



永豐銀行

Bank SinoPac

Incorporated in Taiwan with Limited Liability

## GENERAL TERMS AND CONDITIONS

### FOR ACCOUNTS

### 帳戶一般條款及條件

永豐商業銀行股份有限公司 香港

Bank SinoPac Hong Kong



## GENERAL TERMS AND CONDITIONS FOR ACCOUNTS

Please read these General Terms and Conditions for Accounts carefully and make sure that you understand them.

### 1. DEFINITIONS

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions shall have the following meanings :

“**Account**” means any bank account, whether savings, current, deposit, or otherwise, opened, established, maintained with or provided by the Bank to the Customer;

“**Authorized Representative**” means a person appointed by the Customer and accepted by the Bank to give instructions to the Bank on behalf of the Customer and otherwise represent the Customer for and in connection with the operation of any Account, including authorized signatories appointed pursuant to any mandate;

“**Bank**” means Bank SinoPac, being a licensed bank under the Banking Ordinance (Cap.155) and registered under Part 16 of the Companies Ordinance (Cap.622) and carrying on business in Hong Kong, which expression shall include its successors and assigns;

“**Bank Group Members**” means the Bank, its ultimate holding company, any subsidiary and affiliate of the Bank or of its ultimate holding company and all associated companies (being companies in which an equity interest is held by the foregoing);

“**Business Day**” means any day on which the Bank is open for business in Hong Kong (including severe weather days other than a Saturday, Sunday, or public holiday. Severe weather days are days on which typhoon signal number 8 or above or a black rainstorm signal is issued by the Hong Kong Observatory or the occurrence of “extreme conditions” is announced by the HKSAR Government);

“**Customer**” means any person who has agreed to open, establish and maintain an Account and includes the beneficial owner of the Account, if different;

“**Hong Kong**” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“**Items**” includes cheques, bills of exchange, drafts, cashiers orders and other monetary and negotiable instruments;

“**Subsidiary**” and “holding company” shall have the meanings given to them in Section 2 of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong);

“**Unauthorized transaction**” means any error, discrepancy or unauthorized transaction appearing in any statement of account, deposit confirmation or other confirmation of instructions issued by the Bank and any other transaction on any Account not authorized by the Customer or any Authorized Representative;

“**Terms and Conditions**” means these General Terms and Conditions for Accounts.

1.2 Unless the context otherwise requires :

(a) words importing one gender include the other genders;

(b) words importing the singular shall include the plural and vice versa;

(c) references to Clauses and Paragraphs are references to clauses and paragraphs in these Terms and

Conditions, and references to Paragraphs are to paragraphs in the Clause in which the reference appears;



- (d) references to documents (including these Terms and Conditions) include the same as from time to time amended, supplemented and substituted;
- (e) clause and other headings are for ease of reference only and shall not affect the interpretation of these Terms and Conditions;
- (f) the word “person” includes any individual, company, firm, partnership, joint venture, association, sole proprietorship or other incorporated or unincorporated entity and “including” and “includes” mean respectively “including without limitation” and “includes without limitation”.

## **2. OPENING AND CLOSING OF ACCOUNTS**

- 2.1 Prior to the opening of an Account, the Customer shall provide the Bank with suitable references and proof of identity and legal existence of both itself and, if appropriate, its directors and controlling shareholders, and complete and sign such forms, mandates and specimen signature cards as may be prescribed by the Bank from time to time. The Customer may appoint Authorized Representative(s) for or in connection with the operation of any Account and shall provide the Bank with specimen signatures and other relevant details of its Authorized Representative(s) as may be required by the Bank.
- 2.2 The Bank shall be entitled from time to time at its discretion to prescribe :-
  - (a) maximum and minimum amounts or balances that must be credited to Accounts at the time of opening and during the maintenance and operation of Accounts;
  - (b) the currencies in which Accounts may be denominated and, notwithstanding any provision of these Terms and Conditions, the methods of payment into and out of such Accounts; and
  - (c) the available periods for time deposit Accounts.
- 2.3 If, in the Bank’s reasonable opinion, any Account (i) has not been satisfactorily operated or maintained or (ii) has a nil balance and, in the Bank’s reasonable opinion, has been inactive for an extended period the length of which shall be determined at the Bank’s discretion, the Bank may at any time at its absolute discretion by 30 days notice to the Customer, unless there are exceptional circumstances (for example, use of the Account for criminal activities), close that Account with the reason(s) for so doing. The Bank shall notify the Customer as soon as reasonably practicable after closing that Account under this Clause 2.3 unless the closure of that Account is requested by the Customer. Upon the lapse of 30 days after the deemed receipt of such notice by the Customer pursuant to Clause 26.1 or immediately, if the aforesaid exceptional circumstances exist, the Bank shall be released from any further obligations in respect of the relevant Account or to the Customer. The Customer shall be held solely responsible for any and all consequences resulting or arising therefrom.
- 2.4 The Bank may transfer any balance on an Account closed by the Bank pursuant to Clause 2.3 to the Bank’s unclaimed balances account. Subject to payment of the service charge (details of which are available on request and are otherwise available at any branch of the Bank in Hong Kong) provided for under Clauses 7.4 and 8.13, the Customer may collect the balance from the Bank during the Bank’s business hours on any Business Day.
- 2.5 Notwithstanding Clause 2.3, the Bank may at any time without liability and disclosing any reason suspend the operation of, or freeze, any Account of the Customer. The Bank shall notify the Customer after exercising its rights under this Clause 2.5.
- 2.6 When a current Account is closed, the Customer shall return all unused cheques to the Bank within 7 days from the date of closing of the current Account.

