

# General Terms and Conditions • December 2016

These terms and conditions (the "General Terms and Conditions") govern the relationship between BANQUE HAVILLAND (SUISSE) S.A. (the "Bank") and its clients. The terms "Client", "Company", "Corporate Client" and "Person" shall be interchangeable.

## 1. PRELIMINARY PROVISIONS

- 1.1. The business relations between the person(s) in whose name the account is or will be held (the "Client") and the Bank are based on mutual trust. The Bank places its facilities at the disposal of the Client for the execution of different types of instructions. The variety of the business, the large number of transactions and the speed at which they must usually be handled require, in the interest of a defined and reliable legal relationship, the drawing up of certain general conditions. These General Terms and Conditions contain the terms and conditions governing all services provided to the Client or on the Client's behalf.
- 1.2. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number or gender, singular or plural, as the context requires.
- 1.3. The agreement between the Bank and the Client will consist of these General Terms and Conditions together with any other specific separated conditions and agreements agreed upon between the parties, the applicable Swiss laws and regulations, rules and customs, as well as by agreements amongst banks and banking customs generally applicable and followed in Switzerland.
- 1.4. The Bank is a member of the depositor protection scheme of "esisuisse" with registered office at Steinentorstrasse 11, CH-4051 Basel. In Switzerland, cash deposits up to CHF 100'000 by Client are treated in a privileged way (i.e. paid out immediately from the available liquidity of the defaulting bank); if the liquidity does not allow to pay entirely the privileged cash deposits, the depositor protection scheme will cover the difference up to globally CHF 6 billion. Upon request, the Bank will provide the Client with further information on the deposit guarantee scheme; additional information are available on: <http://www.esisuisse.ch/en>.
- 1.5. The Bank is subject to prudential supervision by the "Swiss Financial Market Supervisory Authority" (FINMA) with its registered office at Laupenstrasse 27, CHH 3003 Bern.
- 1.6. Investment in securities, financial instruments and foreign currencies is subject to market fluctuations and the Client may therefore earn profits but may also incur losses. The Client undertakes only to make investments and enter into transactions in relation to securities with which he is familiar and which are within his financial capacity.
- 1.7. The Client confirms, by signing these General Terms and Conditions that he and any authorised person and agent are fluent in English. The Client confirms also that he has read, understood and agreed to these General Terms and Conditions. In addition, the client certifies that he is not subject to guardianship and benefits from full legal capacity. The damage resulting from the legal incapacity of the client or of an authorized third party, particularly a signatory or holder of power of attorney, shall be borne by the client, unless the aforesaid incapacity was notified in writing to the Bank.
- 1.8. The Client agrees to notify the Bank immediately in writing of any change to the Client's personal data provided at the opening of account such as but not limited to, the Client's name, address, personal or fiscal status or any change to the data relating to the Client's agent if any.
- 1.9. UNITY OF THE ACCOUNT
  - 1.9.1. The Bank may, at its own discretion, open sub-accounts. All the sub-accounts of the Client, whatever their designation or currency in which they are operated, constitute one single account (including for the purposes of clauses 13 and 14).
  - 1.9.2. The Bank will book all the assets deposited by the Client with the Bank on one or several accounts or internal sub-accounts opened in its books by the Bank in the name of the Client.
  - 1.9.3. The Client acknowledges that the balance of the one single account is secured by real and personal guarantees attached to any one of the sub-accounts.

## 1.10. JOINT ACCOUNT

- 1.10.1. A joint account is defined as an account opened in the name of at least two persons and whose co-holders of a joint account shall each individually exercise all the rights accruing to them from their safe custody account and their account. Thus each of the co-holders may dispose individually and without restriction of the assets deposited with the bank. In this respect, each holder may manage the assets in the joint account, create debit balances, grant and revoke powers of attorney to third parties, give full and valid discharge to the Bank (e.g. by signing an acknowledgment slip), assets as collateral, respectively pledge the assets or close down the joint account without the Bank having to advise the other holders or their heirs thereof. However, the written consent of all the co-holders shall be necessary for any assignment of their rights under the joint- account. In case of collective signature right, the present section 1.10 shall not apply.
- 1.10.2. In the case of the death or incapacity of one of the joint holders, the other co-holders may continue to freely and singly dispose of the assets in the joint account. Following a request from a legal or testamentary heir of a deceased co-holder, who can validly show appropriate evidence, the Bank is entitled based on applicable regulations to transmit information on the bank relationship and reveal the name(s) of the surviving co-holder(s) as well as of the possible attorneys. The Bank has the right, but is not obliged to block the bank account at its entire discretion if it thinks that the interests of the heirs or of an incapable co-holder justifies the measure when (i) a co-holder dies, especially if an estate executrix has been appointed or (ii) the Bank is informed of the incapacity of a co-holder, especially if a public trustee or a guardian has been appointed.
- 1.10.3. All co-holders of the joint account shall in the meaning of Articles 143 and seq. of the Obligation Code jointly and severally be debtors and liable to the Bank for all obligations arising from the joint account, whether jointly or individually contracted by them (e.g. loan amount, interests, current account debits, commissions, fees, ...). In this respect, the co-holders undertake to relieve and indemnify the Bank for any liability and prejudice, which the Bank may incur in relation to any claim from a co-holder, respectively its heirs, beneficial owners or third parties.
- 1.10.4. The joint account agreement governs exclusively the business relations between the joint holders and the Bank, notwithstanding any internal agreement between co-holders concerning in particular, rights of property between the joint holders and their legal heirs, assignees or successors. The admission of an additional joint holder is subject to the unanimous consent of all the other joint holders
- 1.10.5. If for any reason whatsoever any one of the joint holders, or his authorised attorney, prohibits the Bank in writing from executing another joint holder's (or another joint holder's authorised attorney's) instructions, the joint and several rights between the joint holders towards the Bank shall immediately cease to have effect, subject to the joint and several liability of the joint holders which shall remain unaffected. In this case, the rights attached to the joint account may no longer be exercised individually and the Bank shall only comply with the instructions given by all the joint holders, their heirs, assignees or successors.
- 1.10.6. The Bank may, at any time and without prior authorisation, offset assets against liabilities between the joint account and the various accounts opened, or to be opened, with the name of any one of the joint holders, whatever the nature or the currencies of such accounts. Moreover, the Bank is entitled to credit on the joint-account cash and securities/financial instruments received in favour of one of the co-holders only.

## 1.11. EXISTING NUMBERED ACCOUNTS

- 1.11.1. All correspondence from the Bank bearing the number and letter combination and/or special designation set out in the Account Opening Form will be considered addressed to the Client.
- 1.11.2. The Client expressly acknowledges to be personally bound by all the acts and all documents bearing the designation/digits agreed in account opening file.
- 1.11.3. The Bank will be free from all responsibility, and the Client will assume full responsibility, for any consequences arising from the Bank's designating the account with a number and/or letter combination and/or a special designation chosen by the Client and, in general, from all consequences arising from the use of such accounts. Pursuant to Article 19, the Client will indemnify the Bank and the "Indemnified Persons" for all costs and damages the Bank may suffer due to legal or other actions instituted or threatened in connection with the account(s).

- 1.11.4. If the Bank is in doubt about any order given under special designation, it may refuse execution of such order. The Bank is, in advance, discharged of all legal or other consequences that may result from such a refusal and also released from any responsibility it could be charged with in connection with the abusive use of a special designation.
- 1.11.5. The termination of the special designation agreement must be notified in writing and will enter into force two business days following receipt of the termination letter by the Bank, or the dispatch of the termination letter by the Bank. In the case of termination, the Client must indicate to the Bank the new designation of the account, failing which the account shall be designated by the name of the first Client mentioned on the Account Opening Form.
- 1.11.6. The Bank is authorised, but is not obliged, to credit funds, securities, and other valuables to the account even if these are received in the real name of the Client with no mention of the designated number and letter combination and/or special designation unless an account exists in the real name of the Client.
- 1.11.7. The Bank is authorised to debit the account with its prevailing commission for this service, as outlined in the applicable Fee Schedule.
- 1.11.8. The Client declares that the special designation has been chosen at random without any intention whatsoever to appropriate the name of any person (individual or entity) and without knowing any facts or circumstances that would damage any person or institution with any right to such name or create a confusion.
- 1.11.9. The Bank may, at its discretion, refuse such designation chosen by the Client.

## **2. GENERAL PROVISIONS RELATING TO ACCOUNT OPENING, SIGNATURES, PROXIES**

- 2.1. At the beginning of the relationship and from time to time thereafter, the Client will provide to the Bank any necessary documentation and information to enable the Bank to confirm his identity and that of his authorised persons or agents as well as his tax status. If it is a Corporate Client, the latter provides its status, its tax status and the identification of its directors, authorized persons and Beneficial Owners including for the latter their respective tax status, in accordance with Swiss law, including the provision of all relevant official documents required by the Bank and proof of the origin of assets to be deposited with the Bank. Individuals may be asked by the Bank to provide evidence of their legal capacity. The Bank may further, upon the opening of the account or in the future, request any other documentation it considers necessary to comply with its legal obligations and to maintain a relationship of trust with the Client. If the Client fails to deliver any such document or information in a timely fashion to the Bank, the Bank is authorised to liquidate the positions of the Client and to close the account without further notice.
- 2.2. The Client may be represented in dealings with the Bank by one or several agents. The Client will provide the Bank with a list of all persons authorised to give instructions together with specimen signatures. Should agents of the Client cease to be authorised in that capacity, the Bank shall not be liable for the execution of instructions given by such persons if they are in accordance with the most recent authorised signatory proxy (or authorized persons list) received by the Bank. The latter has no obligation to enquire about potential changes that were not communicated to it, e.g. by consulting public databases, such as the Registrar of Companies. A power of attorney shall not be affected by disability or incapacity of the Client. Except in the case of gross negligence by the Bank, the latter shall not be liable for damage arising from forgeries or faulty authentication which it has failed to detect, including but not limited to payment orders.

In case of termination of the power of attorney, the Client must send a copy of the termination letter to the Bank. The power of attorney will cease on the second business day following the date on which the Bank receives such termination notice by letter, respectively the information that the Client died unless the Client has decided to include a post-mortem validity to the proxy; the burden of proof is borne by the Client. Any action taken by the attorney(s)/agent(s) in good faith after the death of the Client, but without actual knowledge of this death, and which is otherwise valid and enforceable, shall be valid and binding upon his heirs.

