

Foreign Exchange Transactions Terms of Business

These Foreign Exchange Transactions Terms of Business (“**Terms and Conditions**”) apply to all FX Transaction between the Bank and the Customer in respect of which these Terms and Conditions have been incorporated by reference through a Confirmation expressed to be so governed.

These FX Transactions are based on the Shariah principles of Bai’ al-sarf. Bai’ al-sarf refers to a contract of exchange of money for money of the same or different type.

1. **Definitions and Interpretation**

1.1 In these Terms and Conditions:

“**Bank**” means HSBC Amanah Malaysia Berhad (Company Registration No. 200801006421 (807705-X)) which has a principal place of business at No. 2 Leboh Ampang, 50100 Kuala Lumpur and shall be construed so as to include its successors in title, assigns and transferees;

“**Business Day**” means in respect of each currency, a day on which commercial banks in the principal financial centre of each such currency effect delivery of the currency the subject of the FX Transaction;

“**Confirmation**” means a documentation issued by the Bank confirming the terms of any FX Transaction;

“**Customer**” means the relevant counterparty as specified in a Confirmation and shall be construed so as to include its successors in title and permitted assigns;

“**Event of Default**” means any of the events referred to in Clause 5;

“**Force Majeure**” means any event due to any cause beyond the reasonable control of the relevant Party, such as restrictions on convertibility or transferability, requisitions, involuntary transfers, unavailability of communications system, sabotage, fire, flood, explosion, acts of God, civil commotion, strikes or industrial action of any kind, riots, insurrection, war or, acts of state or government;

“**FX Transaction**” means a foreign currency exchange transaction under which the Bank purchases a specified amount from, and sells an amount to, the Customer for delivery or payment within two Business Days from but not including the Trade Date;

“**HSBC Buy Amount and Currency**” means an amount of currency (differing in type from the HSBC Sell Amount and Sell Currency) given in settlement of the HSBC Buy Amount and Currency on the Settlement Date;

“**HSBC Sell Amount and Currency**” means an amount of currency that the Customer intends to purchase from the Bank to be settled in the HSBC Buy Amount and Currency on the Settlement Date;

“**Late Payment Compensation**” means, in relation to any amount which a Paying Party fails to pay to the Receiving Party on the due or agreed date for payment thereof, the compensation amount for the period from the due or agreed date until the date of actual payment by the Paying Party or recovery of the unpaid amount by the Receiving Party (after as well as before judgment) (the “Relevant Period”) in respect of an unpaid amount for any day in the Relevant Period shall be determined according to the following formula:

$$\frac{A \times B}{N}$$

where : A is the unpaid amount;

B is the percentage rate per annum determined by the Receiving Party but not exceeding the prevailing IIMM-Rate (namely the daily weighted average overnight rate for Mudharabah interbank investment quoted in Malaysia's Islamic interbank money market) or such other rate as permitted by the Shariah Advisory Council of Bank Negara Malaysia (or any successor entity thereto) to be charged for late payments in relation to moneys payable under any Shariah-compliant banking facilities in Malaysia;

N is the relevant market day count convention for the currency of the unpaid amount (e.g. where the unpaid amount is in Malaysian Ringgit, N is 365 or where the unpaid amount is in any other currency, N is 360 or such other number as is appropriate in accordance with the market practice for such currency);

"Party" means either the Customer or the Bank; and **"Parties"** means both the Customer and the Bank;

"Paying Party" in respect of a particular currency means the Party that makes a payment in that currency on the relevant Settlement Date;

"Receiving Party" in respect of a particular currency means the Party that receives a payment in that currency on the relevant Settlement Date;

"Settlement Date" means in respect of a FX Transaction, and the relevant currency, the second Business Day from but not including the Trade Date and if the relevant date is not a Business Day, then the first following day that is a Business Day;

"Termination Amount" means an amount payable as determined in accordance with Clause 5;

"Termination Currency" means the currency as specified in a Confirmation;

"Terms and Conditions" means these Foreign Exchange Transactions Terms of Business; and

"Trade Date" means a date upon which a FX Transaction is entered into.

- 1.2 Headings are included for convenience and shall not affect the interpretation nor construction of the clauses herein.
 - 1.3 References to the singular includes the plural and vice versa.
 - 1.4 Reference to "law" includes any laws, legislations, statutes, treaties, judgements, rules, regulations, orders, directives, decree, announcements, guidelines, decisions, procedures, determinations and other requirements (whether any of the foregoing has the force of law or not) made, given or issued or published under the authority of, any regulatory body, government body, exchange, market, clearing house or clearing system, applicable to that Party including any amendment, supplement or replacement thereof.
2. **Entering into a FX Transaction**
- 2.1 A FX Transaction may be entered into by authorised representative of the Parties through oral arrangement over the telephone or by any other means permitted by the Bank.
 - 2.2 The Bank may but is not obliged to enter into any FX Transaction with the Customer and the Bank may request for any information or any other document from the Customer as a condition to enter into a FX Transaction.