## **3. AUTHORIZED REPRESENTATIVES**

Any instruction from the Customer bearing signature(s), chop(s) or seal(s) (if applicable) conforming to those in the mandate and/or such other documents for the time being in effect governing the operation of an Account shall be binding on the Customer. The Bank shall be entitled to rely, and shall not be liable for any loss or damage if acting, on instructions signed by or on behalf of the Customer using signature(s), chop(s) or seal(s) (if applicable) conforming to those in the then current mandate and/or such other documents.



- 3.2 The Bank shall be entitled to refuse to act upon any instruction bearing signature(s), chop(s) or seal(s) (if applicable) which, in its reasonable opinion, do not conform to those in the mandate and/or such other documents for the time being in effect.
- 3.3 Unless otherwise agreed by the Bank, if the Customer wishes to change an Authorized Representative or the authorized signing arrangement in relation to any Account, the Customer shall submit to the Bank :
- (a) in the case of an individual, sole proprietor or partnership, written instructions from the Customer (if an individual or sole proprietor) or all the partners comprising the Customer (if a partnership), as the case may be;
  - (b) in the case of a company, a certified true copy of a board resolution of the Customer in the Bank's standard form authorizing the change of Authorized Representative or signing arrangement, as the case may be; and
  - (c) in any other case, such other duly authorized instructions as shall be in form and substance satisfactory to the Bank, requesting such change.

Nothing in this clause shall oblige the Bank to give effect to such change.

#### **4. CHANGE OF SPECIMEN SIGNATURES AND SEALS**

If the Customer wishes to change specimen signature(s), chop(s) or seal(s), the Customer must fill in a form provided for this purpose by the Bank using the same signature(s), chop(s) or seal(s) which at the time appears in the Bank's file and submitting new specimen signature(s), chop(s) or seal(s) indicating the date from which the new signature(s), chop(s) or seal(s) will be effective. No new signature(s), chop(s) or seal(s) shall be used without the prior consent of the Bank.

#### **5. AUTHORITY**

The Customer requests and authorizes the Bank to honour all items drawn on, and items accepted and presented for payment against, Accounts whether or not such Accounts be overdrawn, to comply with any other directions given regarding Accounts, and to accept and act upon any receipts for money deposited with or owing by the Bank on Accounts, provided that such items, directions and receipts are signed by the Customer or, in the good faith determination of the Bank, appear to be signed by the Customer. The Customer agrees to accept liability for all withdrawals from Accounts, to be responsible for the repayment of any overdraft and interest thereon and to assume full responsibility for the genuineness of all instructions given in connection therewith, unless any such withdrawal or instruction is forged or given fraudulently and the Bank has failed to exercise reasonable skill and care in relation to it or is otherwise unauthorized as a result of the wilful default or gross negligence of the Bank or any of its employees, agents or servants.

#### **6. STATEMENTS OF ACCOUNT AND CONFIRMATIONS OF DEPOSITS**

- 6.1 The Bank will send a statement of account for current Accounts, savings Accounts and other Accounts for which the Bank issues statements of account to the Customer at its last known address at monthly intervals or at such other intervals as determined by the Bank from time to time. The Bank shall not be obliged to send a statement of account for an Account if no entry has been made in that Account for the entire month since the date of the last statement. If the Customer fails to receive a statement of account within 14 days after the end of the month or interval to which the statement relates, the Customer should notify the Bank immediately and request a copy to be sent to him.
- 6.2 A deposit (whether fixed term, or otherwise) placed with and accepted by the Bank shall be evidenced by the issue of a deposit confirmation by the Bank, showing the amount of the deposit, the date of maturity of the deposit and the applicable interest rate.
- 6.3 The Customer must examine each statement of account and deposit confirmation and must notify the Bank in writing :
- (a) in the case of a statement of account, within 90 days of the day of deemed receipt of such statement



- (b) in the case of a deposit confirmation, within 14 days of the date of the issuance of such deposit confirmation, of unauthorized transactions referred to in it arising from whatever cause, including forgery, fraud, lack of authority or negligence of the Customer or any other person. After such period, the statement of account and deposit confirmation shall be deemed to be correct and conclusive evidence of the balances upon the relevant Account. No claim to the contrary by the Customer shall be admissible against the Bank unless (i) the Bank has failed to exercise reasonable skill and care in respect of any unauthorized transactions; (ii) any unauthorized transactions arose from the forgery or fraud of any of the Bank's employees, agents or servants; or (iii) any unauthorized transactions arose from the wilful default or gross negligence of the Bank or any of its employees, agents or servants.

- 6.4 Notwithstanding Clause 6.3, the Customer acknowledges that entries in any statement of account or deposit confirmation provided by the Bank are not conclusive as to their correctness against the Bank as deposits may have been made or other items may have been changed since the date of the statement or confirmation. The Bank shall be entitled to correct entries on any records, statements or confirmations and shall not be liable to the Customer or any other person for any loss of whatsoever nature incurred as a consequence of such corrections.

## **7. SAVINGS ACCOUNTS**

- 7.1 No savings Account passbook will be issued to the Customer. All transactions on savings Accounts will be recorded in statements of account.
- 7.2 Any election by the Customer as to the currency in which a foreign currency savings Account is to be denominated shall be irrevocable.
- 7.3 Interest at the rates from time to time determined by the Bank, details of which are available upon request, displayed at the Bank's branch offices will accrue upon the daily balance credited to savings Accounts. Accrued interest will be credited to the Customer's savings Account every month.
- 7.4 The Bank reserves the right to charge (i) additional banking fees in such amounts as the Bank shall from time to time determine if the average monthly balance (as determined by the Bank) in any savings Account with the Bank falls below such amount as the Bank may from time to time determine and (ii) a periodic service charge of such amount as the Bank may from time to time determine if, in the Bank's opinion, any savings Account is inactive or has a balance in the Bank's unclaimed balances account.

