment objective is to profit from speculative trading undertaken with Man. In the event that this is not the case please advise us of your investment objectives below.



5. Banking Information

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Name & address of bank [ ]

Type of account [ ]  
Account number [ ]  
Sort code [ ]

Will all remittances be from the account specified above?

Yes [ ] No [ ]

If you have answered no to the above, please specify other accounts used

[ ]

Are you the beneficial owner of these funds?

Yes [ ] No [ ]

If you have answered no to the above, please specify the beneficial owner

[ ]

Please indicate below how funds will generally be remitted

Telegraphic Transfer [ ]

GB£ Draft [ ]

GB£ Cheque [ ]



NOTE: FUNDS FROM THIRD PARTIES I.E. OTHER THAN THE PARTY/PARTIES SIGNING THIS AGREEMENT WILL NOT BE ACCEPTED INTO YOUR ACCOUNT.

6. Acknowledgement

Date: [ ]

Confidential Customer Information

I/We represent that the foregoing information is true and correct and that I/we will notify Man immediately in writing of any material changes. Man reserves the right to refer to and rely upon the accuracy of information contained herein and to contact such bankers and others as deemed necessary.

Signature/s: [ ]

Print name/s: [ ]

Private Customer Dealing Agreement and FOA Master Netting Agreement

I/We confirm that all terms and conditions set out in the private customer dealing agreement and any incorporating terms have been understood and are accepted.

Signature/s: [ ]

Print name/s: [ ]

Generic Risk Disclosure Statement

I/We confirm that I/we have read and understood the generic risk disclosure statement.

Signature/s: [ ]

Print name/s: [ ]

Authorisation To Take Up References

I/We hereby authorise Man to approach each or all of the banks and other companies referred to in the confidential customer information (individual) now or at any time here after and to seek and obtain from them all such information relating to my/our finances and creditworthiness as may be required in order to establish and maintain an account (In the event that Man feels it necessary to take up a reference Man will of course give you prior notice).

Signature/s: [ ]

Print name/s: [ ]

Commission Rates

I/We confirm that I/we agree to the commission rates laid out in the commission rate schedule and that these rates cover the markets I/we intend to trade.

Signature/s: [ ]

Print name/s: [ ]

## 7. Documentation Check List

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PLEASE BE SURE THAT YOU HAVE READ AND UNDERSTOOD THE DOCUMENTS REFERRED TO IN THE ACKNOWLEDGEMENT SECTION. IF YOU HAVE NOT RECEIVED THESE DOCUMENTS AND THE ACCOMPANYING TRANSLATION (IF APPLICABLE) YOU SHOULD CONTACT MAN ON +44 (0) 20 7285 3630.

When returning documentation please ensure that you have enclosed the following:

- Confidential Customer Information and Acknowledgement, dated and signed in all applicable sections
- Two suitable forms of identification e.g. a photocopy of a valid passport or ID card and a utility bill or bank statement
- For joint accounts please ensure you have read and understood the relevant joint account clause in the Dealing Agreement and that all relevant parties have signed the signature blocks in section 6
- Limited Power of Attorney - please complete and return if applicable

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

# LIMITED POWER OF ATTORNEY

a POWER OF ATTORNEY made on

[ ] 20  
(Date)

by [ ]  
(Customer's Name)

WITNESSES as follows:-

The Customer hereby appoints

[ ]  
(E.g. IB/CTA's Name)

of

[ ]  
(E.g. IB/CTA's Address)

to be the true and lawful Attorney of the Customer and in the Customer's name, place and stead to act on behalf of the Customer in every respect as fully and effectively as the Customer could act themselves in all matters relating to the placing of orders for trades and the giving of advice on the Customer's trading account or accounts with Man Financial Limited (hereinafter "Man" of Sugar Quay, Lower Thames Street, London EC3R 6DU) whether such accounts be now open or hereafter opened by the Customer, including but not limited to the giving of instructions to Man for the buying and selling of contracts as defined in Clause 2 of the Dealing Agreement of Man and the provision of margin cover on the said accounts.

The Customer hereby ratifies and confirms all that the said Attorney shall lawfully do or cause to be done by virtue hereof.

This Power of Attorney may not be delegated to any other person or entity.

This Power of Attorney shall continue in full force and effect until Man receives 24 hours written notice of revocation thereof signed by the Customer.

This Power of Attorney shall be governed by and construed in accordance with English Law.

Signed, sealed and delivered by:

[ ]  
(Customer's Signature)

in the presence of

[ ]  
(Witness' signature)

Please print name of the witness

[ ]

Please print address of the witness

[ ]  
[ ]  
[ ]



## 1. STATUS OF PARTIES AND DEALINGS

- 1.1 This agreement applies to all investment business we carry on with you, or for you, after you sign it and to any transaction connected with such business.
- 1.2 This agreement binds your personal representatives (if any) as it binds you.
- 1.3 Our dealings with you, or for you, on or under the rules of an exchange or market will be subject to its rules and practices as well as to this agreement and applicable law.
- 1.4 If this agreement conflicts to any extent with the rules of the Securities and Futures Authority ("SFA"), Exchange rules or incorporated terms, then, to that extent, SFA rules, Exchange rules or incorporated terms prevail.
- 1.5 We may record telephone calls between you and ourselves. You should be aware that such recorded calls may be used as evidence in the event of a dispute or anticipated dispute between us.
- 1.6 For the purposes of the SFA rules, we are proposing to treat you as a "Private Customer".

## 2. OUR SERVICES

- 2.1 We will provide investment dealing services (including arranging deals) in the following investments: -
  - (a) Shares in UK and Irish companies;
  - (b) Shares in foreign companies,
  - (c) Debenture stock, loan stock, bonds, notes, certificates of deposit, commercial paper, other debt instruments including government, public agency, municipal and corporate issues;
  - (d) Warrants to subscribe for investments falling within (a) or (b) above;
  - (e) Depository receipts or other types of instrument relating to investments in (a), (b) (c) or (d) above;
  - (f) Unit trusts, mutual funds and similar schemes in the UK or elsewhere;
  - (g) Futures contracts, including without limitation, commodity, energy, freight, metal and precious metal, currency, bond, stock, stock index, and any other kind of financial instrument, spot and forward currency contracts including foreign exchange;
  - (h) Option contracts on any of the foregoing and options on options contracts;
  - (i) Contracts for differences;The services may involve:
  - margined transactions;
  - short sales (i.e. sales where one party to the contract is obliged to deliver an asset which it does not possess); or
  - transactions in investments which are:
    - traded on exchanges which are not recognised investment exchanges or designated investment exchanges (as those terms are defined in the SFA rules); and/or
    - not traded on any stock or investment exchange.
- 2.2 In respect of all investments we may enter into transactions with you as a principal and not act on your behalf as agent. We will, nevertheless, continue to be subject to the rules and regulations of the SFA, and the Principles of Conduct requiring us to act in the best interest of our customers. If we act as a principal in any of the investments covered in 2.1 (a) and (b) above you will be notified at the time of dealing and a statement to that effect will be included on the contract note.
- 2.3 Under the rules of the SFA we are bound by certain requirements about taking care to obtain for you, or to give to you, the best practicable price when we deal for you or with you.
- 2.4 We shall provide you with written confirmation of all transactions made on your behalf as soon as reasonably practicable and a monthly statement to the extent required by SFA rules. It is your responsibility to check such information and if you believe it does not accurately record the position between us you should correct any mistake within 2 business days of receipt of the written information. If you do not raise any query within this period the information shall be deemed correct.
- 2.5 We shall provide an execution only service and shall not unless expressly agreed between us in writing offer any advice to you in connection with your investment activities including the merits or suitability for you of any particular transaction.
- 2.6 We shall normally confine our execution services to transactions made on recognised and designated investment exchanges, either in the United Kingdom or in other major financial centres.
- 2.7 We may provide other services if we so agree in writing.
- 2.8 In providing our services, we will act in good faith and with reasonable care.



