

# FORWARD CONTRACT ADDENDUM TO THE TERMS AND CONDITIONS

Malta



This Forward Contract Addendum to the Terms and Conditions ("Addendum") is subject to and governed by the contractual provisions set forth below. This Addendum supplements the Terms and Conditions to which the Client has already agreed to be bound. This Addendum is intended to govern only the Services regarding the sale and/ or purchase of a Forward Contract(s); all other provisions of the Terms and Conditions remain operative and are expressly incorporated by reference. The Terms and Conditions, not this Addendum, shall govern all other Services. Where there is conflict between the terms of this Addendum and the Terms and Conditions, the terms of this Addendum shall prevail with respect to the Forward Contract Services set forth herein and solely to the extent of the conflict. Unless otherwise specified herein, capitalised terms used, but not otherwise defined herein, shall have the same meaning assigned thereto in the Terms and Conditions.

**WHEREAS**, the Client and the Company each desire from time to time to enter into a Forward Contract(s) with each other and, to have such Forward Contract(s) be governed by this Addendum;

**NOW, THEREFORE**, in consideration of the rights and duties allocated below as well as in the Terms and Conditions, the Parties hereto mutually agree to supplement the Terms and Conditions as follows:

## 1. Definitions

**Additional Partial Prepayment (Margin Call/Risk Exposure Top-Up Payment):** An additional security payment required by the Company in connection with a Forward Contract. The amount of such payment shall be determined solely by the Company and shall be based on the actual adverse foreign currency fluctuation relative to the Client's original Forward Contract purchase price, or an adverse change in the Client's financial standing and/or credit worthiness.

**Delivery Window:** A period of time (not excluding 90 days) prior to the Maturity Date during which the Client may Draw Down on a Forward Contract.

**Draw Down:** The partial delivery and/or partial or full Settlement of the Forward Contract.

**Facility:** The Settlement terms and foreign currency exposure or trading limit(s) that the Company may grant the Client from time to time. Additional detail with respect to the Client's Facility may be set forth in a written communication and delivered to the Client by the Company.

**Forward Contract:** A legally binding agreement in which the Client agrees to purchase from (or sell to) the Company a specific amount of funds in one currency and to settle, on an agreed future date, in a corresponding amount of funds in another currency. By signing this Addendum, the Client agrees that each Forward Contract requested by it thereafter, will be governed by the provisions of this Addendum and by the Terms and Conditions.

**Instruction (Request):** A request by the Client made through mail, electronic mail, facsimile, telephone, file transfer, a Standing Order Instruction, the Online Payment System or other means for the Company to enter into a Forward Contract with the Client under the terms set out in this Addendum and in the Terms and Conditions.

**Maturity Date (Delivery Date/Value Date):** The date on which the Forward Contract becomes due for delivery and Settlement. The Maturity Date must be a business day in all jurisdictions involved in the relevant Forward Contract, including both countries of the currencies involved. The Maturity Date (Delivery Date/Value Date) shall always be the last day of the Delivery Window, if any.

**Partial Prepayment:** A security payment required by the Company in connection with a Forward Contract and held by the Company.

## 2. Foreign Currency Forward Contracts

- A. Forward Contract.** The Client may from time to time authorise the Company to enter into a Forward Contract by delivering an Instruction. Each Forward Contract will be governed by the provisions of this Addendum. For avoidance of doubt, it is agreed by the Parties that this Addendum shall only govern those Forward Contracts purchased from the Company on or after the date on which the Client signed this Addendum, as set forth below.
- B. Payment Purpose.** The Client confirms, represents and warrants that each Forward Contract it enters into with the Company is to facilitate payment for identifiable goods or services.
- C. Forward Contract Confirmation.** For each accepted Instruction for a Forward Contract pursuant to Section 3.8 of the Terms and Conditions, the Company will send the Client a Transaction Confirmation. The Client is responsible for checking the accuracy of the Transaction Confirmation. If the Client agrees that the Transaction Confirmation corresponds with its Instruction to the Company then the Client should sign the Transaction Confirmation and return it to the Company by email or fax immediately. The Company may act on the Client's Instruction to enter into a Forward Contract without receiving a signed Transaction Confirmation from the Client. However, if the Client fails to return the signed Transaction Confirmation to the Company within one (1) Working Day of the Company sending the Transaction Confirmation to the Client, then pursuant to Section 7.2 of the Terms and Conditions, the Company may exercise its discretion to cancel and not fulfill the Client's Instruction for a Forward Contract.
- D. Forward Contract Partial Payments.** Within two (2) Working Days of the Client's Instruction to enter into a Forward Contract, unless otherwise agreed in writing (or as contemplated by the Client's Facility), the Company must receive from the Client a Partial Prepayment in the minimum amount of five percent (5%) of the value of the Forward Contract, or such minimum amount as advised by the Company from time to time. During the term of the Forward Contract, (e.g. at any time until the Maturity Date (Delivery Date/Value Date) the Company may request, on more than one occasion, and the Client agrees to provide to the Company within two (2) Working Days of each such request, a Partial Prepayment (if not already provided) and/or Additional Partial Prepayment (Margin Call/Risk Exposure Top-Up Payment). Such Partial Prepayment(s) and/or Additional Partial Prepayment (Margin Call/Risk Exposure Top-Up Payment) is (are) intended to maintain the relative value of the funds to be purchased from or sold to the Company or, to address, in the Company's sole discretion, an adverse change in the Client's financial standing and/or credit worthiness or to address any changes to the Facility granted by the Company. Any Partial Prepayments and/ or Additional Partial Prepayments (Margin Call/Risk Exposure Top-Up Payment) delivered by