## **8. CURRENT ACCOUNTS**

- 8.1 Blank cheques will be provided by the Bank. When a cheque book is required, the Customer must sign an application form supplied by the Bank in accordance with its mandate, using the same signature, chop and/or seal and signing arrangements as recorded on the Bank's file. If the Customer does not apply in person, the Bank may at its discretion deliver the cheque book to the Customer's Authorized Representative, or forward it to the registered address of the Customer by mail or by hand at the Customer's expense, costs may be debited by the Bank from any Account of the Customer.
- 8.2 Upon receipt of a cheque book, the Customer should count the number of cheques carefully and examine the account and serial numbers printed thereon to ensure there are no discrepancies and read the conditions as printed on the inside of the cover of the cheque book which form part of these Terms and Conditions. Cheque books should at all times be kept under lock to safeguard against loss or theft.
- 8.3 Cheques should not be pre-signed in blank. All alterations on cheques must be authenticated by the full signature or signatures of the drawer near the place where such alterations have been made. Initials and abbreviations shall not be used (as the same can be forged easily), unless previous arrangements have been made in respect thereof. The Customer agrees that the Bank shall not under any circumstances be held liable for losses arising from unauthorized alterations to cheques and the Bank shall be entitled to honour cheques even though they are so altered and to debit the Account accordingly provided that the alterations are not





reasonably apparent or detectable.

- 8.4 All cheques must be written in non-erasable ink or ball point pen. Cheques or other instructions to the Bank must be signed in accordance with the Customer's mandate, using the same signature(s), chop and/or seal and signing arrangements as recorded on the Bank's file in respect of the Account. The Bank shall not be obliged to honour any cheque or act upon any instruction if the signature upon it does not appear to conform to the Customer's specimen signature(s) or the specimen signature(s) of its Authorized Representative(s) on the Bank's file or where the cheque or instruction is not signed or given in accordance with the Customer's mandate and any relevant authorized signing arrangements.
- 8.5 The Customer shall exercise care when drawing cheques and agrees that cheques shall not be drawn by any means and/or in any manner which may enable a cheque to be altered or may facilitate fraud or forgery. The Customer agrees when issuing a cheque to :
- (a) delete the words "OR BEARER" from, and cross, any cheque which is sent through the post, by courier or by other persons;
  - (b) write the amount, both in words and figures, as close as possible to each other and to the left-hand margin so as to leave no space for other insertions;
  - (c) write the word "only" after the amount in words;
  - (d) use only Arabic numerals when writing the cheque's amount in figures.
- 8.6 If a signed cheque is lost or stolen, the Customer must immediately report the loss or theft to the Bank in writing duly signed with the same signature, chop and/or seal and signing arrangements as recorded in the Bank's files with instructions to stop payment of such a cheque. If the cheque is stolen, the Customer should also report the loss to the nearest police station. The Bank shall not be liable to the Customer if the cheque is paid prior to the receipt of the instructions to stop payment. If any blank cheques are lost, the Customer shall notify the Bank immediately and request their cancellation. Any instructions countermanding a cheque by the Customer must include complete and accurate details of the number of the cheque, the name of the payee and the amount and date. The Bank shall only comply with such instructions if all such details accord strictly with those of the cheque presented for payment. The Customer agrees to indemnify the Bank against all reasonable losses and expenses it may incur resulting from the non-payment of the cheque on presentation.
- 8.7 The Customer agrees to indemnify the Bank and keep the Bank indemnified against, and agrees that the Bank is entitled to debit any Account to compensate the Bank for, all reasonable claims, demands, actions, damages, costs, losses, expenses (including legal fees) and other sums which the Bank may properly incur or pay by reason of or as a consequence of the Bank paying pursuant to a cheque or other document that is lost, stolen, unlawfully used, fraudulently altered or forged and not as a result of the Bank's negligence, wilful default or fraud.
- 8.8 The Bank shall return to the relevant collecting bank any cheque which is incorrectly completed, altered without authorization, post-dated, out of date or which has any discrepancies that the Bank considers will jeopardize the parties concerned. The Bank reserves the right to impose a reasonable handling charge and recover from the Customer any expenses incurred by the Bank as a result of returning the cheque.
- 8.9 The Bank shall not honour any cheque if the Account on which it is drawn is not in funds unless special overdraft arrangements have been agreed. If temporary overdraft facilities are granted by the Bank, the Customer shall undertake to refund to the Bank the whole amount so overdrawn with interest thereon at a rate prescribed by the Bank as applicable to the overdraft facilities granted in its ordinary course of business to customers or at such other rate as may be agreed between the Bank and the Customer. The Bank reserves the right to impose a charge determined by the Bank in its discretion for every dishonoured cheque.
- 8.10 The Customer shall pay the fees and charges stipulated by the Bank from time to time and the Bank's other out of pocket expenses incurred with respect to stopping payment of a cheque or any countermanding instructions from the Customer. Details of any such fees, charges and expenses connected are available at the request of the Customer and are displayed at all branches of the Bank in Hong Kong.
- 8.11 Order cheques to be credited to an Account must be properly endorsed in favour of the Customer. Cheques



drawn to the order of a third party and so endorsed may be accepted for deposit at the sole discretion of the Bank without prejudice to its rights to claim from the Customer any loss arising from such acceptance. The Customer shall undertake to refund in full to the Bank immediately upon request any loss sustained by it by reason of the Bank allowing the Customer to draw against uncleared cheques or as a result of the Bank endorsing the cheques or from any other cause whatsoever.