- 2.3 The Bank will promptly confirm the terms of any FX Transaction in a Confirmation to be made available to the Customer by mail, telex, facsimile or any other electronic means.
- 2.4 Subject to Clause 2.6, the Confirmation shall be deemed accurate, conclusive and binding, unless the Customer notifies the Bank immediately upon receipt of any errors, exceptions or omissions in the Confirmation.
- 2.5 The FX Transaction is valid even if the Bank delays to issue a Confirmation.
- 2.6 The Bank reserves the right to correct any errors, exceptions or omissions in the Confirmation and the exercise of such right by the Bank shall not prejudice or invalidate the FX Transaction.

3. **Settlement**

- 3.1 All payments to be made by a Paying Party in respect of a FX Transaction must be made so that it is received by the Receiving Party on the Settlement Date in such amount and currency and in such account of the Receiving Party as specified in the Confirmation in cleared funds and full amount without any withholding, deduction, set-off or counterclaim.
- 3.2 If the Paying Party is required by law to make any withholding or deduction, then the Paying Party will pay to the Receiving Party such additional amount to enable the Receiving Party to receive an amount equivalent to the amount the Receiving Party would have received if no such deduction or withholding had been made.
- 3.3 If the Paying Party has previously provided a standard settlement instruction to the Receiving Party, settlement will be made to that account. If no standard settlement instruction has been previously provided, settlement will be made to the account as advised by the Receiving Party in writing no later than the relevant Settlement Date.
- 3.4 If the Settlement Date in respect of a FX Transaction does not fall on a Business Day, such date shall, without prejudice to the liability of either Party to make payment on the Settlement Date, be postponed to the next Business Day and the amount payable on such day shall remain unchanged.
- 3.5 The obligation of a Paying Party to make payment in respect of a FX Transaction in this Clause 3 is subject to the condition precedent that no Event of Default or event which upon the giving of notice or lapsing of time would constitute an Event of Default has occurred and is continuing with respect to the Receiving Party.

4. **Representations and Warranties**

- 4.1 Each Party represents and warrants to the other that:
 - (i) it is duly organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
 - (ii) it has the capacity, power and authority to enter into and perform its obligations contained these Terms and Conditions and the FX Transaction hereunder;
 - (iii) the entering into the FX Transaction by it and the performance of its obligations contained in these Terms and Conditions do not conflict with any provision of its internal rules or constitutions or any other obligation or arrangement which is binding on it;
 - (iv) its obligations under these Terms and Conditions and the FX Transaction will constitute its legal, enforceable, valid and binding obligations enforceable in accordance with their terms;
 - (v) the FX Transaction and the performance of its obligations under these Terms and Conditions do not violate any law applicable to it;
 - (vi) it will at all times maintain all governmental and other authorisations, registrations, approvals, licences and consents required for it to lawfully perform its obligations under these Terms and Conditions and comply and will comply with all applicable laws if failure so to comply would materially impact its ability to perform its obligation under these Terms and Conditions;

- (vii) if for any reason it is required to enter into a foreign exchange transaction that is consistent with the principles of Shariah, it has made its own judgment or has obtained advice from its independent advisors as to the Shariah compliance of these Terms and Conditions and the FX Transaction;
- (viii) it is acting for its own account and it has relied on its own judgment or that of its independent advisors as to whether the FX Transaction is appropriate prior to entering into such transaction;
- (ix) it (on its own behalf or through independent advisors) is capable of assessing and understanding, and accepts, the terms, conditions and risks of the FX Transaction and it assumes the risks of the FX Transaction;
- (x) it is not relying on the statements or communication made by the other Party as investment advice or recommendation to enter into the FX Transaction and each Party is not acting as a fiduciary or an advisor for the other Party in respect of the FX Transaction; and
- (xi) it is not relying on the other Party for advice or recommendation as to the compliance of the FX Transaction with Shariah principles and it has independently made its own assessment as to whether such FX Transaction is compliant with the applicable Shariah principles.

