

Islamic Foreign Exchange Transactions Terms and Conditions

These Islamic Foreign Exchange Transactions Terms and Conditions ("**Terms and Conditions**") apply to all FX Transactions 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.

A copy of these Terms and Conditions is available on the Bank's website, www.hsbcamanah.com.my. These Terms and Conditions may be updated from time to time. Unless otherwise agreed, where Parties incorporate these Terms and Conditions into the relevant Confirmation, they will incorporate these Terms and Conditions as amended and supplemented through the date on which they enter into the relevant transaction.

These FX Transactions are based on the Shariah principles of Wa'ad and Bai' al-sarf..

1. Definitions and Interpretation

1.1 In these Terms and Conditions:

"Bai' al-sarf" refers to a contract of exchange of money for money of the same or different type;

"Bank" means HSBC Amanah Malaysia Berhad (Company Registration No. 200801006421 (807705-X)) which has a principal place of business at Level 21, Menara IQ, Lingkaran TRX, Tun Razak Exchange, 55188 Kuala Lumpur, Malaysia and shall be construed so as to include its successors in title, assigns and transferees;

"Business Day" means, in respect of any date that is specified in the relevant Confirmation to be subject to adjustment in accordance with any applicable Business Day Convention, a day on which commercial banks and foreign exchange markets settle payments and are open for general business in the place(s) and on the days specified for that purpose in such Confirmation and, if place(s) and days are not so specified, a day on which commercial banks and foreign exchange markets settle payments and are open for general business in the same currency as the payment obligation that is payable on or calculated by reference to that date in the principal financial centre of such currency;

"Business Day Convention" means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Business Day. The following terms, when used in conjunction with the term "Business Day Convention" and a date, shall mean that an adjustment will be made if that date would otherwise fall on a day that is not a Business Day so that:

- (i) if "Following" is specified, that date will be the first following day that is a Business Day;
- (ii) if "Modified Following" or "Modified" is specified, that date will be the first following day that is a Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day; and
- (iii) if "Preceding" is specified, that date will be the first preceding day that is a Business Day.

The Business Day Convention applicable to a date that is specified in Confirmation to be subject to adjustment in accordance with an applicable Business Day Convention shall be the Business Day Convention specified for that date in such Confirmation;

"Buy Amount and Currency" means an amount of currency (differing in type from the Sell Amount and Currency) that (i) in respect of FX Spot, the Customer intends to purchase from the Bank to be settled in the Buy Amount and Currency on the Settlement Date; or (ii) in respect of FX Forward, the Customer may, from time to time, unilaterally undertake to purchase from the Bank to be settled in the Sell Amount and Currency on a future date;

"Calculation Agent" means the party designated as such in the relevant Confirmation (or a third party);

"Confirmation" means (i) in the case of FX Spot, a documentation issued by the Bank confirming the terms of the FX Spot transaction; (ii) in the case of FX Forward, the DFT Terms confirmation or the Wa'ad Schedule, containing the Undertaking confirming the terms of the FX Forward;

"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;

"DFT Terms confirmation" has the meaning ascribed to it in the TMA;

"FX Forward" means an Islamic foreign currency exchange transaction under which the Customer unilaterally undertakes to purchase a specified amount from, and sells an amount to, the Bank on a future date and subject to and in accordance with the relevant Confirmation;

"FX Spot" means an Islamic foreign currency exchange transaction under which the Bank purchases a specified amount from, and sells an amount to, the Customer on spot basis where the delivery or payment is within two Business Days from but not including the Trade Date;

"FX Transaction" means either FX Spot or FX Forward, and **"FX Transactions"** means both FX Spot and FX Forward;

"Late Payment Compensation" means, in relation to any unpaid sum, the compensation amount (before as well as after judgment) for the period from (and including) the due or agreed date until (but excluding) the date of actual payment by the Paying Party or recovery of the unpaid sum by the Receiving Party (the **"Relevant Period"**) in respect of an unpaid sum 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 sum;

B is the percentage rate per annum determined by the Receiving Party but not exceeding the prevailing Islamic interbank rate (IIMM) (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 sum (e.g. where the unpaid sum is in ringgit, N is 365 or where the unpaid sum is in any other currency, N is 360 or such other number as is appropriate in accordance with the market practice for such currency);

"Offer and Acceptance Notice" means, with respect to a Transaction, the notice delivered or to be delivered by the Bank as seller to the Customer as purchaser and accepted by the Customer as purchaser pursuant to Clause 3.3 of these Terms and Conditions;

"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;

"Sell Amount and Currency" means an amount of currency (differing in type from the Buy Amount and Currency) given in settlement of the Buy Amount and Currency;

"Settlement Date" means in respect of a FX Transaction, and the relevant currency, the date specified as such in the relevant Confirmation except that each Settlement Date shall be subject to adjustment in accordance with the Modified Following Business Day Convention unless another Business Day Convention is specified to be applicable to Settlement Date in the relevant Confirmation. For FX Spot, the Settlement Date shall not be more than two Business Days following the Trade Date;