- 8.12 Unless otherwise agreed, no interest is payable on any credit balance maintained at a current Account.
- 8.13 The Bank reserves the right to charge (i) additional banking fees in such amounts as the Bank shall from time to time determine if the average monthly balance (as determined by the Bank) in any current Account with the Bank falls below such amount as the Bank may from time to time determine and (ii) a periodic service charge of such amount as the Bank may from time to time determine if, in the Bank's opinion, any current Account is inactive or has a balance in the Bank's unclaimed balances account.
- 8.14 The Bank shall exercise reasonable care in relation to the custody and presentation of cheques presented by the Customer for collection but shall not be liable for loss suffered by the Customer as a result of any loss or destruction of cheques or delay in presentation thereof in the absence of negligence on the part of the Bank. The Bank shall incur no liability as a result of any loss or destruction of cheques or delay in presentation while the cheques are in the custody of any properly authorized third party through whom such cheques are presented for collection. The Bank shall not be liable for any consequential loss arising as a result of the loss or destruction of cheques or their delay in presentation.
- 8.15 On any Business Day that is a severe weather day other than a Saturday, Sunday, or public holiday, all Items received on that Business Day shall be treated as received for the account of the Business Day following the end of the severe weather or extreme conditions. Severe weather days are days on which typhoon signal number 8 or above or a black rainstorm signal is issued by the Hong Kong Observatory or the occurrence of extreme conditions is announced by the HKSAR Government.

## **9. TIME DEPOSIT ACCOUNTS**

- 9.1 Funds for the opening of a time deposit Account with the Bank shall be paid to the Bank in the following manner :
- (a) by cheque in favour of the Customer; or
  - (b) by debiting a designated account of the Customer with the Bank;
  - (c) by remittance in the form of telegraphic transfer in favour of the Customer;
  - (d) by such other form and manner acceptable to the Bank.
- 9.2 Interest on a time deposit shall be determined by the Bank. Details of applicable interest rates are available upon request and displayed at the Bank's branch offices. Interest shall accrue upon the daily balance of a time deposit, calculated on the basis of the actual number of days elapsed (including the first day of the period during which it accrues but excluding the last) and a 360/365 day year.
- 9.3 Interest shall be payable on the maturity date of the time deposit or at such other times as may be agreed by the Bank. The Customer shall give the Bank at least one Business Day's notice prior to maturity of the time deposit regarding renewal or withdrawal of the time deposit and accrued interest. In the absence of such instructions, the Bank may, at its discretion, either (i) renew the time deposit for the same period as was applicable to the time deposit immediately prior to its maturity or for such other period as the Bank considers appropriate and the interest rate applicable shall be the interest rate applied by the Bank with respect to time deposits in the currency of the relevant time deposit prevailing at the relevant time or (ii) hold the money constituting the time deposit (and interest accrued on it) with no obligation to pay further interest until receipt of instructions from the Customer as to treatment of the time deposit (and accrued interest). If a time deposit is renewed, the applicable interest rate shall be the rate prevailing on the renewal date.
- 9.4 Early withdrawal of all or part of the time deposit is permitted at the Bank's sole and absolute discretion and in accordance with the Bank's policies regarding time deposits in force from time to time. If the Bank agrees to allow a withdrawal of the time deposit prior to its maturity, the Bank shall, unless otherwise agreed, pay



interest up to the date of withdrawal and may impose a service charge or a minimum amount of withdrawal and/or withhold all or part of the interest which has accrued on the time deposit up to the time of such early withdrawal. Information on the rates used from time to time for determining such service charge/minimum amount imposed by the Bank shall be made available to the Customer upon request.

- 9.5 A deposit charge determined by the Bank from time to time may be charged by the Bank on any time deposit. Details of any deposit charges are available on request and if in force, shall be displayed at all branches of the Bank.
- 9.6 The Bank shall not be liable to the Customer for any diminution in the value of the monies in any time deposit Account brought about by taxes, levies or depreciation in the currency in which the time deposit is denominated. Apart from any taxes that the Bank is required by applicable law to withhold in connection with a time deposit and interest accruing thereon, the Bank is also not responsible for the reporting and/or payment of any taxes in relation to the Customer in Hong Kong or any other country.
- 9.7 Settlement instructions in respect of a time deposit at maturity must reach the Bank on or before the maturity of the time deposit. The settlement instructions must be in a form acceptable to the Bank and duly signed by the Customer or its Authorized Representative(s), using the specimen signature(s), chop and/or seal filed with the Bank.
- 9.8 If the maturity date of a Hong Kong Dollar deposit falls on a day which is not a Business Day, it shall instead fall on the next Business Day. If the maturity date of a foreign currency deposit falls on a day on which banks in the country of the relevant foreign currency are not open for business, then it shall instead fall on the next day on which such banks are open for business unless the Bank determines that it is desirable for the deposit to mature on the last day on which such banks were open for business prior to the original maturity date.