### **3. YOUR INVESTMENT OBJECTIVES, RESTRICTIONS, WARRANTS, DERIVATIVES RISK WARNINGS**

- 3.1 The attached Confidential Customer Information sheet, which you must complete and sign, is part of this agreement. When completed, it will set out your investment objectives and any restrictions on the investments you wish to make. If you do not complete and sign it, we cannot act for you.
- 3.2 We are proceeding on the basis that you are prepared to accept a high level of risk. If this is incorrect or your investment objectives change, it is important that you should contact us as soon as possible.
- 3.3 As you wish us to deal with you or for you in derivatives and/or warrants, you must also read, and sign that you have read and understood, the relevant Risk Disclosure Statement/s. If you do not, we will not be able to deal with you or for you in the respective investments. Derivatives are options, futures and contracts for differences.
- 3.4 Derivatives dealing may result in a short position, ie a position where you contract to deliver an investment you do not have or bear the costs of converting such a delivery obligation into a payment obligation.
- 3.5 Derivatives dealing will frequently involve contingent liabilities. These contingent liabilities will require you to put up margin or collateral, as referred to in clause 7 below and to settle any amount due on the closing of a position not covered by margin or collateral. In our dealings all obligations to make or take delivery will be converted into cash settled obligations. This could result in the whole of your account balance being used for margin or close out payments.
- 3.6 Please note that we will not advise you about the merits of a particular transaction. You should be aware that any information, general or specific, verbal or otherwise, which is conveyed to you by us should not be construed as a recommendation for you to follow a certain course of action.

### **4. OUR CHARGES**

- 4.1 Our charges for our services will be as set out in the Cover Letter / Rate Card accompanying this agreement. We will notify you in writing of any alteration to them before they come into effect. You will also pay us any applicable value added tax and stamp or other transaction duty. We may share dealing charges with our associated companies or other third parties in respect of transactions carried out on your behalf. Details of any such sharing agreements are available upon request.
- 4.2 Any charges for any services we provide under 2.8 above (other services) will be notified to you in writing before we provide them. We will notify you in writing of any alteration to these charges before they come into effect.
- 4.3 We may deduct our charges and any applicable value added tax and stamp or other transaction duty from, and to the extent of, any funds we are holding for you. If we do not, or hold no or insufficient funds for you, you will pay us, or pay us the undischarged balance, as stated in the relevant contract or confirmation note or statement.

### **5. INTEREST**

- 5.1 No interest will be paid to you in relation to positive balances in your account but in the rare circumstance where you have a negative balance you will be charged interest at the rate set out in your Rate Card unless otherwise agreed in writing.

### **6. OUR POWER OF SALE OVER YOUR INVESTMENTS**

- 6.1 We shall have full power and authority to:-
- sell any investment (including collateral) we are holding or entitled to receive for you subject to having given one days notice of our intention to do so;
  - close out any open position you have;
  - charge you any costs we incur in doing so; and
  - apply the proceeds of sale or (if any) closing out to meet or put towards any amount due by you to us howsoever arising including losses, liability for any margin call and costs.

However, we may do so only if anything referred to in section 23.2(a)(i) - (iii) below (our rights to deduct from your funds) occurs or to meet, or put towards, a margin call on us or you as referred to in 7.1 below.

We may also close out any open position you have if this agreement is terminated.

- 6.2 Any surplus on a sale or closing out under section 6.1 above after payment to us of all sums due or owing will belong to you and so we will treat it as client money. Accordingly, if we default when still holding it, it will be pooled with our other client money for the benefit of all our customers.
- 6.3 Our rights under this paragraph 6 are without prejudice to our rights and remedies at law.

### **7. MARGIN, COLLATERAL AND CLOSING OUT YOUR OPEN POSITIONS**

- 7.1 Where we deal with you or for you in investments, the exchange or market (if any) on which we deal, its clearing house or our counterparty may from time to time call on us to put up initial or supplementary margin or collateral to cover liabilities we have incurred or may incur. We will fix margins and collateral requirements to at least this level and reserve the right to increase them, ie they may be higher than that required by the relevant exchange, market or counterparty, and we may:



- (a) as stated in 23.2(c) below and 6.1 above, put up funds we are holding for you, sell any investment we are holding or entitled to receive for you and put up the proceeds or put up any such investment (including any funds or investment you have put up under 7.1(b) below); and
- (b) in turn call on you to put up margin or collateral, in the form (respectively) of cash or of any investment we permit.

7.2 If we call on you, you will provide the cash or investment in the manner we require.

7.3 You should be available for margin calls whenever you have open positions. If you fail to meet that call, then, as stated in 6.1 above, we reserve the right to close out any open positions you have and charge you any costs we incur in doing so. Alternatively, we may, at your risk, leave any position open for up to five business days; if we elect to do so this will not be or be deemed to be a waiver of our rights.

7.4 In addition to our rights under 7.3 above, and again as stated in 6.1 above, we reserve the right to close out any open position you have without prior reference if:

- (a) you do not pay any premium or other amount (other than margin) due in connection with an investment transaction; or
  - (b) section 23.2(a)(i), (ii) or (iii) below applies for some other reason (our power of sale over your investments); or
  - (c) this agreement has terminated; or
  - (d) we reasonably consider it necessary or desirable for our own protection; or
  - (e) you die or steps are taken against you including bankruptcy, insolvency or analogous law;
- and we may charge you any costs we incur in doing so.

7.5 If we have received no instructions from you having made reasonable effort to call you, we will:

- (a) roll over to the next trading month all futures contracts two days before first notice day (or last trading day if no first notice day), for long positions and two days before last trading day for all short contracts. This will result in the closing out of existing contracts and the opening of new contracts for the next traded month. You will be charged a commission for this and all resulting account balances will be settled forthwith.
- (b) abandon any out of the money options or close out any in the money options immediately prior to the expiry date and you will pay any resulting commission for this and settle any account balances resulting from such close out.

7.6 Our rights under this paragraph 7 are without prejudice to our rights and remedies at law.

## 8. STABILISATION

8.1 Unless you instruct us otherwise, we may recommend to you, or effect transactions in, investment which are subject to stabilisation in the market.

Stabilisation is a price supporting process that may take place in the context of new issues. The effect of stabilisation can be to make the market price of the new issue temporarily higher than it would otherwise be. The market price of investments of the same class already in issue, and of other investments, whose price affects the price of the new issue, may also be affected.

This process is undertaken in order to ensure that the issue of investments is introduced to the market in an orderly fashion and that the issue price and/or the prices of associated investments is not artificially depressed because of the increase in supply caused by the new issue.

Stabilisation may only take place for a limited period, and there are limits on the price at which shares, warrants, and depository receipts may be stabilised (although there are no limits in respect of loan stock or bonds).