The Client assumes sole liability for the consequence of the attorney(s)/agent(s) actions. The Client is fully aware of all risks involved in granting a power of attorney to a third party for account management purposes and accepts the consequences of such power of attorney. The Client will rely on the attorney/agent for any information or advice regarding investments or any operations on the account, and accordingly releases the Bank from those duties.

The Bank has no duty to supervise the actions taken by the attorney(s)/agent(s) or to ensure compliance with any limitations or instructions agreed with the attorney(s)/agent(s) or with the investment profile assessed by the attorney(s)/agent(s).

- 2.3. The Bank may refuse to execute instructions from an agent, on the same grounds pertaining to such agent as could affect the execution of instructions from the Client himself.
- 2.4. The Client hereby declares and represents that all information he has provided, and will provide, to the Bank is, and will be, complete, accurate and not misleading in any material respect. The Bank assumes no responsibility for verifying the accuracy or the completeness of the data presented by the Client. Any amendment to such information must be communicated immediately in writing to the Bank. The Client, and not the Bank, will be liable for any damages caused by wrong, inaccurate, outdated or incomplete data. If the Bank has to verify the authenticity, validity or completeness of documents received from or handed out on behalf of a Client, or if it has to translate them, the expenses related to those operations shall be borne by the Client, and the Bank shall only be liable for gross negligence.
- 2.5. The Client shall ensure that, in all his dealings with the Bank, he complies with any legal, regulatory or other obligations incumbent upon him (such as but not limited to his tax obligations in the country(ies) in which the Client is obliged to pay taxes in relation to the assets deposited with or managed by the Bank). Should the Client fail to comply with such obligations, he shall be exclusively responsible for all consequences thereof (including possible financial or criminal sanctions) and the Bank shall not bear any responsibility in that respect. The same obligations shall apply with respect to the beneficial owner of any account held with the Bank. The Client should consult relevant legal or other advisers in case of doubt as to the exact obligations incumbent upon him.

### 3. PERSONAL DATA

- 3.1. The Client information held by the Bank is confidential. The Bank is responsible for the processing of a number of items of personal data concerning contractual and pre-contractual relations with the Client.
- 3.2. The Client authorises and empowers the Bank acting in his name and on his behalf to collect, store and process certain personal information concerning him. The Client may at his discretion refuse to communicate such information to the Bank, thereby precluding the Bank from establishing or maintaining computer records. However, such refusal or preclusion shall be an obstacle to the entry into or to the continuation of the relationship between the Bank and the Client as well as may constitute depending on the circumstances indicia justifying a reporting to the Swiss authorities. The personal information in relation to the Client is required to enable the Bank to perform the services requested by the Client, and to comply with its legal obligations. The correct functioning of accounts is subject to the existence of a complete and up-to-date set of client documentation, and the Client therefore undertakes to inform the Bank as soon as possible of any change in the data recorded and to provide to the Bank upon request any additional information which the Bank shall deem necessary to maintain the banking relationship and/or the relations as prescribed by legal or regulatory provisions.
- 3.3. The Bank shall be legally bound by a duty of banking secrecy and confidentiality and personal data protection rules. The Bank undertakes not to communicate personal data to any third parties, unless it derives from the execution of services which it shall provide on the order of the Client or from obligations to do so by present or future applicable legal and/or regulatory provisions, in particular, by application of (1) the OECD Standard for the Automatic Exchange of Financial Account Information in Tax Matters (the "OECD Standard") or (2) the intergovernmental agreement on the Foreign Account Tax Compliance Act ("FATCA") signed between Switzerland and the United States of America. Thus the Client is aware that his/her personal data and financial information may be exchanged with the Swiss and American tax authorities which may forward that information to the relevant foreign tax authorities. For more information on the automatic exchange of information, please refer to <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760>.
- 3.4. As part of the regime of the automatic exchange of information in tax matters, the Client will be asked to provide the Bank with his Taxpayer Identification Number (TIN). If his country of tax residence does not issue a TIN, the Client can provide a social security number, personal identification card reference number or official reference number issued by the authorities of his/her country of residence. For corporate entities, the Client will be asked to provide the company or business registration number. For more information on the TIN please refer to <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>.
- 3.5. The storage, protection and communication of personal data performed by the Bank is made in compliance with the provisions of the federal law of data Protection.

- 3.6. The Client is entitled to ask for a printed copy of its data related documents and may require a rectification of the data in cases where such data is inaccurate and incomplete (or similarly scanned documents) or computerised registrations effected by the Bank on the basis of original documents shall constitute prima facie evidence and shall have the same value in evidence as an original written document. Such records will be the sole property of the Bank.
- 3.7 The management bodies, employees and agents of the Bank are required by law to keep confidential the relationship maintained with the Client. **The Bank is however authorized to inform third parties as to the Client's identity when it judges it necessary for the good execution of the instructions received on behalf of the Client or when it will judge it necessary for the defence of its legitimate interests and/or the exercise of its rights arising from its relation with the Client. Thus the Client releases the Bank from its obligation to maintain confidentiality in so far as this may be necessary for the defence of the legitimate interests of the Bank,** in particular:
- In the event of legal actions taken by the client against the Bank;
  - To guarantee the Bank's claims and to realize the collateral provided by the client or by third parties;
  - In the event of recovery of the Bank's claims against the client;
  - In the event of criticisms levelled at the Bank by the client, either publicly or to Swiss or foreign authorities;
  - In the event of civil (attachment) or criminal provisional measures, letters rogatory;
  - In the event of the right and/or duty of the Bank to communicate in accordance with the requirements of the Swiss law against money-laundering in the financial sector;
  - In the event applicable laws in case of assets transfer or corporate actions over any type of financial instruments, especially foreign, require a disclosure;
  - In the event of investment on financial markets (see Art. 14.11);
  - In the event of high risk management (e.g. in case of credits) in connexion with our parent company.

**3.7. The Client explicitly authorises the Bank to tape record any telephone conversations and e-mail communications between the Client or its agent/authorized representatives and the Bank, in order to especially secure transactions; the records are kept for a limited period of time. It is agreed that such tape recording can be used for defending Bank's interests, especially in the event of complaint, dispute or legal actions in front of courts as conclusive evidence of the conversations thus recorded and to the same extent as a written document. Those recordings will also be available to authorized authorities.**

#### **4. PERSONAL DATA AND SWIFT**

4.1. The Bank draws specifically the attention of the client to the fact that the Bank uses the services of SWIFT (Society for Worldwide Interbank Financial Telecommunication), located outside Switzerland, especially for payment transactions and securities settlements, In accordance with the legal requirements, cross border and domestic payment transactions and securities settlements trigger the communication to the concerned banks as well as to Swiss and foreign system operators of data on the ordering party, especially the name, the address, the account (IBAN number) or portfolio number or even the identity of the beneficial owner, etc..., The data sent and stored abroad or any not subject anymore to Swiss regulations and foreign authorities may have access based on the laws of the place of registration More information may be obtained by browsing on the FINMA website (<http://www.finma.ch>).

#### **5. GENERAL PROVISIONS RELATING TO MAIL CORRESPONDENCE**

- 5.1. Unless agreed to the contrary or so required for the safeguarding of the interests of the Bank, the Bank will send all documents to clients by ordinary mail. Mail regarding accounts with several Account Holders will be sent to a common address indicated to the Bank. If no such address has been indicated, mail shall be forwarded to any one of such clients.
- 5.2. The date of dispatch is deemed to be the date recorded on the document. The dispatch and the date of dispatch of any communication are sufficiently established if the Bank has in its possession a printed or computer-stored copy or other mailing record of such communication. The transmission report (in the case of faxes) shall constitute conclusive evidence of the dispatch of a communication by the Bank and the receipt thereof by the Client. Written communications by the Bank are deemed to have been duly delivered within the ordinary course of mail, if sent to the last address of which the Bank has received notice from the account holder, the co-holders of a collective account, respectively one of the co-holder of a joint account in the meaning of Article 1.10 above, and is thus effective against other co-holders.
- 5.3. The Client undertakes to inform himself on a regular basis and at least on a 6 (six) monthly basis of the situation of his bank account(s). The same applies to clients who have instructed the Bank to hold mail on their behalf: in such a case, the Client undertakes to collect his mail on a 6 (six) monthly basis. Non-compliance with such obligation may be detrimental to the Client.
- 5.4. Where mail is returned to the Bank with a statement that the addressee is unknown at the address indicated or no longer resides at such address, the Bank shall be entitled to withhold such mail as well as any later mail; thereafter, the provisions in clause 5.3 and 5.5 relating to Hold Mail (including Hold Mail fees) shall apply until the Bank is informed in writing of the new address of the Client.
- 5.5. Mail which the Bank withholds (including where the address for delivery is that of the Bank) either upon the instructions of the Client or pursuant to clause 5.4 is deemed to have been delivered the day mentioned in each communication. The Bank may destroy withheld mail after a period of ten years after the termination of the business relationship between the Client and the Bank, independently of the storage method used (e.g. hardcopies or electronic archives). The Client assumes full responsibility for consequences or damages resulting from the dispatch or withholding of mail and undertakes to verify his mail on a regular basis.

- 5.6. Notwithstanding the existence of instructions to hold mail, the Bank shall be entitled to contact the Client by any means whatsoever (namely by sending correspondence by post, fax, electronically or telephonically) in the event of an emergency or if it considers this is in the interests of the Client or to assert its rights in connection with its relationship with the Client, or if the Client fails to collect his mail withheld by the Bank on his behalf and therefore does not comply with his obligations pursuant to clause 5.3, or if the Bank is required to do so by any laws or regulations, especially within the frame of duties deriving from potential dormant assets. In the aforementioned cases, the Bank reserves the right to send the Client all correspondence held by it. The Bank shall only be subject to a duty of best efforts in these circumstances and shall not be responsible if it is unable to contact the Client at the address or number given. The Bank shall moreover not be responsible for any consequences when, within the scope of this clause 5.6, it successfully contacts the Client despite hold mail instructions from the Client.
- 5.7. If the Client requests the mailing or transportation of non-dematerialized securities or other non-transferable assets to his address or to a person designated by the Client, such mailing or transportation shall be made at the risk and at the cost of the Client. Accordingly, in such cases the Bank shall be considered as having satisfied its obligation of restitution to the Client of assets held in custody with the Bank, upon remittance of such assets to the postal services for mailing or to a known courier service company for transportation.
- 5.8. The Bank shall not be obliged to insure the assets remitted by mail or transportation. The Bank shall only be liable for gross negligence and any such liability of the Bank shall be limited to the amount paid by the insurance company to the Bank or, in the absence of any insurance coverage, to the refunding to the Client securities of the nature and amount (but not necessarily bearing the same numbers) or cash or, if this is not possible, to the repayment of the value of these items as at the day of dispatch. The Bank shall not be liable for the loss in value of assets during the delivery period.
- 5.9. Any notices to be given under these General Terms and Conditions shall be made in writing, and may be made by facsimile, e-mail transmission, letter or other durable medium.