## **10. PAYMENTS INTO / FROM ACCOUNTS**

- 10.1 All items accepted for deposit in any Account are credited subject to final clearance and interest will only begin to accrue upon such items when they are cleared and credited. If any item deposited with the Bank for credit to any Account is returned unpaid or dishonoured, the sum credited into such Account and any interest accrued thereon shall be null and void and an amount equal to the sum and interest so credited shall be debited from such Account. The Bank shall notify the Customer as soon as practicable after such debit is made. The Bank reserves the right to charge the Customer's Account in accordance with the Bank's standard rate of charges in force from time to time for items which are subsequently returned unpaid or dishonoured. Details of such charges are available upon request and at any branch of the Bank.
- 10.2 The Customer may not draw against uncleared Items (whether drawn on the Bank or sent for collection) paid in by the Customer until the proceeds thereof have been actually received by the Bank. The Bank reserves the right to recover from the Customer in full any loss sustained by it as a result of the non-payment from whatsoever causes of such Items. All Items received for collection after the Bank's business hours on any Business Day shall be treated as received for the account of the following Business Day (except if the following Business Day after the Bank's daily business hours is a severe weather day other than a Saturday, Sunday, or public holiday, the Items received for collection shall be treated as received for the account of the Business Day following the end of the severe weather or extreme conditions. Severe weather days are days on which typhoon signal number 8 or above or a black rainstorm signal is issued by the Hong Kong Observatory or the occurrence of extreme conditions is announced by the HKSAR Government.).
- 10.3 If the Bank receives instructions for several payments or other transactions which in aggregate would exceed the amount of the credit balance on any Account or any authorized limit in respect thereof, it shall be entitled at its absolute discretion to select which transaction or transactions shall be executed, without reference to the date of despatch or time of receipt of the Customer's instructions.
- 10.4 Unless otherwise agreed in writing, the liabilities of the Bank hereunder shall be payable only at the branch at which the relevant Account is maintained. The Bank may also, if it in its discretion sees fit, discharge its obligations by the issue of a banker's draft or other item drawn upon it.
- 10.5 Special or standing instructions from the Customer for payments from an Account and remittances and collections by the Bank on behalf of the Customer shall be subject to a handling charge determined by the





Bank from time to time. Details of these handling charges are available on request and are displayed at all branches of the Bank.

## **11. DEBIT AUTHORIZATION**

Without prejudice to any other provisions of these Terms and Conditions or any other agreement between the Bank and the Customer, the Customer agrees that the Bank may debit to any Account all sums which the Customer is liable to pay to the Bank, whether under these Terms or Conditions or otherwise, including sums paid or advanced by the Bank to the Customer together with all interest, charges, commissions, fees and costs or any reasonable expenses incurred by the Bank in relation to any Account.

## **12. COMPUTER AND MICROFILM BOOKS AND RECORDS**

The Customer agrees that books and records kept in digital form or on microfilm, on computer discs or otherwise by the Bank shall constitute conclusive evidence of the Customer's dealings with the Bank unless :

- (a) the Bank failed to exercise reasonable skill and care in respect of any such books and records;
- (b) the contents of such books and records resulted from the forgery or fraud of any employee, agent or servant of the Bank; or
- (c) the contents of any such books and records resulted from the wilful default or gross negligence of the Bank or any of its employees, agents or servants.

The Bank may, if it sees fit, destroy any original items, documents or other original evidence of the Customer's dealings with the Bank after microfilming the same or converting them into digital form and storing them on computer discs.

## **13. NO CREATION OF THIRD PARTY RIGHTS**

The Customer shall not assign, pledge, mortgage, charge or otherwise encumber any right, title and/or interest to and in any Account without the prior written consent of the Bank.

## **14. RETENTION OF MONEY AND SET-OFF**

14.1 Without prejudice to any other provision of these Terms and Conditions or any other agreement between the Bank and the Customer, the Bank shall be at liberty to retain all monies, deposits and any interest accrued thereon in any Account or any part of such monies, deposits and interest, irrespective of whether such monies, deposits or interest are due for repayment to the Customer, if the Customer is or becomes indebted to the Bank, whether under these Terms and Conditions, any other agreement between the Bank and the Customer or otherwise.

14.2 Without prejudice to any other provision of these Terms and Conditions or any other agreement between the Bank and the Customer, the Bank may, at any time, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the then existing Accounts opened in the name of the Customer (whether subject to notice or not, whether matured or not, whether held singly or jointly and whether in Hong Kong or with any other branch of the Bank in any other jurisdiction). The Bank may set-off or transfer any sum standing to the credit of any one or more such Accounts, whether in Hong Kong or with any other branch of the Bank in any other jurisdiction, in or towards satisfaction of any liabilities of the Customer, whether such liabilities be present or future, actual or contingent, primary or collateral, or several or joint. If such combination, consolidation, set-off or transfer requires the conversion of one currency into another, such conversion shall be made at the Bank's spot buying rate of exchange (as conclusively determined by the Bank, the details of which will be provided to the Customer upon request) for the currency for which the Customer is liable against the currency credited to the relevant Account. The Bank shall notify the Customer as soon as practicable after exercising its rights under this Clause 14.2.

## **15. INDEMNITY FROM CUSTOMER AND GENERAL LIABILITY OF BANK**



- 15.1 Without prejudice to any other provision of these Terms and Conditions or any other agreement between the Bank and the Customer, the Customer shall indemnify and keep the Bank indemnified against all reasonable losses, damages, costs (including legal fees and any interest or commission payments), proceedings, claims and demands which the Bank may reasonably suffer or incur as a result of any transactions or contracts entered into or services provided in respect of any Account. The Customer shall immediately on demand pay in full any sums due to the Bank under any of these indemnities.
- 15.2 Neither the Bank, nor any of its directors, officers, employees or agents, shall be liable to the Customer for any expenses, losses or damage suffered by or occasioned to the Customer by reason of :
- (i) any act or omission by the Bank or any of its directors, officers, employees or agents other than as a result of the fraud, wilful default or gross negligence of the Bank or its directors, officers, employees or agents;
  - (ii) the Bank's failure to honour any stop-payment instructions given by the Customer, provided that such failure is reasonable and is in good faith;
  - (iii) the presentation to the Bank of any item which is post-dated or the loss or theft of any item sent through the post or which otherwise is not delivered to the Bank by the Customer in person;
  - (iv) the Bank for any reason failing to honour any items drawn on it by the Customer, but the Bank shall immediately notify the Customer through the normal channels giving the reason for the dishonour;
  - (v) unauthorized use or forgery of any signature of the Customer or an Authorized Representative as a result of the gross negligence, wilful default or fraud of the Customer or such Authorized Representative;
  - (vi) any act, omission or insolvency of any person not associated with the Bank;
  - (vii) any malfunction of, or error in the transmission of information caused by, any electrical or mechanical machine or system or any interception of communication facilities, abnormal operating conditions, labour difficulties, acts of God, or any similar or dissimilar causes beyond the reasonable control of the Bank;
  - (viii) notwithstanding Paragraph (vii), the error, failure, negligence, act or omission of any other person, system, institution or payment infrastructure; and
  - (ix) the Bank failing to act upon any items or other instructions which are not signed using signatures conforming to those in the mandate and/or such other documents for the time being in effect in respect of any Accounts.

## **16. LOSS OF SEAL ETC**

If a seal or chop used for operating an Account is lost or if the Customer becomes aware that any Account may have been or may be about to be operated contrary to its instructions, the Customer shall immediately notify the Bank in writing. The Bank shall not be responsible for any transfer or other transaction upon the relevant Account made prior to its receipt of such written notice unless :

- (a) the Bank failed to exercise reasonable skill and care;
- (b) any unauthorized transaction arose from the forgery or fraud of any employee, agent or servant of the Bank; or
- (c) any unauthorized transaction arose from the wilful default or gross negligence of the Bank or any of its employees, agents or servants.

## **17. TELEPHONE AND TELEFAX INSTRUCTIONS**

17.1 The Bank may, if it sees fit, also act on any instructions and/or requests (in this Clause 17, "communications") given by the Customer either by telephone or telephone facsimile machine ("telefax") which are expressed to come from the Customer and which are honestly believed by the Bank to do so, even if in the case of a telephone communication they are not followed by written confirmation. However, any telefax communication must bear a signature or signatures which, in the reasonable opinion of the Bank, correspond to those of the Customer or of its Authorized Representative.

17.2 If the Customer gives written confirmation of an earlier telephone or telefax communication, such confirmations shall be marked clearly with the words "Confirmation only - do not duplicate".



- 17.3 The Customer shall bear all risks arising from any telephone or telefax communication with the Bank, which is discharged from any responsibility in respect thereof apart from risks arising from its own wilful default or negligence. The risks for which the Bank shall not be responsible shall include those resulting from errors in transmission and misunderstandings or reasonable errors by the Bank regarding the identity of the Customer or its Authorized Representative.
- 17.4 The Customer agrees to hold the Bank harmless and to keep the Bank indemnified against any reasonable loss which it may suffer as a result of acting on telephone or telefax communications which the Bank reasonably believes in good faith to have been given on behalf of the Customer and agrees to perform and ratify any contract entered into or action taken by the Bank as a result of such communications.
- 17.5 The Bank shall be entitled at any time, at its absolute discretion, to refuse to carry out any instruction given or offer made by telephone or telefax communication, even if the employee who received such communication on behalf of the Bank may have stated its acceptance thereof.
- 17.6 Notwithstanding any of the provisions in these Terms and Conditions, the Bank shall not be obliged to remit funds or deliver property of the Customer to a third party solely on the basis of a telephone and telefax communication, except when the party receiving the funds or property is a subsidiary or affiliate company of the Customer, unless in consideration for such payment or transfer the Bank shall receive value in the form of money, shares, bonds or other property to be held by it to the credit or for the account of the Customer.
- 17.7 If the Bank gives written confirmation of any telephone or telefax communication, the Customer must examine such confirmation and must notify the Bank within 14 days of the day of deemed receipt of such confirmation under Clause 26.1 these Terms and Conditions of any unauthorized transaction arising from whatever cause, including forgery, forged signature, fraud, lack of authority or negligence of the Customer or any other persons. After such period, the Bank's confirmation will (in the absence of manifest error) be deemed to be correct and conclusive evidence that the transaction is authorized and binding on the Customer. No claim to the contrary by the Customer shall be admissible against the Bank unless (i) the unauthorized transaction was by any third party and the Bank failed to exercise reasonable skill and care in respect of it or (ii) any unauthorized transaction arose from the wilful default or negligence of the Bank or any of its employees, agents or servants.
- 17.8 If the Customer decides to take advantage of the ability to give instructions to the Bank by telephone or telefax, the provisions of this Clause 17 shall apply in respect of such instructions until written notice of cancellation is received by the Bank from the Customer, or any one of them in the case of a joint account.

## **18. DEPOSITED PROPERTY**

If the Customer deposits with the Bank or its nominee precious metals, share certificates, documents of title or any other property (the "Deposited Property") the Bank will act as custodian thereof and keep it with the same care as it keeps similar property belonging to it. Subject only to this, Deposited Property will be placed with the Bank at the risk of the Customer and unless otherwise agreed in respect of specific items, the Bank shall not be obliged to monitor and inform, or exercise on behalf of the Customer any rights whatsoever attached or relating to the Deposited Property and shall have no duty to advise the Customer of any variation in the value thereof.

## **19. CHANGE OF CUSTOMER'S INFORMATION**

The Customer shall immediately notify the Bank in writing of any change in the Customer's personal particulars, address, telephone or facsimile number and any other details relating to the Customer or its Account(s). Such changes shall not be effective until duly entered in the Bank's records.