## 9. SET-OFF

9.1 Without prejudice to any other rights we may have (whether under this agreement or by operation of law) we may at any time, where any of the events set out in 7.4 hereof have (in our discretion) occurred, combine accounts, set-off sums due by us or any of our affiliates to you or by you to us or any of our affiliates or otherwise apply any collateral we hold against any obligation to us or any of our affiliates (whether actual or contingent). This right of set-off shall be mutual. All payment obligations between us shall at our option be converted into such currency as we may deem appropriate and we should be entitled to buy and sell any currency (if required) in order to give the fullest effect to this set-off provision and all payment obligations between us shall be settled on a net basis. The terms of the FOA Master Netting Agreement (February 1997 version) (as amended from time to time) shall be incorporated into any agreement between us as if written out in full herein and any terms used therein shall, where the context admits, be amended to ensure their effectiveness as between us.

## 10. AMENDMENT

10.1 Where necessary or desirable, to accord with changes in the law, custom, market rules or practices, we may amend the terms of this agreement by written notice to you. Any such amendments will be effective on a date specified in the notice.

10.2 No amendment will affect any outstanding transaction or existing legal right or obligation.

10.3 You will not assign your rights or obligations under this Agreement without our prior consent in writing.



## 11. TERMINATION

- 11.1 You may terminate this agreement by written notice to us effective from our receipt or, if we receive it on a non-business day, the start of business on the next business day.
- 11.2 We may terminate this agreement by written notice to you effective from your receipt of our notice.
- 11.3 No penalty will be due from you or us in connection with the termination of this agreement.
- 11.4 Termination of this agreement will not affect:
- any outstanding transaction (subject to 11.4 (c) below);
  - any existing legal right or obligation;
  - our right above to close out any open positions you have following termination; or
  - this paragraph 11.

## 12. ALLOCATION

- 12.1 Where the relevant clearing house, intermediate broker, settlement agent or counterparty (as the case may be) does not allocate open purchase contracts on maturity direct to our own specific account or client account open sale contracts, or vice versa, we shall, where required, allocate them randomly or on an equitable basis at our discretion.

## 13. INTERMEDIATE BROKERS

- 13.1 In order to give effect to your dealing instructions we may instruct an intermediate broker or settlement agent (as the case may be) selected by us at our discretion. We shall instruct an intermediate broker or settlement agent (as the case may be) where your investment is to be subject to the rules of an Exchange located outside the United Kingdom unless we are able to give effect to your instructions by executing the transaction itself.
- 13.2 An intermediate broker or settlement agent (as the case may be) will be:-
- another person authorised under the Financial Services Act 1986 (as amended from time to time)
  - a person (not being an authorised person) carrying on investment business outside the United Kingdom under the regulatory system (whether or not having the force of law) of the country in which the intermediate broker or settlement agent (as the case may be) carries on business or of any relevant third country.
- 13.3 You authorise us generally to use an intermediate broker or settlement agent (as the case may be) which is an associate of ours.

## 14. OUR CONFLICTS OF INTEREST OR DUTY

- 14.1 When communicating with you, or dealing with you or for you, we, any of our associated companies or any other person connected with us may have an interest conflicting with yours or a duty conflicting with ours to you. The conflict may be material, however, we require any employee communicating or dealing with you or for you to comply with our policy obliging him or her to disregard any such conflicting interest or duty.

## 15. COMBINING YOUR ORDERS

- 15.1 When we believe on reasonable grounds that it is in your best overall interest, we may aggregate your orders with ours and those of other customers. However, this may result in your obtaining, on some occasions, a less favourable price than if we had executed the order separately.

## 16. NOT READILY REALISABLE INVESTMENTS

- 16.1 We may deal with you or for you in not readily realisable investments. These are ones in which the market is limited or could become so. They can be difficult to buy or sell and to assess what would be a proper market price for them.

## 17. DEALINGS INCLUDING REGULATED EXCHANGES AND MARKETS

- 17.1 The Financial Services Authority ("FSA") recognises or designates exchanges and markets, in the UK and elsewhere, which regulate dealings on them so that they meet certain investor protection standards. Unless otherwise agreed in writing we shall only deal for you on an exchange or market, which FSA has recognised or designated.
- 17.2 In order to provide investment services in relation to unregulated collective investment schemes we may introduce you to an overseas person who is not authorised to carry on investment business in the United Kingdom. The investment services undertaken on your behalf (or provided to you by the overseas person) are not covered by the rules and regulations made for the protection of investors in the UK. In relation to these investments, it means that you will not have the benefit of rights designed to protect investors under the Financial Services Act 1986, and under the rules of the SFA.



In particular, you will not benefit from the following protections:

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- (a) the right to claim through the Investors Compensation Scheme for losses resulting from a default of obligations owed under the rules of SFA;
- (b) in the event of a dispute, access to SFA Complaints Bureau and Arbitration Scheme;
- (c) protection of money held on your behalf under the SFA Client Money Regulations;
- (d) the obligation that your transaction must be executed at the best price available in the relevant market at the time;
- (e) the obligation that any charges levied on you must be disclosed in advance;
- (f) the obligation that any advice or recommendations in respect of investments may only be made to you if they are considered to be suitable for you in accordance with your disclosed investment objectives and financial resources.

## 18. CUSTODY OF YOUR INVESTMENTS (INCLUDING COLLATERAL)

- 18.1 With our prior agreement in writing, but not otherwise, you shall be entitled to deposit assets or provide security in a form other than cash with us by way of security for any obligation arising from time to time ("Collateral"). We will on each occasion agree the continuing value of the collateral for security purposes (notwithstanding its face value). We reserve the right to request such additional security cover percentage as we shall notify to you in writing. Any Collateral provided to us will not be registered in your name.
- 18.2 Although your monies will be segregated from ours, the proceeds of the sale of any Collateral which exceeds the amount owed by you to us will, upon a default by us, be subject to the pooling rules under The Financial Services (Client Money) Regulations 1991 (or as may be amended). This action could result in you receiving less than the value of the surplus amount owed to you.
- 18.3 In exceptional circumstances we may have to return Collateral other than the original Collateral deposited with us. In all such circumstances, we will make best endeavours to ensure there is no material difference.
- 18.4 As a consequence of passing your Collateral to an Intermediate Broker, Exchange or Clearing House your Collateral may be used as Collateral for the obligation of other customers or our own obligations. Although care is taken in the selection of the above and they are regularly monitored, we do not accept liability for default of any such third party.
- 18.5 Your investments and assets will be held by us in accordance with SFA rules. Unless otherwise agreed any documents of title or documents evidencing title to investments belonging to you and which are held by us shall not be lent by us to a third party or be used as security for repayment of money borrowed from a third party by us on your behalf.
- 18.6 If we have agreed to provide you with a Safe Custody facility, the following terms will apply:-
  - (a) any document of title or other assets held by way of Safe Custody (including any bearer instrument) will at our discretion be held either by ourselves or by a custodian which will be an "Eligible Custodian" in accordance with SFA rules. The custodian may be an associated company of ours;
  - (b) any registerable instrument held by us on your behalf by way of safe custody will not be held in your name but in our name or in a manner permitted by SFA rule;
  - (c) where investments are in an uncertified form or otherwise transferable by book entry, such investments may be transferred through any depository or settlement system. Entitlement to such investments will be separately identifiable from our own investments or investments of other customers held or transferred through the same system;
  - (d) the common depositories and other persons holding investments for us only accept responsibility for their safe custody obligations to the extent provided in their own terms and conditions of business and we do not accept responsibility or liability for their safe custody obligations unless the party is an associated company of ours;
  - (e) unless otherwise agreed with you, we shall not normally be responsible for the following matters relating to investments held by way of safe custody;
    - Dealing with any rights and meeting calls;
    - Exercising any conversion, subscription or redemption rights;
    - Dealing with take-over or other offers or offers arising from capital re-organisation;
    - Exercising voting rights;
    - Claiming and receiving dividends, interest payments and other rights accruing to you;
  - (f) we may pool assets by way of safe custody. The general effect of pooling is that the individual entitlements of our customers to assets may not be identifiable by separate certificates or other physical documents of title and in the event of a shortfall following our default, you may not receive the full value of assets held with us.