5. Events of Default

- 5.1 The occurrence of any of the following events to a Party is an event of default with respect to that Party (the “**Defaulting Party**”):
- (i) the Defaulting Party fails to pay under these Terms and Conditions on the due date for such payment;
 - (ii) the Defaulting Party commits a material breach of its obligation under these Terms and Conditions (other than an obligation to make any payment in Clause 5.1(i));
 - (iii) the Defaulting Party repudiates or evidences an intention to repudiate in whole or in part or challenges the validity of these Terms and Conditions;
 - (iv) any representation or warranty made or deemed to be made by the Defaulting Party proves to be untrue or misleading in a material respect;
 - (v) the Defaulting Party (a) becomes insolvent, (b) is unable to pay its debt or fails, or admits in writing its inability, to pay its debt generally as they become due, (c) is dissolved (other than pursuant to a consolidation, amalgamation or merger), (d) enters into, or proposes any arrangement or composition with or for the benefit of its creditors, (e) institutes, or has instituted against it, any legal proceeding in relation to suspension of payments, moratorium of indebtedness, winding up, dissolution, administration, insolvent reorganisation of such Defaulting Party, (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (g) has an order made, or a resolution passed for, its winding up or dissolution (other than for the purpose of a solvent amalgamation or reconstruction), (h) has a distress, execution, attachment or other legal proceeding enforced against all or substantially all of its assets; or
 - (vi) such Defaulting Party consolidates into, or merges with, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party.
- 5.2 Upon the occurrence of an Event of Default with respect to the Defaulting Party, the other Party (the “**Non-Defaulting Party**”) may elect, by notice in writing to the Defaulting Party, to terminate the FX Transaction with immediate effect and no further payment under Section 3.1 will be required to be made, but without prejudice to the other provisions of these Terms and Conditions. Termination Amount payable, if any, will be determined in accordance with this Clause 5.
- 5.3 On or as soon as reasonably practicable following the occurrence of an Event of Default, the Bank as the calculation agent will, in good faith using commercially reasonable procedures, calculate from the perspective of the Non-Defaulting Party the mark-to-market value of the FX Transaction as at the termination date using one

or more third party market quotation (either firm or indicative) for replacement transactions or one or more third party market data chosen by the Bank. The Bank will determine the mark-to-market value having regard to the losses or costs that the Non-Defaulting Party will incur under then prevailing circumstances (expressed as a positive number) or gains to the Non-Defaulting Party that it will realise under then prevailing circumstances (expressed as a negative number) in replacing the terminated FX Transaction.

- 5.4 If as a result of this calculation, the final sum is positive, the Defaulting Party must pay the Non-Defaulting Party an amount equal to that positive sum. Alternatively, if as a result of this calculation the final sum is negative, then the Non-Defaulting Party must pay the Defaulting Party an absolute value equal to that negative sum. The Bank will notify the Customer the outcome of its calculation. An amount calculated as being due under this Clause must be paid no later than two Business Days from the date of such notification.
- 5.5 To the fullest extent permitted by the law, payment under Clause 5.4 is to be made in the Termination Currency. If the amount due under Clause 5.4 is denominated in a currency other than the Termination Currency, the Bank shall convert the amount payable to the Termination Currency using its spot exchange rate as at the relevant termination date.
- 5.6 If payment cannot be made in the Termination Currency due to any applicable law, the final payment may be satisfied by payment made in currency other than the Termination Currency ("**Second Currency**") if such payment results in actual receipt by one Party of the amount due in the Termination Currency after converting in good faith the amount tendered in the Second Currency using the Bank's quoted spot rate of exchange on the day that the amount is due under Clause 5.4. If for any reason the amount so received falls short of the amount payable on termination, the Party paying the Termination Amount will immediately pay such additional amount in the Secondary Currency as may be necessary to compensate for the shortfall.
- 5.7 The amount payable determined pursuant to this Clause will be subject to any set-off by the Non-Defaulting Party.

6. **Force Majeure and Illegality**

- 6.1 If
- (i) either Party is prevented from, hindered or delayed by reason of Force Majeure from making or receiving any payment in respect of the FX Transaction; or
 - (ii) it has become unlawful under any applicable law for either Party (through no fault of its own) to make or receive any payment in respect of the FX Transaction ("**Illegality**"),
- and is continuing then settlement which would otherwise be required to be made under Clause 3 will be deferred to and will not be due until:
- (a) the first Business Day following the date the event or circumstance giving rise to that Force Majeure or Illegality ceases to exist; or
 - (b) the first Business Day following the end of three Business Days in the case of Illegality and the end of eight Business Days in the case of Force Majeure following the occurrence of that event or circumstance, whichever is earlier ("**Waiting Period**").
- 6.2 Should the event or circumstance giving rise to that Force Majeure or Illegality continues after the expiry of the relevant Waiting Period, either Party may by not more than 20 days' notice to the other Party terminate the FX Transaction. Once so elected, Parties are no longer required to make payments under Clause 3, but without prejudice to the other provisions of these Terms and Conditions. Clause 5 will govern the final payment to be made save that the mark-to-market value at termination date shall be calculated using mid-market quotations or values.
- 6.3 The Party affected by any event or circumstance giving rise to Force Majeure or Illegality is under an obligation to use all reasonable efforts to inform the other Party on the occurrence of such event or circumstance.