## **20. CERTIFICATE CONCLUSIVE**

For all purposes, including any legal proceedings, a certificate by an authorized signatory of the Bank as to



the sums and liabilities for the time being due or incurred to the Bank by the Customer shall, in the absence of manifest error or fraud or negligence of the Bank, be conclusive evidence thereof against the Customer.

## **21. SUSPENSE ACCOUNT**

The Customer acknowledges and agrees that the Bank may place and keep any money received in connection with any Account(s) to the credit of a suspense account on such terms and for such period as the Bank may think fit.

## **22. DISCLOSURE OF INFORMATION**

22.1 The Bank is authorized, if it so wishes, to obtain references in respect of the Customer from any person, including (if the Customer is an individual) an employer, and to obtain credit reports on the Customer, when considering whether to open an Account, to continue it, or to revise the facilities offered pursuant to it. The Bank shall not approach any proposed referee for the Customer unless the Customer has first confirmed to the Bank that the Customer has obtained the consent of such referee for his name to be used.

22.2 The Customer authorizes the Bank to disclose any information regarding the Customer's banking relationship with the Bank and any Account to :

- (a) any branch office of the Bank and any Bank Group Member anywhere in the world, any of the Bank Group Member's subsidiaries or affiliates or their agents engaged to provide services to them in their normal course of business;
- (b) other banks, financial institutions, consumer credit grantors, credit bureaux, credit and payment card companies, debt collection agencies, credit reference agencies, governmental (wherever situate) and other regulatory authorities (wherever situate);
- (c) any actual or proposed transferee, assignee or successor of all or any part of the assets or business of the Bank.

It is agreed that such disclosure shall not constitute violation of the Bank's obligations of confidentiality.

22.3 Without prejudice to Clause 22.2, the Customer (if an individual) agrees to be bound by the Bank's Circular to Customers relating to the Personal Data (Privacy) Ordinance ("Circular") and to the use of personal data about him in the manner specified in the Circular, and agrees that the provisions of the Circular shall apply generally to the Bank's treatment of personal data about him. If the Customer is not an individual it shall ensure that all individual agents and staff members who in the course of their dealings with the Bank with respect to the operation and maintenance of the Customer's Accounts are or may be obliged to provide their personal data to the Bank have read, understood and agreed to the Circular.

## **23. JOINT ACCOUNTS**

If the Customer is constituted by more than one person :

- (a) the obligations and liabilities of those persons to the Bank in connection with any Account shall be joint and several;
- (b) the Bank shall be entitled to act upon any request or instructions received from one or more such persons if such request or instruction is in accordance with the authorized signing arrangement established pursuant to the Customer's mandate;
- (c) subject to paragraph (d) below, the Customer authorizes the Bank to hold on the death of any of the persons constituting the Customer any credit balance in any Account and the securities and property of any description held in joint names to the order of the survivor(s) or the executors or administrators of the last survivor of the Customer subject to any claim or objection on the part of the Estate Duty Commissioner or any other competent authority, but without prejudice to (i) any right the Bank may have in respect of such balance, securities or property arising out of any mortgage, lien, charge, pledge, right of set-off, counterclaim or otherwise and (ii) any legal proceedings which the Bank may see fit to take in view of any claim by any person other than the survivor(s) or the executors or administrators of



the last survivor of the Customer PROVIDED HOWEVER that the Bank may on the death of one or more of the persons constituting the Customer freeze all or any of such persons' Accounts with the Bank and/or any of their securities, properties, deeds or documents deposited with the Bank and hold the same to the order of the survivor(s) only after the relevant probate/letters of administration/certificate of exemption from estate duty shall have been granted and lodged with the Bank;

- (d) if any one or more of the persons constituting the Customer dies, any request or instruction issued by the Customer which is in accordance with the authorized signing arrangements and received and acted on by the Bank before notice in writing of such death shall have been received by the Bank shall be binding upon the Customer and each of the persons constituting the Customer and their respective executors, administrators, successors and all other persons claiming from or under the Bank; upon receipt by the Bank of notice in writing of such death, the provisions of Clause 23(c) shall apply;
- (e) the Bank may at any time, apply all or part of the funds standing to the credit of any other Account (whether a joint account or an individual account) in the name of any person constituting the Customer with the Bank in or towards discharging any liabilities of any such person to the Bank;
- (f) the Bank shall be entitled to deal separately with any person constituting the Customer on any matter, including the discharge of any liability to any extent without affecting the liability of any other such person;
- (g) in the absence of written instructions to the contrary, if an Account is maintained in joint names, each person constituting the Customer shall be entitled to operate and authorize closure of the Account individually and independently from the other(s); if, prior to acting on instructions received from one such person, the Bank receives contradictory instructions from another such person, it shall act thereafter only on the instructions of all persons constituting the Customer;
- (h) any notice to any one person constituting the Customer will be deemed effective notification to all such persons;
- (i) references to the Customer shall be construed, as the context requires, to any or all such persons.

## **24. RESPONSIBLE USE OF SERVICES**

The Customer will use the Bank's services responsibly. In giving instructions to the Bank to make payments or effect transactions, the Customer agrees to take reasonably practicable steps to safeguard the Customer's own interest, money and assets from fraud or other illegal activities. One of these steps for the Customer before giving instructions to the Bank, is to use the information or tool made available to the public by the law enforcement agencies, governmental or regulatory authorities to check whether the party receiving payment from or transacting with the Customer is real and credible. Such information or tool includes Scameter made available by Hong Kong Police Force. Given the quantity of payment instructions received by the Bank from customers, it is not feasible in practice for the Bank to conduct the check for the customers before processing their payment instructions. It is therefore the duty of the Customer (and not the Bank) to check before giving instructions to the Bank.