## **6. STATEMENTS OF ACCOUNT**

- 6.1. Statement of account shall be issued every month, quarter, half-year or year at the Client's choice. The Bank shall credit or debit the agreed or customary interest, commissions and expenses at the end of the month, quarter, half-year or year as it sees fit. The Bank may also charge particular services and special expenses which it has incurred to the Client's account. All amounts received or transferred by the Bank in foreign currency shall be credited or debited in Swiss francs, unless the Client has given instructions to the contrary in good time or holds an account in the currency concerned. If the Client only has accounts denominated in other currencies, the Bank shall credit or debit the amounts in one of these currencies at its discretion.
- 6.2. The Client shall immediately check for accuracy, correctness and completeness any information received from the Bank, whether electronically or by other means. The Bank's accounting material shall at all times be valid proof for the amounts outstanding to the credit of the account or of amounts owing.
- 6.3. The Client shall advise the Bank immediately of wrong execution or non-execution of an instruction, but also of errors, divergences and irregularities that appear in statements of account, portfolio evaluation or any other mail or document addressed to him by the Bank, or where there is any delay in receiving expected mail or document. If the Bank does not receive any written objection or complaint from the Client within 30 (thirty) days either of the dispatch of the documents and statements of account, portfolio evaluation or their availability, all transactions mentioned thereon are considered as having been approved and ratified by the Client, and all transactions and figures shall be considered final, accurate, approved and ratified by the Client. Following expiration of the 30 day period, the Client shall have no direct or indirect right to object to any such transactions effected by the Bank, in particular, but not limited to, transfers and investments of funds, and purchases and sales of securities and precious metals, even though the acknowledgment slip remitted from time to time to the Client has not been returned to the Bank.
- 6.4. The Bank is authorised to correct any material errors it makes by a new book entry with appropriate value date. If, after such a re-entry, the account shows a debit balance, overdraft interest will be automatically due, without formal notice, as from the effective date of the overdraft.
- 6.5. The Client accepts that the written confirmations of account statements sent by the Bank shall substantiate the due execution of the transaction in accordance with its instructions.
- 6.6. The Bank will provide portfolio valuations and/or statements of account at the frequency specified by the Client in the applicable Account Opening Form or as otherwise agreed between the Bank and the Client from time to time.

- 6.7. It is the Client's responsibility as account-holder to obtain specific tax statements and documents by express request. The Bank's issuance of this type of documents may be subject to a fee.

## **7. INSTRUCTIONS AND RELATED WAIVER**

- 7.1. The Client hereby authorises the Bank to accept and execute any instruction received (by whatever means of communication, whether or not in writing) which the Bank reasonably believes, to come from the Client or to have been given on its behalf (including any person notified to the Bank in writing pursuant to clause 2.2 as being authorised by the Client). The Client takes alone full responsibility for the incorrect execution of or failure to carry out these instructions arising from but not limited to (i) non-reception/loss or delay in transmission/reception of instructions, (ii) misunderstanding/misinterpretation, (iii) mutilation/alteration or interception of the message by third parties or (v) double dispatch of instructions and accepts all risks and losses, delays and damages resulting from the use of the chosen form of communication, whether by postal mail, facsimile, phone or verbally. Furthermore, the Bank reserves the right to require and wait for written confirmation by letter or fax of instructions received by telephone before carrying them out. The Bank is not liable for the consequences arising from delays, errors or omissions in the transmission of messages, whatever nature, provided it does not constitute a gross negligence caused by the Bank.
- 7.2. The Bank shall not be held liable for any prejudice resulting from instructions acted upon in good faith. The Client shall not hold the Bank liable for any prejudice resulting from wrong transmissions, misunderstandings, forgeries or other fraudulent activities. It is expressly agreed that the Bank's records shall alone constitute conclusive proof that instructions given by any means of telecommunication, including orally or by telephone, have been given in the manner in which they were implemented.
- 7.3. The Bank reserves the right not to implement instructions given otherwise than in writing if it considers that they do not appear to be sufficiently authentic. It is normally not the policy of the Bank to accept instructions for the execution of financial transactions by electronic mail (e-mail). In the event where the Client wishes to transmit orders via electronic mails (e-mails), he/she takes due note that the Bank especially draws the Client's attention to the increased risks of fraud associated with the use of e-mails when he/she give instructions to the Bank for the execution of financial transactions. The Client is specifically aware that electronic messaging is sent through the medium of the unsecured network known as the internet, or any similar network that may be used in the future. This medium offers no guarantee of confidentiality, and the Client recognizes that the Bank accepts no responsibility for use of the internet. The Client recognizes in particular that the Bank shall not be held liable for any harm caused to the Client by errors of transmission, abuse of the system by a third party, misrepresentation, hacking, decryption by unauthorized Swiss or foreign persons or authorities, technical defects, interruptions or breakdowns of service, network overload, corruption of messages, denial-of-service attacks, disruptions or blocking of access by network users, and the delaying or prevention of the Bank from carrying out the instructions sent to it by the Client. To this effect, the Client expressly authorizes the Bank to communicate with him/her by electronic messaging and to send information concerning his/her account to the e-mail address communicated in the account opening documentation, which will be regarded as valid by the Bank until the Client notifies it of a new e-mail address by non-electronic mail. Moreover, the Client expressly states that he/she recognizes and accept all the risks and harm that may result from the communication means used and in full knowledge of these facts, releases the Bank from any liability in this matter whatsoever. Thus the Client ratifies all operations the Bank will execute based on instructions transmitted via electronic messaging; in this regard the Client must take all the measure necessary to ensure proper reception and execution of his/her instructions by the Bank. Moreover, the Client recognizes and accepts that the Bank is not liable for the accuracy and integrity of data and communications transmitted via electronic messaging.

The Bank furthermore reserves the right, without been committed, to require from clients confirmation by letter or by telecopy on the same day as any instructions given by electronic mails (e-mails) or by data communication. It may also request, without being obliged to do so, such information from the principal of the transaction to confirm his identity and to explain the economic nature of the transaction.

- 7.4. At its convenience, the Bank reserves the right to refuse or delay the execution of any incomplete or imprecise instructions, but in the event that it shall execute such instructions, it may not be held liable for any errors or delays resulting from incompleteness or inaccuracy of said instructions. The Bank shall use reasonable efforts to notify the Client of any such refusal or delay.
- 7.5. Whenever the Bank receives instructions in which the name of the Client does not match the account number indicated thereon, the Bank may rely conclusively on the account number.



- 7.6. The Client shall notify the Bank on each occasion when payments are due within a time limit and where delays in the fulfilment of such instructions may cause specific damage. If no such notification has been given, the Bank shall only be liable for losses arising from its gross negligence. Payment instructions must, however, always be received with reasonable advance notice (minimum three banking business days) and shall be subject to customary execution terms. Should the Bank fail to execute such payment instructions in a timely fashion, the liability of the Bank towards the Client will be limited to the debit interest incurred or the loss of credit interest resulting from the delay of the payment, provided a gross negligence may be attributed to the Bank. Depending upon the primary currency of the relevant account, interest will be calculated at the LIBOR, the EURIBOR rate or, in absence of such a rate, at the rate commonly used for the relevant currency.
- 7.7. The Bank may, on reasonable grounds, refuse the execution of an order or suspend such execution if the order relates to transactions or products which the Bank does not handle in the ordinary course of its business, or if the Client has failed to execute an obligation he has towards the Bank. If for any reason the Client's order has not been executed, the Bank will promptly after becoming aware of the material difficulty in carrying out the order, inform the Client and provide him with the reasons for the non-execution.
- 7.8. Where stock exchange orders or the like are concerned, the Bank is liable neither for the errors or omissions made by its correspondent banks or other intermediaries, nor for the losses connected with the use of the usual means of communication.
- 7.9. Irrespective of the nature of a transaction, the Bank is permitted to provide the proof of such instructions by any legal means and in particular by way of testimony or recordings of instructions placed by telephone.

## **8. TRANSFERS AND TRANSACTIONS**

- 8.1. Accounts may be opened with the Bank in any currency acceptable to the Bank. Foreign currency accounts shall be subject at all times to the current foreign exchange regulations in force. All payments made by cheque, transfer or otherwise, whether by the Client or a third party, are credited subject to due receipt of the amount by the Bank. If bills of exchange, cheques or similar instruments which have been presented for encashment or exceptionally discounted (subject to restrictions as provided by laws and practices of the concerned countries) are not paid, or if the proceeds are not freely available, the Bank may cancel credit transactions and debit the Client's current account with the corresponding amount. The Bank shall retain all the rights embodied in said instruments until the debit balance and ancillary claims are eliminated. In agreeing to collect bills of exchange/cheques, the Bank shall act simply as a paying agent without accepting responsibility for the form, regularity or authenticity of said bills. The Bank shall incur no liability if a bill of exchange or a cheque is not presented or protested, except in the case of gross negligence on its part.
- 8.2. The Client's cash balance in foreign currency shall be placed on deposit with correspondent banks in the Bank's name but for the account, sole risks and at the expense of the Client, irrespective of whether said correspondents are established in the monetary area where the account currency is legal tender. Measures and restrictions imposed by any Swiss or foreign authorities concerning such assets in the country where the currency is legal tender or in the country where they are deposited shall also apply to the client's balances in said currency; the Client shall bear all the expenses and risks arising therefrom, in particular those resulting from exchange controls or special taxes in the countries concerned. The Client may operate his foreign currency accounts by means of currency sales or money transfers, as well as by issuing or buying cheques; any other arrangements shall require the prior consent of the Bank. The latter shall charge a commission on cash deposits and withdrawals. Furthermore, the Bank does not accept any liability if it is impossible to obtain a foreign currency as a result of restrictions, enforced transfers, distraint of any kind, decisions of authorities exercising powers or as a result of other similar facts beyond the bank's control. The Client shall bear, in proportion to its share, all the financial and legal consequences that might affect all the Bank's assets in the country of the currency or in the country in which the funds are invested, following measures taken by an authority in Switzerland or abroad. If the Bank, while fulfilling the instructions of the Client, uses the facilities of third parties, the Client shall be bound by the agreements, general and special conditions applicable between the Bank and such third parties, as well as by the conditions binding those third parties e.g. when operating on foreign stock exchanges. Transactions may be carried out only via an account opened by the Client with the Bank, which shall maintain the necessary balance, either in cash or in securities. The Bank's obligation to settle any transaction or to deliver any securities purchased by the Client is conditional upon receipt by the Bank on or before the due date for settlement (or satisfactory confirmation of such receipt by the Bank's settlement agent) of all necessary documents or funds due to be delivered by the Client or on its behalf on such date. The Bank shall only be required to credit the account of the Client (with the relevant value dates) once it has effectively received all necessary funds, securities or documentation resulting from transactions.