"TMA" means the form of ISDA/IIFM *Tahawwut* Master Agreement (version 2010, jointly published by the International Swaps and Derivatives Association, Inc. and the International Islamic Financial Market ("**IIFM**")). A copy of the TMA is available on the IIFM website, <https://www.iifm.net/>;

"Trade Date" means a date upon which a FX Transaction is entered into pursuant to the relevant Confirmation;

"Transaction Record" means, with respect to a Transaction, the notice delivered or to be delivered by the Bank as seller to the Customer as purchaser pursuant to Clause 3.4 of these Terms and Conditions;

"Undertaking (Wa'ad)" means an irrevocable unilateral undertaking given by the Customer as purchaser for the benefit of the Bank as seller to enter into a FX Forward;

"Wa'ad Schedule" has the meaning ascribed to it in the Master Hedging Terms and Conditions made between the Bank and the Customer.

- 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 Spot Transaction**

- 2.1 A FX Transaction may be entered into by authorised representative of the Parties through oral arrangement over the telephone, in writing via email, or any other means as agreed between the Parties.
- 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. **Entering into a FX Forward Transaction**

- 3.1 A FX Transaction may be entered into by authorised representative of the Parties through oral arrangement over the telephone, in writing via email, or any other recognized means permitted under section 12 of the TMA, or any other means permitted by the Bank.
- 3.2 The Customer may, from time to time, unilaterally undertake to purchase the Buy Amount and Currency from the Bank to be settled in the Sell Amount and Currency, on a future date and subject to and in accordance with the Terms and Conditions, by sending an Undertaking to the Bank as seller.
- 3.3 After the Customer has issued an Undertaking to the Bank, the Bank may and the Customer shall, no later than the Settlement Date, respectively communicate the offer to sell the Buy Amount and Currency on the terms specified in the Undertaking and the acceptance of such offer to each other by telephone or at any branch premises of the Bank, in writing via email, or any other means as agreed between the Parties, but nothing herein shall preclude the Bank and the Customer from communicating the said offer and acceptance to each other in the manner set out in the Offer and Acceptance Notice.
- 3.4 After a Transaction has been completed in accordance with Clause 3.3 above, the Bank will within a reasonable time thereafter, send a Transaction Record to the Customer for the Customer's record unless the offer and acceptance constituting the Transaction were communicated by the Parties in the manner set out in the Offer and Acceptance Notice.

4. **Settlement**

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 Whenever the Calculation Agent is required to select banks or dealers for the purposes of making any calculation or determination or to select any exchange rate, the Calculation Agent will make the selection in good faith after consultation with the other party (or the parties, if the Calculation Agent is a third party), if practicable, for the purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market or designating a freely convertible currency, as the case may be. Whenever the Calculation Agent is required to act, make a determination or to exercise judgement in any other way, it will do so in good faith and in a commercially reasonable manner.
- 4.5 The Calculation Agent is responsible for performing any duties specified in the relevant Confirmation as being duties required to be performed by the Calculation Agent. For the avoidance of doubt, the Calculation Agent does not act as a fiduciary for or as an adviser to any party in respect of its duties as Calculation Agent. The Calculation Agent shall not be liable for any loss, damage, costs or expenses, suffered or incurred by a party as a result of anything done or omitted to be done (as the case may be) by the Calculation Agent in the course of performing its obligations hereunder unless any such loss, damage, costs or expenses arose directly as a result of wilful default or gross negligence on the part of the Calculation Agent.

5. **Late Payment**

- 5.1 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 Receiving 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.

6. **Recording**

- 6.1 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.
- 6.2 The Customer consents to the recording of the telephone conversation and agrees to obtain any necessary consent of such personnel of it.
- 6.3 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.

7. **Recovery and Shortfall**

- 7.1 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.

8. **General**

- 8.1 Any amendments to these Terms and Conditions may be done by the Bank giving prior notice to the Customer in any of the following manner:
 - (a) notice in writing to the Customer; or
 - (b) notice in the Customer's account statement; or
 - (c) publishing the notice on the Bank's website (at www.hsbcamanah.com.my), or electronic terminals, or in the press or any media; or
 - (d) exhibiting the notice at any of the Bank's premises and/or branches in Malaysia,and such amendments which will become effective on the expiry of no less than 30 days from the date of such notice.
- 8.2 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.
- 8.3 The Bank is permitted to disclose and share information in accordance with (i) (in the case where the Customer does not maintain an account with the Bank) the Bank's Relationship Terms of Business, or (ii) (in the case where the Customer has opened an account with the Bank), the provisions relating to the collection, processing and sharing of customer information as contained in the Bank's Generic Terms and Conditions where all references to "Services" in the Generic Terms and Conditions shall include "the FX Transaction"; for the avoidance of doubt, the Bank's Relationship Terms of Business, to the extent earlier accepted by the Customer, will not apply under the scenario in sub-clause 8.3(ii).
- 8.4 Both the Bank's Relationship Terms of Business and the Bank's Generic Terms and Conditions are available at www.hsbcamanah.com.my or upon request and which may be updated/amended by the Bank from time to time in accordance with the manner prescribed therein.