

## Standard Terms and Conditions for Purchase of Physical Gold (Spot and Forward Contract)

(The terms stipulated below are to be read and construed as an integral part of the Letter of Offer)

### 1. Definitions

"Authorised Personnel(s)"	refers to the list of nominated persons who are duly authorised by the Customer to transact, deal or instruct the Bank on any Contract pursuant to the board of directors and/or shareholders resolution and includes any supplemental or amended resolutions passed by the Customer from time to time in respect to the Gold Facility.
"Authorised Signatories"	The list of nominated signatories who are duly authorised to appoint new Authorised Personnel pursuant to the board of directors and/or shareholders resolution and includes any supplemental or amended resolutions issued by the Customer from time to time in respect of the Gold Facility.
"Bank" or "we"	refers to United Overseas Bank (Malaysia) Bhd [Registration No. 199301017069 (271809-K)] and shall where applicable include its successors-in-title and assigns.
"Contract"	means the spot or forward contract entered into between the Bank and the Customer for the purchase of physical gold ("Gold").
"Customer" or "you"	refers to the borrower / purchaser and to whom the Letter of Offer is addressed; if the Letter of Offer is addressed to more than one borrower / purchaser company, "Customer" refers to all those borrowers / purchaser companies jointly and severally.
"Extraordinary Event"	means any event or series of events which the Bank believes to:- <ul style="list-style-type: none"><li>(a) have a material adverse effect on any Contract; or</li><li>(b) adversely alters or varies the rights and obligations the Bank undertook upon the establishment of any Contract and shall include without limitation the imposition of governmental regulation, or similar sovereign act of whatsoever nature and in any jurisdiction, whether <i>de facto</i> or <i>de jure</i> that would:<ul style="list-style-type: none"><li>(i) affect or impair the delivery, availability, credit, convertibility, transfers or repatriation of, or</li><li>(ii) the occurrence of a natural or man-made disaster, armed conflict, act of terrorism, riot, labour disruption, act of state or <i>force majeure</i> which makes it impossible (other than as a result of its own misconduct) for the bank to perform any obligation in relation to the Gold Transaction.</li></ul></li></ul>
"Gold Facility"	means the total aggregate limit approved by the Bank for the Customer to affect the Contract, as stated in the Letter of Offer.
"Gold Transactions"	means any transaction to purchase Gold with the Bank.
"Letter of Offer"	means agreement relating to the limit in any Gold Facility including any variation or modification to the letter of offer which was duly accepted by the Customers and the Bank, as advised and supplemented from time to time.
"Terms"	means these terms and conditions governing the Purchase of Physical Gold (Spot and Forward Contract) (including any variation or addition hereto as we may prescribe from time to time).

Capitalised words not otherwise defined in these Terms shall have the same meaning as ascribed to them in the Standard Terms and Conditions Governing Banking Facilities ("STC") (as amended and supplemented from time to time and the Letter of Offer.

In the interpretation of these Terms, words importing the singular include the plural and vice versa and words importing a gender includes all genders.

## 2. Purpose

- 2.1 The Contract is to allow Customer to hedge its exposure on Gold pricing arising from the purchase of Gold.

Unless the Bank agrees in writing, the obligations of the Bank to sell the Gold to the Customer in respect of any Gold Transaction under these Terms is subject to the condition precedent that there is no Event of Default having occurred (as described in the STC).

- 2.2 The Customer may not assign, transfer, sub-participate or otherwise dispose of, or create or allow to subsist any charge, security, lien or any encumbrance over any Gold Transaction, or rights over or interest in any account or the margin to any person.

- 2.3 The Customer warrants and represents that the Customer is familiar with, understands and will keep updated on the relevant laws, regulations, customs, rulings and interpretation of all relevant markets where the Gold Transactions are effected and that in any event, the Customer is separately advised on such matters and do not and will not rely on the Bank in relation to the same.

## 3. Instructions

- 3.1. For the operating mandate of the Gold Transaction, you must provide us with the resolution passed in accordance with your constitution or authorisation letter executed by Authorised Signatories or a person authorised by your constitution to nominate and appoint your Authorised Personnel (whichever may be applicable).

- 3.2. The Bank may rely on any oral or written instruction in relation to Gold Transaction which is given by the Authorised Personnel of the Customer in relation to the Contract.

- 3.3. The Bank may rely on any instructions, which the Bank believes to be given by the Authorised Personnel(s) in accordance with the board of directors and/or shareholders resolution passed by the Customer. The Customer shall not hold the Bank liable in any way for acting on inconsistent, ambiguous or incomplete instructions and the Customer shall indemnify and keep the Bank indemnified for any losses and expenses (including legal fees) in reliance thereof save and except if such losses or expenses are due to or arising from the gross negligence or willful default on the part of the Bank.