- 8.3. If the Bank entrusts third parties with the execution of a transaction, the Bank's liability shall be engaged only in case of gross negligence and be limited only to the careful selection and direction of those parties. The Bank is not liable for any failure of the third parties to provide their service according to the terms and conditions usually applicable to their relationship with the Bank. On certain markets, the Bank may be obliged, under the terms of local legal or regulatory provisions, to reveal the identity of the Client under certain circumstances. The Client hereby authorises the Bank to supply the relevant persons with the data required to allow the Bank to comply with the local rules of the market on which the Client has asked the Bank to act on its behalf. Some international payment systems require the identification of the originator of an instruction and of its beneficiary. The Bank draws the attention of the Client to the fact that, in case of a money or securities transfer, it may have to disclose some of the personal data of the originator. Under certain circumstances, the Bank may require from the Client identification of the beneficiary of such transfers. For further information, please refer to article 4 above.
- 8.4. The Bank may execute the instructions of the Client in one or several tranches, depending upon market conditions, unless the parties have agreed to the contrary. All instructions from the Client shall be executed in accordance with the market price applicable at the time of the transaction, unless the Client has expressly imposed price limits upon the Bank. When the Bank receives from a Client several instructions which total an amount exceeding the funds available to such Client, the Bank may execute such instructions as it deems fit, regardless of the date they bear or the date on which they were received by the Bank, acting in the best interest of the Client.
- 8.5. Money or securities transfers may be subject to taxes, duties, restrictions and other measures ruled upon by the authorities of the country of the currency or of the correspondent's residence. The Bank bears no responsibility, nor makes any commitment towards the Client resulting from the above mentioned events or any other events beyond the control of the Bank.
- 8.6. All deposits, savings accounts and other obligations of the Bank may be payable in cash only at its offices in Switzerland. The Bank may, in its absolute discretion, agree to make such payments elsewhere. Other payments, whatever currency, shall be made by the Bank by transfer to an account indicated by the Client; the Bank may on Client's demand and provided it is equipped issue a bank cheque drawn on a correspondent bank in the concerned currency. When the Bank issues a bank cheque (i.e. with prior debit of the account), the client shall take great care of the cheque and must inform the Bank immediately in case of loss or theft. The client shall be liable for any damage resulting from the disappearance, fraudulent use or forgery of the cheque, even if he is not at fault. The Bank is not under any obligation to make payments in foreign bank notes. Subject to a specific agreement to be entered into between the Bank and the Client, the Bank may be authorised by the Client to use the securities of the Client deposited with the Bank in securities lending transactions (i.e. stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction or a buy-sell back or sell-buy back) for the risk and benefit of the Bank for its own account or for the account of another client, provided that such transactions are made in markets generally open to financial sector professionals and organised by securities or other clearing institutions or market organisers.

## **9. FEES, INDUCEMENTS, INTEREST, COMMISSIONS, DUTIES**

- 9.1. The Bank shall invoice its services to the Client in accordance with the practices within the banking system and the nature of the transactions involved (commissions, custody fees on the financial instruments or any type of deposits as well as miscellaneous expenses). The Client shall pay in addition to the Bank all interest, fees (e.g. management or advisory fees), charges and other amounts that may be due, as well as all charges incurred by the Bank for the account of the Client or his assignees by opening, operating and closing the account. In particular, the Client shall bear the costs for the dispatch of mail, telecommunication and other charges, including but not limited to legal/lawyer's fees, disbursement, incurred by the Bank in any legal and administrative actions against the Client. The relevant Fee Schedule of the Bank, as applicable at the time of the signature of these General Terms and Conditions and as amended from time to time, is at the permanent disposal of the Client at the Bank. The Client shall enquire with the Bank about the fees applicable to a proposed transaction. By entering into transactions with the Bank, the Client shall be deemed to have accepted the relevant Fee Schedule of the Bank, unless expressly agreed otherwise. The Bank may, at any time, change interest rates, commissions, custody fees, fees and other charges due from the Client. The relevant Fee Schedule of the Bank will be amended accordingly and will be held permanently at the disposal of the Client as mentioned above.

9.2. The Client shall pay or, as the case may be, reimburse to the Bank all taxes and duties relating to transactions executed by the Bank in its relationship with the Client and paid by the Bank, or for which the Bank is or may be held liable, or that may be created in the future by Luxembourg or foreign authorities. The Bank is authorised to debit any amount so due from the Client's account irrespective of the settlement date of the original transactions.

### 9.3. INDUCEMENTS

9.3.1. The Bank offers to its clients a wide range of financial instruments. To this effect, the Bank enters into distributions' agreements and may consequently receive commissions, fees and other pecuniary benefits, which are comparable to retrocession fees, in relation to the investments made (e.g. discount on the issue price, structuring fees, etc...). The customer hereby expressly waives the right to receive the said fees or pecuniary benefits which shall be kept by the Bank and which form an integral part of the remuneration for the performance of its activity. The said waiver by the customer shall be deemed to have been accepted both for future and past transactions regarding existing accounts. The amount of the said fees and benefits shall represent a percentage of the annual level of investment which may vary up to 1.5%. The Bank shall inform the customer of the exact amounts it has received at the customer's request provided that the said amounts are directly related to the transactions that have been carried out for the customer. The costs of the said calculation shall be paid by the customer if the Bank has to carry out an in-depth research.

The Bank hereby undertakes to take any or all requisite measures to avoid any or all conflict of interests and ensure that the customer's interests are fairly taken into account within the scope of any or all dispute.

9.3.2. Changes to the information referred to in clause 9.3.1 shall be provided by the Bank to the Client using the same medium unless agreed otherwise.

### 9.4. INTEREST

9.4.1. DEBIT BALANCES ARE AUTOMATICALLY SUBJECT TO DEBIT interest. In the absence of a specific agreement with respect to the rate, the interest rate will be determined by the Bank in accordance with its rate and conditions set out in its Fee Schedule, as applicable from time to time.

9.4.2. Overdraft interest, costs and charges shall be calculated on a daily basis and debited from the Client's account at the end of each month. Overdraft interest costs and charges shall be capitalised at the end of each month.

## 10. ACCOUNT MANAGEMENT DUTIES

10.1. The Bank will not assume any duties or have any responsibility regarding the management of the Client's assets and/or liabilities unless the Client has entered into a discretionary portfolio management agreement, or any similar agreement empowering the Bank to manage all, or part, of the Client's assets and/or liabilities; in the latter case, the Bank has no obligation of results et is only liable for gross negligence. In particular, the Bank is generally not required to inform the Client of any potential losses owing to changes in market conditions, of the value of the assets and/or liabilities booked with the Bank, or of any circumstances that might prejudice or otherwise impair the value of those assets and/or liabilities.

10.2. If, at the request of the Client, the Bank gives generic advice or expresses opinions regarding the management of assets, the Bank shall use its reasonable endeavours with respect to the provision of such advice and/or opinions, but shall only be liable for gross negligence.

## 11. SPECIAL EVENTS

11.1. The Bank shall not be liable for any prejudices arising from natural disasters or events of a political or economic nature, which interrupt, disorganise or disturb, totally or partially, the services of the Bank or any of its national or foreign correspondents, even if these events do not constitute an event of "force majeure", such as interruptions of its telecommunications system or other similar events. The Bank shall not be liable for any damages due to legal provisions, declared or imminent measures taken by the public authorities, war, revolutions, civil commotion, strikes, lockouts, boycotts and picketing or any other "force majeure" event, this list not being limited and irrespective of the Bank being itself a party to the conflict or of its functions being only partly affected thereby.

- 11.2. In the case of a Corporate Client's bankruptcy, insolvency or dissolution, the persons authorised to represent the company shall, except if otherwise provided in the law, replace the Client in the relationship with the Bank. Unless and until the Bank is formally notified in writing about the company's bankruptcy, insolvency or dissolution, the Bank will not be liable if it carries out instructions received from an agent or representative of the Company.
- 11.3. In the case of an individual Client's death or incapacity, the persons authorised to represent the deceased or incapacitated Client's estate or assets and liabilities (in particular the executor of the will, the heirs or, as the case may be, the guardian), shall, except for joint accounts or as otherwise provided by law, replace the Client in the relationship with the Bank for the transmission of the estate. Unless and until the Bank is formally notified in writing of the Client's death or the incapacity, the Bank will not be liable if it carries out instructions received from the agent of the deceased or incapacitated Client.