## 19. RESEARCH

- 19.1 We may provide a general commentary and information on market events. We do not provide specific or tailor-made advice on your individual investment decisions unless otherwise agreed in writing between ourselves. You must satisfy yourself that you have understood the suitability and nature of the investment business you wish to undertake. We shall not be liable for any investment decision you make and you are expressly warned that you should not make such decisions in reliance upon anything said to you by us or any written material we provide to you from time to time.



**20. INSTRUCTIONS**

- 20.1 You may give us instructions orally, in writing or electronically via the Internet or similar. We shall accept instructions from you or anyone who reasonably appears to us to have your authority to give instructions.
- 20.2 We may refuse to accept any instruction at our absolute discretion but where any refusal is made we shall normally explain our reasons to you.
- 20.3 You may give orders that are good for the day (day orders) or good till cancelled orders (GTC orders). Good for the day orders will lapse at the end of the relevant day, GTC orders may be worked until cancelled.
- 20.4 If we execute business for transfer to another broker or dealer and that broker or dealer accepts the transfer by us of your open positions then our agreement with you in relation to the positions transferred will terminate automatically upon such transfer. We shall have no further liability to you in respect of such position.
- 20.5 Confirmations and statements will be sent to the address provided by you in the Confidential Customer Information sheet unless we are informed otherwise.

**21. UNSOLICITED CALLS ON YOU**

- 21.1 We may "cold" call you if we believe the call will benefit you. We will try to avoid unsociable hours, and will not call you before 08:00 hours or after 21:00 hours unless there are urgent and compelling reasons to do so.
- 21.2 Although being permitted to cold call you will probably improve our services to you, it means you lose your statutory right to unwind a deal resulting from a cold call.

**22. DATA PROTECTION**

- 22.1 All personal information provided by you and any other information relating to your accounts will be treated in confidence and will not be disclosed to third parties, except where permitted by law or where your consent has been received.
- 22.2 The uses of your personal information are covered by our registration under the Data Protection Act 1998 (as amended from time to time). Under the terms of the Act you have the right to obtain a copy of the information we hold about you, upon payment of the appropriate fee.

**23. YOUR MONEY, OUR INDEMNITY AND SETTLEMENT**

- 23.1 We will treat all funds we hold or receive for you as client money under SFA Client Money Regulations. As such we are required to segregate your money from ours in a bank account at an approved bank. This account is held by us as trustee and the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed on any other accounts of ours.
- 23.2 We reserve the right (without prejudice to our rights and remedies at law) to:
- (a) retain your funds and to deduct from them all or part of the amount due and/or of our loss or liability if:
    - (i) you have failed to pay us any amount when due;
    - (ii) you have failed to deliver to us any investment when due; or
    - (iii) we have for any other reason suffered a loss or incurred a liability caused by your negligence, wilful default or breach of this agreement (including through closing out an open derivatives position);
  - (b) deduct from them our charges and value added tax and stamp or other transaction duty as referred to in 4.3 above; and
  - (c) use them to meet, or be put towards, a margin call on you or us as referred to in section 7.1 above.
- 23.3 You will indemnify us against any loss or liability if anything referred to in 23.2(a)(i)-(iii) above occurs to the extent we have not recovered or discharged it under or by virtue of 23.2 above or section 6.1 (our power of sale over your investments).
- 23.4 You will settle with us in time to enable us to settle in turn within the normal time applying to the deal.
- Your attention is drawn to rolling settlement, where settlement is due a fixed number of days after the day on which the transaction is executed. You must ensure that you have taken all necessary steps to permit delivery of sold investments or settlement of the amount due in order to allow settlement to be effected on the settlement date. If you fail to make payment or delivery of investments on the due date your account will be debited with interest at the rate referred to in Clause 5 on any resulting unsecured debt or amount of short position from the date of default until payment by you or delivery and clearance of the debit or short position.
- 23.5 As you may wish to trade on overseas markets (non UK) we are obliged to give to you the following warnings:
- (a) Your money may be passed by us to an intermediate broker, settlement agent or approved bank outside of the UK; and



- (b) The legal and regulatory regime applied to the intermediate broker, settlement agent or approved bank is different from that of the UK and in the event of a default of the intermediate broker, settlement agent or approved bank your money may be treated differently from the position which would apply if the money was held by an intermediate broker, settlement agent or approved bank in the UK; and
- (c) You should consider taking independent legal advice if you are concerned about the implications of (b) above.

Although care is taken in selection of the above and they are regularly monitored, we do not accept liability for default by any such third party.

23.6 We are a member of the FSA's Compensation Scheme.

#### 24. JOINT ACCOUNT FACILITY

Where you wish to open an account in more than one name the following will apply:

- (a) We will accept trading instructions from any party who has signed the Confidential Customer Information Acknowledgement and Check List.
- (b) We will accept receipt and payment instructions from any party who has signed the Confidential Customer Information Acknowledgement and Check List.
- (c) All receipts and payments to us will be from and to a joint bank account held in the names of the parties who have signed the Confidential Customer Information Acknowledgement and Check List.
- (d) Where we have agreed to open a joint account on our books it is on the understanding that all parties who have signed the Confidential Customer Information Acknowledgement and Check List will be jointly and severally liable for any losses on the account.

#### 25. LIFFE CLAUSES

##### 25.1 Matching Contracts

In respect of every contract made between us subject to the rules of LIFFE, we shall have made an equivalent contract on the floor of the market for execution by open outcry or in the market conducted on an automated trading system administered by a futures and options market / futures and options exchange, or shall have accepted the allocation of any such contract.

##### 25.2 Arbitration

Any dispute arising from or relating to this agreement, in so far as it relates to contracts made between us subject to the Rules of LIFFE, and any dispute arising from or relating to any such contract as aforesaid and made hereunder shall, unless resolved between us, be referred to arbitration under the arbitration rules of LIFFE, or to such other organisation as LIFFE may direct before either of us resort to the jurisdiction of the courts (other than to obtain an injunction or an order for security for a claim).

##### 25.3 Jurisdiction

Subject to the arbitration clause, disputes arising from this agreement or from contracts made under this agreement shall be subject to the exclusive jurisdiction of the English courts to which both parties hereby irrevocably submit, provided that this shall not prevent us bringing an action in the courts of any other jurisdiction.