## **25. DEBT COLLECTION**

If the Customer fails to pay any sum due to the Bank, the Bank may appoint a debt collection agency to collect it. The Customer shall indemnify the Bank against all fees and expenses reasonably and properly incurred by the Bank, including legal fees and debt collection agents' fees, in connection with demanding, collecting or suing to recover any sum payable by the Customer or other remedies resulting from the breach of any of these Terms and Conditions or any other agreement with the Bank. The Bank shall comply in all respects with the Code of Banking Practice in force from time to time in relation to collection of debts.

## **26. NOTICES**

- 26.1 Without prejudice to any other provisions of these Terms and Conditions, any notice issued by the Bank shall be deemed to have been validly served if addressed to the Customer at the address for notices notified to the Bank in writing by the Customer from time to time or which appears in the Bank's records as the Customer's last known address. Any notice delivered personally shall be deemed to have been validly served at time of delivery. Any notice dispatched by letter postage prepaid shall be deemed to have been validly served





immediately after posting, its return by the post office notwithstanding. Any notice sent by telex or by telefax shall be deemed to have been validly served at the time of transmission.

- 26.2 Any notice to the Bank shall be in writing and duly signed by or on behalf of the Customer using the specimen signature(s) in its current mandate and/or such other documents prescribed by the Bank and for the time being in effect in respect of the relevant Accounts. Notices from the Customers shall be addressed and delivered to the Bank at its principal place of business or such other offices or branches in Hong Kong for the time being selected by the Bank and notified to the Customer and shall be deemed to have been received only upon actual receipt by the Bank.

## **27. BUSINESS HOURS**

The business hours of the Bank may be extended or otherwise revised by the Bank in accordance with its business requirements. A notice posted in its branch offices shall constitute written notice to the Customer of such change. All business transacted within the extended or revised period shall be considered as having been transacted during normal business hours in the ordinary course of business.

## **28. AMENDMENTS**

The Bank may amend these Terms and Conditions at any time, subject to giving the Customer 30 days' prior notice (unless such amendment is not within the Bank's control) of the relevant amendment. If the Bank, in its reasonable opinion, considers that it is not practicable to notify the Customer by written notice, notice under this clause shall be deemed to be duly given to the Customer by displaying such notice at its branch offices for 30 consecutive days.

## **29. MISCELLANEOUS**

- 29.1 All transactions in relation to Accounts or otherwise with the Bank (whether or not also governed by these Terms and Conditions) shall be effected by means of the applicable transaction forms provided by the Bank for such purpose or in such other manner as the Bank may reasonably require. The Customer shall be deemed to be bound by terms and conditions imposed by the Bank in respect of such transactions whether appearing on relevant forms or not and whether or not the relevant forms or other documents required by the Bank are completed and/or signed by the Customer.
- 29.2 Without prejudice to any other provision of these Terms and Conditions, the Bank shall be entitled to charge reasonable service and handling fees and charges in respect of all banking services provided to the Customer and functions carried out for the Customer during the course of its banking relationship with the Customer. Details of these fees and charges are available on request and are displayed at all branch offices of the Bank.
- 29.3 Unless the context otherwise requires, references to the Customer shall, if the Customer is a sole proprietorship, include the sole proprietor and his successors in the business and, if the Customer is a partnership, include all the partners from time to time of the partnership and the successors to such partnership business. These Terms and Conditions shall be binding on the Customer and the Customer's successors notwithstanding any change in the constitution of the Customer or any such successors and, without limiting the foregoing, shall not be terminated or affected by the death or retirement of any parties or by any other change in the composition of any firm as aforesaid.
- 29.4 Any forbearance or delay by the Bank in exercising any right or remedy shall not be deemed to be a waiver of such right or remedy, and any single or partial exercise of any right or remedy shall not preclude further exercise thereof. No course of dealing between the Customer and the Bank nor any waiver in any one or more instances shall be deemed a waiver in any other instance. The Bank's rights and remedies shall continue in full force and effect until they are specifically amended or waived in writing by the Bank.
- 29.5 Any provision in these Terms and Conditions which is invalid shall be ineffective only to the extent of such invalidity and shall not affect the validity of the remaining Terms and Conditions.

## **30. ASSIGNMENT**



- 30.1 These Terms and Conditions are for the benefit of the Bank and its successors and assignees, notwithstanding any change by way of merger, amalgamation, consolidation or otherwise in the constitution of the Bank or any such successors or assignees. The Customer confirms and agrees, in advance, that the Bank may assign or otherwise transfer any of its (i) rights and/or (ii) obligations under these Terms and Conditions and any related transactions and/or in or under any securities, deeds, documents and properties over which it has a security interest and may deliver the same to the successor(s), assignee(s) or transferee(s), who shall become vested with all the rights and/or obligations formerly vested in the Bank. The Bank shall be released from any liability in respect of those rights and/or obligations.
- 30.2 The Customer shall not assign or transfer any of its rights under these Terms and Conditions or any contracts or transactions effected under them.

### **31. CONFLICT**

If there shall be any conflict between these Terms and Conditions and any other terms and conditions governing services, facilities and products of the Bank and general descriptive information about the Bank's services which specifically concern the Code of Banking Practice endorsed by the Hong Kong Monetary Authority (as amended from time to time), these Terms and Conditions shall prevail.

### **32. GOVERNING LAW**

These Terms and Conditions shall be governed by and construed in accordance with the laws of Hong Kong and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong in connection with any suit, action or proceeding arising out of or in connection with these Terms and Conditions.

In the event of there being any difference between the English and Chinese versions of these Terms and Conditions, the English version shall prevail for all purposes