## **12. GENERAL PLEDGE AND SET-OFF**

### **12.1. GENERAL PLEDGE**

- 12.1.1. To guarantee all its claims (including those not yet due) in respect of capital, interests, commissions, recovery costs, lawyers' fees and any other expenses arising from its business relations with the client, the Bank shall be granted a lien and pledge, as well as a possible right of retention, on all assets held or managed by it for the account of the client, irrespective of their designation or nature, especially on all securities, whether evidenced by a document/certificate or not, with deferred printing of certificate or not, all claims, equities, debt instruments, participation certificates, cash precious metals, holdings in Swiss francs or foreign currency (or their countervalue in Swiss francs), as well as all other assets which are or may be deposited with the Bank or held by its correspondents under the Bank's management and without prejudice to special guarantees which may have been provided in other respects. Said lien, setoff and pledge, as well as the possible right of retention, shall also apply to all interests, dividends, distributions and other current or future rights related to the items pledged, as well as any increase in value regardless of the cause, other items replacing pledged items and all term deposits in Swiss francs or foreign currency held at our affiliated entities in Switzerland or abroad or also at other institutions in a fiduciary capacity, i.e. in the name of the Bank but for the account and at the risk of the client. The general lien and compensation of the Bank extends to all debts and claims, current or future, disputed or not, of any kind, including claims out of third parties' misdemeanor behavior, claims for damages whether actual or out of loss of earnings, debts from illegitimate enrichment, debts by way of penalty clauses, as well as any claim resulting from the Bank's right of recourse against the client and/or the claims of the Bank based on obligations of compensation from the client, in particular in relation to investments made in a fiduciary capacity on behalf of the Client and/or according to its specific instructions. The client hereby assigns to the Bank the securities whose pledge is subject to an assignment.
- 12.1.2. The Bank shall be authorized ipso facto to take any measures which it may deem appropriate for the creation of the lien or which may be necessary for it to exercise the rights attached thereto. The undersigned hereby undertake(s) to comply, should the need arise and on the Bank's first demand, with all the formalities which may be necessary to enable the Bank to exercise all and any rights accruing to it from the present pledge. If the debtor(s) has/have created a lien and a third party/several third parties has/have also deposited collateral for the same claims, all the assets so pledged in favor of the Bank shall be treated as one unit; consequently, the Bank may, at its discretion, realize in part or in full one or several of the pledged items belonging either to the debtor(s) or the third party pledgor(s).
- 12.1.3. If, for any reason whatsoever, the value of the pledged assets falls below the margin stipulated by the Bank or if the latter considers for any other reason that the collateral provided is no longer sufficient to cover its claim(s), the Client(s) undertake(s) to restore the margin on the Bank's first demand and within the time limit set by the Bank, either by depositing additional pledges or by reducing the debt(s), or in any other manner the Bank deems appropriate in its sole discretion; should the Client(s) not comply with said demand within the period stipulated, the full amount of the Bank's claim shall become due immediately. If, for any reason whatsoever, the Bank is not able to notify the Client(s)/debtor(s) or the third party pledgor(s) that the value of the pledge has fallen below the specified margin, or in the event of extraordinary circumstances, the full amount of claims in respect of principal, interest, commissions, expenses and all other incidental costs shall become due immediately.

- 12.1.4. As soon as the claim(s) is/are due for any reason whatsoever (e.g. should the Client fail to fulfil his obligations or do so only partially and, in particular, if he/she is in default and has not reacted within reasonable time to a demand addressed to him/her), the Bank shall be entitled but not obliged to realize all or part of the pledged assets immediately, without further notice and without recourse to the procedure foreseen by the Federal Act on Recovery of Debts and Bankruptcy, in whatever sequence and at whatever time it chooses, by private treaty or by sale on a stock exchange or on an over-the-counter market. It shall be entitled to use the proceeds in full settlement of its claim in respect of principal, interest, commissions, expenses and any other incidental costs. The Bank shall incur no liability if it waives, or only partly exercises, its right to realize the pledged assets; the undersigned hereby agrees to refrain from filing any claim or raising any objection in this connection.
- 12.1.5. In all cases, the Client/debtor(s) shall remain accountable for any shortfall after realization of the pledged assets; it is specified that any surplus shall revert to the Client/debtor(s) or the pledgor(s). Consequently, it is acknowledged that the Bank cannot be involved in any possible recovery action ensuing from the legal relationship between the Client/debtor(s) and the pledgor(s) and no action may be taken against it as a result.
- 12.1.6. All summonses, demands for reimbursement and other communications from the Bank to the borrower(s) or pledgor(s) shall be deemed validly made if sent by registered mail to the last address given by him/them. Should the borrower(s) or pledgor(s) instruct the Bank to hold all correspondence, the latter shall be unconditionally considered as delivered to the addressee(s) on the date appearing on each communication; in this case, the borrower(s) or pledgor(s) shall bear all the risks which may result from this procedure, the Bank being discharged from any responsibility in this respect.

## 12.2. SET-OFF

- 12.2.1. Notwithstanding any provision of clause 1.10, all accounts held by the Client with the Bank shall form a single unit in the internal relations with the Bank and constitute one single and indivisible current account, irrespective of their denomination, nature, currency, interest or terms and may therefore be offset at any time in the Bank's sole discretion and without prior approval from the Client. All credit or debit transactions between the Client and the Bank become mere credit or debit items on the single current account and generate at any moment and in particular at the closing of the Client's account(s), a single net due credit or debit balance. The debit balance of the single current account existing between the Client and the Bank shall be secured by all the assets of the Client and by all guarantees and other collaterals whatsoever given to the Bank by the Client or by any third party acting in favour of the Client and on his behalf. In case of default by the Client of any provision of these General Terms and Conditions or any other agreement between the Bank and the Client all debts of any nature, including term obligations that the Client has towards the Bank, will immediately become due. If at any time during the course of or following the termination of these General Terms and Conditions, any amount is owed by the Client to the Bank, the Bank reserves the right to set-off, retain, or make deductions from any amount which the Bank, or any associate, owe to the Client or are holding for the Client. The Bank may at any time set off liabilities to make payments to the Client against any liability of the Client to make payment to the Bank. The Bank is entitled to offset those debts, without formal notice and in the order of priority it considers most suitable, against the assets of the Client with the Bank. In order to facilitate the set-off, assets other than cash deposits shall be realised at the market rate at the time of the set-off and the resulting proceeds shall be applied as a cash deposit. If the asset is not listed at an exchange the Bank shall be entitled to determine the value of the asset at its own discretion, using the best possible and transparent method available to value the assets, such as getting quotes from at least two recognised brokers (if available). In this regard the Bank is also entitled to purchase a valuation from an independent expert, at the cost of the Client. Any foreign exchange balance may be converted into one of the existing currencies of the account at the prevailing rates. Derivatives may be closed by the Bank, at the Client's risk and for the Client's account.
- 12.2.2. The Bank may, at any time and without prior authorisation, offset assets against liabilities between the joint and the various accounts opened or to be opened in the name of any one of the Joint Account Holders, whatever the nature or the currencies of such accounts. In such case the joint and the various accounts opened in the name of any one of the Joint Account Holders will be considered part of one single current account.

## 13. SAFEKEEPING ACCOUNTS

### 13.1. MISCELLANEOUS

- 13.1.1. Upon request of the Client, the Bank may accept to keep in custody securities of all kinds and whether registered or bearer (Custody Assets).
- 13.1.2. It is expressly agreed that the Bank has no obligation whatsoever to insure any deposited item (including any Custody Asset), unless this has specifically been agreed upon in writing by the Client and the Bank. Furthermore, the Client bears the full risks of exchange, transfer and/or insolvency of the company in question, as well as all consequences resulting from legal or administrative restrictions, or from possible restructuring of the debts of the country of the said company.
- 13.1.3. All Custody Assets and cash will be kept in either a global deposit with the Bank or its sub-custodian, or in a collective central deposit, and shall be subject to the applicable rules that govern such institution.
- 13.1.4. The Bank may refuse part or all of the items offered for safekeeping, without having to give any reason for such refusal.

### 13.2. FUNGIBLE ACCOUNT AND REGISTRATION OF SECURITIES

- 13.2.1. Unless there exists an express agreement in writing to the contrary, all securities shall be deposited in a fungible account. The Bank only has to return to the Client securities of the same nature and the same amount as those deposited with the Bank (but not necessarily bearing the same numbers).
- 13.2.2. The Bank shall hold and keep Custody Assets under its custody either in its own accounts or through Swiss or foreign correspondents or Swiss or foreign securities systems. **These Custody Assets deposit is made at the risk of the client, and this also if the custodian abroad is not subject to any prudential surveillance or is not subject to adequate surveillance. The Bank does not assume any liability for the acts and/or omissions of the collective safe custody center and/or third party depositories.** In this case, the correspondents shall hold the securities in safe custody in accordance with the laws and customary practices at the place of deposit and their commission and expenses shall be added to the Bank's charges. The Client grants full power to the Bank to take any action required for the purpose of ensuring proper registration of the Custody Assets in the name of the Client or the name of a nominee, including registering such Custody Assets in the name of the Bank or correspondent where such registration is necessary. Securities deposited with correspondents in securities systems hereunder will be subject to the laws, rules, statements of principle and practices of such correspondents and securities systems. Securities systems are not delegates of the Banks.
- 13.2.3. The Client accepts that the securities placed in safe custody shall form part of a collective deposit at the Bank or be transferred to a collective depository in Switzerland or abroad. The Client shall then become the holder of co-ownership rights pertaining to the collective deposit or deposits, in proportion to the number of securities deposited; said rights shall be of the same nature and have the same object as those embodied in the securities originally placed in collective custody. A reservation is made for securities issued in the name of the depositor or those which must be held separately for other reasons. In the case of deferred printing of certificates, the Bank shall be entitled to (i) require the issuer to convert existing securities into rights not evidenced by document; (ii) have existing certificates cancelled; (iii) perform all necessary administrative acts; (iv) give the issuer all necessary instructions; (v) obtain essential information from the issuer; (vi) demand the printing and delivery of the securities from the issuer at any time; and (vii) execute stock market orders as a counterparty. If securities placed in a collective deposit (or held in a form similar to this type of deposit) are drawn by lot, the Bank shall distribute these securities by means of an additional drawing, using a method which guarantees all the beneficiaries the same chances as under the first drawing procedure.

### 13.3. PRECIOUS METAL ACCOUNTS AND DEPOSITS

#### 13.3.1 COLLECTIF DEPOSIT

Unless the Client has specifically instructed the Bank to hold precious metals in an individual deposit, metals having the same assay and weight, as well as non-numismatic commercial coins entrusted to the Bank for safekeeping by the Client or purchased for his account, shall be held by category in the form of a collective deposit either in the Bank's vaults or with its correspondents in Switzerland or abroad. In the latter case, the Bank shall hold the precious metals under its management but for the account and at the risk of the Client. The place of deposit shall be indicated on the purchasing note or deposit slip. The Client's deposits shall neither be materially individualized nor separated from those of other clients and holdings of the Bank in the same category. The Client shall have a right of co-ownership of the collective deposit of the

precious metal in question, proportionate to his share of the deposit. In the event of withdrawal, the Bank shall not physically deliver the same items deposited, but ingots or coins having the same features and quality as those originally deposited or purchased by the client. In accordance with the customary practice for each type of metal or coin, the Client's deposit shall be accounted for in terms of gross weight, net weight or number of units. An estimate of the client's holdings in the collective deposit shall be provided in custody account statements.

The Bank shall manage the collective deposit and protect the rights of the holder vis-à-vis the other co-owners and third parties.

The Client may at any time withdraw the quantity of precious metal equivalent to his share in the collective deposit and have it delivered to the original place of deposit or, at his request, to a different location, provided that this is materially possible and does not contravene the laws in force at that location. The Client shall bear all the expenses, dues and risks arising from delivery to a place other than the place of deposit. In the case of withdrawal at a place other than the registered office of the Bank, the latter must be informed five working days before the withdrawal for technical and administrative reasons, in order to execute the client's instructions in good time. All present and future taxes and dues shall be charged to the client.