7. **Late Payment**

- 7.1 If any amount due and payable by a Party to the other Party is not received by the other Party on the due date for payment (an “**unpaid sum**”), the paying Party undertakes to pay Late Payment Compensation (before as well as after judgment) to the other Party starting on (and including) the due date for payment thereof and ending on (but excluding) the date on which the unpaid sum is received or recovered in full.

8. **Recording**

- 8.1 The Bank may (but is not obliged to) record telephone conversations between the relevant personnel of the Parties in connection with any FX Transaction or potential FX Transaction.
- 8.2 The Customer consents to the recording of the telephone conversation and agrees to obtain any necessary consent of such personnel of it.
- 8.3 The Parties agree that such recordings shall be the sole property of the Bank and may be submitted as evidence in any legal proceedings or regulatory investigation related to these Terms and Conditions.

9. **Recovery and Shortfall**

- 9.1 If a Party seeking recovery has obtained a court judgement or order against other Party of any amount in a currency other than the currency in which such amount was due, the Party seeking recovery, after recovery in full of the aggregate amount to which such Party is entitled pursuant to the judgment or order, will be entitled to receive such additional amount from the other Party to compensate for any amount of shortfall arises from any difference between (a) the spot rate of exchange at which the amount due is converted into the currency of the court judgment or order; and (b) the spot rate of exchange at which the Party seeking recovery is able (acting in good faith and using commercially reasonable means) to purchase the amount due with the amount actually recovered by the Party seeking recovery pursuant to the court judgement or order.

10. **General**

- 10.1 Party may give each other notices or other communication in respect of these Terms and Conditions in any manner set forth below to the latest address or number stated in each Party’s records and will be deemed received:
- (i) if in writing and delivered in person, at the time of delivery;
 - (ii) if in writing and sent by ordinary/registered post (either AR or non-AR registered) or courier, on the date it is delivered or its delivery is attempted;
 - (iii) if in writing and sent by facsimile transmission, on the date it is received by an authorised personnel of each Party;
 - (iv) if sent by electronic messaging system, on date it is received; or
 - (v) if sent by e-mail, on the date it is delivered.
- 10.2 Time shall be of the essence.
- 10.3 The obligations under these Terms and Conditions and the Confirmation bind the Customer including its respective successors, permitted assigns and personal representatives as applicable. The Customer may not transfer or assign any of its rights and/or obligations under these Terms and Conditions without prior written consent of the Bank.

- 10.4 Each Party shall take all reasonable steps to mitigate the loss and damage it may incur in relation to any claim or action (whether for negligence, breach of contract or misrepresentation) which it may bring against the other Party.
- 10.5 Rights or remedies of a Party herein are cumulative and not exclusive of any rights or remedies provided by law.
- 10.6 No failure to exercise or delay in exercising any rights or remedies under these Terms and Conditions and Confirmation shall operate as a waiver. Waiver if any shall be in writing and limited to the specific circumstances stated thereto.
- 10.7 Once incorporated by reference through a Confirmation, any amendment to these Terms and Conditions must be in writing and agreed between the Parties.
- 10.8 Each FX Transaction, these Terms and Conditions, the Confirmation and any non-contractual obligations arising out of or in connection with them shall be governed by, and construed in accordance with, the laws of Malaysia. The Parties submit to the non-exclusive jurisdiction of Malaysia.
- 10.9 Each provision herein is severable. If any provision is or becomes invalid, illegal or unenforceable, that provision is severed to the extent of such invalidity, illegality or unenforceability without affecting the remaining terms and conditions.
- 10.10 These Terms and Conditions constitute the entire agreement between the Parties.
- 10.11 The content of these Terms and Conditions is confidential but the Bank is permitted to disclose and share information in accordance with the Relationship Terms of Business.
- 10.12 In the event of any inconsistency between any of the following documents, the relevant document first listed below shall prevail to the extent of such inconsistency (i) the Bank's Relationship Terms of Business, (ii) the Confirmation, and (iii) these Terms and Conditions.
- 10.13 The Bank's Relationship Terms of Business applies. The Relationship Terms of Business be obtained via the Bank's website at www.hsbcamanah.com.my