- 3.4. All instructions given by the Customer or any person authorised by the Customer are irrevocable and binding on the Customer.

- 3.5. The Bank shall be entitled to refuse to enter into any Gold Transaction with you, and accept or act on any instruction in relation to the Gold Transaction if: -

- 3.5.1. the Bank is unable to verify the Customer's identity to its satisfaction;
- 3.5.2. the Bank has any doubt on the authenticity, clarity or completeness of the instruction;
- 3.5.3. the form or content of such instruction is not in accordance with the requirements or policies or practices as the Bank prescribes from time to time;
- 3.5.4. the instruction(s) is not in accordance with the mandate(s) for the time being in effect in respect of the Gold Facility;

- 3.5.5. in the Bank's opinion, the Bank believes or suspects that the instruction is unauthorised, fraudulent or forged;
  - 3.5.6. the signature on the instructions differs from the specimen signature in our records;
  - 3.5.7. an Event of Default has occurred; or
  - 3.5.8. the Bank decides not to accept or act on any instruction, or deems it inappropriate if the Bank were to proceed with the instruction.
- 3.6. The Bank shall not be liable for any losses, liability or expenses suffered, sustained or incurred by the Customer or any third party as a result of the Bank's refusal to accept or act on the instruction save and except if such losses or expenses are due to or arising from the gross negligence or willful default on the part of the Bank.
- 3.7. The Bank may rely on any instructions which the Bank believes to be given by the Customer or any person authorised by the Customer. The Bank shall be entitled to rely and act upon any order in accordance with any reasonable interpretation thereof which any officer of the Bank believes to be the correct interpretation including any instruction which is (in the view of the Bank) ambiguous or inconsistent with any other instruction. Whilst the Bank will make necessary verification process, the Bank shall not be held liable for acting on inconsistent, ambiguous or incomplete instructions and the Customer shall indemnify the Bank for any claims, demands, actions, loss and expenses (including legal fees) in reliance thereof save and except if such losses or expenses are due to or arising from the gross negligence or willful default on the part of the Bank.
- 3.8. The Bank shall not be held liable to the Customer for any and all liabilities, losses and damages incurred by the Customer arising from any misunderstanding, errors, unauthorised alterations or instructions, fraud, forgery, loss, delay in the transmission or wrongful interception of any instruction through any equipment or system owned and / or operated by or for the Bank, provided that it was not due to the Bank's fault save and except if such losses or expenses are due to or arising from the gross negligence or willful default on the part of the Bank.

#### **4. Confirmation Advice**

- 4.1. The Bank will send a confirmation advice to the Customer in relation to the Contract.
- 4.2. The Customer shall:-
- 4.2.1 immediately notify the Bank in writing if a confirmation advice is not received by the Customer in the ordinary course of business; or
  - 4.2.2 notify the Bank in writing in the event of any discrepancies on the confirmation advice within seven (7) working days from the date of the confirmation advice, failing which the Gold Transaction stated in the confirmation advice will be considered true, correct and accepted by the Customer.
- 4.3. The entries in the confirmation advice shall be deemed as conclusive evidence of the Customer's instruction to the Bank to effect the Contract set out in the confirmation advice.
- 4.4. The Bank may at any time rectify or cancel any error on any entry in the confirmation advice if the Bank needs to correct any such error or omission. Any entry in the confirmation advice so rectified shall be binding on the Customer.

#### **5. Limit**

- 5.1. The Customer shall comply with the transaction limit set by the Bank from time to time. Such limit may include the minimum size for the Contract. The Customer should be aware of its transaction limit as no notification will be given by the Bank when such limit has been exceeded by the Customer.

5.2. The Contract shall be marked to market at the Bank's prevailing rate. If at any time:-

5.2.1. the unrealised losses on the Contract exceed 10% of the limit of the Gold Facility, or 10% of the original value of the Contract, or such other percentage as the Bank may determine from time to time;

5.2.2. in the Bank's opinion, there is any rapid or unusual changes in the value of any currency; or

5.2.3. there is an Event of Default or an Extraordinary Event;

the Bank shall be entitled to exercise one or more of the following rights and a written or oral notice will be issued to the Customers upon execution of the rights:-

- (a) earmark from the Customer's banking facilities including but not limited to overdraft facilities such outstanding amount for such period as the Bank may deem fit and the Customer shall not be entitled to utilise the earmarked amount;
- (b) demand the Customer to provide the Bank such security or additional security acceptance to the Bank;
- (c) earmark any deposit including credit balances of the Customer for settlement of the Contract, and in such case, the Bank shall be entitled to withhold such earmarked deposit including credit balances until the Customer discharges all actual or contingent liabilities;
- (d) withhold any payment to the Customer in respect of any Contract which yields profit for the Customer until the Customer discharges all actual or contingent liabilities to the Bank;
- (e) close out or cancel any or all the Contract, and any outstanding sums arising from the Contract including any costs, charges and fees which the Bank may have or had incurred as a consequence of it, shall be immediately settled by the Customer; and/or
- (f) take any action which the Bank is entitled to take under the STC and/or the Letter of Offer including the right to set-off.

## 6. Settlement

6.1. The Customer is required to settle all outstanding transaction Contract on or by the respective maturity date(s) or such date(s) as the Bank may stipulate, failing which the Bank may with prior notice to you, take the following action: -

6.1.1. take up the outstanding Contract on your behalf and such amount paid by the Bank on behalf of the Customer shall be settled by the Customer immediately together with interest at the rate of 3.5% (or such other rate as the Bank may determine from time to time) above the Bank's prevailing base lending rate on monthly rests until payment in full to the Bank; and/or

6.1.2. cancel any or all Contract notwithstanding that the contracts may be backed by underlying transactions and any losses arising from it including but not limited to any costs, charges and fees which the Bank may incur or has incurred as a consequence of it, shall be immediately settled by the Customer.

## 7. Termination and Suspension of Gold Facility

We may terminate, withdraw and suspend the Gold Facility:-

- 7.1. as we deem fit with prior notice to you;
- 7.2. if in our opinion, you do not comply with any Applicable Laws;
- 7.3. if in our opinion, the Gold Facility is not operated in a proper or regular manner;
- 7.4. if you have breached any of these Terms and Conditions or other terms and conditions and/or conditions applicable to you;
- 7.5. if any representation, warranty or undertaking made to us by you is or will become incorrect or misleading in a material respect;
- 7.6. if you become insolvent or allow any judgment to remain unsatisfied for a period of twenty one (21) days;
- 7.7. if you are unable to pay your debts, as the case may be, or suspend your debts, as the case may be, or enter into any composition or arrangement with or for the benefit of your creditors, as the case may be;
- 7.8. if any resolution is passed, or if a petition is presented against you:-
  - (i) for liquidation, winding-up or dissolution; or
  - (ii) for the appointment of liquidator, receiver, trustee or judicial manager;
- 7.9. if a liquidator, receiver, trustee, judicial manager or a similar official is appointed for all or a substantial part of your assets;
- 7.10. if execution or any form of recovery or enforcement action is levied or taken against any of your assets;
- 7.11. if you transfer or dispose of or intend to transfer or dispose of a substantial part of your assets, as the case may be;
- 7.12. if in our opinion, there is any change or threatened change in:-
  - (i) circumstances which would materially and adversely affect your business or financial condition or your ability to perform your obligations under these Terms and Conditions; or
  - (ii) circumstances in relation to you or any of your directors or members of the management board or any direct or indirect shareholder that could, in our opinion, expose us to the risk of loss or reputation or regulation action in any country;
  - (iii) your status as a resident or resident controlled company; or
  - (iv) your shareholders, shareholding structure, directors or management;
- 7.13. if a notice or proposal for the compulsory acquisition of any of your properties is issued or made under any law;
- 7.14. if you are blacklisted pursuant to the DCHEQS guidelines or any guidelines issued by Bank Negara Malaysia or any other authority having jurisdiction over us;
- 7.15. if any of your accounts with us is re-designated or closed by us for any reason whatsoever;
- 7.16. if you fail to discharge any obligation or liability to us or to any other person;
- 7.17. if you commit a default in any loan, facility or similar arrangement with any person (including us) which gives the right to the creditor concerned (including us) to demand repayment of the loan, facility or arrangement before its due date, to withdraw the loan, facility or arrangement, or to enforce the security for the loan, facility or arrangement;
- 7.18. if there is a default in the payment of any moneys under the account of any other person for whom you are providing security;
- 7.19. if there is any litigation (whether civil or criminal) arbitration or administrative proceedings pending, on-going or threatened against you;
- 7.20. if we suspect or have reasons to believe that the Gold Facility or any part of it is derived from or being used for any unlawful activity;
- 7.21. if there is any investigation by the police or regulators pending, on-going or threatened against you;
- 7.22. if you have been charged or convicted for any criminal offences or have any criminal records;
- 7.23. if there is any report lodged against you under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (as amended or replaced from time to time);
- 7.24. if your whereabouts are unknown to us;
- 7.25. if you become a US Person; or
- 7.26. if we decide that the continuation of the Gold Facility could likely be detrimental to our own position and interest, our decision shall be final.

## **8. Losses by the Bank**

- 8.1. The Customer and the Bank agree that any losses incurred and/or suffered by the Bank that may arise from any closing out or cancellation of any Contracts shall be borne by the Customer. The losses incurred and/or suffered by the Bank shall include but not limited to the difference of the Gold pricing at the time of closing out or cancellation and the original Gold pricing for any Contracts and any fees, costs and charges that the Bank may incur or has incurred as a consequence of the cancellation of the Contracts.
- 8.2. The Customer irrevocably and unconditionally authorises the Bank to debit any of its designated account with the Bank and/or to debit the balance of the overdraft facility (if any) to settle such losses due to the Bank.
- 8.3. The Customer agrees that it shall have no rights, claims or recourse against the Bank for debiting of such payment due to the Bank.

## **9. Recording of Communication**

- 9.1. The Customer agrees to the electronic recording of telephone conversation (including the telephone conversation of the Bank's agents, servants and employees) with the Bank, with or without the use of an automatic tone or other warning device.
- 9.2. The Customer agrees to the use of such recordings and transcripts for any purposes which the Bank deems desirable including the use as evidence by the Bank in any dispute between the Bank and the Customer.
- 9.3. The Customer acknowledges and agrees that the Bank is not required or obliged to maintain copies of such recordings or transcripts and the same may be wiped out or destroyed from time to time.

## **10. General Exclusion**

- 10.1. Any views expressed from time to time by the dealers or employees of the Bank are personal opinions only and are not to be taken as advice given by such dealers or employees of the Bank. Any reliance on such views by the Customer shall be at the Customer's own risk and the Customer agrees that it will not have any recourse against the Bank for such reliance on these views.
- 10.2. In addition, and without prejudice to any right or remedy which the Bank shall have (at law or otherwise), the Bank shall not be liable to you in any respect for any losses suffered by you. Without any prejudice to the generality of the foregoing, the Bank shall not in any event be liable to you for any direct, indirect or consequential loss, or for punitive damages save and except where such losses are directly caused by the Bank's negligence or willful default.
- 10.3. You shall Indemnify and keep the Bank indemnified against any and all losses, such losses including but not limited to claims, expenses (including legal fees) taxes, costs, duties, damages and liabilities suffered or incurred by the Bank as a result of:
  - (a) any delay or failure by you to comply with any of these Terms;
  - (b) the Bank acting in accordance with your orders pursuant to clause 2 or otherwise, or in any manner permitted under these Terms or any account;
  - (c) any change in any applicable laws or regulations, or as may be required by any regulatory body of any jurisdiction; and/or
  - (d) any act or thing done or caused to be done by the Bank in connection with or referable to these Terms or any account.

This indemnity shall not apply in cases where the Bank's losses are arising from or a result of its own gross negligence or wilful misconduct.

#### 11. Amendments

The Bank may amend, vary or supplement any terms pursuant to these Terms including and not limited to specific terms relating to the Gold Facility by giving twenty one (21) calendar days prior notice to the Customer by posting on our official website at [www.uob.com.my](http://www.uob.com.my) or in any manner that we choose. Such amendment, variation or supplement shall take effect as between the Customer and the Bank from the date specified in such notice or in the absence thereof as from the date of such notice.

#### 12. Waiver

No failure or delay by the Bank in exercising of any right or remedy shall operate as a waiver of it nor shall any single or partial exercise or waiver of any right or remedy shall preclude its further exercise or the exercise of any other right or remedy.

#### 13. No Liability

The Bank shall not be liable for any losses, damages, liabilities, costs, charges, expenses, penalties, fines or taxes which are incurred and/or suffered by the Customer as a result of any changes in the governmental regulations or restrictions or other similar sovereign act of whatsoever nature in any jurisdiction which may affect the Contract, suspension or termination of trading on matters relating to the Contract, war, civil or labour disturbance, delay or inaccuracy in the transmission or reporting of orders due to a breakdown or failure of computer services, transmission or communication facilities or any other cause beyond the Bank's control.

#### 14. Notices

14.1. The Customer agrees that it must inform the Bank in writing of any change of the Customer's address, facsimile number, electronic mail address or mobile phone number.

14.2. Any confirmation advice, correspondence or notice to you may be delivered personally or sent by ordinary mail, facsimile or electronic mail to your address, facsimile number or electronic mail address last known to the Bank or to such other address notified by you to the Bank from time to time or at any of your principal places of business, or by posting on the website or by insertion in any statement of account which the Bank may send to you or by advertisement in any one daily newspaper.

14.3. Anything whatsoever that the Bank sends to the Customer will be deemed effective:

- i. at the time of delivery, if delivered by hand;
- ii. forty-eight (48) hours after posting, if sent by pre-paid ordinary post;
- iii. at the time the facsimile transmission is complete, if sent by facsimile transmission;
- iv. at the time the electronic mailing is complete, if sent by e-mail;
- v. at the time posting, if posted on our website;
- vi. on the day the advertisement appears in the newspaper.

14.4. The Bank will not be responsible for what may happen to notices or communications after they are sent, for example if any notice or communication is delayed, intercepted, lost, fails to reach or is disclosed to any one during transit.

14.5. The Bank's rights here under are not to be affected by any failure on the Customer's part to notify the Bank of any changes in the address, facsimile number, electronic mail address or mobile phone number.



## 15. Circumstances beyond the Bank's Control (Force Majeure)

If the Bank is unable:

- (a) to perform any of its obligations under these Terms or any Security Document;
- (b) to carry out its usual business operations; or
- (c) to provide any service;

due to any reason beyond its control including, but not limited to:

- (i) any fire, earthquake, flood, epidemic, pandemic, natural disaster, accident, riot, civil disturbance, industrial dispute, act of terrorism, embargo, war or Act of God;
- (ii) any failure of or interruption to telecommunications, internet, electricity, water or fuel supply; or
- (iii) any circumstances in the nature of a *force majeure*, that is, an unforeseeable event that prevents us from performing any of its obligations under these Terms or any Security Documents.

the Bank will not be in any way liable for any failure to perform as per the circumstances herein or for any inconvenience, loss, injury or damage which Customer may directly or indirectly suffer as a result.

## 16. Taxes, Duties or Levies

16.1 For Gold Transaction, you shall be liable to pay for any goods and services tax or other taxes or levies which as at the date of the purchase of the Gold or at any date subsequent thereto, is required by law (including the Goods and Services Tax Act or anything equivalent) to be paid to anybody or authority having jurisdiction over the Bank, in respect of any monies charged or incurred by the Bank, in addition to all other monies payable by the Bank.

16.2 You consent and agree that any goods and services tax or other taxes or levies incurred by the Bank in relation to your purchase of the Gold or the provision of services by the Bank to you, shall be borne and charged to you and in the event that the Bank shall effect payment on your behalf, you shall be liable to reimburse the Bank for such amounts paid.

## 17. Time and Continuation

17.1 Time shall be of the essence pursuant to these Terms.

17.2 These Terms shall be binding upon you, your heirs, liquidators, receivers, representatives, successors in title and notwithstanding any change in your constitution, if a corporation by amalgamation, consolidation, reconstruction or otherwise, and if a firm, by retirement, expulsion, death, admission, accession or change of any partners or otherwise.

## 18. Single Agreement

The Customer and the Bank agrees that these Terms, the STC, the Confirmation Advice and the Letter of Offer shall form and be construed as a single agreement.

## 19. Inconsistency



In the event of any inconsistency between the terms and conditions in these Terms, the STC, the Letter of Offer and the Confirmation Advice, the terms and conditions of these documents will be interpreted according to the following order of precedence: (1) the Confirmation Advice; (2) these Terms; (3) the Letter of Offer; and (4) the STC.

## **20. Applicable Laws**

The Customer's relationship with the Bank, the operation of all accounts in connection with Gold Transactions and the implementation of all instructions shall be subject at all times to the applicable laws and regulations which the Bank is subject to, and which govern such Gold Transaction provided that any breach of any applicable laws shall not relieve the Customer of its obligations under any Gold Transaction. The Bank may take or refrain from taking any action whatsoever, and the Customer shall do all things and take all actions as required by the Bank, in order to procure or ensure the Gold Transaction's compliance with applicable laws and regulations.

## **21. Governing Law and Jurisdiction**

These Terms, any account, the relationship between the Customer and the Bank and all matters in relation to Gold Transactions, shall be governed by and construed in accordance with the laws of Malaysia. The Customer irrevocably submits to the non-exclusive jurisdiction of the courts of Malaysia and agrees that the Bank may bring proceedings with respect to these Terms and any dispute arising out of or in connection with these Terms, in the courts of any jurisdiction and may take concurrent proceedings in more than one jurisdiction, in which case, the Customer irrevocably submits to the jurisdiction of any such courts and waives any immunity or objection to proceedings in any such court on any grounds whatsoever including on grounds that the proceedings have been brought in an inconvenient forum.