### 13.3.2 INDIVIDUAL DEPOSIT

Precious metals in non-standard commercial form or which do not have an assay of 999.9/1000 for gold, or at least 999/1000 for other precious metals, and coins of numismatic value shall be held separately in an individual deposit.

### 13.3.3 PRECIOUS METAL ACCOUNT

Precious metal accounts shall be denominated in units of weight (gold: fine metal weight; other metals: gross weight). They shall not bear interest. The Client shall be entitled to delivery of a quantity of precious metal equivalent to the balance on his account.

The Client may have said quantity of precious metal delivered to him at the Bank, in conformity with the legal regulations in force in Geneva (place of performance). By this delivery, he shall acquire a right of ownership of the precious metal.

At the Client's request, the Bank shall also deliver the precious metals to him at a different place, provided that this is materially possible and does not contravene the laws in force at that place. The Client shall bear all the expenses and risks arising from delivery to a place other than the place of performance. Under extraordinary circumstances such as war, limitation of transfers, etc., the Bank reserves the right to deliver the precious metals to the place and in the manner which it deems most judicious, at the Client's risk and expense. In the event of withdrawal of large quantities, the Bank must be given a reasonable period of notice to effect delivery of the precious metals in good time. The fine weight of the ingots shall be debited to the metal account. Any difference in favor or to the debit of the account holder shall be calculated at the market rate for precious metals in Zurich (or if necessary at the free rate on the international market) prevailing at the time of delivery.

When delivering metals, the Bank shall be entitled to supply ingots with dimensions of its own choosing, as well as of the quality and type corresponding to normal trade specifications. It shall have the right to charge the client for the additional manufacturing costs at the time of delivery and to prepare a detailed account of possible differences in weight or assay at the rate prevailing on the day. As soon as the precious metal is delivered, the Client shall acquire ownership of same. The Bank shall charge a commission for administering precious metal accounts, based on the scale of charges applicable in each case. It reserves the right to modify these charges at any time. All taxes, dues and expenses shall be borne by the Client

#### 13.4. SUPPLEMENTARY SERVICES RELATING TO SAFE KEEPING

- 13.4.1. Without the express order of the Client and without assuming any responsibility, the Bank will collect interest, dividends and coupons due, as well as redeemed securities (including, but not limited to, upon their maturity), exchange certificates. For such purpose, the Bank may rely on the publications made available to it. Failing express instructions from the Client accepted by the Bank, this latter and its correspondent banks are not liable for other acts of administration. In particular, in the case of a scheme of composition, bankruptcy, class actions or default of payment by the company issuing the security/securities held on behalf of the Client or by the bank which has borrowed on the basis of a fiduciary investment made by the Client at its own risk, the Bank shall communicate the necessary information to the Client. It is the responsibility of the Client, on the basis of this information, to undertake any useful and necessary measures, at its own expense, to safeguard its interests. If need be, the only obligation of the Bank towards the client is to transfer to the Client all possible amounts received from the company in question, less any tax or fee as well as commissions, custody fees, and other expenses due to the Bank.
- 13.4.2. The Bank will not forward information, proxies or notices for shareholders' or bondholders' meetings, nor exercise any voting rights, unless expressly instructed to do so by the Client. The Client will bear the relevant cost after being duly informed of its amount and the Bank shall be entitled to deduct such costs from the Client's account.
- 13.4.3. Unless otherwise agreed, it shall be incumbent upon the Client to take all other appropriate measures to safeguard the rights attaching to deposited Custody Assets, in particular to give instructions to the Bank to exercise or sell subscription rights, or to exercise any option right or conversion right. The Bank shall be under no obligation to inform the Client of any such rights with respect to Custody Assets. If a payment is due on partially paid securities, the Bank shall be authorised, unless instructed to the contrary, to debit the relevant amount from the account of the Client.
- 13.4.4. Generally, in the absence of instructions from the Client within the deadline set by the Bank when he/she has been requested to instruct the Bank about the measures he wishes to undertake, the Bank shall be authorised to refrain from any action or to act according to what it considers to be the best interests of the Client, without the Client being entitled to hold the Bank liable for any losses resulting from any action or inaction (except in the case of gross negligence). Forfeiture and prejudice arising from the lack of exercise of rights and obligations of any nature concerning deposited securities and coupons are entirely borne by the Client. The Bank, as depository for securities, has no other principal or ancillary obligations other than those expressly set out herein.
- 13.4.5. The Bank will only take advantage of the rights of recovery as well as the imputation of taxes on the basis of express instructions from the Client, at the expense of this latter. Furthermore, the Bank will only issue, if possible, tax statements, including ensuing from possible withholding tax under the Client's relevant double taxation treaties, for the Client upon the Client's express request. Said statements will be made in the name and at the cost of the Client.
- 13.4.6. The Client hereby accepts full responsibility for and will indemnify the Bank with respect to any claims of whatever nature - including but not limited to, claims for additional taxes, interest thereon or penalties - imposed by the tax authorities in connection with any tax, judicial or administrative proceeding, subsequent to or resulting from withholding tax credit filings. The Client will notify the Bank of any information rendering such filing incorrect, untrue or incomplete and will provide the Bank on demand with any document that will be required in the future for the aforementioned tax purposes.
- 13.4.7. It is up to the Client alone to obtain information and to conform to the possible obligations for notifying any significant participating interests to the issuers and proper authorities, in particular in the event of crossing a notification threshold. The Client shall indemnify the Bank for any damage which it could sustain because of the non-observance of such notification obligations. The Bank is not bound to inform the Client in this respect, or to carry out instructions which it could think would start a duty of notification or would violate the regulatory standards applicable in the matter.



### 13.5. CUSTODY

- 13.5.1. Reasonable advance notice must be given to the Bank for securities withdrawals of Custody Assets. Withdrawals are subject to the provisions of clauses 7 and 8.
- 13.5.2. Fees and charges for safe custody are calculated according to the Bank's Fee Schedule, as described in clause 9.1 above. These fees and charges are payable at the beginning of each calendar quarter and are due for the whole period of that quarter, except in the case of written agreement to the contrary. Safe custody charges will not be reimbursed if Custody Assets are sold, transferred or otherwise disposed of.
- 13.5.3. The Bank will calculate and is authorised to debit from the Client's account its own charges, commissions and fees as well as those of its correspondents and/or brokers according to prevailing rates.

### 13.6. RESPONSIBILITY

- 13.6.1. The Bank is not responsible for any imperfections relating to securities deposited with the Bank.
- 13.6.2. In its capacity as depository for securities, the Bank shall only be liable for gross negligence. If the Bank sub-deposits the securities in deposit with third parties, its liability shall be limited according to clause 8.3.
- 13.6.3. In case of the loss of securities due to the Bank, the Bank shall only be liable to replace the securities with securities of the same nature and amount (but not necessarily bearing the same numbers) as those deposited with the Bank or, if undeliverable, to refund the value of the securities as at the date of the request for delivery or sale.

## 14. SECURITIES TRANSACTIONS ORDERS

- 14.1. All orders from the Client for the purchase and sale of securities and equivalent assets, or of options on securities and equivalent assets, are carried out by the Bank, at its discretion, as a commission agent contracting in its own name (special notification not being required) or as a trader for its own account.
- 14.2. At the time of transmission of a stock market order, the Client's account must necessarily hold a sufficient balance or cover, either in cash or in securities or other financial instruments. The Bank has the right to refuse the acceptance of stock market orders without having to provide any reason.
- 14.3. In the absence of cover or delivery, the Bank may, but is not obliged to, execute orders at the exclusive risk of the Client. If, within twenty-four hours of execution, the cover or deliveries have not yet been fulfilled, the Bank may, at its discretion, liquidate the transactions at the sole risk of the Client and the Client shall indemnify the Bank against any resulting damages, and will reimburse the Bank for any resulting shortfall.
- 14.4. In the absence of specific instructions, the Bank will choose the place and manner of execution of the Client's instructions acting always in the client's interests.
- 14.5. All orders will be executed in accordance with the rules and practices of the market on which they are executed, whether executed in Switzerland or abroad. The costs in connection with the execution of these orders shall be borne by the Client. The Client is responsible for complying with the relevant legal and regulatory provisions and in particular with his/her/their tax, stock exchange or exchange control obligations.
- 14.6. The Bank does not have to verify the conditions (including disclosure requirements) applicable to transactions in all the markets in which the Client instructs the Bank to effect transactions. The Client agrees to hold the Bank harmless for any damage that may arise there from.
- 14.7. Orders not bearing an expiry date remain valid only during the day they have been placed in the relevant market. Orders given by the Client for an undetermined period (good until cancelled) remain valid as determined by the rules and practices of the relevant market; however, they shall ultimately expire at the end of the calendar year during which they were given.
- 14.8. CONFLICTS OF INTEREST POLICY

- 14.8.1. As indicated above (9.3.1), the Bank hereby undertakes to take any or all requisite measures to avoid any or all conflict of interests and ensure that the Client's interests are fairly taken into account. Nevertheless, the Client acknowledges and accepts that the Bank is not responsible for situations of conflict that the Bank cannot reasonably foresee or detect.

14.8.2. In the event that the measures taken by the Bank are insufficient to ensure, with reasonable certainty, that the risk of damaging the Client's interests cannot be avoided, the Bank shall inform the Client concerned of the general nature and/or the source of such conflicts of interest prior to taking further action.

14.8.3.

#### 14.9. RIGHTS OF THE BANK

14.9.1. At its discretion the Bank may:

- refuse to execute sales orders before securities are received;
- refuse to execute orders on credit, term or premium transactions;
- execute purchase orders only up to the available balance in the Client's account;
- repurchase, at the expense of the Client, securities sold which were defective or not delivered in time;
- debit the account of the Client with securities equivalent to the securities (or an amount equivalent to their value if the securities are no longer held in the account) which the Client has initially physically remitted to the Bank and which thereafter are subject to a stop-order; and/or consider as a new order any instructions which are not specified as a confirmation of or change to an existing order.

The Client bears all legal and financial consequences arising from remittance for sale of restricted securities.

14.9.2. The Bank retains the right to replace, at the Client's expense, securities put up for sale which have not been delivered in due time.