the Client and received by the Company are non-refundable and will be applied to satisfy the Client's total payment obligation owed to the Company with respect to the relevant Forward Contract on the Maturity Date (Delivery Date/Value Date) or on the date of any Draw Down.

- E. Delivery of Funds.** Once Settlement has been received by the Company, the Company will deliver the funds to the Client in accordance with the Client's Instructions. The Client shall provide to the Company, at least two (2) Working Days before the Maturity Date (Delivery Date/Value Date), or any Draw Down date, the necessary remittance details and Instructions to initiate the payment to the Payee.
- F. Draw Down.** The Client may Draw Down against a Forward Contract during the Delivery Window; provided, however, the Company has received Settlement in immediately available funds corresponding to the amount of the Draw Down. Notwithstanding any Draw Down, the Client shall be required to provide full Settlement (or any remaining balance) to the Company in immediately available funds in connection with a Forward Contract on or before the end of the Maturity Date (Delivery Date/Value Date)
- G. Rollover.** In the event that the Client desires to rollover a Forward Contract, or any portion thereof, before the Maturity Date (Delivery Date/Value Date), the Client may do so; provided, however, certain terms, conditions and costs (if any) are agreed in advance by the Client and the Company.
- H. Termination.** If the Client fails to deliver to the Company any Partial Prepayment or Additional Partial Prepayment(s) (Margin Call/Risk Exposure Top-Up Payment) required in relation to a Forward Contract or, communicates to the Company an intent not to provide to the Company any Partial Prepayment or Additional Partial Prepayment(s) (Margin Call/Risk Exposure Top-Up Payment) required in relation to a Forward Contract, or disputes the validity or existence of a Forward Contract or defaults, or communicates its intent to default, on any of its obligations described in the Terms and Conditions and/or

in this Addendum, specifically those described in Section 2(D) above, or the Company determines in its sole discretion (acting reasonably) that the client has not entered into a Forward Contract to facilitate payment for identifiable goods or services but for some other reason, the Company may terminate and unwind, without any notice to the Client, the relevant Forward Contract and/or any other outstanding Forward Contract(s) agreed to between the Company and the Client without any liability to the Company and/or take any other steps the Company deems appropriate (including any actions contemplated under Section 7.2 of the Terms and Conditions) to mitigate the potential loss(es) caused by the Client's failure to honour its contractual obligations under the Forward Contract(s). In the event of such termination, the Client agrees to pay to the Company on demand within five (5) Working Days the amount of any and all losses and expenses incurred by the Company in connection with the termination and unwinding of the Forward Contract(s). Where a Forward Contract has been terminated, the Client agrees that the Company's sole liability to the Client shall be to return any amounts the Client actually paid to and received by the Company that remain after deducting all amounts owed to the Company. Except as contemplated in this Section 2(G), the Client understands that a Forward Contract, once agreed and entered into, cannot be terminated. The Client acknowledges that the foreign currency market is volatile. The Client expressly acknowledges this market risk and accepts the risk that the value of the Forward Contract may weaken/strengthen during the period it is open and, that the value of the amount of currency which the Client has agreed to sell to, or purchase from, the Company may be less/more favourable than the then current price for the currency. The Client represents and warrants that the Client has entered into this Addendum for lawful and commercial/business purposes only and not for the purpose of investment or speculation.

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