##### 25.4 Exclusion of Liability

In relation to all relevant Customer Contracts LIFFE is obliged under the Financial Services Act 1986 to ensure that business conducted by means of its market facilities is conducted in an orderly manner and so as to afford proper protection to investors. LIFFE and ourselves wish to draw to your attention that, inter alia, business on the market may from time to time be suspended or restricted or the market may from time to time be closed for a temporary period or for such longer period as may be determined in accordance with LIFFE's rules, on the occurrence of one or more events which require such action to be taken in the interests of, inter alia, maintaining a fair and orderly market. Any such action may result in us and through us, your (and your clients (if any)) being from time to time prevented from or hindered in entering into contracts in accordance with LIFFE's rules. Furthermore, we, and through us, you (and your clients (if any)) may from time to time be prevented from or hindered in entering into contracts in accordance with LIFFE's rules as a result of a failure of some or all market facilities. LIFFE and ourselves wish to draw the following exclusion of liability to your attention (and to the attention of your clients (if any)). Unless otherwise expressly provided in LIFFE's rules or in any other agreement to which LIFFE is party, LIFFE and ourselves shall not be liable to you (or any client of yours) for loss (including any indirect or consequential loss) including, without limitation, loss of profit, damage, injury or delay, whether direct or indirect, arising from any of the circumstances or occurrences referred to above or from any act or omission of LIFFE, its officers, employees, agents or representatives under LIFFE's rules or pursuant to LIFFE's obligations under statute or from any breach of contract by or any negligence howsoever arising of LIFFE, its officers, employees, agents or representatives.



## INTERNET

- 5.1 Information, advice, recommendations and research may be provided to you by us over the Internet, particularly via our website or computer dealing system (together the "Internet Services").
- 5.2 You acknowledge that the Internet is not a secure medium for communication of sensitive information. You also acknowledge that we will not be liable for any delay in receipt by you of any information via the Internet Services and any use by you of our Internet Services shall be at your sole risk. You further agree that any market data or information provided to you will not be broadcast, retransmitted or commercially exploited and you acknowledge that exchanges and markets have a proprietary interest in this data and information.
- 26.3 Access to some areas of our Internet Services may only be permitted where you have been issued with a password. You shall keep any password issued secure and shall not disclose the password to any third party without our express permission. As soon as you are aware that a password has become known to an unauthorised user, you shall inform us immediately.
- 26.4 When accessing our Internet Services you will comply with any separately undertaken agreement with us covering our computer dealing system and instructions or directions given by us for use or maintenance of the Internet Services and you agree to hold us harmless from any claims, liabilities, expenses or losses, howsoever arising which may result from your failure to follow any instructions or directions given by us.
- 26.5 You understand that we do not guarantee you electronic access to your account at all times. Whether or not you have been provided with electronic access to your account you understand that we do not guarantee your account against losses due to electronic communication problems.

## 27 DISCLOSURE

We may from time to time be requested or required to disclose to officials of Exchanges or clearing houses or to governmental, police or regulatory authorities in the UK or elsewhere (including, among others, the FSA and SFA) particulars of your dealings with us. You irrevocably authorise us to make such disclosures without prior reference to you, whether or not the request or requirement has the force of law.

## 28. SECURITIES – SHORT AND LONG SALES

- 28.1 In placing any sell order for a short account, you will designate the order as such at the time you place the order, and hereby authorise us to mark the order as being "short". Short sales may only be made in Margin Accounts and are subject to initial margin and margin maintenance requirements. In order to facilitate a short sale, we must be able to borrow the security you are selling short to cover the delivery to the purchaser(s). If the security is recalled by the lender(s) of the securities we will attempt to borrow the securities. However, if we are unable to re-borrow the securities we may be forced to cover your short position by purchasing the securities on the open market at the then current market price without prior notice to you. If a short position is closed out, you will be liable for any resulting losses and all associated costs incurred by us.
- 28.2 In placing any sell order for a long account, you will designate the order as such and hereby authorise us to mark the order as being "long". The designation of a sell order as being for a long account shall constitute a representation that you own the security with respect to which the order has been placed, that such security may be sold without restriction in the open market and that, if we do not have the security in our possession at the time you place the order, you shall deliver the security by settlement date in good deliverable form or pay us any losses or expenses incurred by us as a result of your failure to make delivery on a timely basis.

## 29 MISCELLANEOUS

- 29.1 In the event of your death your personal representative may close the Account (upon presentation of such evidence of their authority as we may require) by withdrawing the balance and any interest that may have accrued. Where the account is a joint account and a joint account holder dies, the account may continue in the name(s) of the surviving Account holder(s).
- 29.2 You must notify us promptly and in writing to Man Financial Limited, Sugar Quay, Lower Thames Street, London EC3R 6DU, for the attention of the Documentation Department, any change in your name or address. Any notice of name change must be accompanied by evidence of the change.
- 29.3 Time shall be of the essence in respect of any of your obligations to make any payment or to provide any security or documents to us under this agreement.

## 30 GOVERNING LAW AND JURISDICTION

- 30.1 English law governs this agreement.
- 30.2 You irrevocably submit to the exclusive jurisdiction of the English courts but we may take steps against you in the courts of any country where we deem it necessary for our protection.



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## Risk Disclosure Statement for Futures and Options

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This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent to your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

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### FUTURES

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#### 1. Effect of 'Leverage' or 'Gearing'

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are 'leveraged' or 'geared'. A relatively small market movement will have a proportionally larger impact on the funds you have deposited or will have to deposit; this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

#### 2. Risk Reducing orders or strategies

The placing of certain orders (eg 'stop-loss' orders, where permitted under local law, or 'stop-limit' orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as 'spread' and 'straddle' positions may be as risky as taking simple 'long' or 'short' positions.

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### OPTIONS

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#### 3. Variable Degree of Risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarise themselves with the type of option (ie put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling ('writing' or 'granting') an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the options and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see section on Futures above). If the option is 'covered' by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.



## Terms and Conditions of Contract

You should ask the firm with which you deal about the terms and conditions of the specific futures or options which you are trading and associated obligations (eg the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

### 5. Suspension or Restriction of Trading and Pricing Relationships

Market conditions (eg illiquidity) and/or the operation of the rules of certain markets (eg the suspension of trading in any contract or contract month because of price limits or 'circuit breakers') may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge 'fair' value.

### 6. Deposited Cash and Property

You should familiarise yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property, which had been specifically identifiable as your own, will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

### 7. Commission and other Charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

### 8. Transactions in other Jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation, which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

### 9. Currency Risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

### 10. Electronic Trading and Order Routing Systems (FIA Disclosure Statement<sup>1</sup>)

Electronic trading and order routing systems differ from traditional open outcry pit trading and manual order routing methods. Transactions using an electronic system are subject to the rules and regulations of the exchange(s) offering the system and/or listing the contract. Before you engage in transactions using an electronic system, you should carefully review the rules and regulations of the exchange(s) offering the system and/or listing contracts you intend to trade.

#### a) Differences among electronic trading systems

Trading or routing orders through electronic systems varies widely amongst the different electronic systems. You should consult the rules and regulations of the exchange offering the electronic system and/or listing the contract traded or order routed to understand, among other things, in the case of trading systems, the system's order matching procedure, opening and closing procedures and prices, error trade policies, and trading limitations or requirements; and in the case of all systems, qualifications for access and grounds for termination and limitations on the types of orders that may be entered into the system. Each of these matters may present different risk factors with respect to trading on or using a particular system. Each system may also present risks related to system access, varying response times, and security. In the case of internet-based systems, there may be additional types of risks related to system access, varying response times and security, as well as risks related to service providers and the receipt and monitoring of electronic mail.

#### b) Risk associated with system failure

Trading through an electronic trading or order routing system exposes you to risks associated with system or component failure. In the event of system or component failure, it is possible that, for a certain time period, you may not be able to enter new orders, execute existing orders, or modify or cancel orders that were previously entered. System or component failure may also result in loss of orders or order priority.

c) Simultaneous open outcry pit and electronic trading

Some contracts offered on an electronic trading system may be traded electronically and through open outcry during the same trading hours. You should review the rules and regulations of the exchange offering the system and/or listing the contract to determine how orders that do not designate a particular process will be executed.

d) Limitation of liability

Exchanges offering an electronic trading or order routing system and/or listing the contract may have adopted rules to limit their liability, the liability of FCMs, and software and communication system vendors and the amount of damages you may collect for system failure and delays. These limitations of liability provisions vary among the exchanges. You should consult the rules and regulations of the relevant exchange(s) in order to understand their liability limitations.

II. **Off-exchange Transactions**

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarise yourself with applicable rules and attendant risks.

<sup>1</sup> Each exchange's relevant rules are available upon request from the industry professional with whom you have an account. Some relevant rules are also available on the exchange's Internet home page.



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## Warrants Risk Warning Notice

This notice is provided to you, as a private customer, in compliance with the rules of The Securities and Futures Authority ("SFA"). Private customers are afforded greater protections under these rules than other customers, and you should ensure that your broker tells you what these are. This notice cannot disclose all of the risks and other significant aspects of warrants. You should not deal in them unless you understand the nature of the transaction you are entering into and the extent of your exposure to potential loss.

You should consider carefully whether warrants are suitable for you in the light of your circumstances and financial position. In deciding whether to trade, you should be aware of the following matters.

### 1. Warrants

A warrant is a right to subscribe for shares, debentures, loan stock or government securities, and is exercisable against the original issuer of the securities.

*Warrants often involve a high degree of gearing, so that a relatively small movement in the price of the underlying security results in a disproportionately large movement in the price of the warrant. The prices of warrants can therefore be volatile.*

You should not buy a warrant unless you are prepared to sustain a total loss of the money you have invested plus any commission or other transaction charges. Some other instruments are also called warrants but are actually options (for example, a right to acquire securities which is exercisable against someone other than the original issuer of the securities, often called a "covered warrant").

### 2. Off-Exchange Transactions

Transactions in off-exchange warrants may involve greater risk than dealing in exchange traded warrants because there is no exchange market through which to liquidate your position, to assess the value of the warrant or the exposure to risk. Bid and offer prices need not be quoted, and even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what is a fair price.

Your broker must make it clear to you if you are entering into an off-exchange transaction and advise you of any risks involved.

### 3. Commissions

Before you begin to trade you should have details of all commissions and other charges for which you will be liable.

### 4. Foreign Markets

Foreign markets will involve different risks to UK markets. In some cases risks will be greater. On request, your broker must provide an explanation of the protections which will operate in any relevant foreign markets, including the extent to which he will accept liability for any default of a foreign broker through whom he deals. The potential for profit or loss from transactions on foreign markets will be affected by fluctuations in foreign exchange rates.

ศูนย์วิทยพัชกร  
จุฬาลงกรณ์มหาวิทยาลัย

# FOA MASTER NETTING AGREEMENT (two way) 283

THIS MASTER NETTING AGREEMENT is entered into on the day and year set out under the heading "General Information" in the Confidential Customer Information Sheet.

## BETWEEN

(A) Man Financial Limited, Sugar Quay, Lower Thames Street, London EC3R 6DU; and

(B) The name and address set out under the heading "General Information" in the Confidential Customer Information Sheet.

NOW IT IS HEREBY AGREED as follows:

### 1. SCOPE OF THIS AGREEMENT

- 1.1 Unless otherwise agreed in writing by the Parties in Schedule 1 or otherwise and subject to the next sentence, these terms and the particular terms agreed by the Parties govern each Transaction entered into or outstanding between any two Designated Offices of the Parties on or after the date of execution of these terms. In the case of Transactions within paragraph (i), (ii), (iii) or (iv) of the definition of "Transaction", these terms govern only those Transactions where the exchange mentioned in such definition is a Specified Exchange.
- 1.2 These terms, the particular terms of, and applicable to, each and every Transaction governed by these terms, the Schedules to these terms and all amendments to any of such items shall together constitute a single agreement between the Parties. The Parties acknowledge that all Transactions governed by these terms which are entered into on or after the date of execution of these terms are entered into in reliance upon the fact that all such items constitute a single agreement between the Parties.

### 2. SETTLEMENT AND EXCHANGE OR CLEARING ORGANISATION RULES

- 2.1 Unless a Liquidation Date has occurred or has been effectively set, a Party shall not be obliged to make any payment or delivery scheduled to be made by that Party under a Transaction governed by these terms for so long as an Event of Default or Potential Event of Default with respect to the other Party has occurred and is continuing.
- 2.2 Unless otherwise agreed in writing by the Parties, if the Parties enter into any Transaction governed by these terms to close out any existing Transaction between the Parties then their obligations under such Transactions shall automatically and immediately be terminated upon entering into the second Transaction, except for any settlement payment due from one Party to the other in respect of such closed-out Transactions.
- 2.3 These terms shall not be applicable to any Transaction to the extent that action which conflicts with or overrides the provisions of this agreement has been started in relation to that Transaction by a relevant exchange or clearing organisation under applicable rules or laws and is continuing.

### 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 3.1 Each Party represents and warrants to the other Party as of the date of execution of these terms and, in the case of the representation and warranty in (v) of this Clause 3.1 relating to the entering into of Transactions, as of the date of entering into each Transaction governed by these terms that: (i) it has authority to enter into this agreement; (ii) the persons entering into the agreement on its behalf have been duly authorised to do so; (iii) this agreement and the obligations created under this agreement are binding upon it and enforceable against it in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any agreements to which such Party is bound; (iv) no Event of Default or Potential Event of Default has occurred and is continuing with respect to it; and (v) it acts as principal and sole beneficial owner (and not as trustee) in entering into these terms and each and every Transaction governed by these terms.
- 3.2 Each Party covenants to the other Party that: (i) it will at all times obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required to enable it lawfully to perform its obligations under this agreement; and (ii) it will promptly notify the other Party of the occurrence of any Event of Default or Potential Event of Default with respect to itself or any Credit Support Provider in relation to it.

### 4. TERMINATION AND LIQUIDATION

- 4.1 If, at any time:
- (i) a Party fails to make any payment when due under or to make or take delivery of any Property when due under, or to observe or perform any other provision of, this agreement (including any Transaction governed by these terms) and such failure continues for two business days after notice of non-performance has been given by the other Party to the defaulting Party;



- (ii) a Party commences a voluntary case or other procedure seeking or proposing liquidation, re-organisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to an insolvent Party), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian, examiner or other similar official (each a "Custodian") of it or any part of its assets; or takes any corporate action to authorise any of the foregoing; and, in the case of a re-organisation, arrangement or composition, the other Party does not consent to the proposals;
- (iii) an involuntary case or other procedure is commenced against a Party seeking or proposing liquidation, re-organisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to it or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to an insolvent Party) or seeking the appointment of a Custodian of it or any part of its assets and such involuntary case or other procedure either (a) has not been dismissed within five days of its institution or presentation or (b) has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure;
- (iv) a Party dies, becomes of unsound mind, is unable to pay its debts as they fall due or is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to such Party; or any indebtedness of a Party 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 proceedings are commenced for any execution, any attachment or garnishment, or any distress against, or an encumbrancer takes Possession of, the whole or any Part of the property undertaking or assets (tangible and intangible) of a Party;
- (v) a Party or any Credit Support Provider in relation to a Party (or any Custodian acting on behalf of a Party or any Credit Support Provider in relation to a Party) disaffirms, disclaims or repudiates any obligation under this agreement (including any Transaction governed by these terms) or any Credit Support Document;
- (vi) any representation or warranty made or deemed made by a Party pursuant to this agreement or 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;
- (vii) (a) any Credit Support Provider in relation to a Party or the relevant Party itself fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with the applicable Credit Support Document; (b) any Credit Support Document relating to a Party expires or ceases to be in full force and effect prior to the satisfaction of all obligations of such Party under this agreement (including any Transaction governed by these terms), unless the other Party has agreed in writing that this shall not be an Event of Default; (c) any representation or warranty made or deemed made by any Credit Support Provider in relation to a Party 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 (d) any event referred to in (ii) to (iv) or (viii) of this Clause 4.1 occurs in respect of any Credit Support Provider in relation to a Party;
- (viii) a Party is dissolved, or in respect of a Party whose existence is dependent upon a formal registration, such registration is removed or ends, or any procedure is commenced seeking or proposing a Party's dissolution or the removal or ending of such a registration of a Party; or
- (ix) any event of default (however described) occurs under any terms of business in place between the Parties or any other event specified for these purposes in Schedule 1 or otherwise occurs, then the other Party (the "Non-Defaulting Party") may exercise its rights under Clause 4.2, except that, if so agreed in writing by the Parties (whether by specifying as such in Schedule 1 hereto or otherwise), in the case of the occurrence of any Event of Default specified in paragraph (ii) or (iii) above the provisions of Clause 4.3 shall apply.

4.2 Subject to Clause 4.3, at any time following the occurrence of an Event of Default, the Non-Defaulting Party may, by notice to the Defaulting Party, specify a Liquidation Date for the termination and liquidation of Transactions in accordance with the provisions of Clause 4.4.

4.3 If the Parties have so agreed, the date of the occurrence of any Event of Default specified in paragraph (ii) or (iii) of Clause 4.1 shall automatically constitute a Liquidation Date, without the need for any notice by either Party and to the intent that the provisions of Clause 4.4 shall then apply.

4.4 Upon the occurrence of a Liquidation Date:

- (i) neither Party shall be obliged to make any further payments or deliveries under any Transactions governed by these terms which would, but for this Clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;



- (ii) the Non-Defaulting Party shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Transaction governed by these terms, its total cost, loss or, as the case may be, gain, in each case expressed in the Non-Defaulting Party's Base Currency (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or, as the case may be, gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position), as a result of the termination, pursuant to this agreement, of each payment or delivery which would otherwise have been required to be made under such Transaction (assuming satisfaction of each applicable condition precedent and having due regard to, if appropriate, such market quotations published on, or official settlement prices set by, a relevant exchange or clearing organisation as may be available on, or immediately preceding, the date of calculation); and
- (iii) the Non-Defaulting Party shall treat each cost or loss to it, determined as above, as a positive amount and each gain by it, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Non-Defaulting Party's Base Currency (the "Liquidation Amount").

4.5 If the Liquidation Amount determined pursuant to Clause 4.4 is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount.

4.6 Unless the Parties specify otherwise in Schedule 1 or otherwise, where termination and liquidation occurs in accordance with Clause 4.4, the Non-Defaulting Party shall also be entitled, at its discretion, to apply the provisions of Clause 4.4 to any other Transactions entered into between the Parties which are then outstanding, as if each such Transaction were a Transaction governed by these terms.

4.7 The amount payable by one Party to the other Party pursuant to the provisions of Clause 4.5, or any applicable laws or regulations, shall be paid in the Non-Defaulting Party's Base Currency by the close of business on the business day following the completion of the termination and liquidation under Clause 4.4, or any laws or regulations having a similar effect, (converted as required by applicable law into any other currency, any costs of such conversion to be borne by, and (if applicable) deducted from any payment to, the Defaulting Party). Any such amount which is not paid on the due date therefore shall bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11.00 am (London time) (or, if no such rate is available, at such reasonable rate as the Non-Defaulting Party may select) plus 1% per annum, for each day for which such amount remains unpaid.

4.8 For the purposes of any calculation hereunder, the Non-Defaulting Party may convert amounts denominated in any other currency into the Non-Defaulting Party's Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.

4.9 The Non-Defaulting Party's rights under this Clause 4 shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise).

## 5. SET-OFF

Without prejudice to any other right or remedy which it may have, either Party may, on or after the occurrence of a Liquidation Date and the determination of the Liquidation Amount, set-off any amount owing by it (whether actual or contingent, present or future and including, if applicable and without limitation, the Liquidation Amount and any amount due and payable on or before the Liquidation Date but remaining unpaid) to the other Party against any amount owing by such other Party (whether actual or contingent, present or future and including, if applicable and without limitation, the Liquidation Amount and any amount due and payable before the Liquidation Date but remaining unpaid) to the first Party.

## 6. CURRENCY INDEMNITY

If a Party (the first Party) receives or recovers any amount in respect of an obligation of the other Party (the second Party) in a currency other than that in which such amount was payable, whether pursuant to a judgement of any court or otherwise, the second Party shall indemnify and hold harmless the first Party from and against any cost (including costs of conversion) and loss suffered by the first Party as a result of receiving such amount in a currency other than the currency in which it was due.

## 7. ASSIGNMENTS AND TRANSFERS

Neither Party may assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer its rights or obligations under this agreement (including the Transactions governed by these terms) or any interest therein without the prior written consent of the other Party, and any purported assignment, charge or transfer in violation of this Clause shall be void.



## 8. NOTICES

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Unless otherwise agreed, all notices, instructions and other communications to be given to a Party under this agreement shall be given to the address, telex (if confirmed by the appropriate answer back) or facsimile (confirmed if requested) number and to the individual or department specified in Schedule 1 or by notice in writing by such Party. Unless otherwise specified, any notice, instruction or other communication given in accordance with this Clause shall be effective upon receipt.

## 9. TERMINATION, WAIVER AND PARTIAL INVALIDITY

9.1 Either of the Parties hereto may terminate this agreement at any time by seven days' prior notice to the other Party and termination shall be effective at the end of such seventh day; provided, however, that any such termination shall not affect any then outstanding Transactions governed by these terms, and the provisions of this agreement shall continue to apply until all the obligations of each Party to the other under this agreement (including the Transactions governed by these terms) have been fully performed.

9.2 A Party may waive any right, power or privilege under this agreement only by (and to the extent of) an express statement in writing.

9.3 If, at any time, any provision of these terms 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 these terms nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

## 10. TIME OF ESSENCE

Time shall be of the essence in this agreement.

## 11. PAYMENTS

Every payment to be made by a Party under these terms shall be made in same day (or immediately available) and freely transferable funds to the bank account designated by the other Party for such purpose.

## 12. GOVERNING LAW AND JURISDICTION

Unless the Parties specify otherwise in Schedule 1 or otherwise:

12.1 These terms shall be governed by, and construed in accordance with, the laws of England and Wales.

12.2 With respect to any Proceedings, each Party irrevocably (i) agrees that the courts of England shall have exclusive jurisdiction to determine any Proceedings and irrevocably submits to the jurisdiction of the English courts and (ii) waives any objection which it may have at any time to the bringing of any Proceedings 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 such Party.

12.3 Each Party 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 (i) suit, (ii) jurisdiction of any courts, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgement) and (v) 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. Each Party consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever of any order or judgement which may be made or given in such Proceedings.

## 13. INTERPRETATION

13.1 In these terms:

"Base Currency" means, as to a Party, the currency specified as such Schedule 1 or agreed as such in relation to it in writing between the Parties or, failing any such specification or agreement, the lawful currency of the United Kingdom;

"Credit Support Document" means, as to a Party (the first Party), a guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party ("Credit Support Provider"), or of the first Party, in favour of the other Party supporting any obligations of the first Party under this agreement;

"Credit Support Provider" has the meaning given to it in the definition of Credit Support Document;

"Custodian" has the meaning given to it in Clause 4.1;



"Defaulting Party" means the Party in respect of which, or related to a Credit Support Provider in respect of which, an Event of Default has occurred;

"Designated Office(s)" means, as to a Party, the office identified with its name on page 1 of these terms and any other office(s) specified in Schedule 1 or otherwise agreed by the Parties to be its Designated Office(s) for the purposes of this agreement;

"Liquidation Date" means a day on which, pursuant to the provisions of Clause 4, the Non-Defaulting Party commences the termination and liquidation of Transactions or such a termination and liquidation commences automatically;

"Potential Event of Default" means any event which may become (with the passage of time, the giving of notice, the making of any determination hereunder or any combination thereof) an Event of Default;

"Proceedings" any suit, action, or other proceedings relating to this agreement;

"Specified Exchanges" means the exchanges specified in Schedule 2 and any other exchanges agreed by the Parties to be Specified Exchanges for the purposes of Clause 1.1; and "Specified Exchange" means any of them;

"Transaction" means:

- (i) a contract made on an exchange or pursuant to the rules of an exchange;
- (ii) a contract subject to the rules of an exchange; or
- (iii) a contract which would (but for its term to maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for differences, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof;

- (iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition; or
- (v) any other transaction which the Parties agree shall be a Transaction.

13.2 In these terms, "Event of Default" means any of the events listed in Clause 4.1; "Liquidation Amount" has the meaning ascribed to it in Clause 4.4; and "Non-Defaulting Party" has the meaning ascribed to it in Clause 4.1.

13.3 Any reference in these terms to:

a "business day" shall be construed as a reference to a day (other than a Saturday or Sunday) on which:

- (i) in relation to a date for the payment of any sum denominated in (a) any currency (other than ecu or euro), banks generally are open for business in the principal financial centre of the country of such currency; (b) ecu, the Ecu Clearing and Settlement System operated by the Ecu Banking Association (or, if such clearing system ceases to be operative, any other clearing or settlement system determined by the Parties) is open for business; or (c) euros, settlement of payments denominated in euros is generally possible in London or any other financial centre in Europe selected by the Parties; and

- (ii) 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;

a "Clause" or "Schedule" shall be construed as a reference to, respectively a clause or schedule of these terms, unless the context requires otherwise;

a "currency" shall be construed so as to include any unit of account;

"indebtedness" shall be construed so as to include any obligation (whether present or future, actual or contingent, as principal or surety or otherwise) for the payment or repayment of money;

"Parties" shall be construed as a reference to the parties to this agreement and shall include their successors and permitted assigns; and "Party" shall be construed as a reference to whichever of the Parties is appropriate in the context in which such expression may be used;

a Party to which a Credit Support Provider relates shall be construed as a reference to the Party whose obligations under this agreement are supported by that Credit Support Provider; and

these "terms" or this "agreement" shall be construed as including the Schedules and as a reference to these terms or this agreement as the same may be amended, varied, novated or supplemented from time to time.



SCOPE OF AGREEMENT

- (a) Each of the following shall be a Transaction for the purposes of paragraph (v) of the definition of "Transaction" in Clause 13.1. Any other lawful contract being a futures, option, contract of differences, spot or forward, swap, swaption or any derivatives thereof, which is not made on or through an exchange.
- (b) For the purposes of Clause 1.1, these terms shall apply to all Transactions outstanding between the Parties on the date of execution of these terms.

DESIGNATED OFFICES

None, save as provided in the definition of "Designated Office(s)" in clause 13.1.

ADDITIONAL EVENT(S) OF DEFAULT

Not applicable.

AUTOMATIC TERMINATION

Upon the occurrence of any Event of Default specified in paragraph (ii) or (iii) of Clause 4.1, the provisions of Clause 4.3 shall apply.

TERMINATION OF OTHER TRANSACTIONS

The provisions of Clause 4.6 shall apply.

NOTICES

Notices to Man Financial Limited shall be given at the address referred to in the FOA Master Netting Agreement.

Facsimile: 020 7285 3501  
Attention: Client Services

Notices to Customers shall be given at the address set out under the heading "General Information" in the Confidential Customer Information Sheet.

GOVERNING LAW AND JURISDICTION

The following provisions shall not apply in place of the provisions of Clause 12:

- 12.1 These terms shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to conflict of law provisions.
- 12.2 With respect to any Proceedings, each Party irrevocably (i) submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City and (ii) 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 such Party.
- 12.3 Each Party 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 (i) suit, (ii) jurisdiction of any courts, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgement) and (v) 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. Each Party consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever of any order or judgement which may be made or given in such Proceedings.
- 12.4 Each Party hereby irrevocably waives any and all right to trial by jury in any Proceedings.

8. BASE CURRENCY

United States Dollars.

9. SELECTED FINANCIAL CENTRES FOR EURO SETTLEMENTS

Not applicable.







## ประวัติผู้เขียนวิทยานิพนธ์

นางสาวภัทราภรณ์ พรหมนุชาธิป เกิดวันที่ 11 มกราคม พ.ศ. 2515 ที่ กรุงเทพมหานคร สำเร็จการศึกษานิติศาสตรบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย พ.ศ. 2536 ได้รับประกาศนียบัตรเนติบัณฑิตไทยสมัยที่ 48 พ.ศ. 2538 จากสำนักศึกษาอบรมกฎหมายแห่งเนติบัณฑิตสภา และ LL.M. in International Commercial & European Law จากมหาวิทยาลัยเซฟฟีลด์ สหราชอาณาจักร พ.ศ. 2541 เข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิตที่จุฬาลงกรณ์มหาวิทยาลัย เมื่อพ.ศ. 2542 ปัจจุบันทำงานในตำแหน่งนายความ (Associate) ที่บริษัทที่ปรึกษากฎหมายและภาษีอากรไพร์ซวอเตอร์เฮาส์คูเปอร์ส จำกัด



ศูนย์วิทยพัชการ  
จุฬาลงกรณ์มหาวิทยาลัย