#### 14.10. AUTHORISATIONS BY THE CLIENT

14.10.1. The Client understands and agrees:

- that the Bank may purchase or sell securities for other Clients or itself of the same kind as for the Client and at the same time, and that the Bank is authorised to deal with itself or related companies in purchasing or selling securities for the account of the Client;
- that securities may be purchased or sold for the Client's account which may be issued by companies maintaining a banking relationship with the Bank and its affiliates, or in which officers of the Bank, or its affiliates, may serve as directors;
- that the Bank may purchase or sell for the Client's account shares or certificates of investment funds or companies which are managed by the Bank or its affiliates;
- that the Bank may, from time to time, purchase and sell securities from and to any account maintained by any other Client with the Bank or related companies of the Bank; and
- that the Bank may purchase or sell for the Client's account securities or certificates of investment funds issued or distributed by companies maintaining a banking/business relationship with the Bank and/or its affiliates that entitle the Bank to receive commission and/or retrocession fees.

14.11. The Client's attention is expressly drawn to the fact that, from time to time when he/she invests in a financial instruments, of whatever kind and depending on jurisdiction and specific circumstances, the Bank may be required to disclose the identity of the direct/indirect holders and the beneficial owner in relation to a given transaction in financial instruments (or similar rights) under legal or regulatory provisions applicable to such instruments. Non-compliance with such disclosure obligations may result in the relevant instruments or cash being blocked (for example voting rights may not be exercised, dividends and other rights might not be received or that the instruments may not be sold or otherwise disposed of).

In such context, **the Client agrees to submit to the transparency rules imposed (i) by the laws and regulations which governs the markets in which he/she operates his/her transactions through his/her account or (ii) when this requires by the collective deposit centers or custodians with which securities, intermediate securities, stocks and shares, financial instruments and/or rights issues are deposited or registered and expressly instructs the Bank to disclose, at its sole discretion, without delay and without reverting to the Client, its representatives and/or the beneficial owner, the identity and other information on the Client, its representatives and/or beneficial owner at the disposal of the Bank, details on the relevant transactions and holdings of financial instruments and other positions to supply the relevant persons (such as i.a. an exchange, public authority such as a supervisory or tax authority, self-regulatory organization, issuer, correspondent bank, custodian bank, registrar, broker or other intermediary) with the data required in order to allow the Bank to comply with local law, the rules of the market on which the Bank acts on behalf of the Client or the requirements set out in the articles of incorporation of the issuer.** The Client also agrees that the Bank may, in this context, take further measures such as to close out positions, to deny the execution of instructions or to rescind the business relationship. The Bank shall not be liable for any damages suffered by the Client, its representatives and/or the beneficial owner that may result from the disclosure of its identity and holdings or other measures taken by the Bank as foreseen in this clause. **The Client agrees that it is his/her sole responsibility to become informed about the transparency rules imposed by the different financial centers, since the Bank does not assume this information responsibility.**

The Client is aware that a certain number of automatic exchange of information treaty with third countries has been signed by Switzerland and that others will be signed in the future. In such context, the Bank expressly draws the attention of the Client and/or its representatives, whether or not the Client is a beneficial owner of the account, to the fact that under applicable international agreements made by Switzerland the address and complete identity of the Client, its representatives and/or the beneficial owner of the account and generally the information held by the Bank in relation with a Client's account (especially assets in deposit, revenues, capital gains, etc..) may be transmitted to the competent foreign and local authorities, especially and generally in application of the tax automatic exchange of information treaties.

In such context, the Client expressly instructs the Bank to disclose to the competent authorities according to such treaties, at its sole discretion without delay and without reverting to the Client, its representatives and / or the beneficial owner, the identity and other information on the Client, its representatives and/or beneficial owner at the disposal of the Bank, details on its assets, held directly or indirectly. The Client shall be obliged, upon demand by the Bank, to provide the Bank with the information required by such competent authorities. If the Client acts in a manner that prevents the Bank from disclosing information where it is required to do so by the above mentioned authorities, the Bank will be entitled to terminate this agreement immediately upon written notice or through any other appropriate means. The Bank shall not be liable for any damages that the Client may suffer as a result of the Bank's compliance with the provision of information in accordance with these laws, administrative orders or agreements.

If the Client and the beneficial owner of the account are different persons, it is the Client's responsibility as account-holder to inform the beneficial owner of its obligations and responsibilities and of the precautionary statements contained in this clause.

## 15. TAXES

- 15.1. The Bank draws the Client's attention to the legal and regulatory obligations that he is personally (in its own name or through any patrimonial vehicle) responsible for satisfying on account of his nationality or place of residence. In particular, the Client must comply with the tax laws that apply to him and must ensure that any instruction or order that he transmits to the Bank for execution also complies with such laws. The Bank is not required to verify the existence of or compliance with any such rules and shall not incur any liability in the event the Client fails to comply with said rules. The Client is responsible for requesting that the Bank provides any statements or documents that may be necessary in order for him to satisfy his tax obligations.
- 15.2. The concept of tax residence may differ from jurisdiction to jurisdiction. Common determinants include the Client's domicile, nationality or days spent in a particular jurisdiction. For corporates entities, this may depend on the place of effective management. It is possible to be resident in more than one jurisdiction. Tax residence can be a complex topic and the Client is encouraged to seek his own tax advice to ensure compliance with the Client's tax obligations.

- 15.3. In the event that the Bank considers the Client, whether a natural person or corporate entity, to be a “US-person” under the withholding tax regulations and securities laws of the United States of America, the Client undertakes not to invest in US-securities as defined under the said regulations or to transfer any such securities to his account with the Bank, unless the Client has provided the required documentation, including but not limited to the W-9 form, to the Bank prior to investing in such securities or transferring such securities.
- 15.4. The Bank reserves the right to proceed to the sale of the concerned securities or to have them sold, and to apply the mandatory withholding and to report as required under a special qualified intermediary agreement in the event that the Client becomes a “US Person” holder of securities carrying reportable payments and refuses to produce the W-9 form or any other form as required by the United States securities laws as well as a written waiver of bank secrecy.
- 15.5. Notwithstanding any other provision, the Bank, at its sole discretion, may refuse to invest in US assets on behalf of a Client. The Client acknowledges that he is aware that non-compliance with the US withholding tax regulations may result in excessive withholding taxes and penalties, which are to be borne by the Client.
- 15.6. In particular, for the purpose of ensuring that the Bank is not in breach of FATCA, in the event that it considers the Client as a (i) non US financial institution and non-participating as well (nonParticipating Foreign Financial Institution, hereafter “NPFFI”), i.e. established in a non-Intergovernmental Agreement as defined in relevant U.S. Treasury Regulations or (ii) legal entity that is considered by extension as NPFFI after a significant period of non-compliance with the transparency rules, the Client will be subject to the mandatory FATCA tax withholding.
- 15.7. If a Client subsequently becomes a NPFFI and such fact comes to the attention of the Bank, the accounts owned by that Client may be closed in accordance with clause 2.1.
- 15.8. In addition, in accordance with clause 14.12, should the Client be considered a NPFFI or a US Person owning US reportable accounts, the Client authorizes the Bank to disclose such account information to the relevant tax authority.
- 15.9 **As a rule, it is up to the Client to obtain information about the tax and legal impact of its business with the Bank, the latter not assuming any liability or taking any active step in this respect. Moreover, the Bank shall not be responsible for any omission to completely and timely declare to the competent and concerned tax authorities. In this context, Article 19 hereunder applies, especially with regard to the indemnification from the Client due to the Bank, pursuant to any sentence against the Bank, its employees, respectively the Indemnified Persons in relation to said failure.**
- 15.10 If the Client is concerned by an international agreement on the taxation of savings revenues and the Client has not make provisions to avoid deduction at source, like authorizing the Bank to transmit to the proper authorities the necessary information according to the terms of the aforesaid agreement or giving the Bank the necessary residence tax certificate, the Bank, acting as paying agent, shall apply deduction at source on the revenues considered as taxable by the agreement. In order to determine the values subject to withholding, the Bank shall base itself on the broadcasted information in particular by approved data suppliers. **For the rest, the Client assumes exclusively and entirely the risks inherent to its personal situation in respect of tax agreements as well as those arising from incorrect classification of the securities.**

Consequently, the Client relieves, guarantees and indemnifies the Bank for any damage, claim, expenses or charges which it may sustain in relation to a tax debt arising from such agreements and which affects the Bank in its capacity as paying agent. **Moreover, the Bank shall not incur liability towards the Client for errors of classification made by it or by approved data suppliers, except in the event of serious fault or fraud on the part of the Bank.**

## 16. FIDUCIARY DEPOSITS

- 16.1. Upon the request of the Client, the Bank will effect interest bearing fiduciary deposits in freely available and convertible currencies for the account and sole risks of the Client. Instructions received by the Bank concerning renewals of fiduciary deposits shall be carried out by the Bank at interest rate offered by counterparties for the relevant type of deposit at the time of renewal. In order to instruct the Bank to make such type of fiduciary deposit, the Client must prior sign the "mandate for fiduciary investments".
- 16.2. Instructions concerning renewals, notifications or termination of fiduciary deposits must be received by the Bank at least three business days prior to the maturity date of such deposits.
- 16.3. Fiduciary Deposits are cash deposits with third parties, which are remunerated at a fixed maturity date and rate, determined in advance for the account and sole risks of the Client. The Client may request at any time the list of counterparties to fiduciary deposits selected by the Bank as well as the criterion applied by the Bank to assess their solvability.
- 16.3.1. **Advantages:** Depending on market conditions, these products may provide a higher return than other fixed-income products.
- 16.4. **Risks:** These products are mainly subject to the risks of inflation, exchange and interest rate and of insolvency of the counterparty.
- 16.4.1. **Exchange Rate Risk:** Since currency exchange rates fluctuate, there is an exchange rate risk whenever Term Deposits are held in a foreign currency. Material elements affecting the exchange rate of a currency are the inflation rate of a country, the gap between domestic interest rates and foreign rates, the assessment of the evolution of the economic activity, the political situation in the world and the safety of the investments. Additionally, internal political crises may weaken the exchange rate of the domestic currency.
- 16.4.2. **Inflation Risk:** Devaluation of a currency may cause financial damage to an investor. Therefore, it is important to take into account the real value of the existing assets of the portfolio as well as the real yield that ought to be realised through such assets. To calculate the yield, the real interest rate should be taken into account, i.e. the difference between the nominal interest rate and the inflation rate.

## 17. CREDIT CARDS

- 17.1. The Bank issues credit cards through a card service provider, on request of the Client and pursuant to the Bank's issuance policy and tariffs applicable at the time of the signature of these General Terms and Conditions. These credit cards will be subject in addition to the general terms for credit cards of the relevant card service provider, which shall form an integral part of these General Terms and Conditions. The general terms for credit cards have been communicated to the Client and accepted by him. The general terms for credit cards may be amended from time to time. The Client is obliged to immediately notify the card service provider of any event of loss, theft or fraudulent use of his card.
- 17.2. The Bank is liable only for gross negligence in respect of all damages arising from the issue, the use (even fraudulent), the loss or the forgery of credit cards. The Client is not entitled to withdraw any instruction given by the means of his credit card.

## 18. TERMINATION OF BUSINESS RELATIONSHIP

- 18.1. The Bank and the Client may, immediately or with notice, at any time and without having to state any reason (but especially for reasons mentioned in paragraph 18.3 below), unilaterally give notice of termination, either totally or in part, to their relationship. In the absence of written arrangement to the contrary, the Bank shall retain the right to cancel, respectively terminate, credit facilities and demand immediate repayment of all claims.
- 18.2. The Bank is authorised to suspend the execution of its obligations if the Client does not perform any obligation (including executing any document) for which he is responsible, on any account whatsoever. All sums and financial instruments, regardless of their type, held by the Bank on behalf of the Client may be retained by the Bank, at the Client's risk, in the event of the Client's non-execution or late execution of his obligations whatsoever.

- 18.3. Notwithstanding clause 18.2, the Bank may terminate its relationship with the Client with immediate effect and without any further formalities, in which case all term obligations of the Client shall become immediately due, in any of the following circumstances if: the Client is in breach of his contractual obligations; the Bank is of the opinion that the financial position of the Client is threatened; the security the Bank holds is regarded by it in its sole discretion as being insufficient, or the security requested has not been obtained according to clause 12; the Bank is of the opinion that by continuing its relationship with the Client it may be subject to a liability claim; the operations of the Client appear to be contrary to public policy; or the Client is in breach of his duty of good faith. In case of termination of the business relationship with immediate effect, all matured obligations of the Client become immediately due at the date of termination.
- 18.4. At the expiry of the relationship, the balance of each of the Client's accounts and deposits, including fixed time deposits, will become immediately due and payable. Furthermore, the Client will release the Bank from all commitments and obligations in respect of the Client's account, positions or any instructions of the Client, whether transactional, informational or otherwise, including penalties, damages, and all other costs. Any security, lien or pledge held by the Bank over any Client assets will remain in full force and effect until the complete discharge of all debts due from the Client to the Bank.
- 18.5. In the event that the Bank terminates these General Terms and Conditions, the Bank may:
- treat any or all outstanding investment transactions as cancelled, respectively terminated;
  - sell or realise any investment which the Bank is holding or is entitled to receive on the Client's behalf, without responsibility for any loss or diminution, in order to realise funds sufficient to satisfy any amount owed by the Client to the Bank or any associate of the Bank; and/or
  - cancel, close out, terminate, reverse all or any transaction or open position, and take any other action which the Bank considers necessary or appropriate to reduce the Bank's loss or otherwise recover any amount owed by the Client to the Bank or any associate of the Bank.
- 18.6. The Client must withdraw all his assets from the Bank or give the Bank appropriate transfer instructions with respect to such assets within fifteen days from the termination of the account relationship. The Bank may, at any time thereafter, sell all securities held for the Client and convert all cash positions into one single currency. The Bank will apply the relevant legal provisions with regard to funds not withdrawn within the statutory limitation period after the termination of the account relationship. During the statutory limitation period, the funds will be booked on a non-interest bearing account.

## 19. EXCLUSION AND RESTRICTION OF LIABILITY

- 19.1. Neither the Bank nor any associate, nor any of our or its directors, officers, employees, contractors and other agents shall be liable for any loss suffered by the Client under or in connection with these General Terms and Conditions unless caused by our or their gross negligence.
- 19.2. **The Client undertakes to relieve, guarantee and indemnify the entities of group Havilland, the Bank, its subsidiary companies and the nominees, as well as their Directors, employees, management bodies and respective representatives ("Indemnified Persons") for any liability, claim cost, damage, loss, expenditure, expense and prejudice of whatsoever kind it may be (the "Claims") which the Indemnified Persons may incur, directly or indirectly, in relation to any act or omission, execution and/or non-execution of an instruction from the client, except in the event of fraud or of serious fault of the Indemnified Person. The Client also undertakes to refund and/or advance to each Indemnified Person upon first demand, all the disbursement and legal expenses undertaken or to be undertaken by this latter in the event of a lawsuit in connection with the Claims. In this context, the Bank is authorized to freeze the Client's assets to the extent of the estimated Claims.** Each Indemnified Persons is authorized to personally claim the execution of this Indemnification clause in accordance with article 112 of the Code of Obligations.
- 19.3. In no event shall the Bank or any associate of the Bank or its or their directors, officers, employees be liable for consequential, indirect or special damages, however caused.

## 20. AMENDMENTS

- 20.1. The Bank may change these General Terms and Conditions or any document mentioned herein, including but not limited to the Fee Schedule, at any time.

- 20.2. In the event these General Terms and Conditions or any document mentioned herein are amended, the Bank undertakes to notify the Client of such changes in writing, either by circular letter, statements of account, posting on the Bank's website or by any other means of communication, as the Bank shall decide.
- 20.3. These changes shall be considered to have been approved by the Client if said Client fails to inform the Bank of its objection in writing within 30 (thirty) days as from the date on which it was informed of said change. Notwithstanding the above and unless the Bank has given a written undertaking not to do so, the Bank reserves the right to adjust interest rates and commissions to market conditions with immediate effect. It is understood that changes due to changes in laws or regulations shall be binding on the Client without any prior notification and that any different period of time imposed by law or agreed in a specific agreement or in specific conditions shall prevail.
- 20.4. Unless otherwise agreed, no amendment will affect any outstanding order or transmission or any legal rights or obligations which may already have arisen.
- 20.5. Any accepted amendments become an integral part of these General Terms and Conditions.

## **21. ASSETS WITHOUT CONTACT AND DORMANT ASSETS**

- 21.1. In order to prevent a situation where the Bank loses contact with the Client, the latter must notify the Bank, immediately in writing, of any change of name or address concerning him/her. In the cases provided for by the "Guidelines on the treatment of assets without contact and dormant assets held at Swiss banks (Guidelines on Dormant Assets)", when the Bank loses contact with the Client, his/her proxy holder or his/her heirs (if the Client has died), it will thenceforth be legitimate to itself undertake, or by mandating service providers, searches in Switzerland and/or abroad to attempt, without any guarantee of results, to find the holder(s), or entitled person(s), at their expenses and risks, if need be by departing from the contractual provisions in the presumed interest of the Client. The expenses arising from this may represent, according to the size of the search and the tariffs practiced by the service providers, a substantial part of the assets concerned. The Client here and now authorizes the Bank to debit these expenses from its account.

## **22. SEVERABILITY**

- 22.1. Each provision of these General Terms and Conditions is severable and in the event of any provision becoming invalid, void or contravening any applicable laws, rules or regulations, the remaining provisions shall be binding on each of the parties.

## **23. CLIENT CONFIRMATION**

- 23.1. On a continuing basis, the Client represents and warrants to the Bank and agrees that:
  - the information indicated in the Account Opening Form is complete, true and correct and that the Bank is entitled to rely on such information until it has received written notice from the Client of any change occurring in his or its legal or professional status, constitution, trading position, ownership, directors or management;
  - all necessary authorisations, consents and approvals have been obtained and these General Terms and Conditions create valid and binding obligations upon the Client and shall not infringe the terms of any agreements by which he or it is bound;
  - if it is a Corporate Client, it is a corporation duly incorporated and which has full power and authority to conduct its business and to execute and deliver the Account Opening Form required by the Bank and to comply with the provisions of these General Terms and Conditions; and
  - any of the client's investments which the Bank or its correspondents hold on behalf of the Client pursuant to these General Terms and Conditions are or will be beneficially owned by the Client free from all liens, charges and encumbrances other than those which may arise in favour of the Bank.
- 23.2. In accordance with the Federal Act on Combating money laundering and terrorism financing as well as the Criminal Code, the Client hereby acknowledges and confirms that:
  - all monies which shall be paid to the Bank originate from legitimate sources and do not derive directly or indirectly from a criminal activity, corruption, money laundering or terrorism financing;

- no other party than the Client or the one communicated to the Bank has an interest in the account and that he shall inform the Bank immediately if he ceases to be the underlying principal; and
- if it is a Corporate Client, that it has internal controls in place to ensure that it knows the identity of the ultimate Beneficial Owners.

#### **24. OUTSOURCING AND COLLABORATION**

The Bank may outsource to qualified third parties part or whole of his activities (e.g. operation of IT, payment transactions, corporate actions, asset management, advisory, etc.) and transmit to the delegate all data necessary in this regard, provided regulation permits it. Subject to mandatory provision of the law, those qualified third parties are liable alone for damages caused by their fault. Within the use of the services of SWIFT, the Bank has outsourced to a Swiss company the inter-bank messaging as well as some application services.

#### **25. LANGUAGES AND PUBLIC HOLIDAYS**

- 25.1. Any communication between the Bank and the Client will be made in the language chosen by the parties at the time of their entry into business relationship. The Bank however draws the Client's attention to the fact that the working language of the Bank is English. A client who does not understand English or does not wish to communicate in English with the Bank is asked to make this known to the Bank prior to the establishment of business relationship with the Bank.
- 25.2. Saturday shall rank as an official public holiday in all business relations with the Bank; the same shall apply to all public holidays recognized by the federal and cantonal authorities.

#### **26. GOVERNING LAW AND JURISDICTION**

- 26.1. **Unless otherwise agreed by specific agreement, the relationship between the Bank and its Client shall be governed by the laws of Switzerland. Irrespective of the client's place of domicile, all disputes between the client and the Bank concerning both parties' rights and obligations shall be handled by the courts of the Canton of Geneva, subject to appeal to the Federal Court; Swiss law shall be applicable. However, the Bank reserves the right to institute judicial proceedings before any other competent court, notably at the client's place of domicile.**

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**By signing here below, the Client (i) certifies having taken due note specifically to clauses 1.10 (joint account), 7 (Instructions and related waiver, - especially by phone, facsimile or electronic mails / « e-mails »), 9.3 (Inducements received by the Bank), 12 (General pledge and sett-off) et 14.12 (disclosure requirements from the Bank in connexion with investments in financial instruments) and (ii) expressly declares that he/she accepts the content of the rights and obligations as they result from said clauses.**

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**Account holder 1**

Name, first name:

Date:

Signature:



**Account holder 2**

Name, first name:

Date:

Signature: